

Title 27: Personnel

Part 210: PERS, Regulations for Retirement Plans Administered by the Board of Trustees

Chapter 01: Classification and Reporting of State Employees

100 Purpose

The purpose of this regulation is to define the term “state employee” for purposes of reporting for Social Security and retirement annuity coverage. It also clarifies PERS’ responsibilities for collecting and reporting Social Security Contributions.

101 Definition of State Employee for Social Security and Retirement Annuity Purposes

State employees are hereby defined as those who are under the control and direction of a state department, institution or agency. Each employee so covered shall be paid by the agency from funds under its control, or on the basis of budgets prepared by the agency, whether the funds involved are appropriated, donated or secured from Federal Government or from local units of state government, but which funds are mingled with the general funds or budgets of the agency, or into any fund of the State Treasury; provided that employees who are paid directly and solely from funds of a unit of local government, which funds are appropriated specifically for the operation of a department under the supervision, direction and jurisdiction of a state institution or agency, and which funds are expended on the basis of budgets prepared by the state agency and adopted by the local unit of government, shall be considered as state employees. Employees paid directly and solely from funds of a municipality or county or other political subdivision, not coming within the provisions set forth above, shall be classified as employees of local units of government. Employees paid directly and solely from federal funds by federal checks shall be classified as federal employees and shall not be included in Social Security coverage or state retirement annuity coverage.

102 Reporting of State Employees for Social Security Contributions

1. Reporting for periods prior to January 1, 1987

Prior to December 31, 1986, the state department, institution or agency which has the control and direction of state employees is responsible for the collection and remittance of the employees’ contributions and the remittance of the employers’ contributions, and have total responsibility for reporting such collections for each employee and for making the employers’ contributions for each employee to the board.

2. Reporting for periods from and after January 1, 1987

The Omnibus Reconciliation Act of 1986 changed the manner in which Social Security contributions are deposited by State and local government employers. This legislation placed State and local employers under the Internal Revenue Service provisions with respect to the schedule for frequency of deposits and interest charges and penalties for late deposits. The law removed from the State the intermediary role of collecting Social Security payments from local governments and relieved the State

from liability for verifying and depositing such payments with respect to payments due on wages paid after December 31, 1986.

(History: Adopted May 29, 1951, page 11; amended June 21, 2005 to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 02: Definition of Part-time and Emergency Employees for Social Security

100 Purpose

The purpose of this regulation is to define part-time temporary and emergency employees for purposes of eligibility for Social Security coverage.

101 Definition of Emergency employees and part-time temporary positions.

Emergency employees shall be defined as those who are hired to serve on the basis that a condition of emergency exists and these employees shall not be included in Social Security coverage. Services in part-time temporary positions, the compensation for which is less than \$50 per quarter reporting period shall not be covered for Social Security.

(History: Adopted September 4, 1958, page 386; amended and reformatted August 1, 2007)

Chapter 03: Coverage of Teachers formerly covered under the Teachers' Retirement System (TRS) – REPEALED

100 Purpose

The purpose of this regulation was to define the term “teacher” for purposes of Social Security and Retirement Annuity coverage, including the effective date of such coverage.

101 This regulation, which addressed the coverage of teachers formerly covered under the Teachers' Retirement System, was repealed by the Board of Trustees on August 1, 2016.

(History: Adopted May 29, 1952, page 11; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007; repealed August 1, 2016)

Chapter 04: Coverage of Employees of Public Schools other than Teachers

100 Purpose

The purpose of this regulation is to provide for the manner in which employees of public schools who are not teachers may be covered for Social Security and Retirement Annuity coverage.

101 Social Security Coverage of Employees of Public Schools other than Teachers

Employees of public schools, other than teachers, are not to be included in the original agreement between the State and the Federal Security Administration, but may be included by separate agreements made with the superintendents of the various school

districts, or these employees of the various school districts may be included as participating units of agreements negotiated with the various counties or municipalities in which the school district is located.

102 State Retirement Annuity Coverage of Employees of Public Schools other than Teachers

1. February 1, 1953 to June 30, 1973

Employees of public schools, other than teachers, are not automatically included in the state retirement annuity coverage, but may be included by separate agreements made with the superintendents of the various school districts, or these employees of the various school districts may be included as participating units of agreements negotiated with the various counties or municipalities in which the school district is located.

2. From July 1, 1973 forward

Effective July 1, 1973, all public school employees other than teachers, such as bus drivers, janitors, maids, maintenance workers and cafeteria employees, had the option to participate in state retirement annuity coverage. Employees hired in those positions after July 1, 1973, shall be covered automatically without the necessity of a separate joinder agreement provided they meet the work requirements as set forth in Regulation 8 and Regulation 36.

(History: Adopted May 29, 1951, page 12; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 05: Social Security and State Retirement Annuity Coverage during Educational or Professional Leave

100 Purpose

The purpose of this regulation is to clarify the conditions under which an employee is eligible for Social Security and State Retirement Annuity coverage during educational or professional leave.

101 Qualification of "Educational Leave" for Social Security and Retirement Annuity Coverage

"Educational Leave" is defined as that period of time during which an employee in a covered group is absent from his job or position obtaining instruction and additional education to better qualify him to perform his duties with his agency. In order to qualify for "educational leave" such an employee must be under agreement at the time he takes "educational leave" to return to the department or agency, or to work for some other department or agency in a covered group.

Provided an employee meets the above qualifications for "educational leave", that period of time he is absent from his regular duties on "educational leave" will be added in computing covered employment under the Social Security Act from March 1, 1951 (or whatever the effective date is stipulated in the agreement between the State and the Federal Security Administrator) and also for prior coverage computed from the time he

commences "educational leave" under the State Retirement System provided by Article II of SB 273 [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)].

It shall also be necessary for the department, agency or other employer of the covered group to certify to the Board of Trustees, in writing under oath, that the employee, at the time he first became absent from his duties on "educational leave", was under agreement to return to regular employment with said department, agency, or employer, or was under agreement to commence employment upon his return with another employer of a covered group.

The prior employer shall pay the Federal contributions taxes both for the employer and the employee for any employee on "educational leave" on the basis of tuition, subsistence or other payments made to the employee or institution on "educational leave", commencing with said contributions of the employer and employee, payable out of money received on May 1, 1952, and the first of each month thereafter as long as the "educational leave" continues. At the end of the "educational leave" contributions shall be due and payable as in all other cases of covered employment.

If any such employee is on "educational leave" on February 1, 1953, or thereafter, and is eligible for benefits under the State Retirement System, as provided in Article II of SB 273, [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)] the employees' contributions shall be withheld commencing February 1, 1953, and the employers' contributions shall be paid at the same time at the rate provided under said Article II, [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)], applied to the tuition and other payments and things of value received by the employee while on "educational leave".

This regulation has been superseded effective May 14, 1984, by the provisions in the Miss. Code Ann. §25-11-109 (1972, as amended) as it applies to retirement annuity coverage during absence from employment while on professional leave.

(History: Adopted May 30, 1952, page 14; amended June 21, 2005 to be effective August 1, 2005, reformatted August 1, 2007)

Chapter 06: Coverage of Members of Boards and Commissions

100 Purpose

The purpose of this regulation is to clarify when a member of a Board or Commission is considered as an employee in state service for Retirement Annuity coverage.

101 Eligibility of Members of Board and Commissions for Retirement Annuity Coverage.

Members of Boards and Commissions of various state departments or agencies or commissions, who are paid solely on a per diem and expense basis, shall not be considered as in state service within the meaning of this term as it applies to

employment of the state. Members of such Boards or Commissions, who are paid a stipulated salary monthly for their services, shall be considered as employees in state service.

(History: Adopted May 29, 1952, page 12, reformatted August 1, 2007)

Chapter 07: Coverage of Members and Employees of the Legislature

100 Purpose

The purpose of the regulation is to specify when members of the Legislature are eligible for Social and State Retirement Annuity coverage when the System was created in 1952 and thereafter.

101 Coverage of legislative members and employees in 1952

Members of the Legislature, who were elected to serve in the 1952 Regular Session and who have not resigned from state service, or retired or become deceased and members who were elected subsequently to the 1952 Session to fill vacant positions caused by death or resignation shall be considered employees in service, as of the date of signing the agreement. Members of the 1952 Legislature, who were members of the previous Legislature and who served on interim legislative committees after the effective date of the agreement between the State of Mississippi and the Federal Security Administration, shall receive retroactive coverage for all services performed back to the effective date of the agreement. All services performed by members of the Legislature, as members of interim committees, shall be considered as state service. Members serving the 1952 Legislature and members of Legislative Interim Committees shall be classified as State employees for the period of such service, and their coverage shall be retroactive as of the effective date of the agreement. Employees of the 1952 Legislature who are employed in state service on the date of signing the agreement, and members and employees of subsequent Legislatures and employees of all Legislative Interim Committees which are organized and operated on the date of signing of the agreement, shall be classified as in state service on that date and their coverage shall be retroactive to the effective date of the agreement.

102 Coverage of members and employees of subsequent legislatures.

Thereafter, all newly elected legislators and employees of subsequent legislatures shall be covered automatically in accordance with the statutes and regulations governing state retirement annuity coverage.

(History: Adopted May 29, 1952, page 12; amended June 21, 2005 to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 08: Former employees with prior services re-entering State Employment. (This applies to Retirement Annuity only and not to Social Security)

100 Purpose

The purpose of this regulation is to set forth when former employees who reentered state service after April 15, 1952, but prior to July 1, 1953, are eligible for prior service credit under state retirement annuity coverage.

101 Former employees with prior service reentering state employment

Any former employee with prior service with any department of the State of Mississippi, or any County, Municipality, or any Subdivision or Instrumentality, who, after April 15, 1952, but prior to July 1, 1953, re-enters either the department for which prior service was performed, or any department, county, municipality, or instrumentality covered under the Public Employees' Retirement System and becomes a member of said Retirement System, shall be required to remain in service and contribute to said System for a period not less than four years before his certificate of prior service shall become final except in those cases where persons are prevented from completing the four year requirement because of total and permanent disability or because of having attained the compulsory retirement age of 70 years.

(History: Adopted May 29, 1952, page 13; amended October 23, 1957, page 325; Amended March 30, 1961, page 521; reformatted August 1, 2007)

Chapter 09: Prior Service Credits

100 Purpose

The purpose of this regulation is to define what public service qualifies for prior service credit for retirement annuity coverage.

101 Governmental service eligible for prior service credit

Prior service credits in the Public Employees' Retirement System of Mississippi may be granted only for service performed for a State Agency, or for an instrumentality or juristic entity of the State of Mississippi, which is covered by an agreement executed between such instrumentality or juristic entity and the Public Employees' Retirement System of Mississippi and which includes Article II of the agreement, in accordance with the provisions of SB 273, Laws of 1952 (now Article III beginning at Miss. Code. Ann. §25-11-101 et seq. (1972, as amended).

(History: Adopted September 4, 1952, page 39; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 10: Deduction of Contributions from Employee Salaries for State Retirement Annuity

100 Purpose

The purpose of this regulation is to clarify the covered wages on which employee contributions are required for retirement annuity coverage.

101 Covered wages on which employee contributions are due

Employee contributions shall be made on the basis of the contribution rates as set by the Board of Trustees from time to time as applied to earned compensation as defined by law.

1. From February 1, 1953 to June 30, 1968

Deductions for Article II, [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)], from the salary of school employees employed for the school year shall be made on the basis of earned annual compensation less \$1200 per year, payable monthly on a pro-rata basis. Example: A teacher having a contract for \$1600 for the school year of 8 months and receiving \$200 per month would not pay on the first \$150 per month of her salary, as she has only an 8 months contract and $8 \times \$150 = \1200 . She would therefore contribute 4% of \$200 minus \$150, or 4% of \$50 per month or \$2 per month to Article II, [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)]. However, if she works in other public employment the other 4 months during the year, she would pay 4% of her total salary for these months as she will get her \$1200 exemption from her school service.

2. From and After July 1, 1968

Effective July 1, 1968, deductions for employee contributions from the salaries of all employees for retirement annuity coverage shall be based on all covered wages not to exceed the statutory limits.

(History: Adopted September 9, 1952, page 40; amended June 21, 2005 to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 11: Effective date of deductions for State Retirement Annuity

100 Purpose

The purpose of this regulation is to establish the initial effective date on which contribution were due for state retirement annuity coverage.

101 Initial effective date for retirement annuity contributions and benefits Payments for the State Retirement Annuity (Article II), [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)] are due on wages earned from and after February 1, 1953, and retirement for those eligible for retirement under Article II, [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)] may begin as of February 1, 1953.

(History: Adopted September 9, 1952, page 41; amended June 21, 2005 to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 12: Eligibility of Retirants from other Systems for Membership in State Retirement Annuity

100 Purpose

The purpose of this regulation is to clarify eligibility of retirants from other retirement systems for membership in state retirement annuity coverage.

101 Eligibility of retirants of other retirement systems for membership in state retirement annuity coverage

1. Prior to July 1, 1980

Prior to July 1, 1980, statutory law prohibited any person who was retired from service under any retirement system of the State of Mississippi operating for state, county or municipal employees and who was receiving retirement benefits there under from being eligible to participate in the state retirement annuity coverage. Thus, prior to this date, retirants receiving a retirement allowance under any retirement plan of this State, or who received a retirement allowance or pension on or after April 15, 1952, from any plan of this State were not eligible for Article II of SB 273, Laws of 1952, [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)]

2. From and after July 1, 1980

Effective July 1, 1980, the statutory prohibition was removed and retirants of another system administered for state, county, or municipal employees had the option to participate in state retirement annuity coverage. Retirees from other systems hired after July 1, 1980, are covered automatically for state retirement annuity coverage.

(History: Adopted September 9, 1952, page 41; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 12: Eligibility of Retirants from other Systems for Membership in State Retirement Annuity

102 Purpose

The purpose of this regulation is to clarify eligibility of retirants from other retirement systems for membership in state retirement annuity coverage.

103 Eligibility of retirants of other retirement systems for membership in state retirement annuity coverage

1. Prior to July 1, 1980

Prior to July 1, 1980, statutory law prohibited any person who was retired from service under any retirement system of the State of Mississippi operating for state, county or municipal employees and who was receiving retirement benefits there under from being eligible to participate in the state retirement annuity coverage. Thus, prior to this date, retirants receiving a retirement allowance under any retirement plan of this State, or who received a retirement allowance or pension on or after April 15, 1952, from any plan of this State were not eligible for Article

II of SB 273, Laws of 1952, [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)]

2. From and after July 1, 1980

Effective July 1, 1980, the statutory prohibition was removed and retirants of another system administered for state, county, or municipal employees had the option to participate in state retirement annuity coverage. Retirees from other systems hired after July 1, 1980, are covered automatically for state retirement annuity coverage.

(History: Adopted September 9, 1952, page 41; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 13: Employers' Contributions under State Retirement Annuity Coverage

100 Purpose

The purpose of this regulation is to provide the basis for making employer contributions for State Retirement Annuity Coverage.

