

SUBCHAPTER 3. FERRY CAPITAL IMPROVEMENT PROGRAM FUNDING

16:89-3.1 Source of funds

(a) (No change.)

(b) NJ TRANSIT will allocate FCIP participants at least 75 percent of the funding generated as a result of their RVM reported to the NTD and allocated to NJ TRANSIT [under] pursuant to the FTA’s 49 U.S.C. [§§5307] §§ 5307 and 5337 programs, or their successors. The remaining balance will be retained by NJ TRANSIT to cover internal administration cost and assist in the support of NJ TRANSIT capital projects that are deemed by NJ TRANSIT to be required for the support of commuter ferry operations.

(c) NJ TRANSIT will allocate FCIP participants at least 75 percent of the funding generated as a result of their FGDRM reported to the NTD and allocated to NJ TRANSIT [under] pursuant to the FTA’s 5307 and 5337 programs, or their successors. The remaining balance will be retained by NJ TRANSIT to cover internal administration cost and assist in the support of NJ TRANSIT capital projects that are deemed by NJ TRANSIT to be required for the support of commuter ferry operations.

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

**TREASURY—GENERAL**

(a)

**DIVISION OF PENSIONS AND BENEFITS**

**Teachers’ Pension and Annuity Fund**

**Proposed Readoption with Amendments: N.J.A.C. 17:3**

**Proposed New Rules: N.J.A.C. 17:3-4.7, 6.6, 6.15, and 6.23**

Authorized By: Teachers’ Pension and Annuity Fund, Saretta Dudley, Secretary.

Authority: N.J.S.A. 18A:66-56 et seq.

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

Proposal Number: PRN 2022-137.

Submit comments by December 16, 2022, to:

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The agency proposal follows:

**Summary**

The Division of Pensions and Benefits (Division) is responsible for reviewing the Teachers’ Pension and Annuity Fund (TPAF) rules at N.J.A.C. 17:3. The rules are reviewed periodically to determine if they are in line with the Division’s administration and operation of the State-administered retirement systems. At times, amendments to those rules are necessary to reflect current procedures and practices followed by the Division.

On November 8, 2021, Governor Murphy signed P.L. 2021, c. 296, amending the TPAF return to employment statute, N.J.S.A. 18A:66-53.2, to permit a retired certified school nurse to return to employment with a board of education as a certified school nurse, on a contractual basis for a term of not more than one year, without being re-enrolled in TPAF, provided that the certified school nurse has been retired for 180 days. N.J.S.A. 18A:66-53.2 allows the contract to be renewed for an additional year, provided that: 1) the total period of reemployment with any individual board of education does not exceed a two-year period, unless approved by the Commissioner of Education as being in the best interest

of the school district; and 2) the retiree does not have an option about whether or not to be reenrolled in TPAF.

The Board of Trustees of the Teachers' Pension and Annuity Fund (Board) proposes to readopt N.J.A.C. 17:3, which was scheduled to expire on October 19, 2022, with the following proposed amendments and new rules. As the Board submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to April 17, 2023, pursuant to N.J.S.A. 52:14B-5.1.c(2). The rules proposed for readoption with amendments and new rules affect administration, definitions, insurance and death benefits, membership, purchases and eligible service, retirements, and transfers in the TPAF.

**Subchapter 1. Administration**

At Subchapter 1, the Board proposes to add new subsection (d) at N.J.A.C. 17:3-1.1, Board meetings. This new subsection will add language to specify that persons audio- or video-recording a Board meeting shall inform the Secretary of the Board and provide their names and addresses. Additionally, the Secretary of the Board shall assist with identifying the appropriate location for any cameras and recording devices, so that they do not obstruct or interfere with the conduct of business by the Board.

N.J.A.C. 17:3-1.2, Fiscal year, remains unchanged.

N.J.A.C. 17:3-1.3, Officers and committees, remains unchanged.

N.J.A.C. 17:3-1.4, Election of member-trustee, remains unchanged.

N.J.A.C. 17:3-1.5, Certifying officer (employer), remains unchanged.

The Board proposes to amend N.J.A.C. 17:3-1.6, Records, at subsection (b), to prohibit the release of any active or retired member’s telephone number or email address, as this is also a part of the member’s confidential file. Subsection (c) is reworded to match the language of the other State-administered retirement systems, without any substantive change.

N.J.A.C. 17:3-1.7, Appeal from Board decisions, remains unchanged.

N.J.A.C. 17:3-1.8 is reserved and remains unchanged.

N.J.A.C. 17:3-1.9, Verified discrepancy in member’s age, remains unchanged.

N.J.A.C. 17:3-1.10 is reserved and remains unchanged.

N.J.A.C. 17:3-1.11, Proof of age, remains unchanged.

N.J.A.C. 17:3-1.12, Employees; biweekly salaries, remains unchanged.

N.J.A.C. 17:3-1.13, Age determination; contribution rate, remains unchanged.

