

notice. The cash discount value of the outstanding arrearage for the purchase will be calculated with interest from the date of the last installment payment.

3. A member who authorizes a purchase that requires installment payments but who has not had installment payments made toward that purchase for two years for reasons other than inactivity shall have the installment payments recertified. The recertified installment payments will be calculated with interest from the date of the last installment payment.

4. A member returning from an approved leave of absence after two years may request that the original purchase be resumed. Such purchase shall be recalculated to include additional regular interest accrued between two years after the date of the last installment payment and the date the purchase is resumed. A member returning from an approved leave of absence within two years shall have the original purchase resumed. Installment payments for the purchase shall recommence without the assessment of additional regular interest.

(d) For a member who has authorized a purchase of service credit by installment and has filed for a retirement allowance, any outstanding balance due must be paid in full at least 30 days prior to the member's retirement date. If a balance remains unpaid at the effective date of retirement, the purchased service credit will be pro-rated. If a member becomes ineligible for a retirement benefit due to the pro-rated service credit, the retirement application will be cancelled and the member will be required to refile a new retirement application for a future retirement date.

(a)

DIVISION OF PENSIONS AND BENEFITS PUBLIC EMPLOYEES' RETIREMENT SYSTEM Public Employees' Retirement System

Readoption with Amendments: N.J.A.C. 17:2

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

Proposed: July 17, 2017, at 49 N.J.R. 2189(a).

Adopted: December 13, 2017, by the Public Employees' Retirement System Board of Trustees, Jacquelyn Bussanich, Secretary.

Filed: December 13, 2017, as R.2018 d.025, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Dates: December 13, 2017, Readoption;
January 16, 2018, Amendments, New Rule and
Repeal.

Expiration Date: December 13, 2024.

Summary of Public Comments and Agency Responses:

Comments on the notice of proposed readoption were received from Sarah Favinger, Associate Director, on behalf of the New Jersey Education Association (NJEA).

N.J.A.C. 17:2-3.8(b) and 3.13(b)

1. COMMENT: The commenter expresses a major concern about the proposed amendment to N.J.A.C. 17:2-3.8(b) and deletion of N.J.A.C. 17:2-3.13(b), regarding group life insurance conversion provisions. More specifically, the commenter states that the proposed changes do not uphold current statutory provisions under N.J.S.A. 43:15A-50 and 93 and contradict the information provided in the Division's Fact Sheet 13, Conversion of Group Life Insurance, prior to July 2016. The commenter states that the Division has since made revisions to Fact Sheet 13, stating that a member must live more than 31 days into retirement for their beneficiary/beneficiaries to receive a payout of the conversion of life insurance, which she asserts is inconsistent with statutory and case law.

The commenter also states that as provided in statute and in Fact Sheet 13, members have the ability to convert, within 31 days of retirement, at the member's expense, the difference between the retired group life insurance amount and the full active group life insurance

amount; however, the commenter asserts that the Division has incorrectly added that 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. Further, she asserts that in *New Jersey Education Association v. Board of Trustees, Public Employees' Retirement System*, 327 N.J.Super. 405 (App. Div. 2000), the Court held that life insurance did not automatically convert by statutory function, but qualified that holding by stating that the statutory intent only prohibited the collection of both the active and retired benefit "absent an election to purchase additional insurance." The commenter states that this suggests that both benefits would be due if the life insurance policy was converted, as had been the Division's practice until recently.

RESPONSE: Several important factors support the amendment and deletion of the regulations in question, N.J.A.C. 17:2-3.8(b) and 3.13(b), respectively. First and foremost, when the historical context of this area is examined, the statutory intent of the Legislature becomes quite clear. Prior to 1995, the beneficiary of a member who died with a retirement application pending, before the member's retirement became due and payable, would be entitled to active death benefits, which included the member's active group life insurance and a return of the member's contributions. The beneficiary did not have the option of choosing to receive a retired pension benefit and retired group life insurance coverage in place of the active benefits. However, with the enactment of P.L. 1995, c. 221, the Legislature amended N.J.S.A. 43:15A-93 to allow the member's beneficiary to choose to receive either active death benefits or retired death benefits. In such cases, under N.J.S.A. 43:15A-50 and 93, a beneficiary is permitted to select the member's active group life insurance benefits and a return of contributions, or the beneficiary is allowed to select a monthly (pension) beneficiary benefit, along with the member's retired group life insurance benefits.

Thus, the intent of N.J.S.A. 43:15A-50 and 93 is to allow the beneficiary of a member who dies with a retirement application pending to choose either active benefits or retired benefits, based on the beneficiary's own personal needs. The intent is not to allow a member's beneficiaries to receive both benefits. In *New Jersey Education Association v. Board of Trustees, Public Employees' Retirement System*, 327 N.J.Super. 405 (App. Div. 2000), the court pointed out that "the legislative history demonstrates that by amending N.J.S.A. 43:15A-50, the Legislature intended the beneficiary to select either a retirement allowance or an active member death benefit, but not both." In addition, the OLS (Office of Legislative Services) noted that if a beneficiary had previously received the death-in-service life insurance death benefit but now wanted the retirement benefit, the beneficiary would have to return to the PERS a substantial portion of the life insurance death benefit. Surely, there would be no need to consider the return of the life insurance death benefit if the beneficiary was to be given both the death benefit and the retirement benefit. A literal interpretation of the relevant statutes would give benefits to a limited class of beneficiaries that exceed the benefits that a retiring member could receive, absent an election to purchase additional insurance. Further, the commenter's statement that this last phrase suggests that both benefits would be due if the life insurance policy was converted is incorrect. To be literal, the phrase only refers to a purchase of additional insurance, which a member can do at any time through any insurance company; no mention of the group life insurance conversion privilege through membership in the System is made.