101 Employers' Contributions under State Retirement Annuity Coverage

1. Prior to July 1, 1958

The employer's payment under Article II [now Article III beginning at Miss. Code Ann. §25-11-101 (1972, as amended)] shall be made at present on the basis of
of
2-1/2% of wages paid each covered employee during a calendar year from \$0 to \$6000.

2. From and after July 1, 1958

Employer contributions shall be made on the basis of the contribution rates as set forth from time to time by the Board of Trustees and levels of earned compensation as set forth in the statute.

(History: Adopted September 30, 1952, page 46; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 14: Submission of Monthly Reports and Contributions

100 Purpose

The purpose of this regulation is to provide the due date and manner in which the employer must submit required contributions and wage reports.

101 Due Date of contributions and wage report

Monthly employee and employer state retirement contributions pursuant to Article III beginning at Miss. Code Ann. §25-11-101 (1972, as amended) are due from the employer as of the fifth working day of each month. The wage and contributions report is due from the employer as of the fifth working day of each month. All delinquent payments shall be

assessed interest at the rate of 10% per annum, and all delinquent reports shall be assessed interest at the rate of 2% per annum during the period of delinquency on the amount reported. Contributions and reports posted by the fifth working day of the month shall be considered as received timely. The creation date of the electronic files shall determine the date of submission. However, where the Board of Trustees finds that such delinquency is the result of circumstances beyond the control of the employer and the Board of Trustees has been notified of such circumstances by the employer in a timely manner, then the assessment provided for herein shall be discretionary. For purposes of this Regulation, incomplete and inaccurate reports shall be deemed as delinquent reports until such time as they are properly filed.

102 Manner of submission of contributions and wage report

Effective July 1, 1996, all employers are authorized and shall transfer all funds due to PERS electronically and shall transmit any wage or other reports by computerized reporting systems. An employer may submit a written request for a temporary exemption from the application of the above requirements setting forth the reasons for the inability to comply with the requirement. Where the Board of Trustees finds that an employer cannot comply with the above requirements due to circumstances beyond its control, such temporary exemption may be granted. The Board of Trustees may establish guidelines for determining whether such request shall be granted. The Board of Trustees may assess a processing fee for noncompliance with the mandatory electronic funds transfer and/or computerized reporting if no exemption is granted. Such guidelines and processing fees will be established from time to time by the Board of Trustees and reflected in its minutes.

103 Calculation of Interest on Delinquent Contribution Payments by Fee Officials

The Annual Financial Report (AFR) required to be filed by each covered constable, chancery clerk, and circuit clerk and all retirement contributions due on the net earnings from the office must be remitted to PERS by April 15 of the following year. The amounts due and not remitted by April 15 begin accruing interest daily at the rate specified in PERS Board Regulation 43 from April 15 until the date of payment.

(History: Adopted September 30, 1952, page 52, amended July 15, 1980; amended April 15, 1986, page 66; amended October 21, 1986, page 74; amended December 16, 1986, page 2; amended June 15, 1993; amended February 23, 1994; amended August 20, 1996; amended June 21, 2005 to be effective August 1, 2005; reformatted August 1, 2007; amended December 1, 2010; amended effective December 1, 2015)

Chapter 15: Eligibility of employees not employed between February 1, 1953, and July 1, 1953 for Social Security and Retirement Annuity coverage

100 Purpose

The purpose of this regulation is to establish eligibility for membership and prior service credit in state retirement annuity coverage for public employees covered for Social Security coverage as of July 1, 1952, and who worked in public employment any time

between that time and February 1, 1953, but not between February 1, 1953 and July 1, 1953.

101 Eligibility for certain prior service credit

Public employees, who were properly reported for the retroactive Social Security coverage, and who were considered employed on the effective date of the Federal Security Administration - State Agreement (July 2, 1952), and who worked in covered public employment any time between July 2, 1952, and February 1, 1953 but who were not employed in covered public employment between February 1, 1953, and July 1, 1953, may join Article II (State Retirement Annuity, [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)] of the System and obtain full prior years service credit, provided they apply to the System on PERS Form 1, on or before July 1, 1953, and provided their prospective employer certifies that a contract has been made for their services on or before July 1, 1953, even though such an employee does not actually commence work on July 1, 1953, but such an employee does commence work, at the regular rate of pay for that position, for the certifying employer within 90 days after July 1, 1953. Employees meeting these requirements shall not be required to work the additional five years to obtain prior years service credit.

To Illustrate: A teacher (or other public employee) who taught in the school fiscal year 1951-52 and who taught during the first quarter of the 1952-53 school year, but who for any reason, other than discharge for cause, had to retire from teaching prior to February 1, 1953, and who was unable to teach at any time during the remainder of the 1952-53 school term, but who obtained a contract to teach in the 1953-54 school year, and whose principal would so certify, and if this teacher would send this certification together with her membership application to the Public Employees' Retirement System on or before July 1, 1953, she would not lose her prior years service credit. If she does not meet these conditions she will lose her prior years service credit.

(History: Adopted November 13, 1952, page 57; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 16: Clarification of State-Federal Employment

100 Purpose

The purpose of the regulation is to clarify the meaning of the terms “position” and “state service” as it relates to “creditable service” of employees of joint State and Federal agencies administering State and Federal funds.

101 Eligibility of State-Federal employment for creditable service

The term "position" definition (p) of Section 12, and term "state service" definition (v) of Section 12 of Senate Bill No. 273, [now Miss. Code Ann. §25-11-103(s) (1972, as amended)] relating to joint State and Federal agencies administering State and Federal funds, shall be interpreted to mean, when applied to "creditable service", service rendered by a person employed in a joint State - Federal Program financed jointly by State - Federal funds but which employees are not members of any other retirement system at

the time they made claim for prior service; and provided that such employees are appointed to the position or positions involved by the State Agency, Political Subdivision or Municipality participating in the joint State - Federal Program.

(History: Adopted November 13, 1952, page 58; amended January 23, 1953, page 62; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 17: Election of Members of the Board of Trustees of the Public Employees' Retirement System of Mississippi

100 Purpose

This regulation prescribes the manner in which members of the Board of Trustees of the Public Employees' Retirement System of Mississippi (PERS) are elected.

101 Responsibility for conducting elections

The Administrative Committee, as duly appointed, shall oversee all elections. The executive director shall prepare and furnish the Administrative Committee with a schedule of election to be approved by the Board and followed in each election.

102 Prohibition against influencing election

The official authority of any Board member or employee shall not be used for the purpose of interfering with or affecting the result of an election or a nomination for office.

103 Election Procedure

The procedure for the nomination and schedule of election of members of the Board provided in Miss. Code Ann. § 25-11-15 (1972, as amended), shall be as follows:

1. Not less than 150 days prior to the expiration of the term of office of any member of said Board, the executive director shall prepare and distribute to the chief executive officer of all agencies whose employees are eligible to participate in the election, or to the retirees and beneficiaries in the case of the election of a retiree representative, a notice of such impending expiration, and shall simultaneously prepare and distribute, or make available, an appropriate petition as prescribed by the Board for the nomination of candidates. In the event the Board declares a vacancy in the office of a trustee prior to the expiration of his or her term of office, the executive director shall, within seven business days of the declared vacancy, initiate accelerated election proceedings in accordance with Miss. Code Ann. § 25-11-15(3) (1972, as amended) so as to fill the vacancy as quickly as possible.
2. Sufficient lines shall be provided on each petition for at least 25 signatures of members or retirees, as applicable, of systems administered by PERS who are eligible to vote in said election and a minimum of 25 signatures, other than the signature of the candidate seeking nomination, shall be necessary to place the name of any eligible candidate in nomination for the office.

3. The petition nominating candidates for said office shall be filed with the executive director not less than 120 days prior to the expiration of the term of office of the incumbent member of the Board whose term is expiring, and no nomination received subsequent to said time shall be considered. The executive director, or his or her designee, shall be responsible for verifying the eligibility of any candidate and, if necessary to perfect a petition, may allow a nominee to obtain additional required signatures after filing the petition if the additional signatures are received before the deadline for filing of petitions.
4. Approximately one week after the deadline for filing petitions as provided in Section 103.3 of this regulation, the executive director shall initiate the preparation of an official ballot for said election, listing thereon in alphabetical order the names of all eligible candidates placed in nomination pursuant to these regulations. Ballots and candidate information shall be provided or made available to the members, retirees, and beneficiaries entitled to vote in said election. If only one nomination is approved, such candidate shall be declared by the Board of Trustees to have been duly elected.
5. Employees who are active members of a public retirement system administered by PERS and retirees and beneficiaries, regardless of age, who are receiving a monthly retirement allowance from a public retirement system administered by PERS shall be entitled to vote in the appropriate election of the member of the Board of Trustees, as provided in Miss. Code Ann. § 25-11-15 (1972, as amended); however, only an eligible active member of PERS who has at least 10 years of creditable service or a retired member receiving a monthly retirement allowance from PERS may seek election to and, if elected, serve on the Board of Trustees.
6. Any employee of PERS may vote in any state employee representative election but may not seek election to serve on the Board of Trustees while so employed.
7. Any active member or retiree who holds office in the legislative or judicial branches of state or local government may vote in the applicable member or retiree representative election but may not seek election to serve on the Board of Trustees.
8. The executive director is authorized to conduct elections of an active employee member or retired member to the Board of Trustees in the manner deemed most efficient and effective. The manner used in the casting of ballots in the election, whether by paper ballot, telephone, or electronic means, shall reasonably provide each member with the opportunity to cast a single vote for the candidate of his or her choice. The executive director shall take the necessary measures to ensure that the election is conducted with a high degree of confidentiality and that the voting process provides secure, verifiable, and unbiased results.
9. Within 30 days after such ballots have been provided or made available to members, retirees, and beneficiaries who are entitled to vote in said election, the voting period will close and the results tabulated. The results of the election will be certified at the next Board meeting. Any candidate in said election, or his or her representative or attorney, shall, upon request within 90 days, have the right to review the official certified results.
10. If any candidate for said office shall receive a majority of all votes cast in said election, such candidate shall be declared to have been duly elected. If no candidate

- receives a majority of the total votes cast in said election, the Administrative Committee shall certify the name of the candidate receiving the highest number of votes and the name(s) of the candidate(s) receiving the second highest number of votes, and the executive director shall, thereupon, within a period of approximately one week after such certification, initiate an official runoff election. In the event two or more candidates tie for the highest number of votes cast in said election, the Administrative Committee shall certify the names of those candidates for purposes of the runoff election. The runoff election process, including the declaration of the duly elected candidate, shall be conducted using the same voting process as hereinabove provided in the first election process, except that the candidate who receives the most votes cast in the runoff election, or the candidate decided by lot in the event of a tie vote, shall be declared to have been duly elected.
11. In the event the name of an ineligible individual is placed on an official ballot in any election, that election shall be declared invalid and a new election will be held, unless excluding the votes cast for the ineligible individual would have no bearing whatsoever on the election results, in which case the election results would be certified by the Board.
 12. In the event any eligible runoff candidate withdraws his or her name or subsequently becomes ineligible to serve at any point after certification of the candidates for the runoff election and before the election is completed, the Board shall declare the remaining candidate to have been duly elected if there is only one remaining candidate.
 13. The Board of Trustees shall certify the results of said election to the Secretary of State so that a commission may be issued as required by law to the successful candidate, and said candidate shall be sworn in as a member of the Board as provided by law.
 14. The Board of Trustees shall be the sole judge of all questions touching on the qualifications of (i) candidates, (ii) employees of the various political subdivisions, agencies, institutions, departments, (iii) retirees, and (iv) voters in such elections, and shall likewise determine any and all other questions arising incident to or connected with such election.
 15. Any legal holidays falling within any period of time set forth in these policies shall extend the time for that period by one day unless otherwise directed by the Board. Any time period referred to in these procedures shall mean calendar days, not work days. If a deadline falls on Saturday or Sunday, the deadline shall be extended to the following Monday.

104 Oath of Office

Each trustee shall, within ten days after his appointment or certification of election, take an oath of office as provided by law that he or she will diligently and honestly administer the affairs of the said Board, and that he or she will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to any public retirement system administered by PERS. Such oath shall be signed by the member making it, certified, and immediately filed in the office of the Secretary of State.

(History of Board Regulation 17: Adopted November 13, 1952, page 55; amended November 2, 1953, page 130; amended March 26, 1953, page 80; amended December 17, 1991; amended June 30, 1992; amended August 17, 1993; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007; amended October 23, 2007; amended effective August 1, 2014; amended effective December 1, 2016)

Chapter 18: Agencies joining State Retirement Annuity Coverage after February 1, 1953

100 Purpose

The purpose of this regulation is to address a) when service credit may be granted retroactive to February 1, 1953, when an agency or employee joins state retirement annuity coverage after February 1, 1953, but on or before July 1, 1953, and b) when contributions for the period prior to joining is due.

101 Requirements for receiving certain service credit

Agencies or employees who join Article II of SB 273, Laws of 1952, [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)] after February 1, 1953, but on or before July 1, 1953, will be required to remit prior to July 25, 1953, both the employer's and the employee's part of contributions for that period, or else they are not to receive credit for services rendered during that period.

(History: Adopted January 23, 1953, page 61; amended November 2, 1953, page 130; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 20: State Retirement Annuity Coverage for Teachers obtaining contract before July 1, 1953 – REPEALED

100 Purpose

The purpose of this regulation was to address state retirement annuity coverage for certain employees who were not in covered employment between April 15, 1952, and July 1, 1953, but who obtained a contract for teaching or other employment on or before July 1, 1953.

101 This regulation, which addressed state retirement annuity coverage for certain employees who obtained a contract for teaching or other employment before July 1, 1953, was repealed by the Board of Trustees on August 1, 2016.

(History: Adopted July 2, 1953, page 112; amended November 2, 1953, page 130; amended March 30, 1961, page 521; reformatted August 1, 2007; repealed August 1, 2016)

Chapter 21: Eligibility of Teachers retired under Teacher Retirement System – REPEALED

100 Purpose

The purpose of this regulation was to address the eligibility for state retirement annuity coverage of certain teachers who retired on disability retirement under the Teachers’

Retirement Act and who returned to active duty after implementation of the state retirement annuity plan.

- 101** This regulation, which addressed the eligibility for teachers retired under the Teacher Retirement System who returned to active duty after implementation of the state retirement annuity plan, was repealed by the Board of Trustees on August 1, 2016.

(History: Adopted November 2, 1953, page 131; amended June 21, 2005 to be effective August 1, 2005; reformatted August 1, 2007; repealed August 1, 2016)

Chapter 23: Format for Wage and Contribution Reports

100 Purpose

The purpose of this regulation is to set forth the authority of the Board of Trustees to specify the format and procedures under which wage and contribution reports will be made.

- 101** In making State Retirement Annuity reports, the reporting agency shall be required to list employees in alphabetical order, or in the format and under the procedures as otherwise prescribed by the Board of Trustees from time to time.

(History: Adopted July 2, 1953, page 111; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 24: Employees who rejected membership

100 Purpose

The purpose of this regulation is to address the effect of a transfer of employment upon an employee’s rejection of members in the state retirement annuity plan.

101 Effect of job transfer on rejection of membership service

Employees who had rejected membership in Article II [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)] who transfer from one Agency to another without an appreciable break in their employment, may be allowed to retain their rejection of membership.