**Subchapter 1A. Definitions**

At N.J.A.C. 17:3-1A.1, Definitions, the Board proposes to add the following definitions: “bona fide severance from employment,” “Employer Pensions and Benefits Information Connection,” “independent medical examiner,” “Medical Review Board,” “Member Benefit Online System,” and “treating physician.” “Bona fide severance from employment” means a complete termination of the employee’s employment relationship with the employer for a period of at least 180 days. The 180-day count begins September 1 for July 1 retirees who were 10-month employees. The following does not constitute a complete termination of the employee’s relationship with the employer: employment or reemployment in a part-time or volunteer position; employment or reemployment in a position that is not covered by the Defined Benefit Plan; a change in title; employment or reemployment as a contract or subcontract employee, a leased employee, or an independent contractor; or termination of employment with a pre-arranged agreement for reemployment. The terms “Employer Pensions and Benefits Information Connection” and “Member Benefit Online System” are terms the Board frequently uses to refer to the internet-based applications that are utilized by employers and employees to manage pension and health benefits information electronically. The Medical Review Board reviews all reports, hospital records, medical examination forms, and other medical records in support of a disability retirement application. “Treating physician” means someone who provides the member, or who has provided the member, with medical treatment on an ongoing basis. Generally, the Division will consider that a member has an ongoing treatment relationship with a physician when the medical evidence establishes that the physician is seeing, or has seen, the member with a frequency consistent with accepted medical practice for the type of

treatment and/or reevaluation required for the member's medical condition(s). The Division, in the past, has used the term "attending physician," which in some cases only applied to a physician in a hospital setting or emergency room.

#### Subchapter 2. Enrollment

- N.J.A.C. 17:3-2.1, Enrollment eligibility, remains unchanged.
- N.J.A.C. 17:3-2.2, Documentation required, remains unchanged.
- N.J.A.C. 17:3-2.3, Multiple enrollees, remains unchanged.
- N.J.A.C. 17:3-2.4, Emergency or provisional certificate, remains unchanged.
- N.J.A.C. 17:3-2.5, Janitors, remains unchanged.
- N.J.A.C. 17:3-2.6 is reserved and remains unchanged.
- N.J.A.C. 17:3-2.7, Enrollment following deferred retirement, remains unchanged.
- N.J.A.C. 17:3-2.8, Enrollment date, remains unchanged.

#### Subchapter 3. Insurance and Death Benefits

- N.J.A.C. 17:3-3.1, Compulsory and optional enrollment, remains unchanged.
- The Board proposes to amend N.J.A.C. 17:3-3.2, Computation of insurance benefits, at subsection (f) to include verbiage for an overpayment and procedures for collecting such funds. The existing rule only addresses what happens in the event of an underpayment. This proposed amendment specifies that, in the case of an overpayment, any future monetary benefits due to the beneficiary or beneficiaries would be reduced in the amount of such overpayment. The Board has long had the authority to recover overpayments under the statutory provision for correction of errors at N.J.S.A. 18A:66-63.
- N.J.A.C. 17:3-3.3, Contributory insurance rate, remains unchanged.
- N.J.A.C. 17:3-3.4, New enrollments and transfers; contributory insurance premiums, remains unchanged.
- N.J.A.C. 17:3-3.5, Leave for illness; life insurance coverage, remains unchanged.
- N.J.A.C. 17:3-3.6, Survivor benefits, remains unchanged.
- N.J.A.C. 17:3-3.7, Withdrawal application; contributory insurance, remains unchanged.
- N.J.A.C. 17:3-3.8, Withdrawal and return, contributory insurance, and conversion, remains unchanged.
- N.J.A.C. 17:3-3.9, Retired life insurance coverage, remains unchanged.
- N.J.A.C. 17:3-3.10, Contributory insurance premiums, leave of absence and workers' compensation, remains unchanged.
- N.J.A.C. 17:3-3.11, Ten-month members, remains unchanged.
- N.J.A.C. 17:3-3.12, Beneficiary designation; pension contributions, remains unchanged.
- N.J.A.C. 17:3-3.13, Benefits payable when a member dies with a retirement application pending, remains unchanged.
- N.J.A.C. 17:3-3.14(a), is proposed for amendment to state that the required information needed for beneficiary designations must include: a full name, Social Security number, tax identification number (for estates or trusts), address, and date of birth. This information assists the Division with locating beneficiaries in an efficient manner. In turn, this assists the Division with processing claims in a timely fashion.
- N.J.A.C. 17:3-3.15, Suspension, remains unchanged.

#### Subchapter 4. Membership

The Board proposes to amend N.J.A.C. 17:3-4.1, Creditable compensation, at subsection (a), to add language that is consistent with N.J.S.A. 18A:66-2.d(1)(2). Specifically, that "compensation" means the contractual salary, for services as a teacher as defined at N.J.S.A. 18A:66-2.d(1)(2), in accordance with established salary policies of the member's employer for all employees in the same position. The Board also proposes new subparagraphs to reflect the Division's long-standing policy of not permitting service or salary credit for compensation for performing temporary or extracurricular duties, temporary duties while covering an employee on a leave of absence, and increments and stipends added to base salary outside the contracted position. Therefore, the Board proposes to add N.J.A.C. 17:3-4.1(a)1xx to include language that would not permit service or salary credit for compensation for performing temporary or extracurricular duties beyond the regular workday or shift. Additionally, the Board proposes to add N.J.A.C. 17:3-4.1(a)1xxi to include language

that would not permit service or salary credit for compensation for performing temporary duties during the regular work day or shift while covering for an employee on a leave of absence. The Board also proposes to add new N.J.A.C. 17:3-4.1(a)1xxii to include language that would not permit service or salary credit for compensation for increments or stipends added to base salary.