In addition, it is important to note that a member's retired group life insurance policy and converted individual policy both do not take effect until 31 days after the date of termination of employment. Thus, a member continues to be covered by his or her active group life insurance until that period ends. At that time, the member's retired group life insurance and any converted individual life insurance, up to the amount of active group life insurance, will take effect. If a member passes away before the effective date of the converted individual policy, the death benefit provided by the policy in effect at that time, the active group life insurance policy, will be paid. In such cases, the converted individual group life insurance has not yet become effective, based on its date of issue, and is, therefore, null and void, so it is not paid to the designated beneficiary. If a payment for the conversion privilege has been made,

that payment will be returned. For this reason, N.J.A.C. 17:2-3.13(b) is to be deleted.

This is not peculiar to the conversion privilege offered by the State of New Jersey through PERS membership, but rather reflects the insurance industry's standard for conversion policies. In general, such policies do not become effective until the member's active group life insurance policy expires, since the purpose of a group life insurance conversion privilege is to allow someone who is terminating employment for any reason to continue to have the same level of insurance coverage as while actively employed. As Prudential states in its brochure, Continuing Your Group Term Life Insurance Coverage (2017), "YOUR CONVERSION POLICY will be effective on the 32nd calendar day after YOUR group life insurance coverage ended. If YOU die within 31 calendar days after YOUR group life insurance coverage ended and while YOU are entitled to CONVERSION, then a life insurance claim will be processed under the GROUP CONTRACT. The amount of any benefit determined to be payable under the GROUP CONTRACT is equal to the amount of group life insurance coverage YOU had under the GROUP CONTRACT immediately after that coverage ended. If a benefit is payable under the GROUP CONTRACT, then it will be paid even if YOU have not exercised YOUR conversion right under the GROUP CONTRACT."

To restate, a member's active group life insurance continues for 31 days after the date of termination of employment for any reason, including a member's retirement. Because the member is still covered by his or her active group life insurance policy during this 31-day period, the member cannot also be covered by a retired and/or converted group life insurance policy. For this reason, N.J.A.C. 17:2-3.8 is amended to state that a member's retired group life insurance and any individual life insurance that the member converts will take effect only after coverage under the member's active group life insurance policy ends, 31 days after the member's termination of employment, and N.J.A.C. 17:2-3.13(b) will be deleted.

However, as the commenter correctly states, and consistent with N.J.S.A. 43:15A-93, the beneficiary (or beneficiaries) of a member who dies on or after 31 days after the retirement date (or due and payable) will be eligible to receive the full conversion benefit if the member filed the conversion application and paid the initial premium prior to death. That private conversion insurance policy will then be honored by the insurance company, as long as the member converts within the period specified by N.J.S.A. 43:15A-93, that is, prior to the 31st day after termination of employment. If the member dies, the member's beneficiary or beneficiaries will receive the benefit under the private individual conversion policy, along with any other retired benefits payable under the deceased member's PERS membership.

N.J.S.A. 43:15A-93 clearly provides that when an individual's coverage under the group policy terminates due to termination of employment, whether by retirement or for another reason, the conversion privilege becomes available upon termination of the group policy. Further, N.J.S.A. 43:15A-93 clearly articulates that if a member dies during the 31-day period that he or she would be entitled to exercise the conversion privilege, the amount of insurance with respect to which he or she could have exercised the conversion privilege shall be paid as a claim under the group policy. As N.J.S.A. 43:15A-93 specifically states, this ensures that the benefits paid "shall in no event exceed the amount of insurance for which the member was insured under the group policy immediately prior to the date the right of conversion arose."

Moving forward, the Board intends to uphold the statute correctly, even if it may have been misinterpreted in the past, by allowing the beneficiary of a member who dies with a retirement application pending to choose to collect either the active death benefits or the retired death benefits. In cases where a member dies during the 31-day period in which his or her group life insurance coverage continues, before a member's converted group life insurance policy becomes effective, the converted individual policy does not take effect. The proposed amendment to N.J.A.C. 17:2-3.8(b) is to be adopted and N.J.A.C. 17:2-3.13(b) is to be deleted.

N.J.A.C. 17:2-4.10

2. COMMENT: The commenter points out that in accordance with P.L. 2011, c. 78, members hired after June 28, 2011, who are under age

65 must have at least 30 years of service to retire, rather than 25, so N.J.A.C. 17:2-4.10 must be amended accordingly.

RESPONSE: The commenter is correct. Under N.J.S.A. 43:15A-41 (and P.L. 2011, c. 78), a member hired after June 28, 2011, who is under age 65 must have at least 30 years of service to retire. N.J.A.C. 17:2-4.10 will be changed accordingly upon adoption.