(History: Adopted August 11, 1953, page 119; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 25: Eligibility of Part-time Employees for State Retirement Annuity Service Credit

100 Purpose

The purpose of this regulation is to clarify the minimum level of employment which qualifies an employee to receive service credit.

101 Minimum level of employment required for service credit

Persons working the equivalent of one-half, or more, of a normal work load for their positions and receiving one-half, or more, of normal wages for that position, may receive full service credit for such work. This Regulation must be read in conjunction with Regulation 36 and Miss. Code Ann. §25-11-109 (1972, as amended).

(History: Adopted May 28, 1953, page 100; amended November 2, 1953, page 132; amended June 21, 2005 to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 26: Eligibility for Prior Service Credit for Employees Returning to Covered Employment after April 15, 1952 or Employed after July 1, 1953

100 Purpose

The purpose of this regulation is to address the eligibility for service credit for certain employees returning to covered employment after April 15, 1952, or for those employed after July 1, 1953.

101 Prior service credit for employees returning to covered employment after April 15, 1952, but before July 1, 1953

Persons who were employed as a regular employee in the public schools for the final school term of the school year 1951-52, or persons who were regularly employed in other covered public employment when Senate Bill 273, Laws of 1952, was approved (April 15, 1952), may join the state retirement annuity phase of the Public Employees' Retirement System and receive credit for prior years service by obtaining active employment for any period of time in covered employment any time between February 1, 1953, and July 1, 1953.

102 Prior service credit for employees hired after July 1, 1953, but before July 1, 2007

Persons employed in a covered position after July 1, 1953, but before July 1, 2007, must remain in a covered position as a contributing member for a minimum of four (4) years to obtain any eligible prior service credit.

103 Prior service credit for employees hired on or after July 1, 2007

Persons employed in a covered position on or after July 1, 2007, must remain in a covered position as a contributing member for a minimum of eight (8) years to obtain any eligible prior service credit.

(History: Adopted February 19, 1953, page 63; amended June 21, 2005, to be effective August 1, 2005; amended and reformatted July 1, 2007)

Chapter 28: Benefits for Members Withdrawing from Service prior to age 60

100 Purpose

The purpose of this regulation is to clarify the requirements under which a member who withdraws from service before age 60 is eligible for service retirement benefits.

101 Any person who became a member before July 1, 2007

Any person who became a member before July 1, 2007, who withdraws from service prior to age 60 with four (4) or more years of contributing membership service but less than twenty-five (25) years of creditable service and who does not receive a refund of his or her contributions, shall, upon the attainment of age 60, be eligible to apply for a retirement allowance in accordance with the formula provided in Miss. Code Ann. §25-11-111 (1972, as amended).

102 Any person who became a member on or after July 1, 2007, but before July 1, 2011

Any person who became a member on or after July 1, 2007, but before July 1, 2011, who withdraws from service prior to age 60 with eight (8) or more years of contributing membership service but less than twenty-five (25) years of creditable service and who does not receive a refund of his or her contributions, shall, upon the attainment of age 60, be eligible to apply for a retirement allowance in accordance with the formula provided in Miss. Code Ann. §25-11-111 (1972, as amended).

103 Any person who becomes a member on or after July 1, 2011

Any person who becomes a member on or after July 1, 2011, who withdraws from service prior to age 60 with eight (8) or more years of contributing membership service but less than thirty (30) years of creditable service and who does not receive a refund of his or her contributions, shall, upon the attainment of age 60, be eligible to apply for a retirement allowance in accordance with the formula provided in Miss. Code Ann. §25-11-111(1972, as amended).

(History: Adopted March 27, 1957, page 295; amended June 21, 2005, to be effective August 1, 2005, amended and reformatted July 1, 2007; amended effective July 1, 2011)

Chapter 29: Documentation Required for Prior Service Credit

100 Purpose

The purpose of this regulation is to specify the documentation requirements for the award of prior service credit.

101 Documentation required to prior service credit

Service credit for periods prior to February 1, 1953, may be awarded only after a) qualification for same, and b) receipt of employment and earnings records or such other documentation as satisfactory to the Board of Trustees.

(History: Adopted August 28, 1957, page 318; amended June 21, 2005 to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 30: Minimum Monthly Retirement Allowance

100 Purpose

The purpose of this regulation is to establish a minimum retirement allowance for all Public Employees' Retirement System of Mississippi (PERS) retirees eligible for a monthly retirement allowance.

101 Minimum retirement allowance for any person who became a member before July 1, 2011

- 1. Minimum retirement allowance from May 6, 1958 to June 30, 1971** Members of PERS who were eligible for any amount of monthly service retirement benefits prior to passage of H.B. 904, Laws of 1958, on May 6, 1958, and who had not retired prior to that date, may retire after that date with the \$10 per month minimum provided that they were 65 or over at the time of termination of their employment. Members who were not eligible for any monthly service retirement benefits whatsoever on or before May 6, 1958, and who withdrew from service prior to that date are not eligible for the \$10 per month minimum benefits unless their termination of employment had been made at the close of the 1958 school year which might have occurred prior to May 6, 1958.
- 2. Minimum retirement allowance from July 1, 1971, to June 30, 1973** Effective July 1, 1971, the minimum monthly retirement allowance under the maximum option was two dollars (\$2) per year of service.
- 3. Minimum retirement allowance from July 1, 1973, to June 30, 1980** Effective July 1, 1973, the minimum monthly retirement allowance under the maximum option was three dollars (\$3) per year of service.
- 4. Minimum retirement allowance from July 1, 1980, to June 30, 1985** Effective July 1, 1980, the minimum monthly retirement allowance under the maximum option was five dollars (\$5) per year of service.
- 5. Minimum retirement allowance from July 1, 1985, to June 30, 1987** Effective July 1, 1985, the minimum monthly retirement allowance under the maximum option was seven dollars and fifty cents (\$7.50) per year of service.
- 6. Minimum retirement allowance from and after July 1, 1987** Effective July 1, 1987, the minimum monthly retirement allowance under the maximum option is ten dollars (\$10) per year of service or as otherwise provided in Miss. Code Ann. §25-11-111(d)(3) (1972, as amended).

102 Minimum retirement allowance for any person who becomes a member on or after July 1, 2011 Miss. Code Ann. §25-11-111(e) (1972, as amended) does not provide for a minimum monthly retirement allowance for any person who becomes a member of PERS on or after July 1, 2011.

(History: Adopted January 28, 1959, page 402; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007; amended effective August 1, 2011)

Chapter 32: Extending Membership In PERS to Political Subdivisions

100 Purpose

The purpose of this regulation is to state the cost basis upon which PERS may grant service credit for retroactive service to employees of political subdivisions pursuant to a joinder agreement addendum.

101 Conditions for granting retroactive service credit to employees of political subdivisions

Political subdivisions may elect to join PERS and provide membership to their employees on a prospective basis only or they can also provide for retroactive service credit. If the political subdivision elects to provide service credit retroactive to a certain date, no credit for such service can be granted to a member until he or she has contributed to PERS under Article III beginning at Miss. Code. Ann. §25-11-101, et seq. (1972, as amended) for the minimum required period based on the date of membership into the system and the appropriate cost for such service has been paid. Employees who became members of the retirement system before July 1, 2007, must have remained contributors to the system for a minimum of four (4) years, while employees who became members of the retirement system on or after July 1, 2007, must have remained contributors to the system for a minimum of eight (8) years, to be able to establish retroactive service credit.

1. Cost of Retroactive Service Prior to July 1, 1998

The cost of such retroactive service prior to July 1, 1998, shall be controlled by the regulation, statutes and the addendum to the joinder agreement in effect at the time.

2. Cost of Retroactive Service From and After July 1, 1998

Effective July 1, 1998, no credit shall be granted for retroactive services between January 1, 1953, and the date of entry into the retirement system unless the member:

- a.** Furnishes proof satisfactory to the Board of Trustees of certification of service from the covered employer where the services were performed; and
- b.** Pays the retirement system on the date he or she is eligible for such credit or at any time thereafter, but prior to the date of retirement, the actuarial cost for each year of such creditable service.

(History: Adopted July 27, 1960, page 483 -484; amended June 21, 2005 to be effective August 1, 2005; amended and reformatted July 1, 2007)

Chapter 34: Reemployment after Retirement

100 Purpose

This regulation sets forth the terms and conditions under which a service retiree may be reemployed by a covered employer after retirement.

101 Background

1. Public Employees' Retirement System of Mississippi

In accordance with Miss. Code Ann. § 25-11-127 (1972, as amended), the Board of Trustees of the Public Employees' Retirement System of Mississippi (PERS) has adopted the following rules and regulations governing the provisions for reemployment of PERS service retirees who are reemployed after service retirement under the above-cited Section on or after the effective dates of the applicable provisions of this regulation.

In accordance with Miss. Code Ann. § 25-11-126 (1972, as amended), the Board of Trustees of the Public Employees' Retirement System of Mississippi (PERS) has adopted the following rules and regulations governing the provisions for reemployment of retired public school teachers who are reemployed as full-time teachers in critical teacher shortage areas and critical subject-matter areas under the above-cited Section on or after the effective dates of the applicable provisions of this regulation.

2. Mississippi Highway Safety Patrol Retirement System

In accordance with Miss. Code Ann. § 25-13-25 (1972, as amended), the Administrative Board of the Mississippi Highway Safety Patrol Retirement System (MHSPRS) has adopted certain rules governing the provisions for reemployment of MHSPRS retirees who are reemployed after retirement. Those rules have been incorporated into sections 102 and 108 of this regulation.

102 Loss of Monthly Benefits upon Employment or Reemployment

1. Public Employees' Retirement System of Mississippi

No person who is being paid a retirement allowance or a pension after retirement under Article 3 of the Mississippi Code of 1972, as amended, shall be employed or paid for any service by the State of Mississippi or any of its departments, agencies, or subdivisions participating in PERS, including services as an employee, contract worker, contractual employee or independent contractor, until the retired person has been retired for not less than 90 consecutive days from his or her effective date of retirement. After the person has been retired for not less than 90 consecutive days from his or her effective date of retirement or such later date as established by the board in Section 106.2 of this regulation, he or she may be reemployed while being paid a retirement allowance under the terms and conditions provided in Section 103 of this regulation. **(See Sections 109 and 110 for work as an independent contractor or for work through a third party.)**

- a. Elected officials are deemed to be full-time for the purpose of creditable service. Therefore, retirees may not be employed or reemployed in a covered elected office under the provisions of Section 103 so as to receive both salary and retirement benefits concurrently as provided in that Section, except as provided in Section 103.2.b. of this regulation.
- b. Following a bona fide separation from service of at least 90-days, elected or appointed officials paid solely on a per diem basis as provided by statute are not considered employees for purposes of this regulation on reemployment and may

continue receiving a retirement benefit while serving as an elected or appointed official.

2. Mississippi Highway Safety Patrol Retirement System

No person being paid a retirement allowance or a pension after retirement under Title 25, Chapter 13 of the Mississippi Code of 1972, as amended, shall be (i) employed in a law enforcement position with the Mississippi Highway Patrol (MHP) or the Mississippi Bureau of Narcotics (MBN) or (ii) paid from the MHP budget or the MBN budget while being paid a retirement allowance from MHSPRS, if such employment commences on or after December 1, 2013. An MHSPRS retiree may be employed in any capacity with an employer other than MHP or MBN and remain in compliance with this rule.

103 Exceptions under which a retiree may be reemployed while in receipt of a retirement allowance

1. Retirees reemployed in a covered position other than an Elected Position

PERS may not withhold a monthly benefit payment if the retiree is employed by a covered employer in the following instances:

- a. For a period of time not to exceed one-half of the normal working days or one-half of the equivalent number of hours for the position in any fiscal year during which the retiree will receive no more than one-half of the salary in effect for the position at the time of employment, or
- b. For a period of time in any fiscal year sufficient in length to permit a retiree to earn not in excess of 25 percent of the retiree's final average compensation used to calculate the retiree's monthly benefit.

“Fiscal year” shall mean the period beginning on July 1 of any year and ending on June 30 of the next succeeding year as provided by statute.

2. Retirees reemployed as a Municipal or County Elected Official

A member may retire and continue in covered municipal or county elective office provided that the member has reached age 59 ½ effective July 1, 2020 (or age 62 prior to July 1, 2020), or a retiree may, after incurring a bona fide separation from service of at least 90 days as set forth in Section 106, be elected to a covered municipal or county office, provided the retiree:

- a. Files annually in writing in the office of the employer and of PERS before he or she takes office or as soon as possible after retirement a waiver of all salary or compensation and elects to receive in lieu of that salary or compensation a retirement allowance, in which event no salary or compensation shall thereafter be due or payable for those services, or
- b. Files annually in writing in the office of the employer and of PERS an election to receive compensation for that municipal or county elective office in an amount not to exceed 25 percent of the retiree's average compensation, which shall be prorated over a 12-month time frame.

A retiree who continues in or is elected to covered municipal or county office under Section 103.2.a. or Section 103.2.b. may receive any office expense allowance,

mileage or travel expense authorized by any applicable statute of the State of Mississippi.

3. Retirees employed in both a non-elective position and a Municipal or County Elected position

If at any point during the fiscal year, a retiree is reemployed in both a covered local elected position (and thus considered a full-time employee) and is also reemployed on a limited basis in a non-elective position, he/she must either:

- a. Begin or continue under the 25 percent of average compensation limitation and apply what has already been earned from any other position during the fiscal year to that limitation or
- b. Stay under an existing election to work no more than one-half of the normal working days or one-half of the equivalent number of hours and earn no more than one-half of the salary for a non-elected position and waive the salary for the local elected position.

4. Municipal or County Elected Positions

- a. For purposes of reemployment limitations under Miss. Code Ann. § 25-11-127(6) (1972, as amended), municipal or county elected office shall include:

Municipal: Mayor, Alderman (Councilman or Selectman), Police Chief or Marshal, Municipal Judge, Tax Collector, Tax Assessor, City or Town Clerk, unless any such position is made appointive pursuant to Miss. Code Ann. § 21-3-3, or any other salaried official elected by popular vote and eligible for coverage in PERS.

County: County Supervisor, Chancery Clerk, Circuit Clerk, Tax Assessor, Tax Collector (if separate from Tax Assessor), Sheriff, County Surveyor, Justice Court Judge, County Judge/Family Court Judge, Constable, County Coroner or Medical Examiner, Elected County Prosecutor/Elected County Attorney, or any other salaried official elected by popular vote and eligible for coverage in PERS.

- b. Municipal or county elected positions shall not include:
Governor, Lieutenant Governor, Secretary of State, Attorney General, State Auditor, State Treasurer, Commissioner of Agriculture and Commerce, Commissioner of Insurance, Public Service Commissioner, Transportation Commissioner, State Senator, State Representative, Supreme Court Justice, Court of Appeals Judge, Chancery Court Judge, Circuit Court Judge, District Attorney, Election Commissioner, School Board Member, or other office not included in the municipal or county elected offices listed under this Section.