- N.J.A.C. 17:3-4.2, Leave with pay, remains unchanged.
  - N.J.A.C. 17:3-4.3, School year members; 10 and 12 months, remains unchanged.
  - N.J.A.C. 17:3-4.4, Loan tolerance, remains unchanged.
  - N.J.A.C. 17:3-4.5, Approved leave, remains unchanged.
  - N.J.A.C. 17:3-4.6, Minimum adjustment, remains unchanged.
  - The Board proposes new N.J.A.C. 17:3-4.7, Loans. This proposed new section clearly specifies that IRS regulations govern the repayment of pension loans that are taken from a qualified plan. Specifically, I.R.C. § 72(p)(2)(C) requires that all pension loans be repaid within five years and, if the member fails to make payments on the plan loan within this timeframe, it will be deemed a distribution. The I.R.C. also sets forth that any loan amount (combined with prior loans) over \$50,000 will be deemed a distribution.
  - N.J.A.C. 17:3-4.8, Military leave prior to August 1, 1974, remains unchanged.
  - N.J.A.C. 17:3-4.9, Eligibility for loan, remains unchanged.
  - N.J.A.C. 17:3-4.10, Waiver of retirement benefits upon withdrawal, remains unchanged.
  - The Board proposes to amend N.J.A.C. 17:3-4.11, Termination; withdrawal, to add new paragraph (c)6 to add an additional reason for rejecting a withdrawal application. If the member has a pending retirement application, it must be rescinded before the processing of the withdrawal application can proceed. As the retirement allowance is comprised of employer and employee contributions, a member cannot withdraw and simultaneously collect a monthly retirement allowance.
  - N.J.A.C. 17:3-4.12, Deductions, remains unchanged.
  - N.J.A.C. 17:3-4.13, Active employment; membership requirement, remains unchanged.
  - N.J.A.C. 17:3-4.14, Maximum compensation limit for pension contributions based upon annual maximum wage contribution base for Social Security, remains unchanged.
- #### Subchapter 5. Purchases and Eligible Service
- At Subchapter 5, the Board proposes to amend N.J.A.C. 17:3-5.1, Eligibility for purchase, at subsection (a), to state that active members who are not contributing to the Teachers' Pension and Annuity Fund must purchase their requested service credit in a lump sum. Further, the Board proposes to add language to specify that the purchase request must represent active service in a State-administered system for which the member would have otherwise been eligible to be enrolled.
- N.J.A.C. 17:3-5.2, New enrollment contribution rate adjustment, remains unchanged.
  - N.J.A.C. 17:3-5.3, Reestablishing military leave credit, remains unchanged.
  - N.J.A.C. 17:3-5.4, Compulsory contributions (back deductions), remains unchanged.
  - N.J.A.C. 17:3-5.5, Optional purchases of eligible service, remains unchanged.
  - N.J.A.C. 17:3-5.6, Methods of payment, remains unchanged.
  - N.J.A.C. 17:3-5.7 is reserved and remains unchanged.
  - N.J.A.C. 17:3-5.8, Service ineligible for purchase, remains unchanged.
  - N.J.A.C. 17:3-5.9, Lump-sum purchases, remains unchanged.

#### Subchapter 6. Retirements

At Subchapter 6, the Board proposes to amend N.J.A.C. 17:3-6.1, Applications, to propose new subsection (f), which would require a TPAF member to request a reasonable accommodation from their employer prior to applying for disability retirement. It requires the certifying officer, as defined at N.J.A.C. 17:3-1.5, to certify that the member requested a reasonable accommodation and whether any accommodations were able to be provided. The certifying officer will provide this information upon completion of the Certification of Service and Final Salary. The Board also proposes to amend recodified N.J.A.C. 17:3-6.1(g)1 and 2 to include the defined term "treating physician" and to specify that the two required medical reports for a disability retirement must be completed on a form

prescribed by the Division. Additionally, the Board proposes to include language requiring documentation for disability retirement applications to be received within six months of the date of filing the disability retirement application. If the required documentation is not received, the retirement will be cancelled and the member must complete a new disability retirement application with a future retirement date. Finally, proposed new N.J.A.C. 17:3-6.1(g)5i is added to clarify when a disability retirement application is ripe for consideration by the Board.

The Board proposes to amend recodified N.J.A.C. 17:3-6.1(i) to allow applicants who are denied a disability retirement, but qualify for any other retirement benefit, to submit a written statement within 30 days of accepting the alternate retirement benefit. In the past, the Division required a separate application.

N.J.A.C. 17:3-6.2, Effective date, remains unchanged.

N.J.A.C. 17:3-6.3, Effective date; changes, remains unchanged.

N.J.A.C. 17:3-6.4, Outstanding loan, remains unchanged.

N.J.A.C. 17:3-6.5, Willful negligence, remains unchanged.

The Board proposes new N.J.A.C. 17:3-6.6, Retirement quotations. This proposed new section details how outstanding arrears or shortages are handled at retirement. As an employee's monthly retirement allowance is based in part on employee contributions, all outstanding arrears and shortages must be paid in full prior to a retirement check being issued. The Division has indicated that for timely and efficient processing, all outstanding obligations to the pension fund must be satisfied within 90 days, after which the request for retirement will be cancelled. This timeframe is consistent with the time the Division allows an employee to submit additional information needed to process any retirement application. The employee will qualify for a retirement check on the first of the month following receipt of the outstanding amount in its entirety, provided 30 days following the retirement or 30 days following the approval of the retirement by the Board of Trustees has elapsed, whichever is later.