N.J.A.C. 17:2-5.5

3. COMMENT: The commenter correctly references changes to the Teachers' Pension and Annuity Fund (TPAF) regulations at N.J.A.C. 17:3-5.5 that were made in the notice of adoption and not the notice of proposal. The commenter asserts that corresponding PERS regulations at N.J.A.C. 17:2-5.5 should provide the same requirements, in accordance with statute, N.J.S.A. 43:15A-39. The commenter notes that there is a distinction between service credit purchases of up to three months for personal reasons for childcare and service credit purchases of up to two years for personal illness in connection with maternity leave. The commenter further notes that it is not mandated that a leave of absence due to child care must begin with the birth of a child.

RESPONSE: The distinction between service credit purchases of up to three months for personal reasons for childcare and service credit purchases of up to two years for personal illness in connection with maternity leave is an important one, as stated by the commenter. For this reason, N.J.A.C. 17:2-5.5(a)4 will be changed upon adoption, so that the language of subparagraph (a)4iii corresponds to the language provided in the corresponding TPAF rules.

N.J.A.C. 17:2-5.1(c) and 6.1(a)

4. COMMENT: The commenter states that N.J.A.C. 17:2-5.1(c) and 6.1(a) should allow members to submit paper applications in cases where they cannot submit the necessary applications online. The commenter notes that proposed N.J.A.C. 17:2-4.11(b) allows for the submittal of a paper withdrawal application in specific instances.

RESPONSE: While N.J.A.C. 17:2-4.11(b) does provide that members may submit a paper withdrawal application in specific instances, and N.J.A.C. 17:2-5.1(c) and 6.1(a) do not, it is important to note that withdrawals are different from retirements and purchases in that a withdrawal from the System usually occurs after a member terminates his or her public employment and PERS membership. When a member's public employment and membership end, that former member's access to MBOS also ends within a limited time frame. For that reason, former members must be permitted to submit a paper application, especially in cases where the Application for Withdrawal is submitted after the former member's MBOS access ends.

In contrast, in cases where a member retires or wishes to purchase service time, access to MBOS continues, so submitting an online MBOS application is possible; therefore, submitting a paper application should not be necessary in most cases. The Division does make exceptions in only a very limited number of cases, and members wishing to submit a purchase application or a retirement application can open and access an MBOS account from any personal computer, including their own. In contrast, members who have terminated employment and no longer have MBOS access must be provided with another viable option for completing a withdrawal application, such as submitting a paper application. For this reason, N.J.A.C. 17:2-5.1(c) and 6.1(a) will not be changed at this time.

N.J.A.C. 17:2-6.1(c)

5. COMMENT: The commenter states that N.J.A.C. 17:2-6.1(c) contains a typographical error in making a reference to N.J.S.A. 43:66-39.

RESPONSE: The commenter is correct about the typographical error present in proposed N.J.A.C. 17:2-6.1(c), so the statutory citation will be changed to the correct statutory citation, N.J.S.A. 43:15A-42.

N.J.A.C. 17:2-6.1(f)

6. COMMENT: The commenter asserts that a member should be able to qualify for an accidental disability retirement allowance based on a disability caused by the accident and any other condition, whether it is associated with the accident or not, as long as the traumatic event is the essential significant or substantial contributing cause of the disability.

The commenter further asserts that requiring that only those disabilities associated with the purportedly-disabling event may be considered conflicts with the law governing accidental disability retirement, particularly with respect to the interplay between the condition caused by the accident and any pre-existing condition(s). The commenter also asserts that the Supreme Court has held that members may qualify for an accidental disability retirement based on a disability that results from a combination of the condition caused by the accident and a different pre-existing condition.

RESPONSE: Proposed N.J.A.C. 17:2-6.1(f)1 does not indicate that other conditions cannot contribute to the disability; however, as already established by the courts, an accidental disability retirement benefit will be granted only when it is determined that the member's disabling condition is the direct result of a traumatic event that occurred during, and as a result of, the member's usual or assigned duties, and not as a result of the member's willful negligence. Further, the traumatic event must be undesigned and unexpected; be identifiable as to time and place; and result directly in the member's permanent and total disability from the performance of his or her usual and assigned duties.

The main purpose of paragraph (f)1 is to prevent abuses by making clear that accidental disability retirement benefits are not awarded on the basis of pre-existing conditions alone, or those that combined with work effort (but not with an accident) resulted in total and permanent disability. Accidental disability retirement benefits are intended for members who are totally and permanently disabled as a direct result of a traumatic event that occurred while a member was performing regular or assigned work duties. A member with a preexisting condition always has the option of applying for an ordinary disability retirement for disability caused by that condition, but that member will not qualify for an accidental disability retirement on the basis of that condition alone. See N.J.S.A. 43:15A-43, which provides that "permanent and total disability resulting from a cardiovascular, pulmonary or musculo-skeletal condition which was not a direct result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability."