5. Senior or Special Judge

Miss. Code Ann. § 9-1-105 limits the amount of compensation that can be paid to any judge retired from the chancery, circuit, or county courts, from the Court of Appeals or from the Supreme Court who is appointed as a special judge and who continues to receive a retirement allowance. Such reemployed retired judge may receive no more than 50 percent of the current salary in effect for a chancery or circuit court judge.

6. Retirees reemployed as a full-time public school teacher in critical teacher shortage areas and critical subject-matter areas

Effective July 1, 2024, a member who was employed as a public school teacher at the time of retirement, has at least 30 years of service credit, has incurred a bona fide separation from service of at least ninety (90) days, and holds a standard teaching

license in Mississippi, may be reemployed as a full-time teacher in a public school district and shall continue receiving a retirement benefit in accordance with Miss. Code Ann. § 25-11-126 (1972, as amended). Any teacher who has retired with at least 25 years of creditable service as of July 1, 2024, is also authorized for reemployment under Section 103.6.

a. Limitations of Employment

A retired teacher may be reemployed full time under this Section for a total of five years, which may be performed consecutively or intermittently. Any portion of the school year shall constitute one of the five years of post-retirement teaching eligibility. Any retired teacher who returns under Section 103.6 shall not be eligible to return to work under Sections 103.1, 103.2, 103.3, 108 and any other reemployment authorized in Miss. Code Ann. § 25-11-127 (1972, as amended). Any retired teacher who returns under Miss. Code Ann. § 25-11-127 (1972, as amended) shall not be eligible to return to work under section 103.6 and any other reemployment as authorized in Miss. Code Ann. § 25-11-126 (1972, as amended).

b. Earnings Limitations

During the full-time reemployment authorized under Section 103.6, the reemployed teacher shall be limited to earning half of up to 125 percent of the salary schedule comparable to the teacher's years of service and licensing. The remaining half shall be paid by the school district to PERS as a pension liability participation assessment.

c. Certification of Qualifications

The criteria for critical teacher shortage areas and critical subject-matter areas shall be established by the Mississippi Department of Education. The school district superintendent shall certify to PERS that the retiree has met all qualifications for reemployment as required under the law.

d. No Election to Contribute

Any member reemployed under Miss. Code Ann. § 25-11-126 (1972, as amended) shall not have an election to become a contributing member in PERS nor shall the member have the right to cease receiving the retirement benefit and become a contributing member of PERS during reemployment.

104 Determination of Required Number of Working Days for the Position

For purposes of Section 103.1.a., the employer shall determine the required number of working days for the position on a full-time basis and the equivalent number of hours representing the full-time position. The retiree then may work up to one-half of the required number of working days or up to one-half of the equivalent number of hours and receive up to one-half of the salary for the position. In the case of employment with multiple employers or in multiple positions with the same employer, the limitation shall equal one-half of the number of days or hours for a single full-time position.

105 Notification Requirement and Failure to Comply with Regulation

To lawfully employ a PERS service retiree under Section 103, the employer must notify PERS in writing of the terms of the eligible employment within five days from the date of employment and also from the date of termination on a form prescribed by the Board.

Failure by the employer to timely notify PERS may result in the assessment of a \$300 penalty per occurrence payable by the employer.

A service retiree reemployed under Section 103.1 shall make one election per fiscal year to either (i) limit the number of days/hours worked for all covered employers to that allowed under Section 103.1.a. or (ii) limit the amount of compensation that will be earned from all covered employers as provided under Section 103.1.b. of this regulation.

A retiree who continues in or is elected to covered municipal or county office (and who is not also reemployed in a non-elective position) shall make one election per fiscal year to either (i) waive his or her salary and continue to receive a retirement allowance under Section 103.2.a. or (ii) elect to receive an amount not to exceed 25 percent of the retiree's average compensation in Section 103.2.b. Note that such elected official does not have the option of limiting the number of days or hours worked.

106 Withdrawal from Service or Termination from Service

1. "Withdrawal from service" or "termination from service" is defined by statute as the complete severance of employment in state service of any member by resignation, dismissal or discharge. Retirement benefits may not begin until the member has withdrawn from service as required in Miss. Code Ann. § 25-11-111 (1972, as amended). If the retired member is reemployed by the same or another covered employer in any capacity, including that of an independent contractor, within 90 days from the effective date of retirement, has entered into a pre-arranged agreement for reemployment with a covered employer, or the parties otherwise have a reasonable expectation that the retired member will return to work for a covered employer, the member shall be considered to have continued in the status of an employee and not to have separated from service. In the absence of a bona fide separation from service of at least 90-days, any retirement allowance payments received by the retired member shall be repaid to PERS and the retirement shall be negated. If such retiree is so employed or reemployed in a covered position without the requisite separation, such reemployed retiree's earnings shall continue to be reported to PERS.
2. In order to fall within one of the exceptions of Miss. Code Ann. §§ 25-11-126 and 25-11-127 (1972, as amended), as outlined in Section 103, or the provisions for waiver of compensation by retirees reemployed as a Municipal or County elected official where the retiree elects to receive a retirement allowance in lieu of such salary, such complete severance shall mean the absence of any employment in any capacity, including service without pay, and without a prearranged agreement between a covered employer and the retiree for reemployment or a reasonable expectation of the parties that the retiree will return to work for a covered employer for a minimum of 90 consecutive calendar days beginning with the effective date of retirement. Provided, however, any employee of an educational institution employed on less than a 12-month basis who retires at the end of the school year and is reemployed the beginning of the next school year shall not have terminated his or her employment within the meaning of Miss. Code Ann. § 25-11-111 (1972, as amended). In order to fall within the exceptions of the reemployment provisions of Miss. Code Ann. §§ 25-

11-126 and 25-11-127 (1972, as amended), such retiree retiring at the end of one school year may not be reemployed in an educational institution any earlier than 90 consecutive calendar days after the beginning of the next school year. Where such retiree is reemployed prior to the expiration of such 90-day time frame, any benefits received during the summer months prior to reemployment shall be recovered and the retirement shall be negated.

3. If a member is reemployed prior to the requisite bona fide separation from service of at least 90-days and continues employment in a noncovered position in accordance with PERS Board Regulation 36, *Eligibility for Membership in the Public Employees' Retirement System of Mississippi (PERS)*, the member will become eligible for service retirement benefits once a complete severance of employment has been made as provided herein.

107 Effect of Reemployment under the Exceptions of Miss. Code Ann. §§ 25-11-126 and 25-11-127 (1972, as amended) on Service Credit and Contributions

1. Employment of a retiree described in Section 103 does not entitle a retiree to additional service credit for such limited period of reemployment, and the retiree so employed shall not make contributions to PERS from compensation for that employment.
2. The employer of a PERS retiree reemployed in a position as an employee or as a contractual employee under the limited reemployment provisions of Section 103.1.a or 103.1.b. shall pay to the board the full amount of the employer's contribution, as is in effect at the time of employment, on the amount of compensation received by the retiree for his or her employment under the applicable section.
3. Whether a retiree holding a Municipality or County elective office chooses to waive his or her salary as described in Section 103.2.a. or receive limited compensation as described in Section 103.2.b, the employing municipality or county shall pay to the board the employer's contributions, as is in effect at the time of employment, on the full amount of the set salary for that elected position as if the position were filled by a covered employee. In the case of fee officials covered by a joinder agreement, the following shall apply:
 - a. For constables, the county shall pay the amount of the employer's contributions on the total direct payments that would otherwise have been issued to the constable for direct services to the county, which includes, but is not limited to, the allowance from the board of supervisors as provided in Miss. Code Ann. § 25-7-27(1)(f) (1972, as amended), and bailiff fees, if applicable, as if the position was filled by a covered employee.
 - b. For coroners and surveyors, the county shall pay the amount of the employer's contributions on the total direct payments that would otherwise have been issued to the coroner or surveyor for direct services to the county as if the position was filled by a covered employee.
 - c. For chancery and circuit clerks, the county shall pay the amount of the employer's contributions on the amount that would otherwise have been the clerk's total County Payroll Income, whether or not such income is subject to the salary limitation as provided in Miss. Code Ann. § 9-1-43 (1972, as amended), as reported on the Annual Financial Report filed by the clerk with the Office of the

State Auditor and PERS, not to exceed any applicable employee compensation limits, as if the position was filled by a covered employee.

4. The employer of a PERS retiree reemployed as a full-time public school teacher in a critical teacher shortage area or critical subject-matter area under the limited reemployment provisions of Section 103.6 shall pay a pension liability participation assessment in accordance with Miss. Code Ann. § 25-11-126 (1972, as amended).
5. Compensation as used in this Section does not include office expense allowance, mileage or travel expense authorized by any applicable statute of the State of Mississippi.

108 Effect of Reemployment Outside the Exceptions of Miss. Code Ann. §§ 25-11-126 and 25-11-127 (1972, as amended) on Service Credit and Contributions

1. Where a retiree is reemployed after retirement in a covered position outside one of the exceptions in Section 103 of this regulation, such retiree shall have his or her benefits terminated, and he or she shall again become a contributing member with contributions paid by both the employer and the employee. The retiree shall not be entitled to benefits for any month in which covered reemployment commences and for which creditable service is awarded for such month. Where such reemployment as a contributing member continues for a period in excess of six full calendar months, the member shall have his or her benefit recomputed upon subsequent retirement, including service credit after again becoming a contributing member. However, persons who are reported under this provision and who do not complete the requisite reemployment period for recalculation of benefits shall have their contributions refunded to them by the employer after such contributions are refunded or credited to the employer. The original benefits will be reinstated prospectively the first of the month following termination from employment at an amount no less than the retirement allowance authorized before cancellation of benefits. The employer shall provide written notice to PERS of any such termination from employment upon subsequent retirement.
2. The recalculation of benefits at the member's subsequent retirement, where the member has completed the requisite reemployment period for recalculation of benefits, shall be based on the applicable benefit formula, average compensation definition, and actuarial factors in effect at the time of the subsequent retirement and the optional benefit payment plan selected by the member at the time of the subsequent retirement.
 - a. Where a member has selected Option 4-C during a previous retirement pending eligibility for receipt of Social Security benefits and to the extent PERS has not recovered all benefits advanced pursuant to such additional optional provision at the time of reemployment of the retiree, PERS may (i) reduce the retiree's benefit upon his or her subsequent retirement over the retiree's actuarial life expectancy to recover such unrecovered advances, or (ii) recover such unrecovered advances in a lump sum by withholding part or all monthly benefit payments until such advances are recovered.
 - b. Further, where a member has selected the Partial Lump Sum Option at initial retirement, the new maximum benefit as noted under Section 108.2 of this regulation shall, upon subsequent retirement, be reduced by the same dollar

amount plus 1 percent of that amount for each month that the retiree's benefit was terminated due to the retiree's return to covered employment.

3. Upon a subsequent retirement effective after July 1 of a given year, the retiree's annual benefit adjustment shall resume immediately with the first benefit payment. When resumed, the annual benefit adjustment will be based on the current retirement allowance and the number of full fiscal years in retirement and shall be prorated and paid in equal monthly installments based on the number of months a retirement allowance is payable during the fiscal year. Beginning with the succeeding fiscal year, the annual benefit adjustment shall be paid in a lump sum or monthly installments in accordance with the election made by the retiree.

109 Reemployment as an Independent Contractor

A retiree must have incurred a bona fide separation from service with all covered employers after retirement for at least the 90-day separation period prior to being engaged to perform services as an independent contractor. For purposes of this regulation, this term shall mean any individual (or firm for which an individual performs substantially all the work) who contracts to do a piece of work according to his or her own methods without being subject to the control of his or her employer except as to the results of the work, and who has the right to employ and direct the outcome of the workers independent of the employer and who is free from any superior authority in the employer to say how the specified work shall be done or what the laborers shall do as the work progresses, or one who undertakes to produce a given result without being in any way controlled as to the methods by which he attains the result.

After the requisite 90-day separation period as defined in Section 106, a retiree may contract to provide such services as a true independent contractor outside the limitations of Section 103 while in receipt of a retirement allowance. However, prior to contracting for such services, such retiree must submit to PERS for its approval, documentation, including but not limited to, the following: the nature of the engagement, including services to be performed; how the services were performed previously, including whether they were performed by an employee and whether the independent contractor previously performed those services as an employee; nature of compensation and treatment of expenses; where the services are to be performed, i.e. on the service recipient's premises; who provides the equipment to perform the services; whether the service provider provides such services to other service recipients; whether such services are offered for other persons through advertising or other solicitation and if so; whether the service provider has provided such services to any other service recipient in the last year and if so to how many; whether there is a written contract for the performance of such services; and other information to substantiate that the service provider is a true independent contractor and not an employee. In addition, PERS will utilize the IRS test as a factor in determining whether an individual is an employee versus an independent contractor in making this determination.

If, after a review of all pertinent information, PERS determines that the individual will be performing services as a true independent contractor, the retiree will be notified of same and contracting for such services shall not affect his or her retirement allowance. If,

however, PERS determines that such individual is actually an employee, the retirement allowance will be terminated and benefits repaid unless such reemployment follows the guidelines and limitations of this regulation.

110 Employment through a Third Party

The limitations on reemployment while in receipt of a retirement allowance may not be circumvented by contracting to perform services through a third party (i.e., a placement or temporary employment agency). If an individual is performing services with a covered agency as an employee, the reemployment limitations will apply whether a particular retiree has been reemployed directly by the covered agency or through a third party. Whether a retiree has been reemployed with a PERS covered agency, directly or indirectly, is a question of fact to be determined by PERS. In making such determination, PERS will use the IRS factors to determine whether an individual is an employee along with other factors such as the extent to which control is exercised over details of the work by the individual; whether or not the retiree employed is engaged in a distinct occupational business; the skill required in the occupation; whether the employer supplies the tools and place of work; the length of time for which the person is employed; the method of payment; whether the work involved is part of the “regular business” of the employer.

111 Recovery of Benefits Issued in Error Due to Noncompliance with Provisions of this Regulation

Should a retiree fail to comply with the provisions of this regulation resulting in the issuance of benefits in error, monthly benefits shall be canceled where necessary, and a demand shall be made for the return of any such benefits erroneously issued. The retiree shall be given 30 days to return any benefit overpayment without an interest penalty. If any overpayment is not returned within 30 days from the date that notification is issued, the retiree shall be liable for the return of the overpayment plus interest thereon at 10 percent per annum plus all costs of collection with a minimum interest assessment of \$50.

(History of PERS Board Regulation 34: Amended October 28, 1997 to be effective December 15, 1997, except as specifically otherwise provided; amended effective July 1, 2001; amended effective April 1, 2002; amended July 1, 2002; amended February 1, 2004; amended 6/21/2005 to be effective 8/1/2005; reformatted August 1, 2007; amended effective July 1, 2010; amended effective July 1, 2011; amended effective December 1, 2013; amended effective August 1, 2014; January 17, 2020; amended effective October 1, 2020; amended effective July 1, 2024)

Chapter 35: Filing an Application for Monthly Benefits and Establishing an Effective Date of Retirement

100 Purpose

This regulation prescribes 1) the forms and information necessary to file an application for monthly benefits, 2) the conditions under which an effective date of retirement is established, and 3) when changes in the option specified on the retirement application can and cannot be made.