N.J.A.C. 17:3-6.7, Disability determination, remains unchanged.

N.J.A.C. 17:3-6.8, Option selection; accidental disability denied, remains unchanged.

N.J.A.C. 17:3-6.9, Employer and employee notices, remains unchanged.

The Board proposes to amend N.J.A.C. 17:3-6.10, Involuntary disability application, at paragraph (a)1, to update the method by which an employer can initiate a disability retirement application on behalf of a member. As all retirement applications are now submitted online, a certifying officer, or other designated officer, who wishes to complete an involuntary disability retirement application must authorize an application online through the Employer Pensions and Benefits Information Connection (EPIC). The Board also proposes to amend paragraph (a)2 to reflect that the employer must submit an electronic statement as to the grounds for the employer's request for the member's involuntary disability retirement and all available medical documentation. Further, the Board proposes to amend paragraph (a)3 to reflect that a written statement must be provided to the Board within 30 days to contest the involuntary disability retirement.

N.J.A.C. 17:3-6.11, Early retirement; reduction, remains unchanged.

N.J.A.C. 17:3-6.12, Service retirement; eligibility, remains unchanged.

N.J.A.C. 17:3-6.13, Disability retiree; annual medical examinations, remains unchanged.

N.J.A.C. 17:3-6.14, Disability retiree; annual report (employment, earnings, test, and adjustment), remains unchanged.

The Board proposes new N.J.A.C. 17:3-6.15, Return to employment; certified school nurse. This proposed new section implements the TPAF return to employment statute (N.J.S.A. 18A:66-53.2), which permits a retired certified school nurse to return to employment with a board of education as a certified school nurse on a contractual basis for a term of not more than one year without being re-enrolled in TPAF, provided that the certified school nurse has been retired for 180 days. The statute, and this new section, implement the contract for reemployment to be renewed for an additional year, provided that the total period of reemployment with any individual board of education does not exceed a two-year period, unless approved by the Commissioner of Education as being in the best interest of the school district, and provided the retiree does not have an option about whether or not to be reenrolled in TPAF.

N.J.A.C. 17:3-6.16 is reserved and remains unchanged.

N.J.A.C. 17:3-6.17, Approved allowance, remains unchanged.

N.J.A.C. 17:3-6.18, Option 1 benefit, remains unchanged.

N.J.A.C. 17:3-6.19, Work-related travel; accidental disability retirement and accidental death benefit coverage, remains unchanged.

N.J.A.C. 17:3-6.20, Final compensation; 10- and 12-month members reported monthly, remains unchanged.

N.J.A.C. 17:3-6.21, Determination of last year's salary; veterans paid on a monthly basis, remains unchanged.

N.J.A.C. 17:3-6.22, Waiver, remains unchanged.

The Board proposes new N.J.A.C. 17:3-6.23, Disability retirement application and termination of service. This proposed new section is necessary to emphasize that the applicant is responsible for proving that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment. Furthermore, this section lists a series of reasons that would preclude a member from applying for a disability retirement, and the Division's procedures for verifying whether an applicant is eligible once an application is filed. These reasons include: removal for cause or total forfeiture of public service; settlement agreements reached due to pending administrative or criminal charges (unless the underlying charges relate to the disability for which the member is seeking a benefit); loss of licensure or certification required for the performance of the member's specific job duties; voluntary separation from service for reasons other than a disability; and irrevocable resignations from employment.

N.J.A.C. 17:3-6.24, Part-time members, remains unchanged.

The Board proposes to amend the section heading at N.J.A.C. 17:3-6.25 to "Disability retirement applications; medical examinations; physicians." This proposed amendment is needed to accurately reflect additional information regarding disability retirement applications, which is added as proposed new subsections (a) and (c) through (g). Specifically, subsection (a) lists all the documentation a member who files for a disability retirement must provide prior to the Board's determination of eligibility. New paragraph (a)1 necessitates that all required documentation be provided within six months of submitting the application or the application will be cancelled and the member will be required to submit a new disability retirement application for a future retirement date. The existing information at N.J.A.C. 17:3-6.25 is codified as subsection (b). New subsection (c) sets forth the Division's reservation of the right to require a member to sign a sworn certification that no known underlying condition existed related to the disability for which the member seeks the benefit and that all available medical records related to the disability have been disclosed to the independent medical examiner prior to the examination. New subsection (d) prohibits a member from filing for any other type of retirement while an application for an ordinary or accidental disability retirement is pending. New subsection (e) states that if the member is denied a disability retirement, but is eligible for any other type of retirement benefit, the member must submit a written statement to receive that benefit, collect the alternate retirement benefit, and appeal the denial of disability retirement. If this is received within 30 days of the Board's decision, the member may retain the retirement date on the disability retirement application. New subsection (f) clarifies that a disability retirement application will be processed on the basis of the medical conditions described on the submitted application. If the application is denied, the member may file an appeal within 45 days, based on the medical conditions described on the submitted application. Additionally, if a member who files an appeal qualifies for deferred retirement during the pendency of the appeal, wishes to collect a deferred retirement, they must submit a written statement accepting deferred retirement at the time of the appeal. Finally, new subsection (g) sets forth the process of reapplying for a disability retirement based on a new incident date or different or additional medical conditions. This will require submitting a new application for disability retirement with a new retirement date and supplying all supporting documentation in support of the new incident or medical condition listed on the application.