Finally, in accidental disability retirement determinations, the concept of "direct result of a traumatic event" is a critical element. Establishing a mere connection between an accident and a disability is not sufficient; rather, it must be shown that an incident qualifies as a traumatic event because it is the essential significant or substantial contributing cause of the disability. For example, while it may be foreseeable for a member to undergo surgery following a traumatic event, if the occurrence of a professional mishap, and not the actual accident, is the substantial cause of a resulting permanent disability, the member is not entitled to an accidental disability retirement benefit.

Members who choose to apply for an accidental disability retirement must prove that a traumatic event rendered them totally and permanently disabled from their job duties. A disability that is not the direct result of a traumatic event that occurred while a member was performing his or her job duties will not qualify for an accidental disability retirement benefit. If a member requests that all disabling conditions be considered in order to determine total and permanent disability when applying for an accidental disability retirement, the Division of Pensions will notify the member to request that only those conditions that directly result from the accident be named. Should the member wish to have other conditions considered for total and permanent disability either at the time of initial filing or after the accidental disability application is denied, the member may file an application for ordinary disability retirement benefits.

Accidental disability retirements generally provide a much higher monthly benefit than benefits paid under service, early, deferred, veteran, or ordinary disability retirement. In addition, the benefits are usually paid for the life of the member, and all or a portion of the benefits may continue after the member's death for the life of the member's beneficiary, depending upon the member's retirement system and option selection. A parallel rule at N.J.A.C. 17:3-6.1 that was adopted for the TPAF was upheld in a recent Appellate Court opinion, *New Jersey Education Association v. Board of Trustees of the Teachers' Pension and Annuity Fund*, No. A-3158-15T4, slip op. (App. Div. July 13, 2017).

The Board has the responsibility of preventing abuses and protecting taxpayer dollars by limiting accidental disability retirement benefits to

members who are totally and permanently disabled at the time of separation from service, as a direct result of a traumatic event that occurred while the member was carrying out regular or assigned job duties. On the basis of the reasons stated above, N.J.A.C. 17:2-6.1(f)1 will not be modified upon adoption.

N.J.A.C. 17:2-6.1(f)3

7. COMMENT: The commenter objects to proposed N.J.A.C. 17:2-6.1(f)3, which states that an applicant may be required to demonstrate that the applicant made a reasonable request for his or her employer to accommodate the applicant's disability, but the employer could not make the requested accommodation. The commenter states that the Division already requires an applicant's employer to submit a letter attesting that no other work is available for the applicant (employee). The commenter asserts that this provision will complicate and confuse the issue and lead to unnecessary litigation. In addition, the commenter disagrees with the stipulation that termination of employment for any reason other than a disability should prohibit a member from qualifying for a disability retirement. Further, the commenter states that the regulations should correspond to parallel TPAF regulations at N.J.A.C. 17:3-6.1(f)3.

RESPONSE: The commenter is correct in stating that the Division already requires a member's employer to submit a certification, stating that no other employment is available. Therefore, the Board will delete from this paragraph, language requiring the member to demonstrate that a reasonable request for accommodation of a disability was made.

However, N.J.A.C. 17:2-6.1(f)3 will otherwise remain as proposed. As stated in response to a prior comment, an accidental disability retirement generally provides a much higher benefit than benefits paid under a service, early, deferred, veteran, or ordinary disability retirement. In cases where a member has little service credited, an ordinary disability retirement benefit may also pay a higher benefit than other retirement types that the member is eligible to receive. In addition, both retirement types include health benefits coverage, a benefit that other members will receive at retirement only after attaining a minimum of 25 years of service.

As noted previously, a parallel rule at N.J.A.C. 17:3-6.1 that was adopted for the TPAF was upheld in *New Jersey Education Association v. Board of Trustees of the Teachers' Pension and Annuity Fund*, No. A-3158-15T4, slip op. (App. Div. July 13, 2017). Since parallel statutes exist at N.J.S.A. 43:15A-42 and 44(a) for PERS membership, the court's opinion above applies to N.J.A.C. 17:2-6.1(f)3, the proposed PERS rule, as well.

To prevent abuses and protect taxpayer dollars, the Board must limit awards of disability retirement benefits to members who are found to be permanently and totally disabled at the time of separation from service, and the disabling condition must be the reason for the separation from service. The requirement that the member show that his or her separation from service was due to total and permanent disability and not some other reason (such as incarceration, dishonorable service, or a settlement agreement with the member's employer) is intended to deter members who are not disabled from filing for the heightened benefits that a disability retirement provides. Under current law, disability retirement benefits are provided to members who have become "physically or mentally incapacitated for the performance of duty." They are not intended to provide higher retirement benefits to members whose service has been terminated for any other reason. The fact patterns for the member's case, including the reason for the member's voluntary or involuntary separation from service, must demonstrate that the member is totally and permanently disabled from performing his or her regular or assigned job duties.

N.J.A.C. 17:2-6.1(f)5

8. COMMENT: The commenter asserts that members who have decided to retire should be allowed to submit more than one retirement application at a time, so that if they do not qualify for a disability retirement, they do not have to wait for a retirement application that is filed subsequently to be processed. The commenter also states that it takes the Division six to eight months to process disability retirement applications. In addition, the commenter notes that "under New Jersey

law, pension statutes must be liberally construed and administered in favor of the beneficiary.” Further, the commenter states that a member who is applying for a disability retirement is entitled to include all disabilities.