101 Establishing the Effective Date of Retirement

1. Application for Service Retirement

- a. The effective date of service retirement shall be the first of the month following withdrawal or termination from service as defined under Miss. Code Ann. § 25-11-103 (aa) (1972, as amended) and receipt by PERS of the properly completed application for service retirement, provided that the member is eligible for service retirement benefits on said date.
- b. The Application consists of the
 - i. Form 9A SRVC, *Pre-Application for Service Retirement Benefits*;
 - ii. Form 9S, *Service Retirement Application*;
 - iii. Form 9P, *Payroll Authorization*
 - iv. Form PLSO, *Partial Lump Sum Option Distribution Election* (if applicable), and
 - v. Acceptable proof of age for the applicant and for the beneficiary(ies), if selecting a joint and survivor option.
- c. Receipt of Form 9A SRVC, *Pre-Application for Service Retirement Benefits*, will be used in setting the effective date of retirement provided that all other forms in the Application as noted in Section 101.1.b of this Regulation are received in the PERS office no later than 90 days following the effective date of retirement.
- d. All forms in the Application must be on file in the PERS office before benefit payments can be initiated.
- e. Failure to submit all required forms in the Application within 90 days following the effective date of retirement, as established upon receipt of the Form 9A SRVC, will require the completion of a new Application thereby establishing a new effective date. The executive director may, due to extenuating circumstances and at his or her discretion, extend the 90-day period for completing the application by up to an additional 90 days based on information or documentation provided in a written request from the applicant.
- f. Where a vested member has withdrawn or terminated from service but is not eligible for retirement benefits at the time of withdrawal or termination from employment and has not returned to covered employment, he or she may at a later date become eligible for a service retirement allowance, provided that he or she does not subsequently withdraw his or her accumulated member contributions and interest. The effective date of retirement will be the first of the month following the event that qualifies him or her for retirement, provided PERS has

received a properly completed Application as noted in Section 101.1.b of this Regulation. Such events include:

- i. reaching the statutory age at which a member with the requisite minimum number of years of membership service is eligible for a retirement allowance; or
- ii. completion of the purchase of eligible service credit or repayment of a refund that gives the member the requisite years of creditable service necessary to qualify for a retirement allowance regardless of age.

2. Application for Disability Retirement

- a. The effective date of disability retirement shall be the first of the month after either 1) receipt of the Form DSBL 1 *Pre-Application for Disability Retirement Benefits*, provided that all other forms in the Application as noted in Section 101.2.b of this Regulation are received in the PERS office no later than 90 days following receipt thereof, or 2) actual termination from covered employment as certified by the employer, whichever is later.
- b. The Application consists of the
 - i. Form DSBL 1, *Pre-Application for Disability Retirement Benefits*;
 - ii. Form DSBL 9, *Disability Retirement Application*;
 - iii. Form DSBL 4, *Medical Information and Prior Claim History*;
 - iv. Form DSBL 5, *Physician and Treating Facility History*
 - v. Form DSBL 7, *Statement of Examining Physician*, for each physician listed on Form DSBL 5;
 - vi. Physicians' office records and hospital records for each referenced treatment listed on Form DSBL 5;
 - vii. Workers' Compensation Report of Injury if applying for duty-related disability;
 - viii. Form DSBL 2, *Employer's Certification of Job Requirements*;
 - ix. Form DSBL 3, *Employer's Job Activities Checklist*
 - x. Form DSBL 8, *Authorization for Release of Information*;
 - xi. Form DSBL 10, *Payroll Authorization*;
 - xii. Form DSBL 6, *Family Information*;
 - xiii. Form DSBL 11, *Temporary Benefit Application*, if applicable; and
 - xiv. Acceptable proof of age for the applicant and for the beneficiary(ies), if selecting a joint and survivor option.
- c. Provided the member files all forms required in Section 101.1.b.ii through iv of this Regulation within 90 days of receipt of the Form DSBL 1, *Pre-Application for Disability Retirement Benefits*, the Form DSBL 1 will also be used in setting the effective date for service retirement in the following situations:
 - i. a member who is eligible for service retirement but elects not to receive service retirement benefits while pursuing disability benefits and who
 - (a.) is later denied disability benefits, or
 - (b.) withdraws the application for disability benefits, or
 - ii. a member whose application for disability retirement is voided pursuant to Section 101.2.e of this Regulation.

- d. All forms in the Application must be on file in the PERS office before the claim is presented to the Medical Board and before disability benefit payments can be initiated. Where a member filing for disability benefits is also eligible for service retirement benefits as provided in Miss. Code Ann. § 25-11-113 (c) (1972, as amended) and Board Regulation 45A, *Administration of Disability Benefits Under PERS*, Section 102.3, Forms DSBL 1 and DSBL 9, along with applicable acceptable proof of age, must be received before service retirement benefits can begin.
 - e. Failure to submit all required forms in the Application within 90 days following receipt of the Form DSBL 1 will void the Application and require the completion of a new Application thereby establishing a new effective date. The executive director may, due to extenuating circumstances and at his or her discretion, extend the 90-day period for completing the application by up to an additional 90 days based on information or documentation provided in a written request from the applicant.
 - f. After the application is made and disability benefits initiated, an applicant may not change the type of disability claim (i.e., he or she may not change the application from a claim for non-duty related disability benefits to a claim for duty-related disability benefits).
 - g. After a member begins to receive a service retirement allowance, he or she may not apply for a disability retirement allowance.
 - h. Primary proof of an applicant's child as a dependent child for purposes of the dependent child supplement under the Tiered Disability Plan is the birth certificate of the child with the member listed as the mother or father, as applicable. In the absence of a birth certificate listing the member as a parent, proof must be provided that the member is the lawful guardian or primary custodian of the child. Such proof might include a court order granting guardianship or recent tax returns showing that the member claims the child as his or her dependent.
- 3. Application for Survivor Benefits**
- a. The effective date of survivor retirement benefits is the first of the month after the date of the member's death and receipt of a completed application for survivor benefits. In the case where the application for survivor benefits is received within one year following the member's date of death, the effective date of retirement is the first of the month after the member's date of death as certified on the death certificate, provided that all forms in the Application as noted in Section 101.3.c of this Regulation are received in the PERS office no later than 90 days following receipt of the Form 9A SRVR, *Pre-Application for Survivor Retirement Benefits*. In the case where the application for survivor benefits is received more than one year after the member's date of death, the effective date of retirement is the first of the month following receipt of the Form 9A SRVR retroactive for not more than one year.
 - b. All applicable forms noted in Section 101.3.c of this Regulation must be on file in the PERS office before benefit payments can be initiated.

- c. The Application consists of:
 - i. Form 9A SRVR, *Pre-Application for Survivor Retirement Benefits*;
 - ii. Workers' Compensation Injury Report, if applying for duty-related death benefits;
 - iii. acceptable proof of age for the member, spouse and dependent children;
 - iv. Marriage Certificate;
 - v. Death Certificate;
 - vi. school attendance records, if dependent children are between the ages of 19 and 23;
 - vii. Form 14, *Survivor Retirement Application*; and
 - viii. If someone other than a natural parent makes application for dependent child survivor benefits on behalf of the child, adoption papers, guardianship papers, or proof of representative payee status with the Social Security Administration or PERS will also be required.
- d. Primary proof of an applicant's status as a dependent child is the birth certificate of the child with the deceased member listed as the mother or father, as applicable. In the absence of a birth certificate listing the deceased member as a parent, proof must be provided that the deceased member was the lawful guardian or primary custodian of the child. Such proof might include a court order granting guardianship or other evidence satisfactory to prove that the child was under the permanent care of the member. PERS will rely on the aforementioned documentation as proof unless compelling contradictory evidence is provided disproving the applicant's status as a dependent child.
- e. For purposes of dependent child survivor benefits, a natural child of a member is one who is conceived before the death of the member.
- f. For purposes of dependent child survivor benefits, a child is considered to be a dependent child until he or she marries or reaches age 19, whichever occurs first; however, the age limitation is extended to age 23 as long as the child is a student regularly pursuing a full-time course of resident study. A student child who is receiving a dependent child benefit as of June 30, 2016, may continue to receive the benefit until the July 1 following his or her 23rd birthday.
- g. A full-time course of resident study or training means a day or evening non-correspondence course that includes school attendance at the rate of at least 36 weeks per academic year or other applicable period with a subject workload sufficient, if successfully completed, to attain the educational or training objective within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.
 - h. A child who is age 19 but not yet age 23 who withdraws from school (for a period sufficient to determine that the child is no longer a student regularly pursuing a full-time course of resident study or training) is no longer eligible for dependent child survivor benefits, even if that child reenrolls in a full-time course of resident study or training before age 23. However, if the child can prove based on objective documentation that he or she involuntarily withdrew from school due to extenuating circumstances beyond his or her direct control, the executive director may, at his or her discretion, approve the reinstatement of the dependent child survivor benefits if the child reenrolls in a full-time course of resident study

or training within 12 months of initial withdrawal and (i) the terminated benefit has not been redistributed to other eligible dependent children or (ii) a lump sum refund of unused member contributions has not been paid to the designated beneficiary.

- i. A child under age 23 who marries is no longer eligible for dependent child survivor benefits, even if that child divorces before age 23.
- j. A child who is determined to be physically or mentally disabled by the Medical Board will receive dependent child survivor benefits regardless of age for as long as the child is determined to be disabled as determined by the Medical Board.

4. Normal Retirement Age

- a. Public Employees' Retirement System – The attainment of normal retirement age under the Public Employees' Retirement System shall be defined as:
 - i. having twenty-five (25) or more years of creditable service if the member entered PERS-covered service before July 1, 2011;
 - ii. having thirty (30) or more years of creditable service if the member entered PERS-covered service on or after July 1, 2011.
 - iii. having four (4) or more years of membership service at age 60 or later if the member entered PERS-covered service before July 1, 2007;
 - iv. having eight (8) or more years of membership service at age 60 or later if the member entered PERS-covered service on or after July 1, 2007, but before July 1, 2011;
 - v. having eight (8) or more years of membership service at age 65 or later if the member entered PERS-covered service on or after July 1, 2011.
- b. Mississippi Highway Safety Patrol Retirement System - The attainment of normal retirement age under the Mississippi Highway Safety Patrol Retirement System shall be defined as the age at which an eligible Public Safety Officer retires on an unreduced benefit, i.e., someone who retired with 5 or more years of membership service at age 55 or older, or someone who retired with 25 or more years of service regardless of age.
- c. Municipal Retirement System - All members who have retired or will retire under one of the Municipal Fire and Police Retirement Systems will be considered to have attained normal retirement age.

5. Advanced Application

- a. After a member of the Public Employees' Retirement System (PERS), the Supplemental Legislative Retirement Plan (SLRP), or the Mississippi Highway Safety Patrol Retirement System (MHSPRS) becomes eligible to retire or after a previously retired PERS or SLRP member cancels his or her service retirement and has returned to covered employment and completed the requisite reemployment period for recalculation of benefits (i.e., in excess of six calendar months), he or she may file a Form 16, *Advanced Application*, with PERS.
- b. The Form 16 allows the member to pre-select an option and designate a beneficiary to receive payments of monthly benefits in the event the member dies prior to retirement.
- c. To be effective, the Form 16 must be on file in the PERS office at 429 Mississippi St., Jackson, Mississippi 39201 at the time of the member's death prior to retirement.

- d. In the event of the member's death prior to the actual effective date of retirement, benefits based on a Form 16 on file with PERS will become effective the first of the month following the member's death.

6. Effect of Death on Service Retirement Application

- a. If a member dies before the effective date of retirement and has a valid *Advanced Application* on file with PERS, benefits will be paid in accordance with the *Advanced Application*. If a member dies before retirement and has no valid *Advanced Application* on file, benefits will be paid in accordance with the applicable law.
- b. If a member dies on or after the effective date of retirement but before benefits have begun and he or she has a completed Form 9A SRVC and Form 9S on file with PERS, benefits will be paid in accordance with the Form 9A SRVC and Form 9S. If both forms are not on file with PERS at the time of the member's death and before benefits have begun, the application will be considered void and benefits paid in accordance with the applicable law.
- c. If a member of PERS or SLRP dies after having canceled his or her service retirement but before completing the requisite reemployment period for recalculation of benefits (i.e., in excess of six calendar months), benefits will be paid to the lawfully designated beneficiary(ies) in accordance with the optional benefit payment plan in effect immediately prior to the cancellation of the service retirement allowance.
- d. If a member of PERS or SLRP dies with a valid *Advanced Application* on file with PERS after having canceled his or her service retirement and after having completed the requisite reemployment period for recalculation of benefits (i.e., in excess of six calendar months), benefits will be paid in accordance with the *Advanced Application*. If a member of PERS or SLRP dies without an *Advanced Application* on file with PERS after having canceled his or her service retirement and after having completed the requisite reemployment period for recalculation of benefits, benefits will be paid in accordance with the applicable law irrespective of any previous optional benefit payment plan selection.

7. Effect of Death on Disability Retirement Application

- a. If a vested member who has filed a claim for disability benefits dies prior to the review and determination of his or her claim by the PERS Medical Board, his or her beneficiary or beneficiaries shall be eligible for death benefits in the form of spouse/survivor benefits or a refund of contributions, unless a Form 16 has been completed by the member prior to death and is on file with PERS.
- b. If a vested member who has filed a claim for disability benefits dies after his or her claim has been approved by the PERS Medical Board but before his or her effective date of disability retirement, his or her beneficiary or beneficiaries shall be eligible for death benefits in the form of spouse/survivor benefits or a refund of contributions, unless a Form 16 has been completed by the member prior to death and is on file with PERS.
- c. If a vested member who has filed a claim for disability benefits dies after his or her claim has been approved by the PERS Medical Board and on or after the effective date of disability retirement but before benefits have begun, his or her

beneficiary or beneficiaries shall be entitled to benefits in accordance with the option selected by the member on the disability retirement application.

8. Acceptable Proof of Age

- a. The primary proof of age is the applicant's birth certificate.
- b. Any document that requires a birth certificate prior to issuance would also be considered a primary proof of age, such as a copy of the applicant's:
 - i. passport;
 - ii. valid driver license;
 - iii. Social Security records, if the applicant is already receiving Social Security benefits; or
 - iv. school census record showing the applicant's age when attending as a student.
- c. If an applicant applied for a copy of his or her birth certificate and was advised by the Office of Vital Statistics that his or her birth certificate is not available, the following, listed in the order of preference, may be acceptable as alternative proof of the applicant's age:
 - i. his or her child's birth certificate that shows the applicant's age at the time of the child's birth;
 - ii. his or her Department of Defense Form DD214 from the United States Armed Forces;
 - iii. a statement from the Social Security Administration showing the applicant's date of birth as established in their records;
 - iv. a copy of his or her voter registration form, provided the form is at least five years old and shows the applicant's age at the time of registration;
 - v. a statement from the United States Bureau of Census showing the applicant's date of birth as established in their records; or
 - vi. a copy of his or her baptismal record notarized by a Notary Public.

102 Withdrawal from Service or Termination from Service

Section 25-11-103 (aa) defines "withdrawal from service" or "termination from service" as the complete severance of employment from state service of an employee by resignation, dismissal, or discharge.