N.J.A.C. 17:3-6.26, Final compensation; biweekly salary computation for employees reported on a biweekly basis, remains unchanged.

N.J.A.C. 17:3-6.27, Determination of last year's salary; veterans reported on a biweekly basis, remains unchanged.

**Subchapter 7. Transfers**

At Subchapter 7, the Board proposes to amend N.J.A.C. 17:3-7.1, Honorable service; interfund transfers; State-administered retirement systems, at paragraph (b)1, to state that once a transfer is completed, all rights and benefits under the former system terminate. This alleviates the confusion of some members who believed they could maintain rights under both systems.

N.J.A.C. 17:3-7.2, Intrafund transfers; State-administered retirement systems, remains unchanged.

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 rules proposed for readoption with amendments and new rules benefit TPAF members and retirees. Members and retirees rely on the efficient operation of the TPAF to provide them with the information needed regarding their individual accounts. Members and employers rely on the publication and clarity of rules governing the TPAF to guide the administration of their benefits and maintain the retirement system’s stability. The proposed new rules will allow retired certified school nurses to return to work for up to two years, creating a larger pool of potentially available certified school nurses.

**Economic Impact**

The rules proposed for readoption with amendments and new rules promote the effective and efficient administration of retirement in the TPAF. The rules proposed for readoption with amendments and new rules for TPAF members have no negative impact on the retirement system.

**Federal Standards Statement**

The rules proposed for readoption with amendments and new rules meet the applicable Federal standards, that is, 26 U.S.C. § 403(b). To maintain qualified plan status, adherence to Federal law and the Internal Revenue Service regulations is required. Thus, the proposed amendments pertaining to accommodations under Title 1 of the Americans with Disability Act and I.R.C. § 72 (p)(2)(C), which govern the repayment of pension loans, meet Federal standards.

**Jobs Impact**

The rules proposed for readoption with amendments and new rules will not have any impact on the generation of jobs.

**Agriculture Industry Impact**

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

**Regulatory Flexibility Statement**

N.J.A.C. 17:3 affects TPAF members and retirees. Thus, the rules proposed for readoption with amendments and new rules do not impose any reporting, recordkeeping, or other compliance requirements on 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 and new rules will not have any impact on the affordability of housing in New Jersey, nor will the rules involve a change in the average costs associated with housing, because the rules proposed for readoption with amendments and new rules pertain only to administration of the TPAF for members and retirees.

**Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments and new rules will not have any impact on the achievement of smart growth, nor will the rules involve 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 proposed for readoption with amendments and new rules pertain to administration of the TPAF for members and retirees.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The TPAF Board has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:3.

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

SUBCHAPTER 1. ADMINISTRATION

17:3-1.1 Board meetings

(a)-(c) (No change.)

**(d) 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 or interfere with the conduct of business by the Board, and the Secretary shall assist in identifying an appropriate location for such devices.**

17:3-1.6 Records

(a) (No change.)

(b) The mailing address[es], **telephone number, or email address** of [all] **any** active [and] **or** retired member[s] are] is considered to be a part of the members’ confidential files and shall not be released for any purpose.

(c) The **beneficiary** designations of [beneficiaries of all] **an** active [and] **or** retired member[s] are considered to be a part of the member’s confidential files and shall only be released after the member’s death.

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

SUBCHAPTER 1A. DEFINITIONS

17:3-1A.1 Definitions

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

...  
**“Bona fide severance from employment”** means a complete termination of the employee’s employment relationship with the employer for a period of at least 180 days. The 180-day count begins September 1 for July 1 retirees who were 10-month employees. The following does not constitute a complete termination of the employee’s relationship with the employer: employment or reemployment in a part-time or volunteer position; employment or reemployment in a position that is not covered by the Defined Benefit Plan; a change in title; employment or reemployment as a contract or subcontract employee, a leased employee, or an independent contractor; or termination of employment with a pre-arranged agreement for reemployment.  
 ...

**“Employers Pensions and Benefits Information Connection”** or **“EPIC”** is a set of internet-based applications that allow registered employers who have obtained authorization by the certifying officer of the location, access to manage their employees’ pensions and, if applicable, health benefits account information. The specific group of application buttons that are visible will depend on the type of employer and the level of access authorized by the certifying officer of the location.  
 ...

**“Independent medical examiner”** or **“IME”** means the physician or group of physicians contracted by the Division to perform an independent medical evaluation on disability retirement applicants.

**“Medical Review Board”** consists of three physicians, each responsible for reviewing all medical documentation submitted in relation to any applications submitted for ordinary or accidental disability retirement.

“Member Benefits Online System” or “MBOS” is a set of internet-based applications that allow registered members access to manage their pension and, if applicable, health benefits account information.

“Treating physician” is defined as someone who provides the member, or has provided the member, with medical treatment on an ongoing basis.

### SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

#### 17:3-3.2 Computation of insurance benefits

(a)-(e) (No change.)