RESPONSE: When members provide all requested information as required, the Division’s processing time for disability retirement applications is about three months. Processing delays do occur due to volume, but they also result when members or their medical examiners fail to provide the required information in a timely manner. Allowing members to submit more than one retirement application to the Division will put excessive and unnecessary administrative demands on the Division’s staff members, which could bring about additional processing delays.

In addition, when members apply for an ordinary disability retirement, they are permitted to list all known disabilities, but they must also provide medical reports that document those disabilities and prove that they are disabled. Processing can be slowed greatly when members are unable to do so. Further, under N.J.A.C. 17:2-6.1(f)6, when an accidental disability retirement application is denied by the Board, the member may be granted an ordinary disability retirement at the time the decision is rendered, if eligibility is determined. Moreover, in cases where a disability retirement is denied, the Board will determine whether the member qualifies for other types of retirement, and will offer the member such options as may apply at the time of denial. The member then has 30 days to submit a retirement application for any of the retirement types offered in order to claim the available retirement benefit as of the retirement date listed on the rejected disability application. A member who chooses to appeal the denial of disability retirement may, on application, collect such alternative benefits on an interim basis during the pendency of the appeal. A member who does not apply for an available benefit within the allotted 30 days must file a new prospective application. Since, in the above examples, the Board has already determined that the member qualifies, processing times will usually be minimal.

Furthermore, as provided above, the parallel rule at N.J.A.C. 17:3-6.1 that was adopted for the TPAF was upheld by the court in *New Jersey Education Association v. Board of Trustees of the Teachers’ Pension and Annuity Fund*, No. A-3158-15T4, slip op. (App. Div. July 13, 2017). Likewise, the court’s determination applies to proposed N.J.A.C. 17:2-6.1(f)5, which limits a PERS member to one retirement application at a time, and N.J.A.C. 17:2-6.1(f)6, which allows a member to apply for a separate retirement type within 30 days of denial of the disability retirement application. Based on the justification provided above, N.J.A.C. 17:2-6.1(f)5 will not be changed upon adoption.

N.J.A.C. 17:2-6.5(a)1

9. COMMENT: The commenter asserts that the proposed section “attempts to change the definition of willful negligence, which has been defined as the equivalent of recklessness, into simple negligence.” The commenter notes that N.J.A.C. 17:2-6.5(a)2 does define willful negligence as conduct that evidences reckless indifference to safety, which the commenter states is consistent with the applicable statute, N.J.S.A. 43:15A-43, and with how willful negligence has been interpreted in case law.

RESPONSE: The current language of N.J.A.C. 17:2-6.5(a)1 defines willful negligence as a deliberate act or deliberate failure to act. The additional language simply expounds upon paragraph (a)1 by stating that such acts or failures to act are deliberate because they reflect a reckless deviation from the standard of care exercised by a reasonable person in similar circumstances. This added language reflects standard legal definitions of willful negligence. For example, *Black’s Law Dictionary*, 10th Ed., defines willful negligence as “A conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party, who may typically recover exemplary damages.” *Irma Pinto v. Board of Trustees, Public Employees’ Retirement System*, No. A-3263-15T4, slip op. (App. Div. August 3, 2017).

Since “willful negligence” is a statutory bar to the award of an accidental disability pension (N.J.S.A. 43:16A-7), the amendment to N.J.A.C. 17:2-6.5(a)1 was necessary to clarify the definition of “willful negligence” and help the Board determine whether willful negligence is

a factor in applicable accidental disability retirement cases, such as the *Pinto* case. For the reasons presented above, N.J.A.C. 17:2-6.5(a)1 will not be changed upon adoption.

N.J.A.C. 17:2-6.7(a)2

10. COMMENT: The commenter asserts that N.J.A.C. 17:2-6.7(a)2 is in conflict with the requirements for ordinary disability retirement as provided at N.J.S.A. 43:15A-42. The commenter expresses that N.J.S.A. 43:15A-42 does not require that the member is disabled at the time the member separated from service, but rather makes him or her eligible for ordinary disability retirement, as long as he or she remains a PERS member based on the criteria listed in N.J.S.A. 43:15A-42. Further, the commenter asserts that the Division, by disqualifying those who left employment for reasons other than disability, is thereby adding requirements for disability retirement not contained in the statutes, and is, thus, limiting the application of those statutes. The commenter notes that pension statutes are to be liberally construed and administered in favor of those they are intended to benefit.

RESPONSE: Disability retirement benefits are intended for members who become totally and permanently disabled while in active service, not for members who have voluntarily or involuntarily terminated service for some other reason. If their service ends on the basis of other grounds, some members decide to apply for a disability retirement in order to maximize the retirement benefits available under their former membership.