For purposes of setting the effective date of retirement, withdrawal from service or termination from service shall mean the cessation of the employee/employer relationship as characterized by resignation or termination from employment, with or without cause. While a member may not be performing the duties of the job, if the member has not resigned or been terminated from employment by the employer, the member is still considered employed. Where the member is on authorized leave with or without pay, such member is considered an employee and thus not terminated from employment for purposes of setting the benefit effective date.

103 Changing the Optional Benefit Payment Plan before Receipt of a Retirement Benefit

No change in the option selected shall be permitted after the member's death or after the member has received a retirement benefit except as provided in Section 104. This prohibition extends to a member's option to receive a refund of the amount of

accumulated employee contributions and interest in lieu of receiving a retirement benefit.

For purposes of this Regulation, “receipt of a retirement benefit” means negotiating or cashing a benefit payment. Except as specifically provided by law, a member may not change an option after 90 days from the date the first benefit payment is issued even if such payment is not negotiated or cashed.

104 Changing the Optional Benefit Payment Plan after Receipt of a Benefit Payment

1. The option selected on the Service Retirement, Disability, or Survivor Application may not be changed after receipt of a benefit payment except as provided below or otherwise provided by law.
 - a. A retired member who is receiving a reduced retirement allowance under Option 2, Option 4, or Option 4-A and whose designated beneficiary predeceases him or her, or whose marriage to a spouse who is his or her designated beneficiary is terminated by divorce or other dissolution may elect to cancel his or her reduced retirement allowance and receive the maximum retirement allowance for life in an amount equal to the amount that would have been payable if the member had not elected Option 2, Option 4, or Option 4-A. That election must be made in writing and filed in the PERS office on Form R, *Application for Recalculation of Benefits*. Any such election shall be effective the first of the month following the date the election is received by PERS, provided that all other required documents are received in the PERS office no later than 90 days following the receipt of the Form R. However, the election to pop-up to the maximum retirement allowance after the death of a retired member’s designated beneficiary may be applied retroactively for not more than three months, but no earlier than the first of the month following the date of the death of the beneficiary. Recalculation of the cost-of-living adjustment based on the new benefit amount will be effective July 1 of the following fiscal year.
 - b. A retired member who is receiving the maximum retirement allowance for life or a retirement allowance under Option 1 and who marries after his or her retirement may elect to cancel his or her maximum retirement allowance and receive a reduced retirement allowance under Option 2, Option 4, or Option 4-A to provide continuing lifetime benefits to his or her spouse. That election must be made in writing and filed in the PERS office on Form R, *Application for Recalculation of Benefits*, no earlier than the date of the marriage and no later than one year from the date of the marriage. Any such election shall be effective the first of the month following the date the election is received by PERS, provided that all other required documents are received in the PERS office no later than 90 days following the receipt of the Form R. Recalculation of the cost-of-living adjustment based on the new benefit amount will be effective July 1 of the following fiscal year.
 - c. A retired member of PERS or SLRP who is reemployed and becomes a contributing member for a period of time that exceeds six calendar months may have his or her benefit recomputed under the same or a different option as provided in Section 108 of Regulation 34, *Reemployment After Retirement*.

105 Effect of Pending Service Credit Transactions on Qualification for a Benefit and on the Effective Date of Benefits

1. The right of a member to repay a refund, to purchase service credit, or to pay an adjustment for unreported wages or service credit belongs only to the member and ceases with the member's death or retirement.
2. A member who wishes to repay a refund to establish previously forfeited service credit must do so before his or her death or before his or her effective date of retirement. Where a member is in the process of repaying any part of a refund, the effective date of retirement cannot be established until the payment is received by PERS.
3. The payment of an adjustment for unreported income and/or service credit based on unreported wages and/or service or for the purchase of optional service credit must be completed prior to the death or the effective date of retirement of the member. If a member is in the process of purchasing service credit based on a reporting error adjustment or purchasing optional service credit at the time of retirement, the effective date of retirement cannot be established until the purchase is completed.
4. The payment for any adjustment for underreported income required to award or retain service credit must be completed prior to the death or effective date of retirement of the member. If a member is in the process of paying contributions and interest at the time of retirement due to an underreporting of earnings, the effective date of retirement cannot be established until the purchase is completed. However, in the case of elected fee officials, benefits can be initiated prior to the complete reporting of the final year's wages and contributions. If, however, full contributions are not remitted to PERS within 90 days following the due date of the fee official's final annual financial report as prescribed by law, PERS may suspend benefits until such time as all contributions and interest, if any, due are made.
5. All rights to purchase retroactive service credit or repay a refund as provided in Miss. Code Ann. § 25-11-101 et seq. (1972, as amended) terminate upon retirement. Likewise, the right of a member to make a claim for service credit for prior service, service credit attributable to unused personal (vacation) and major medical (sick) leave days, military service, out-of-state service, service credit for professional leave, and non-covered service as provided in Miss. Code Ann. § 25-11-109 (1972, as amended) ceases with the member's retirement. Any member who wishes to make a claim for service credit attributable to the above types of service must do so before his or her effective date of retirement. The executive director may, due to extenuating circumstances and at his or her discretion, extend the period for claiming service credit attributable to unused personal (vacation), major medical (sick) leave days, or active duty military service for up to 90 days following the effective date of retirement based on information or documentation provided in a written request from the applicant.

106 Non-payment of Interest

In accordance with Miss. Code Ann. § 25-11-120(4) (1972, as amended), interest shall not be paid on any benefits, including, but not limited to, benefits that are delayed as a result of an administrative determination or an appeal from an administrative determination.

107 Duty-related death benefits for survivors of public safety officers may be excluded from income

Internal Revenue Code Section 101(h) provides that gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) killed in the line of duty:

- a. if such annuity is provided under a governmental plan that meets the requirements of Section 401(a) to the spouse (or a former spouse) of the public safety officer or to a child of such officer; and
- b. to the extent such annuity is attributable to such officer's service as a public safety officer.

IRC 101(h) provides that this treatment does not apply if the public safety officer's death was caused by intentional misconduct or by his or her intent to end his or her life; if the officer was voluntarily intoxicated at the time of death; if the officer was performing his duties in a grossly negligent manner at the time of death; or if the recipient of the survivor annuity took actions that were a substantial contributing factor to the officer's death.

(History of PERS Board Regulation 35: Adopted November 17, 1971; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007; amended July 1, 2008; amended effective July 1, 2009; amended effective August 1, 2011; amended effective August 1, 2012; amended effective February 1, 2013, amended effective December 1, 2016, amended effective July 1, 2017)

Chapter 36: Eligibility for Membership in the Public Employees' Retirement System of Mississippi (PERS)

100 Purpose

This regulation clarifies which employees are eligible for coverage and membership service credit in the Public Employees' Retirement System of Mississippi (PERS).

101 Definitions

1. Definition of "Position"

Participation in PERS is limited to eligible employees who occupy a covered position with a qualifying governmental entity. Miss. Code Ann. § 25-11-103(s) (1972, as amended) defines "position" as any office or any employment in the state service or two or more of them, the duties of which call for services to be rendered by one person, including positions jointly employed by federal and state agencies administering federal and state funds.

2. Definition of "Employee"

"Employee" means any person legally occupying a position in state service and includes the employees of the retirement system. An employee is a person in the service of another where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed. Only employees are eligible for membership in PERS.

3. Definition of "Independent Contractor"

An independent contractor is one, who in the exercise of independent employment, contracts to do a piece of work according to his or her own methods and is subject to his or her employer's control only as to the end product or final result of his or her work. An independent contractor is not eligible for membership in PERS.

4. Definition of "Employer"

"Employer" means the State of Mississippi or any of its departments, agencies, political subdivisions, or instrumentalities from which any employee receives his or her compensation.

5. Definition of "State Service"

"State Service" means all offices and positions of trust or employment in the employ of the state, or any political subdivision or instrumentality of the state that elects to participate in PERS by way of joinder agreement in accordance with Miss. Code Ann. § 25-11-105(f) (1972, as amended), including the position of elected fee officials of the counties and their deputies and employees performing public services and any department, independent agency, board or commission, and also including all offices and positions of trust or employment in the employ of joint state and federal agencies administering state and federal funds and service rendered by employees of the public schools.

102 Eligibility for PERS membership

1. To participate in PERS, an individual must be an employee in a covered position with a covered employer and subject to the control of the covered employer as defined in Internal Revenue Service (IRS) guidelines and **must** satisfy the following requirements:
 - a. Be properly classified as an employee;
 - b. Have compensation properly reported on IRS Form W-2, *Wage and Tax Statement*;
 - c. Be paid regular periodic compensation (whether hourly, daily, weekly, or monthly); and
 - d. Be treated as an employee for all general purposes, including, but not limited to, eligibility for fringe benefits, payment of employment-related expenses, payroll tax withholding, etc.

103 Eligibility for Membership Service Credit

1. To receive service credit for any month, a member must be employed in a position in which the employee works the equivalent of at least half the normal workload for the position and earns at least half the normal compensation for the position in any month. Reference PERS Board Regulation 25, *Eligibility of Part-time Employees for State Retirement Annuity Service Credit*.
2. Any person who works half time or more based on a full-time equivalent position and whose employment is anticipated to exceed four and one-half consecutive months shall be covered, whether probationary or otherwise.
 - a. Requirements for general, non-elected employees
 - i. For non-elected, non-school employees and school employees where the full-time equivalent workload is based on 40 hours per week, creditable service is only allowed for employment in a position in which the employee performs

services and receives compensation for not less than 20 hours per week or a total of 80 hours per month. Except as otherwise provided by law, no creditable service shall be allowed for service when the employee is not paid for at least 20 hours of service per week or for a total of 80 hours per month.

- ii. For non-elected school employees where the full-time equivalent workload is based on 35 hours per week, creditable service is only allowed for employment in a position in which the employee performs services and receives compensation for not less than 17.5 hours per week or a total of 70 hours per month.
 - iii. For school employees employed pursuant to a contract, the employee must substantially complete the legal school term in order to receive credit for a full year of service. "Substantial completion of the legal school term" is defined as the employee completing the full school term and receiving at least 11/12th (91.67 percent) of the contract salary for the full school term. For school employees employed pursuant to a contract who do not substantially complete the legal school term, service credit will be awarded in monthly increments.
 - iv. Except as otherwise provided by law, no service credit shall be awarded to any non-elected employee where the compensation received does not equal or exceed minimum wages as provided in the Fair Labor Standards Act of 1938, as amended.
- b. Requirements for elected officials
- State-wide and district-wide elected officials and local elected officials, including fee-paid elected officials, not excluded by a joinder agreement or by law, who are compensated on an annual or monthly salary, shall be deemed to be full-time employees in a covered position eligible for membership service credit.

104 Positions excluded from coverage

1. An appointed or elected official compensated solely on a per diem basis is not eligible for membership in PERS and thus not eligible for membership service credit. This includes school board members who are specifically excluded from PERS membership pursuant to Miss. Code Ann. § 37-6-13 (1972, as amended) and who may elect to receive either a per diem or a monthly salary.
2. Employees whose positions are excluded from coverage by way of a joinder agreement are not eligible for membership in PERS and thus not eligible for membership service credit.
3. Students of any state educational institution employed by any agency of the State for temporary, part-time, or intermittent work as described in PERS Board Regulation 37, *Eligibility of Student Employees for Membership in Retirement Annuity Coverage*, are not eligible for membership in PERS and thus not eligible for membership service credit.
4. Patients or inmate help who work in state charitable, penal, or correctional institutions are not eligible for membership in PERS and thus not eligible for membership service credit.
5. Persons whose employment is temporary or intermittent in nature and who are not employed at least four and one-half consecutive months shall not be in a covered position and shall not be covered by PERS. However, this limitation shall not apply to

any individual who is already in a covered position under PERS either with the same or another covered agency.

6. Any employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a substitute employee serving in temporary and intermittent employment and shall not be covered under PERS. An employee engaged to fill a vacant position (including a position vacated by an extended leave of absence) is not considered a substitute employee if such employment is for a period of four and one-half consecutive months or longer and therefore must be covered under PERS.
7. Contract personnel employed by state agencies pursuant to the authority granted under Miss. Code Ann. § 25-9-120(1) (1972, as amended) are specifically excluded by law from participation in PERS.

105 Effect of Dual Employment on Reportable Earnings and Membership Service Credit

1. Effective July 1, 1999, any member in a covered position, as defined by PERS laws and regulations, who is also employed by another covered agency or political subdivision shall have the earnings of that additional employment reported to PERS provided the employee occupies a position that would otherwise be covered if the employee worked and was paid for a sufficient number of hours as set forth in this regulation. The wages from the second position are reportable to PERS if the second position is independently covered under PERS or if the second position is less than half time, but would otherwise be covered independently if the employee worked the requisite number of hours.
2. PERS law provides that not more than one year of service is creditable for all services rendered in any one fiscal year. Where a member holds two or more covered positions simultaneously, as defined in this section, PERS can grant creditable service, including membership service credit and credit for unused leave, on only one such position. A member may be covered in two positions with two different employers where both employers provide leave benefits. While the wages of both covered positions are required to be reported to PERS, no more than one year of service credit will be granted during the year regardless of the number of positions held. In addition, upon retirement, PERS can grant additional retirement service credit for accumulated unused leave from only one position.
3. Where a position is expressly excluded by law or where the position is expressly excluded by joinder agreement, wages from the second expressly excluded position shall not be reported to PERS. In no case should compensation paid to an individual as an independent contractor be reported to PERS.

106 Work requirement exception for members employed as of July 1, 1992

Effective July 1, 1992, any employee employed in a position in which he or she receives compensation for less than 20 hours per week or a total of 80 hours per month, or in which school personnel receive compensation for less than half-time for the academic year, shall not be, or become a member, except that any active member employed in such position on July 1, 1992, may continue as an active member so long as he or she is employed in such position.

107 Work requirement exception for members performing professional services
Any active member employed on July 1, 2002, by a covered employer to perform professional services and who participates in PERS based on the performance of such services will continue to be an active member for as long as he or she is employed in such position. This provision applies to an individual, not a firm of individuals, employed as an employee on a regular basis to provide professional services, such as legal or engineering services, to a participating employer. Determination of coverage eligibility is first subject to the authority of the employer to employ such professional. If the employer has the authority to employ the professional in a state service position as defined in Section 101.5 of this regulation and if the professional is determined to be an employee by using the guidelines expressed by the IRS, the professional hired on or after July 1, 2002, is subject to the same participation criteria, including the prerequisite minimum number of hours worked and compensation received, as any other employee.

108 Determination of Employee Status
The employer has the responsibility for the proper employment classification of an individual as an employee or independent contractor. PERS uses the guidelines published by the IRS as reflected in Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, for determining worker status. If, based on the facts, it is determined that an employer has made an error in classification, PERS will require the employer to correct any reporting error resulting from the misclassification.

109 Members of Boards and Commissions
Members of boards and commissions of various state departments or agencies or commissions who are paid a stipulated monthly salary for their services are considered as employees in state service for purposes of coverage under PERS unless the position is specifically excluded by law or joinder agreement. Conversely, members of boards and commission who are paid solely on a per diem and expense basis are not considered as in state service within the meaning of this term as it applies to employment of the state. Reference PERS Board Regulation 6, *Coverage of Members of Boards and Commissions*.