(f) Where post-death audits establish that the insurance benefits were underpaid, an additional check shall be sent to the beneficiary for the value of the underpayment. **Should any change or error in the records result in any member receiving from the pension fund more than he or she would have been entitled to receive had the records been correct, the Board of Trustees shall correct such error, as best as practicable, and shall adjust the payments payable to the member’s designated beneficiary or estate, pursuant to N.J.A.C. 17:1-2.10.**

(g)-(k) (No change.)

#### 17:3-3.14 Acceptable designations of beneficiaries

(a) The beneficiary designation on a duly executed retirement application that is filed with and accepted by the Division supersedes any older designation of beneficiary on file. **Such designation shall include: full name, Social Security number, tax identification number (for estates or trusts), address, and date of birth.** The designation is effective upon acceptance by the Division, even if the retirement date on the application is in the future, or the member cancels the retirement application.

1.-2. (No change.)

(b) (No change.)

### SUBCHAPTER 4. MEMBERSHIP

#### 17:3-4.1 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 Fund shall [be limited to base salary, and] **mean the contractual salary, for services as a teacher defined at N.J.S.A. 18A:66-2.d(1)(2), which is in accordance with established salary policies of the member’s employer for all employees in the same position and shall not include extra compensation.**

1. Forms of compensation that have been identified as extra compensation include, but are not limited to:

i.-xvii. (No change.)

xviii. Compensation paid for serving as a bedside instructor or for leading extracurricular activities; [and]

xix. Compensation paid for additional services performed during a normal duty assignment, which are not included in base salary[.];

xx. **Compensation for performing temporary or extra-curricular duties beyond the regular work day or shift;**

xxi. **Compensation for performing temporary duties during the regular work day or shift while covering for an employee on a leave of absence; and**

xxii. **Increments or stipends added to base salary for additional duties outside the contracted position.**

(b)-(k) (No change.)

#### 17:3-4.7 [(Reserved)] Loans

(a) **All pension loans must be repaid within a period not to exceed five years. If the member has an outstanding loan balance and applies for a new loan, the entire balance must be repaid within five years of the date of the first loan. Furthermore, the new loan amount, when added to the highest balance due (without interest) during the prior 12-month period for all loans from all retirement plans cannot exceed \$50,000. The \$50,000 maximum limit includes all retirement plans the member has an interest in due to his or her employment relationship with the State and/or any other governmental plans sponsored or administered by a public sector employer in New Jersey. Loan**

amounts above the \$50,000 aggregate limit shall be declared a deemed distribution, which is subject to additional tax.

(b) **If a member’s loan is treated as a distribution, the member is still required to repay the loan, unless the member terminates his or her account by withdrawing his or her contributions. If the member withdraws from the retirement system, the settlement will be the net amount of the member’s contributions minus the outstanding loan. If the member returns to work and the member’s account is reactivated or the member retires, the member must repay the full amount of the outstanding loan with additional interest computed from the date the member stopped making loan payments.**

(c) **Pursuant to I.R.C. § 72(p)(2)(C), members must make regular periodic payments to repay their outstanding loans. If a member takes out a loan and fails to make required loan repayments for three consecutive months, the Division will send a letter to the member requesting payment within 30 days. If the payment is not made, the Division will treat the outstanding loan as a deemed pension distribution. A deemed distribution cannot be cancelled by resuming loan payments or repaying the loan in full. Unlike a normal pension distribution, a loan treated as a distribution cannot be rolled over to an Individual Retirement Account (IRA) or another qualified retirement plan.**

#### 17:3-4.11 Termination; withdrawal

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

(c) No application shall be approved, if:

1.-4. (No change.)

5. The member has a claim pending for worker’s compensation benefits unless the member signs a waiver indicating that the member still wishes to withdraw[.]; or

**6. The member has a pending retirement application, unless the member agrees to rescind such application.**

### SUBCHAPTER 5. PURCHASES AND ELIGIBLE SERVICE

#### 17:3-5.1 Eligibility for purchase

(a) **Only active members of the Fund who are currently contributing, or who have contributed within the last two years to the Fund, except as provided [in] at N.J.S.A. 18A:66-8, shall be eligible to make application for purchase of credit. Active members who are not currently contributing to the Fund [shall] must purchase their requested service in a lump sum. The purchase request must represent active service in a State-administered retirement system for which the member received a salary and was eligible for enrollment, but the information must be verified by the employer as to salary information, service, and title.**

(b)-(e) (No change.)

### SUBCHAPTER 6. RETIREMENT

#### 17:3-6.1 Applications

(a)-(e) (No change.)

(f) **A member must request a reasonable accommodation, as defined by the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213, prior to filing for a disability retirement. Upon completion of the Certification of Service and Final Salary, the employer’s designated certifying officer will certify that a reasonable accommodation was requested and if such accommodation could be provided.**

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

1. **An application for a physical disability retirement must be supported by at least two reports. One must be provided by the member’s personal or [attending] treating physician [and the] on a form prescribed by the Division. The other may [consist of] be either hospital records supporting the claim of disability or a report from a second physician on a form prescribed by the Division.[; the] 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. The required documentation must be received within six months of the date the member filed the disability retirement**

application on MBOS, thus, receiving confirmation of the filing. If the required documentation is not received in its entirety, the retirement will be cancelled, and the member must complete a new disability retirement application for a future retirement date. Further, in the case of a member filing for an accidental disability retirement, only those disabilities associated with the [purportedly-disabling] **purportedly disabling** event shall be considered. If the member is denied an accidental disability retirement application but qualifies for an ordinary disability retirement based on the original accidental-disability application, no additional application need be filed, pursuant to [(h)] (i) below.