Proposed N.J.A.C. 17:2-6.7(a)2 is intended to prevent members from applying for a disability retirement benefit when their service has voluntarily or involuntarily terminated for reasons unrelated to a disability, such as a partial forfeiture for dishonorable service or a career-ending settlement agreement involving civil or criminal charges brought against the member. These former members do not qualify for disability retirement benefits, because they were not totally and permanently disabled from performing their job duties when their service ended; their public service ended for a reason completely unrelated to a physical or mental disability that keeps them from continuing to perform their job duties. N.J.A.C. 17:2-6.7(a)2 is intended to prevent individuals from applying for disability retirement benefits who do not qualify for them. NJEA’s interpretation would allow former employees who become disabled from duties they no longer have to collect disability retirement benefits, as long as they became disabled from their former duties within the two years following their separation from service. Such an interpretation would exceed the legislative intent behind the pension laws that provide benefits for those who are incapacitated from their duties “and should be retired.”

Further, in N.J.A.C. 17:1, the General Administration rules that also apply to both the PERS and TPAF, N.J.A.C. 17:1-6.4(c) stipulates that 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. This means that all disability retirement applications will continue to be reviewed on a case-by-case basis, as a way to protect both the taxpaying public and members who apply.

Furthermore, as discussed in the responses to prior comments, parallel rules were upheld in *New Jersey Education Association v. Board of Trustees of the Teachers’ Pension and Annuity Fund*, No. A-3158-15T4, slip op. (App. Div. July 13, 2017). Since parallel statutes exist at N.J.S.A. 43:15A-42 and 44(a) for PERS membership, the court’s opinion above also applies to N.J.A.C. 17:2-6.7(a)2, the proposed PERS regulation.

In addition, N.J.S.A. 43:15A-42 states that no person who becomes a member of the retirement system on or after the effective date of P.L. 2010, c. 3, shall be eligible for an ordinary disability retirement. In other words, P.L. 2010, c. 3, eliminates ordinary and accidental disability retirement benefits for PERS or TPAF members enrolled after May 21, 2010. This legislation was enacted to work toward eliminating the tremendous burdens associated with PERS and TPAF disability retirement benefits, indicating an awareness of the tremendous costs and abuses that are present.

Disability retirements offer generous benefits that are to be awarded to eligible members who become totally and permanently disabled,

either physically or mentally, from their job responsibilities. They are not intended for members who seek to receive these generous benefits after voluntarily or involuntarily separating from their jobs for any other reason, including the reasons enumerated in proposed N.J.A.C. 17:2-6.7(a)2. The Board has an obligation to protect the taxpaying public by striving to ensure that these costly benefits are awarded only to eligible members. For this reason, N.J.A.C. 17:2-6.7(a)2 will remain as proposed.

N.J.A.C. 17:2-6.7(c)

11. COMMENT: The commenter asserts that proposed N.J.A.C. 17:2-6.7(c) states that the receipt of a disability retirement is conditioned on a member's honorable service, but that it should also state that consistent with applicable law, if a statute does not require automatic forfeiture, then the Board retains the discretion to determine an appropriate forfeiture, if any. The commenter further notes that forfeiture cannot be automatic, and to the extent that any penalty is appropriate, the Board retains that authority under the test applied in *Uricoli v. PFRS*, 91 *NJ* 62 (1982) and codified under N.J.S.A. 43:1-3.

RESPONSE: N.J.A.C. 17:2-6.7(c) already states that full or partial forfeiture may be imposed by the Board when appropriate, but it further states that the imposed full or partial forfeiture is to be imposed as provided in N.J.A.C. 17:1-6, which states, "Pursuant to N.J.S.A. 43:1-3, the Boards of Trustees of the State-administered retirement systems are authorized to order the forfeiture of all or part of the pension or retirement benefit of a member of the fund or system for misconduct occurring during the member's public service, which render the member's service or part thereof, dishonorable." The necessary statute reference is, therefore, already present, so N.J.A.C. 17:2-6.7(c) will remain unchanged.

N.J.A.C. 17:2-6.12(a)3

12. COMMENT: The commenter asserts that the age requirement for service retirement for Tier 4 PERS members enrolled after May 21, 2010, but before June 28, 2011, should be age 62, not age 65, in accordance with applicable statute.

RESPONSE: The commenter is correct that the age requirement was erroneously stated. N.J.A.C. 17:2-6.12(a)2 and 3 will be changed upon adoption, accordingly, to state that the age requirement for service retirements for PERS members enrolled between November 2, 2008, and June 27, 2011, is age 62, instead of age 65; the age requirement for members enrolled after June 27, 2011, is age 65.

Federal Standards Statement

The rules readopted 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.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:2.

Full text of the adopted amendments and new rule follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[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 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. 43:4B-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. 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, pursuant to N.J.S.A. 43:15A-32. The 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 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 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 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 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 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 Secretary at the Division;

iv.-v. (No change.)

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

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.

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

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

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 Secretary. The Secretary will verify the eligibility of a member to be a candidate. If the member qualifies as a candidate, the Office of the 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 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 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 indicating no contest shall be distributed to the certifying officers, for posting at the employing locations, since only one candidate was nominated by petition.

5. If no candidates receive the requisite number of signatures to qualify for the position, the position will remain vacant for the remainder of the unexpired term, until the next election cycle;

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 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 the member's intended vote cannot be determined 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 Secretary. All candidates may attend such drawing by contacting the 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 the member's intended vote cannot be determined 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 resulting from the procedures provided in (e) and (f) above shall be elected to the position;

3. The Secretary 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;

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, 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, if a recount could affect the results of the election. All ballots received shall then be recounted and the recount shall be supervised by the Secretary. The Secretary shall certify the results of the recount to the Board. 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.