(History of PERS Board Regulation 36: Adopted December 17, 1991; amended effective July 1, 1999; amended effective July 1, 2002; amended June 21, 2005 to be effective August 1, 2005; reformatted and amended August 1, 2007; clarified effective August 1, 2011; amended effective August 1, 2013; amended effective April 1, 2014, amended effective October 1, 2016; amended effective July 1, 2018, amended effective August 1, 2022)

Chapter 37: Eligibility of Student Employees for Membership in Retirement Annuity Coverage

100 Purpose
The purpose of this regulation is to clarify when an employee is deemed a student of a state educational institution employed in temporary, part-time, or intermittent work and thus not eligible for retirement coverage. This regulation confirms and reaffirms prior

construction of law, practice and procedure of the Public Employees' Retirement System of Mississippi (PERS). Miss. Code Ann. § 25-11-105 II (1972, as amended) provides that "Students of any state educational institution employed by any agency of the state for temporary, part-time or intermittent work" shall not become members of PERS, any other provisions of Articles 1 and 3 to the contrary notwithstanding.

101 Determining status as a student

Any employee having the status of a student who, incidental to such person's status as a student, is employed by the institution being attended, shall be deemed to be in part-time, temporary or intermittent employment and such employment shall not constitute covered employment, except that any active member of PERS who elects to pursue additional education at the institution where employed shall remain an active member, provided such employee continues, without interruption, to be employed in an otherwise covered position. Any person who is employed by any covered agency, other than the educational institution the person is attending, shall be covered in the same manner as non-students. Any student employed by any covered agency for a period of 4½ months or less (i.e. summer employment) is employed on a temporary basis and shall not be covered by PERS.

1. Students in Work Study Program

Students employed by any educational institution pursuant to a Work Study Program and who must be full-time students at the institution, are part-time employees and are not in covered service.

2. Graduate Assistants

Student graduate assistants who work while attending the educational institution where they are employed are part-time or temporary employees and such employment is not covered service.

3. Students in Co-Op Program

Co-Op students shall be considered students regardless of the number of months employed and shall not be eligible for membership.

4. Participants in a Paid Internship Program

Participants in a paid internship program through a covered employer shall be ineligible for membership in PERS where such participants are required under the terms of the paid internship program to be enrolled as full-time undergraduate or graduate students during the regular school term in a program as described in Miss. Code Ann. § 7-7-204 (1972, as amended) or any similar program.

102 Ineligibility of student employee for membership in retirement system. Student employees who are not eligible for membership in PERS will not have deductions made from compensation for that employment, and will not receive service credit for that employment. This provision confirms the practice and policy of PERS and applies for granting of future or prior membership service credit.

(History: Adopted December 17, 1991; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007; clarified April 15, 2009)

Chapter 38: Access to Public Records under Mississippi Public Records Act of 1983

100 Purpose

The purpose of this regulation is to outline the provisions under which the Public Employees' Retirement System of Mississippi (PERS) must respond to requests for information subject to the Mississippi Public Records Act of 1983.

101 General Provisions

The following procedures are adopted as provided under the Mississippi Public Records Act of 1983, Chapter 424, Laws of 1983 (hereinafter referred to as the Public Records Act), and take effect thirty (30) days after adoption by the PERS Board of Trustees.

1. DEFINITIONS

The following terms have been defined for purposes of this policy:

- a. Public body: A public body is defined as "any department, bureau, division, council, commission, committee, subcommittee, board, agency, and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution." Within the meaning of this regulation, the term 'entity' shall not be construed to include individuals employed by a public body or any appointed or elected public official.
- b. Public records: Public records are defined as "all books, records, papers, accounts, letters, maps, photographs, films cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body."
- c. Exempt Records: Those records exempt from disclosure under the Public Records Act or other provision of the law.
- d. Non-exempt records: Those records which are not exempt from disclosure under the Public Records Act or other provision of the law.
- e. Working day: A working day is any day other than a weekend, State holiday, or a day which by executive order an agency is authorized to be closed.
- f. Fees: By statute, charges are made on a cost-recovery basis. Any person who desires copies of a public record as defined herein may be charged the actual cost per page of each mechanically reproduced copy. Copies

of pages printed on both sides (front and back) shall be considered as two pages.

- (i) If the searching, reviewing, or duplicating of documents or the separating of non-exempt material from documents, etc., containing exempt material requires more than one-quarter hour of work, the requesting party may be charged for the work time above one-quarter hour in addition to a mechanical reproduction charge of twenty-five cents (\$.25) per page for any copies desired. The charge, if any, for the hours shall be based upon the hourly salary of the lowest paid employee qualified and available to do the job.
- (ii) In the event the public record is available in computer files and can be obtained through computer use, the requesting party may be charged the cost for the computer use, including programming time and actual computer time as well as any other costs incurred. This charge, if any, will be determined by PERS.
- (iii) Requests for any information from records which are stored off site will be subject to additional actual costs as incurred in retrieving such information from, and returning information to, storage.
- (iv) Mailing costs calculated at the applicable United States Postal Service rates shall be charged where appropriate. The cost of mailing a notice to third parties via certified mail, return receipt requested, shall be charged to persons requesting the public records. Actual costs for shipment by other than United States Postal Service shall be charged to the person requesting the special shipment.
- (v) Fees established by this rule may be waived or reduced upon a determination that such waiver or reduction is in the public interest because furnishing the information is considered as primarily benefiting the general public. Persons seeking such waiver or reduction may be requested to submit a written statement setting forth the intended purpose for which the records are requested or otherwise indicate how disclosure would primarily benefit the public. Determinations regarding waiver or reduction of fees under this provision are solely within the discretion of the PERS.

2. PROCEDURES FOR RECORD REQUESTS

- a. All requests for access to or copies of a public record shall be in writing and shall specify what record is being sought as well as the name, address, and contact information of the individual and/or organization requesting the record. Requests shall be addressed to the Executive Director of the Public Employees' Retirement System of Mississippi. Request forms are available in the PERS office.
- b. PERS shall respond in writing within seven (7) working days from the date of receipt of the request. If PERS is unable to produce the requested

record by the seventh working day after receipt of the request, PERS will provide a written explanation to the requestor stating that it will be produced and specifying why the records cannot be produced within the seven-day period. Unless otherwise agreed to, PERS shall provide the requested information within fourteen (14) working days of receipt of the original request. Requests for information in storage will be provided within seven (7) days of availability of such records to PERS. Denials shall be in writing and shall contain the specific exemption relied upon for the denial. Copies of all denials shall be maintained on file by PERS for not less than three years from the date denial is made.

- c. Access to non-exempt records will be allowed in the PERS office during regular business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays, in a manner and to the extent that such access does not interfere with the normal business operations of PERS.
- d. If any public record which is held to be exempt from disclosure contains material which is not exempt, PERS shall separate or redact the exempt material and make the non-exempt material available for examination and/or copying.
- e. When fees are appropriate as specified in Section 101.1 of this regulation, the fees must be paid prior to PERS' compliance with the request. Cash, money orders, cashier's checks, personal or company checks will be accepted in payment for fees under Section 101.1. Payment by personal or company check will be accepted subject to clearance within seven (7) working days.
- f. Non-exempt records furnished to PERS by third parties which are not public bodies as defined in the Public Records Act, but which contain trade secrets or confidential commercial or financial information will not be released until notice to the third parties has been given. The records shall be released in seven (7) days from expiration of the time as provided in 101.3, unless the third party obtains a court order protecting the records as confidential.
- g. The Executive Director of PERS or his or her designee has the authority to specify the mode, manner, time and place of access.

3. EXEMPT RECORDS

Any record expressly exempt from the Records Act, or any record specifically declared to be confidential or privileged by any Mississippi statute, case law, or constitutional provision, shall not be submitted to mandatory inspection and copying. Those records which are specifically exempt by statute and which fall within the possession of PERS include, but are not limited to, the following:

- a. The name, address or contents of any individual member records without the prior written consent of the individual to whom the record pertains;
- b. Personnel records and applications for employment, except those which may be released to the person who made the application or with the prior written consent of the person who made the application. This shall not be construed to prohibit the disclosure of the following information about

- employees: name, date of employment, length of employment, qualifications, and salary;
- c. Test questions and answers which are to be used in employment examinations;
- d. Letters of recommendation respecting any application for employment;

- e. Test questions and answers which are used in future academic examinations;
- f. Letters of recommendation regarding admission to any educational agency or institution;
- g. Records in PERS possession which represent and constitute the work product of any attorney representing PERS and which are related to litigation made by or against PERS or any of the retirement programs administered by the Board of Trustees of PERS or in anticipation of prospective litigation, including all communications between such attorney made in the course of an attorney/client relationship; and,
- h. Appraisal information which concerns the sale or purchase of real or personal property for public purposes prior to public announcement of the purchase or sale, where the release of such records would have a detrimental effect on such sale or purchase.
- i. Records in PERS possession which would disclose information about any individual's tax payments or status.
- j. Documentary material or data made or received by PERS which consists of trade secrets or commercial or financial information that relates to PERS if the disclosure of the material or data is likely to impair PERS' ability to obtain such information in the future, or is likely to cause substantial harm to the competitive position of the person or entity from whom the information was obtained.

Records furnished to PERS by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential. For the purpose of providing advance notice to submitters of trade secret or confidential commercial or financial information, which is included in records furnished by PERS by another party, thirty (30) days from the submitter's receipt of written notice shall be deemed a reasonable time for the disclosure of the requested records in the absence of a court order to the contrary.

(History: Adopted October 22, 1991; reformatted August 1, 2007; amended effective July 1, 2010)

Chapter 40: Insurance Advisory Committee

100 Purpose

The purpose of this regulation is to establish the Retiree Insurance Advisory Committee of the Public Employees' Retirement System of Mississippi by the Board of Trustees for the purpose of providing information and recommendations to the Board relative to the health and life insurance need of the retirees of the Public Employees' Retirement System of Mississippi and other systems administered by the Board.

101 Membership on the Insurance Advisory Committee

The Committee shall consist of seven members, each retired under a system administered by the Public Employees' Retirement System of Mississippi and at least one of whom shall be a retiree covered by the State Employees' Health Plan. The Executive Director of the Public Employees' Retirement System shall make all appointments to the Committee with the approval of the Board of Trustees. Terms of office shall be for a period of three

(3) years and no committee member shall serve more than two (2) consecutive terms. Service for a portion of an unexpired term shall not count as a full term. The initial appointments for the Board of Trustees, which shall begin on November 1, 1991, shall be as follows:

- Two terms for one year expiring October 31, 1992
- Two terms for two years expiring October 31, 1993
- Three terms for three years expiring October 31, 1994

(After October 31, 1993, the last statement shall read: The term of office shall begin on November 1 of the year of the appointment.)

102 Selection of Committee Officers

The Committee shall elect by a majority vote of those present a Chairman who shall serve for a term of one year and shall be eligible for reelection to that position. The Committee may select other officers as it considers appropriate for similar terms of service not to exceed one year and the Committee may reelect any officer it so chooses.

103 Committee Meetings

All meetings shall be at the call of the Chairman and should be at least annually. Four members present shall constitute a quorum for the transaction of business for the Committee. Committee members shall be reimbursed for mileage required to attend official committee meetings in accordance with the Public Employees' Retirement System Travel Policies.

104 Committee Reports to the Board of Trustees

The Committee shall make reports to the Board of Trustees on an annual basis and will coordinate its activities through the Executive Director or his designee.

105 Filling a vacancy on the Committee

Any vacancy in the office of the committee member shall be declared to the Executive Director by the Committee at the occurrence of such vacancy. The vacancy shall be filled by appointment made by the Executive Director of the Public Employees' Retirement System, and approved by the Board of Trustees, for the unexpired portion of the term of office.

(History: (Adopted December 17, 1991; amended April 5, 1997; reformatted August 1, 2007, amended effective February 1, 2019)

Chapter 41: PERS Marketing Policy and Guidelines - Deferred Compensation Plan

100 Purpose

The purpose of this regulation is to provide enrollment guidelines for the Third Party Administrator to be used in presenting information to and enrolling employees in the Deferred Compensation Plan.

101 Objective of guidelines

The marketing objective is to provide eligible employees a clear understanding of the Deferred Compensation Plan as a supplement to the PERS Retirement Plan. In order to assure that all eligible employees have all the information needed to make informed and unbiased decisions, they should be encouraged to attend group meetings and talk to their Deferred Compensation Registered Representative.

102 Responsibilities of PERS and the Deferred Compensation Plan Administrator

The Deferred Compensation Plan Administrator should be furnished a list of all new eligible employees. The Deferred Compensation Administrator should be permitted to contact the eligible employee to request a mutually agreed upon time for a personal presentation, if the eligible employee desires such a meeting. No high-pressure sales methods will be applied by the Deferred Compensation Registered Representatives. All presentation materials presented to eligible employees by the Deferred Compensation Registered Representatives will be approved by PERS.

103 Guidelines

The Deferred Compensation Registered Representatives will work within the following marketing guidelines set forth by PERS.

1. PERS has the authority over coordination of the Deferred Compensation marketing effort.
2. The employer has the ultimate responsibility for informing each employee of his/her eligibility for the Deferred Compensation Plan. The Deferred Compensation Administrator will assist in meeting this requirement through group meetings sponsored by the employer and conducted by the Deferred Compensation Administrator. Representatives of the Plan will be available for these group meetings and/or additional meetings as requested by the employer or PERS.
3. Each eligible employer may provide the Deferred Compensation Administrator with the name(s) or the contact person(s) by department or location. In turn, the Deferred Compensation Administrator will provide the employer contacts with the names of their respective Deferred Compensation Registered Representatives.

4. The PERS executive director may provide the Deferred Compensation Administrator with contact, wages, date of birth, and other sensitive personally identifiable information for eligible PERS members, provided the Deferred Compensation Administrator signs a statement that any information provided by PERS with regard to its members must be kept confidential and will not be shared with or released to any third party or used in any way except for the express purposes of presenting information to and enrolling employees in the Deferred Compensation Plan.
5. The Deferred Compensation Administrator's representatives may contact eligible employers and employees through brochure distribution, mail-outs, email, at employer sponsored meetings, or through other approved communications.
6. Gifts or any other monetary award or gratuity to employees or employers under the Deferred Compensation Plan contract are strictly prohibited.
7. No products other than PERS authorized Deferred Compensation products may be marketed by the Deferred Compensation Administrator's representatives.
8. PERS must approve all company sales literature and explanatory materials before any such materials may be distributed.
9. Each employer will make available to eligible employees the approved plan literature with the contact information and website of the Deferred Compensation Administrator.

(History: Adopted September 6, 1991; reformatted August 1, 2007, amended effective December 1, 2019, amended effective July 1, 2023)

Chapter 42: Rules of Hearing Practice and Procedure before the Board of Trustees of the Public Employees' Retirement System of Mississippi

100 Purpose

This regulation governs all practice and procedure before the Board of Trustees of the Public Employees' Retirement System of Mississippi in all matters arising under all retirement plans or programs administered by the Board, except where specifically otherwise provided by the statutes of such programs or retirement plans, for which a hearing is requested in any contested case.