2. An application for a mental health medical disability retirement must be supported by at least two medical reports. One must be provided by the member's personal or [attending] **treating** psychiatrist or psychologist [and the] **on a form prescribed by the Division. The other [may consist] "medical report" may be in the form** of either hospital records supporting the claim of disability [or], a report from a second psychiatrist or psychologist **on a form prescribed by the Division**, or from the member's personal or [attending] **treating** physician or licensed clinical social worker. 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. **The Division must receive the required documentation within six months of the date of filing the disability retirement application. If the Division does not receive the required documentation, the retirement will be cancelled and the member must complete a new disability retirement application for a future retirement date.**

3.-4. (No change.)

5. A disability retirement application that is filed [under] **pursuant to** this subsection may take effect, in accordance with the laws and rules applicable to effective dates for disability retirements, only on or after the date the application is filed.

**i. An application for a disability retirement will be forwarded to the Board for consideration only when all documentation is received. The Division will schedule an independent medical examination for the purpose of providing additional information to the Medical Review Board to make a determination about a disability retirement application. The independent medical examination scheduled by the Division will be provided at no cost to the applicant.**

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

[(h)] (i) If a disability retirement application is denied by the Board and the applicant qualifies for any other retirement benefit, the applicant will be required to submit a [separate application for] **written statement accepting the alternate retirement benefit.** If the applicant submits the [separate application for retirement] **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.

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

17:3-6.6 [(Reserved)] **Retirement quotations**

(a) **Members who apply for retirement will receive a quotation of retirement benefits upon the completion of the retirement calculation. For members of retirement systems that provide for optional survivor benefits, the retirement quotations will include a description of the various options available. If the member named a spouse as the pension beneficiary on the application, which provides the spouse's birth date, all survivor options will be included in the quotation, in addition to the maximum allowance.**

(b) **The quotation of retirement benefits will also include any outstanding arrears or shortages due to delinquent enrollment, back deductions, purchases of service credit, and audits. All outstanding arrears or shortages must be paid in full by the employee before a retirement check can be issued. Failure to pay the outstanding amount in its entirety, within 90 days from the Division's notification to the member of the outstanding obligation, will result in the retirement application being cancelled. If the retirement application is cancelled, the member will be required to file a new application**

**with a future retirement date. If the outstanding obligation is paid within 90 days of the Division's notification, but beyond the original retirement date, the member will qualify to receive a retirement check on the first of the month following receipt of the outstanding amount in its entirety, provided the conditions at N.J.A.C. 17:3-6.2 are met. No retroactive checks will be issued.**

17:3-6.10 **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 its employees enrolled in the Fund before May 21, 2010, the member will be promptly notified by letter that:

1. The member's employer has properly initiated a **disability retirement application online through the Employer Pensions and Benefits Information Connection (EPIC) authorized** by the certifying officer or other designated officer, [signed by the Certifying Officer or other designated officer of the employer,] on the member's behalf;

2. The member's employer has submitted [a written] **an electronic** statement as to the grounds for the employer's request for the member's involuntary disability retirement and all pertinent medical documentation;

3. The member has a period of 30 days to contest the involuntary **disability retirement by submitting a written statement** before the Board acts on the employer's application;

4.-6. (No change.)

17:3-6.15 [(Reserved)] **Return to employment; certified school nurse**

**Pursuant to N.J.S.A. 18A:66-53.2, a retired certified school nurse may return to employment with a board of education as a certified school nurse, on a contractual basis for a term of not more than one year, without being reenrolled in TPAF, provided that the certified school nurse has been retired for 180 days. The provisions at N.J.A.C. 17:1-17.14 apply and prearrangement of reemployment is prohibited. The contract for reemployment may be renewed for an additional year, provided that the total period of reemployment with any individual board of education does not exceed a two-year period, unless approved by the Commissioner of Education as being in the best interests of the school district and provided the retiree does not have an option about whether or not to be reenrolled in TPAF.**

17:3-6.23 [(Reserved)] **Disability retirement application and termination of service**

(a) **Each disability retirement applicant must prove that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment, and the member must prove the disability is the reason for leaving employment.**

(b) **Members who have involuntarily or voluntarily terminated service for any of the reasons listed in this subsection will not be permitted to apply for a disability retirement:**

1. **Removal for cause or total forfeiture of public service;**

2. **Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;**

3. **Loss of licensure or certification required for the performance of the member's specific job duties;**

4. **Voluntary separation from service for reasons other than a disability; and**

5. **Irrevocable resignations.**

(c) **The Division will review all disability retirement applications submitted after a member has terminated service to determine whether the member's application is eligible for processing pursuant to (a) above.**

17:3-6.25 [Medical] **Disability retirement applications; medical examination; physicians**

(a) **In addition to the reports required with the application pursuant to N.J.A.C. 17:3-6.1(f)1 and 2, applicants for a disability retirement shall submit with their applications all the medical information they can supply relative to their disability, including: reports of their personal physicians and consulting physicians,**

hospital records, diagnostic test results, and any other medical information that would assist the independent medical examiner, Medical Review Board, and the Board in determining eligibility of the applicants for a disability retirement. The Division shall forward the applications and the accompanying medical information to the Medical Review Board.