(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 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 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 Secretary.

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

(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:

"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.

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 and the Uniform Administrative Procedure Rule, N.J.A.C. 1:1-1 et seq. Administrative hearings shall be conducted by the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.1.

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. 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

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 of age documents include birth certificates with visible seal, passports, U.S. passport cards, naturalization or immigration papers, 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 his or her birthday, the assigned age for enrollment will be the applicant's age on 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 his or her birthday, the purchase actuarial factor will be based upon the applicant's age on 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 ages of the member and designated beneficiary (or beneficiaries) at the effective date of retirement. If on that date, the age of either the member or the designated beneficiary (or beneficiaries) is six months or more past that individual's birthday, the age used for the option selection will be based upon that individual's age on his or her next birthday.

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

(e) For purposes of calculating the group life insurance benefits upon the death of an active employee when the beneficiary elects (or beneficiaries elect) an annuity certain (specified number of years) or a life annuity, the applicable factor is based upon the 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 (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. 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) 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 minimum annual base salary for participation in the 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 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) 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.

(c) Prior to July 1, 2007, an elected official 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 elected position first and enrollment was optional, the enrollment date for the optional position is the effective date of enrollment for the position that required the elected official to establish membership in the PERS. If the individual had already established membership in the PERS, the effective date of enrollment of the optional membership is 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 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-57.2.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 PERS, who has not received compensation from employment covered by the PERS for at least 30 consecutive calendar days, who is not receiving a disability retirement 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-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.).

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;

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 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 and the 16th of the month. 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 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, 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 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) 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 enrolled in the PERS prior to November 2, 2008, 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) 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.

(d) In the event that (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 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 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 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 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 to a PERS-eligible position, whichever is later. 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 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 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. 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 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 a beneficiary 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 a beneficiary is six months or more past his or her birthday, the factor is based upon the beneficiary's age on his or her next birthday.

(d) In calculating the group life insurance benefits upon the death of an active employee when a beneficiary 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 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.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 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 when a member dies with a retirement application pending

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.

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 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 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 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 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 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 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-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]* *30* 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.

(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 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 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 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 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.

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

(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 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, 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]* ***may consist of a* personal illness *component and a personal reasons component (for childcare)*. *[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. The birth of a child constitutes the start of child care leave of absence immediately following maternity; and]* ***Members who apply to purchase any period of a maternity leave as personal illness must provide certification from their physician, verifying that the member was disabled during the requested purchase period, due to pregnancy or childbirth. Absent physician certification, three months is the maximum allowable period of purchase for maternity leave for personal reasons; and*****

iv. (No change.)

5. Members may purchase continuous service subsequent to the date their employer adopted the 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 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, 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 for which the member has received membership service credit in the System;

4. Any service rendered 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 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 (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 this chapter.

SUBCHAPTER 6. RETIREMENTS

17:2-6.1 Applications

(a) Applications for retirement must be made 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 subsection shall not apply to information 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]* *43:15A-42*. Instead, the member may be eligible for disability insurance coverage.

(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. The options, as established by N.J.S.A. 43:15A-50, include the following:

1.-9. (No change.)

(e) (No change in text.)

(f) In addition to the requirements in (a) through (e) 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 medical reports. One must be provided by the member's personal or attending physician and the other may 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 will be required to complete a new disability application for a future retirement date;

2. An application for a mental health disability retirement must be supported by at least two medical reports. One must be provided by the member's personal or attending psychiatrist or psychologist and the other 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 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 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;

5. A member filing for 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 the original disability retirement application is pending. A separate application can be filed only for a date subsequent to withdrawal of the previous application; and

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.

(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.

(h) A member who previously retired pursuant to (a) through (d) above and is reenrolled pursuant to (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. 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.

(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:

1. 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. 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 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;

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, will be retired on an ordinary disability retirement 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;

3.-4. (No change.)

(b) Once the Board approves a member for a disability retirement 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 is rejected for an accidental disability 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 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 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 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:

1. A member whose enrollment date is before November 2, 2008, becomes eligible for a "Service" retirement on the 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-47.a, and requests that date.

2. A member whose enrollment date is between November 2, 2008 and *[May 21, 2010]* **June 27, 2011***, becomes eligible for a "Service" retirement on the first of the month following the member's 62nd birthday. At the election of a member, if the member's 62nd 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.

3. A member whose enrollment date is after *[May 21, 2010]* **June 27, 2011***, 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 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 retirant'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 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- 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:

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.

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 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 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- 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.

1. In the case of members enrolled on or before May 10, 2010, a total of 78 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.

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)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)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. 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 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. 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 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, 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. 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 deemed dishonorable will not be transferable.

(b) 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.

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 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 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 N.J.S.A. 43:15A-14. 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, 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 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. 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-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 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 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 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. The amount of the members' contribution rate shall be established upon recommendation of the actuary using consistent and 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 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 service shall 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 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 as a prosecutor from January 7, 2002 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-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-7.e when the member attains the age of 60, for members enrolled before November 2, 2008; the age of 62 for those members who enroll 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 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, 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 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 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 if enrolled in the regular PERS before November 2, 2008; at age 62 for those members who enroll 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-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. 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

Local Property Tax: General

Readoption with Amendments: N.J.A.C. 18:12

Adopted Repeal: N.J.A.C. 18:12-4.3

Proposed: August 7, 2017, at 49 N.J.R. 2498(a).