1. The applicant must submit all required documentation within six months of submitting the disability retirement application, or the application will be cancelled. The member will then be required to complete a new application for a future retirement date.

(b) N.J.S.A. 18A:66-39 and 40 require the Fund or the Board to designate physicians to perform medical examinations. A designated physician shall not be a member’s personal physician, except in the case of a member whose personal physician has identified the member as having a probable abbreviated life expectancy (referred to as an “imminent death” case), if corroborating medical evidence of the diagnosis can be obtained.

(c) The Division reserves the right to require a member to sign a sworn certification that the member knows of no underlying condition that exists related to the disability for which the member is seeking a benefit and that all available medical reports related to the disability have been disclosed to the IME prior to the examination.

(d) A member filing for any type of disability retirement shall not file a separate application for any other type of retirement while an ordinary or accidental disability retirement application is pending before the Board.

(e) If a disability retirement application is denied by the Board and the applicant qualifies for any other retirement benefit, the applicant will be required to submit a written statement to receive that benefit. 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, collect the alternate retirement benefit, and appeal the denial of disability retirement.

(f) The member’s disability retirement application will be processed on the basis of the medical conditions described on the submitted application. If the disability retirement application is denied, the member may file an appeal within 45 days, based on the medical conditions described on the submitted application. An applicant who files an appeal of a denial of disability retirement may qualify for a deferred retirement during the pendency of the appeal. Such applicant who wishes to accept the deferred retirement must include a written statement accepting deferred retirement at the time of the appeal.

(g) If a disability retirement application is denied by the Board and the applicant wishes to reapply for a disability retirement based on a new incident date or different or additional medical condition, the applicant will be required to submit a new application with a new retirement date. The applicant must also continue to meet the requirements at N.J.A.C. 17:1-6.4(a). All supporting documentation required must be submitted in support of the new incident or medical conditions listed on the application.

SUBCHAPTER 7. TRANSFERS

17:3-7.1 Honorable service; interfund transfers; State-administered retirement systems

(a) (No change.)

(b) Except as noted [in] at (a) above, a member is eligible to transfer membership from another State-administered defined benefit retirement system, provided the membership has not expired or has not been withdrawn and provided that all service eligible for participation has ceased.

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.” This application will [terminate membership] void all possible benefits claims in the former system when approved, and the membership is commenced in the new system.

2.-6. (No change.)

(c)-(e) (No change.)

OTHER AGENCIES

(a)

NEW JERSEY TURNPIKE AUTHORITY

New Jersey Turnpike Authority Towing Rates and Road Services Rates

Proposed Amendments: N.J.A.C. 19:9-3.1 and 3.2

Authorized By: New Jersey Turnpike Authority, Diane Gutierrez-Scaccetti, Chair.

Authority: N.J.S.A. 27:23-5.s.

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

Proposal Number: PRN 2022-139.

Submit written comments by December 16, 2022, to:

Ann Christine Monica, Acting Director of Law  
New Jersey Turnpike Authority  
PO Box 5042  
Woodbridge, New Jersey 07095-5042  
[Rules@NJTA.com](mailto:Rules@NJTA.com)

The agency proposal follows:

Summary

The New Jersey Turnpike Authority (Authority) proposes to amend its rules at N.J.A.C. 19:9-3.1 and 3.2 in response to substantive comments received by the Authority during its recent rulemaking process that culminated in modest adjustments, effective August 1, 2022, to the fees that may be charged by service providers for towing services and road services on the New Jersey Turnpike and Garden State Parkway (Roadways). Pursuant to the Authority’s enabling legislation, N.J.S.A. 27:23-5.s., the Authority has the power to adopt rules to “fix maximum towing and storage fees” for towing and storage services on the Roadways. Prior to the recent changes, the Authority adjusted rates five years ago after rates had remained unchanged for almost 13 years.

After surveying other regional toll roads, it is apparent that the Authority’s towing and road services fees remain significantly lower, even considering the recent modest increases. Further, after careful consideration of the substantive comments received from the towing industry during the recent rulemaking process, it is apparent that additional adjustments: (i) are warranted in these uncertain economic times; (ii) are appropriate to bring routine towing and road service fees more in line with other regional toll roads; and (iii) are necessary to ensure that a qualified pool of service providers remains available to perform these critical services on the Authority’s Roadways.

Additionally, concerns were raised by the insurance industry that some rate increases that became effective on August 1, 2022, exceeded New Jersey State Police (NJSP) authorized rates. As the Authority does not desire to exceed an established State maximum, the applicable rates are proposed to be reduced to the NJSP maximum threshold in this rulemaking.

A 60-day comment period is provided, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the notice of proposal is not subject to the provisions at N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

A summary of the proposed amendments follows:

The current rates at N.J.A.C. 19:9-3.1(a)1 provide for a maximum service charge of \$108.00 for towing services for Class 1 vehicles (under 7,000 pounds Gross Vehicle Weight Rating (G.V.W.R.), generally, “Passenger Vehicles”) and a per mile charge of \$4.00, with the total maximum fee for Class 1 vehicles, including the service charge, being \$148.00. The Authority has determined that an increase to these rates is warranted for the reasons set forth above. Therefore, the maximum service charge for towing services for Class 1 vehicles shall be increased from \$108.00 to \$116.50, and the per mile charge shall be increased from \$4.00