Adopted: December 18, 2017, by John J. Ficara, Acting Director, Division of Taxation.

Filed: December 19, 2017, as R.2018 d.051, **without change**.

Authority: N.J.S.A. 54:1-35.1, 54:1-35.35, 54:3-14, 54:4-1, 54:4-8.66d, 54:4-23.21, 54:4-26, and 54:50-1.

Effective Dates: December 19, 2017, Readoption;
January 16, 2018, Amendments and Repeal.

Expiration Date: December 19, 2024.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

The rules readopted with amendments and a repeal do not contain requirements that exceed those imposed by Federal law. The rules readopted with amendments and a repeal represent policies of the State of New Jersey regarding implementation of N.J.S.A. 54:1-35.35 et seq. and 54:4-1 that are independent of Federal requirements or standards. Accordingly, no Federal standards analysis is required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 18:12.

Full text of the adopted amendments follows:

SUBCHAPTER 1. CATEGORIES OF NONUSABLE DEED TRANSACTIONS

18:12-1.1 Categories enumerated

(a) The following deed transactions are not usable in determining assessment-sales ratios pursuant to N.J.S.A. 54:1-35.1 et seq.:

1. Sales between immediate family members;
2. Sales in which "love and affection" are stated as part of the consideration;
3. Sales between a corporation and its stockholder, its subsidiary, its affiliate, or another corporation whose stock is in the same ownership;
4. Transfers of convenience; for example, transfers correcting defects in title, a transfer by a husband either through a third party or directly to himself and his wife for the purpose of creating a tenancy by the entirety, etc.;
5. Transfers that did not occur within the sampling period. Sampling period is defined as the period from July 1 to June 30, inclusive, preceding the date of promulgation of the Director's Table of Equalized Valuation, except as otherwise stated. The recording date of the deed within this period is the determining date since it is the date of official record. Where the date of deed or date of formal sales agreement

occurred prior to January 1, next preceding the commencement date of the sampling period, the sale shall be nonusable;

6. Sales of property conveying only a portion of the assessed unit, for example, a parcel sold out of a larger tract where the assessment is for the larger tract, usually referred to as subdivisions, split-offs, or cut-offs;

7. Sales of property substantially improved subsequent to assessment and prior to the date of sale;

8. (No change.)

9. Sales of property that are subject to an outstanding Municipal Tax Sales Certificate, a lien for more than one year in unpaid taxes on real property pursuant to N.J.S.A. 54:5-6, or other governmental lien;

10. Sales by guardians, testamentary trustees, executors, and administrators;

11.-12. (No change.)

13. Sales in proceedings in bankruptcy, receivership, or assignment for the benefit of creditors, dissolution or liquidation sales, and short sales;

14.-16. (No change.)

17. Sales to or from any charitable, religious, or benevolent organization;

18. Transfers to banks, insurance companies, savings and loan associations, mortgage companies, or other financial institutions when the transfer is made in lieu of foreclosure;

19. Sales of property for which assessed value has been or is substantially affected by demolition, fire, documented environmental contamination, or other physical damage subsequent to assessment and prior to the date of sale;

20. Acquisitions, resale, or transfer by railroads, pipeline companies, or other public utility corporations for easements or right-of-way purposes;

21.-22. (No change.)

23. Sales of commercial or industrial real property, which include machinery, fixtures, equipment, inventories, licenses, or goodwill when the values of such items are indeterminable;

24. Sales of property, the value of which has been or is substantially influenced by zoning changes, planning board approvals, variances, or rent control provisions subsequent to assessment and prior to the sale;

25. Transfers in which the full consideration as defined in the "Realty Transfer Fee Act" is less than \$100.00;

26. Sales that for reasons other than specified in the enumerated categories are not considered to be between a willing, knowledgeable buyer, not compelled to buy, and a willing, knowledgeable seller, not compelled to sell;

27. Sales occurring within the sampling period but prior to a change in assessment resulting from a recognized revaluation or reassessment, that is, sales recorded during the period July 1 to December 31 next preceding the tax year in which the revaluation or reassessment value is placed on the tax roll;

28. Sales of property subject to leaseback arrangements;

29. Sales of property subsequent to the year of appeal, where the assessed values are set by court order, consent judgment, or the "Freeze Act";

30. Sales in which multiple parcels are conveyed collectively as one transaction with an arbitrary allocation of the sale price of each parcel;

31. (No change.)

32. Sales of a property in which an entire building or taxable structure is omitted from the assessment; and

33. Sales of qualified farmland or currently exempt or abated property.

(b) Transfers within the foregoing category numbers 1, 3, 9, 10, 15, 17, 26, and 28 (under (a) above), should generally be excluded but may be used if after full investigation it clearly appears that the transaction was a sale between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell, with all conditions requisite to a fair sale with the buyer and seller acting knowledgeably and for their own self-interests, and that the transaction meets all other requisites of a usable sale.