101 Construction of regulation

Where good cause appears, not contrary to statute, the Board may permit deviation from these rules insofar as it may find compliance therewith to be impracticable or unnecessary.

102 Definitions

The following words and phrases as used in this Regulation, unless a different meaning is plainly required by the context, have the following meanings:

1. "Board" means the Board of Trustees of the Public Employees' Retirement System of Mississippi.
2. "Executive Director" means the executive director of the Public Employees' Retirement System of Mississippi.
3. "Hearing Officer" or "Committee" means the Disability Appeals Committee or the Claims Committee of the Board of Trustees of the Public Employees' Retirement

System of Mississippi, as applicable.

4. "PERS" means the Public Employees' Retirement System of Mississippi.
5. "Presiding Officer" means the person who presides over the appeals hearing.
 - a. The Presiding Officer for the Disability Appeals Committee will be a voting member of the Committee.
 - b. The Presiding Officer for the Claims Committee may be a representative from the Office of the Attorney General, other than the PERS Attorney General Representative, who may also act as a non-voting legal advisor to the Committee during deliberations on the outcome of the hearing.

103 Perfection of appeal to the Board by timely filing

1. All appeals to the Board shall be initiated by filing a written Notice of Appeal on a form prescribed by the Board.
2. A Notice of Appeal to the Board must be filed within 60 days after the date a person receives written notice of the administrative decision of the Executive Director or decision of the Medical Board, as applicable. Such notice may be filed by mail or in person. Failure to file a completed Notice of Appeal within the time specified shall be a bar to the filing of such appeal.
3. Once an appeal is timely filed, it shall be assigned a docket number.

104 Filing of pleadings and other documents

1. All documents relating to any proceeding pending or to be instituted before the Board shall be filed with the Executive Director, or his or her designee, at 429 Mississippi Street, Jackson, Mississippi 39201-1005.
2. All documentation filed by any party to an appeal must specify the assigned docket number and should be directed to the Executive Director, or his or her designee.

105 Exhaustion of remedies

No person may file an appeal with the Board until there has been an administrative decision by the Executive Director or, in the case of disability appeals, a decision by the Medical Board. Failure to exhaust administrative remedies, as herein provided, shall constitute a bar to any action in the courts, to the extent consistent with the laws of this state.

106 Judicial review

After an Order has been issued by the Board, an aggrieved party may file an appeal with the Circuit Court of the First Judicial District of Hinds County, Mississippi. Any such Notice of Appeal must be filed with the Hinds County Circuit Clerk within 30 days of the entry of the Order of the Board being appealed. Failure to file a Notice of Appeal within the time frame specified will act as a procedural bar and will leave the courts without jurisdiction to hear the appeal.

107 Assignment of Hearing Officer, setting of hearing and appearance

1. The Board may, by Order entered in its minutes, appoint a committee of the Board or such other qualified personnel as Hearing Officer.

2. The Executive Director shall set a date and time for the hearing. Unless otherwise ordered, hearings shall be held in the Hearing Room of the PERS Building located at 429 Mississippi Street, Jackson, Mississippi.
3. A Notice of Hearing shall be sent via United States mail to the appealing party and legal representative, if applicable.
4. If an appealing party fails to appear at the hearing, the Presiding Officer may proceed with the hearing and prepare a proposed statement of facts and recommendation to the Board based on the evidence presented at such hearing.

108 Continuances and rescheduling of hearings

1. Any request for a change or delay of a scheduled hearing must be made to the Executive Director in writing.
2. Continuances requested by any party shall be granted within the discretion of the Presiding Officer or Executive Director only for good cause shown.
3. If a continuance is granted upon a request made less than 14 days prior to a scheduled hearing, the requesting party will be responsible for paying any costs of rescheduling. Payment must be received before a new hearing date will be scheduled.
4. When a continuance is granted or a hearing is rescheduled or relocated for any reason, each party shall be responsible for notifying their witnesses of the date, time and location of the hearing.

109 Witnesses for non-disability-related appeals

In an appeal, other than one from a decision of the Medical Board, each party shall file a list of witnesses who will testify at the hearing, as well as a brief summary of testimony to be given. Each party must file a witness list in compliance with this regulation no later than 10 days prior to the date of the hearing.

1. The list shall contain for each witness proposed to be called by the appealing party:
 - a. Name;
 - b. Relationship to the appealing party (e.g., co-worker, supervisor, spouse, etc.); and
 - c. Brief summary of testimony to be given.
2. The list shall contain for each witness proposed to be called by PERS:
 - a. Name;
 - b. Employer;
 - c. Title or position; and
 - d. Brief summary of testimony to be given.

110 Conduct of hearing

1. Each party may be represented by an attorney.
2. At any hearing, the parties shall be entitled to enter an appearance (in person or by an attorney), present evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.
3. The Presiding Officer shall have the authority to administer oaths and affirmations.
4. The appealing party may request that attendance at such hearing be limited to individuals essential to the efficient conduct of the hearing, including but not limited to the claimant, attorneys, witnesses, employer representatives, Presiding Officer, Committee members, court reporter, and PERS administrative and support staff as are

necessary. The filing of an appeal shall constitute a waiver of confidentiality only to the extent necessary to process and review the claim.

5. The Presiding Officer may clear the hearing room of witnesses not under examination. PERS may have a representative (in addition to its attorney) remain in the hearing room during the entire course of the hearing, even though the representative may testify. The appealing party may remain in the hearing room throughout the hearing.
6. The matter should be heard as directed by and by sole discretion of the Presiding Officer.
7. The Presiding Officer or any Committee member may question a witness during any part of the direct or cross-examination of such witness.
8. The Presiding Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.
9. The Committee may also call upon any party or staff of PERS for further material or relevant evidence upon any issue. However, all parties at interest shall be given a reasonable opportunity to inspect such documents made a part of the record.

Further,

in the case of disability appeals, the Committee shall have the authority to defer a decision to request a medical evaluation or test or additional existing medical records not previously furnished by the claimant. Failure to provide the additional existing medical records within 90 days of notification of such request or refusal to submit to a medical evaluation or test will result in a recommendation being made by the Committee based on the available information. If, prior to the expiration of the 90-day period, an extension of time is requested in writing, the Executive Director may extend the 90-day period provided the applicant can demonstrate that failure to submit to the medical evaluation or test or to provide the additional information was due to circumstances beyond his or her control.

10. At the conclusion of all testimony, the Committee will adjourn and conclude the hearing. Thereafter, the Committee will retire to deliberate, after which the Committee will submit its proposed statement of facts, conclusions of law and recommendation, where applicable, solely for consideration by the Board. The Board has the sole authority to issue a decision relative to all claims on appeal by rendering its Order.

111 Evidence

1. The hearing shall be informal and formal rules of evidence shall not apply. In conducting a hearing, the Committee shall not be bound by the formal rules of evidence and no informality in any proceedings or in the manner of taking of testimony shall invalidate any order or decision of the Board.
2. All testimony to be considered by the Committee, except matters noticed officially or entered by stipulation shall be sworn testimony. Before giving testimony, each person shall swear or affirm that the testimony about to be given before the Committee shall be the truth, the whole truth and nothing but the truth.
3. The Presiding Officer will accept evidence and rule as to the admissibility of evidence that has not been submitted prior to the decision which is the subject of the

appeal. All relevant evidence is admissible, but the Presiding Officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations or undue delay, or needless presentation of cumulative evidence. The Presiding officer shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence.

4. Documents received into evidence by the Presiding Officer shall be marked and filed as a part of the record.
5. A copy of the composite exhibit to be introduced on behalf of PERS will be made available to the appealing party prior to the hearing. PERS may charge a fee for providing such copy in accordance with any applicable fee schedule adopted by the Board.
6. Summations of the evidence and the law may be heard in the discretion of the Presiding Officer.

112 Record of hearing

PERS will ensure that all hearings are recorded by electronic or stenographic means. The method used to record each hearing shall be determined by PERS.

In response to a written request for a transcript of proceedings recorded by electronic means, PERS will provide an audio recording of the hearing. The requesting party must contact a certified court reporter to transcribe and certify, under penalty of perjury, on the transcript that he or she heard the witness sworn on the recording and that the transcript is a correct writing of the recording. It is the responsibility of the party requesting the transcript to pay any costs associated with preparation of the requested transcript.

Any party desiring a transcript of a hearing recorded by stenographic means shall make request of the court reporter in attendance and shall be responsible for the payment of the cost of preparation of the transcript.

In the event the claimant appeals the decision of the Board to the Circuit Court of Hinds County, a certified copy of the transcript must be provided to the Executive Director with cost to be borne by the appealing party.

113 Order to be filed upon completion of hearing

After all evidence is heard or received and the hearing is completed and the Committee's deliberation is concluded, the Committee shall certify the record described in Miss. Code Ann. § 25-11-120 (1972, as amended) to the Board. The record shall include the Committee's proposed statement of fact and recommendation. In no case – other than those specifically left open for additional documentation requested by the Committee – shall evidence received after the hearing be included as part of the record for review by the Board. The Board shall receive the record and make its determination based solely on matters contained therein. Such determination shall be final. A copy of the Order shall be sent by the Executive Director to each party or his or her attorney.

114 Service of notices and Orders by the Board

All notices and orders required to be served by the Board, the Hearing Officer or the Executive Director may be served by mail and service thereof shall be complete when a true copy of such document, properly addressed and stamped, is deposited in the United States mail.

115 Amendment, validity, and enforcement of rules

1. The Board may, from time to time, amend these rules or promulgate new rules.
2. If any one or more of these rules is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.
3. The Board shall have the authority, duty and responsibility to abide by and enforce these rules.

116 Fees

The Board may, by order entered in its minutes, assess and collect fees to offset costs related to the conduct of hearings, including, but not limited to, court reporter fees, medical testimony fees, copying costs, etc.

(History of PERS Board Regulation 42: Adopted September 20, 1993; amended December 15, 1997; amended October 1, 1998; amended December 1, 1999; amended July 1, 2002; amended January 19, 2004; amended and reformatted August 1, 2007; amended October 1, 2009; amended effective April 1, 2010; amended effective August 1, 2014; amended effective June 1, 2015; amended effective December 1, 2017)

Chapter 43 Interest Rates Used in the Calculation of Repayment of a Refund and for Correction of Administrative Reporting Errors

100 Purpose

The purpose of this regulation is to clarify the interest rates used in calculating the repayment of a refund of contributions or in reporting paying interest on unreported contributions.

101 Interest rate of fiscal years prior to July 1, 1994

For fiscal years prior to July 1, 1994, interest, as required in Miss. Code Ann. §25-11-117 (1972, as amended), for the repayment of a refund, or as required in Miss. Code Ann. §25-11-105 (1972, as amended) for the payment of an adjustment for non-reported covered service and/or compensation due to administrative error, shall be calculated on the basis of the interest rate adopted by the PERS Board of Trustees. This interest rate was based on the actuarial assumed interest rate of the System.

102 Interest rate for fiscal years beginning on and after July 1, 1994, through June 30, 1998

For the fiscal year beginning on and after July 1, 1994, through June 30, 1998, interest as required in Miss. Code Ann. §25-11-117 (1972, as amended), for the repayment of a refund, or as required in Miss. Code Ann. §25-11-105 (1972, as amended) for the payment of an adjustment for non-reported covered service and/or compensation due to administrative error, shall be computed on the basis of actual annual total rate of return on investments of the System as reflected in the System's annual report, but in no event will interest so charged be less than the rate of interest credited to the member's account in accordance with § 25-11-121(7).

103 Interest rate for fiscal years beginning on and after July 1, 1998

For each fiscal year beginning on and after July 1, 1998, interest as required above, shall be computed on

the basis of the actuarial assumed interest rate of the System.

- The assumed rate of return from July 1, 1998 through June 30, 2015 was 8.0%.
- The assumed rate of return from July 1, 2015 through June 30, 2021 was 7.75%.
- The assumed rate of return from July 1, 2021 through June 30, 2023 was 7.55%.
- The assumed rate of return as of July 1, 2023 is 7.0%.

104 Interest rate to be credited to member’s account upon repayment of refund

Effective on and after July 1, 1994, upon payment of a refund or adjustment, as provided for above, the member's account shall be credited with interest as provided in Miss. Code Ann. §25-11-121(7) (1972, as amended), equal to the interest which would have been posted had the member's contributions been in the plan on a continuous basis. Such interest credit shall apply only to periods of time from and after July 1, 1994.

(History: Adopted August 17, 1993; amended June 25, 1998; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007; amended effective December 1, 2015; amended effective December 1, 2021, amended effective July 1, 2024)

Chapter 44: Refund of Member Contributions

100 Purpose

The purpose of this regulation is to clarify the conditions under which a refund of member contributions may be made.

101 Payment of refund of accumulated contributions

Mississippi Code Ann. §25-11-117 (1972, as amended) provides that a refund of accumulated contributions to the credit of the member in the annuity savings account shall be paid within ninety (90) days from the receipt of a properly completed form requesting such payment. Effective July 1, 2011, a refund of accumulated contributions will be issued after final wages and contributions are posted to the member’s account but no later than ninety (90) calendar days from the date of termination from covered employment or from the date of receipt of the properly completed form requesting the refund, whichever is later. Refunds of accumulated contributions shall be processed after receipt of a properly completed PERS Form 5, Member Refund Application, and after the final wages and contributions are posted to the member’s account but no later than after the ninety (90) calendar-day period has lapsed. The ninety (90) day period will be calculated on the basis of the termination date certified by the employer on the PERS Form 5 or the date of receipt of the Form 5, whichever is later. Upon filing for a refund, where the member is employed by more than one agency, the latest termination date will be used to calculate the ninety (90) day period.

1. Refund upon death of member

The ninety (90) day period shall not apply in the case of a refund due to the death of a member; however, any refund paid to the beneficiary of a deceased member shall not be paid until after final wages and contributions are posted to the member’s account.

2. Refund to member in case of extraordinary and unforeseen financial emergency

Refunds may be issued prior to the ninety (90) day period in case of a documented extraordinary and unforeseen emergency which cannot be satisfied by PERS communication of the anticipated distribution date and amount. The member will be required to submit a request for emergency distribution (refund) on a form prescribed by PERS. An extraordinary and unforeseen emergency is defined as follows:

- a. Repossession of real or personal property as documented by official notices of such action.
- b. Foreclosure or eviction from residence as documented by official notice of such action.
- c. Loss of personal property due to casualty not covered by insurance.
- d. Sudden or unexpected illness or accident of member or his or her dependent not covered by insurance.
- e. Any extraordinary and unforeseen financial emergency not covered in the above items arising as a result of events beyond the applicant's direct control.

Living expenses, such as utility bills, moving expenses, and unpaid medical bills for routine medical procedures, are not considered extraordinary and unforeseen emergencies.

(History: Adopted August 17, 1993; amended December 15, 1997; Amended June 21, 2005 to be effective August 1, 2005; reformatted August 1, 2007; amended effective July 1, 2011)

Chapter 45A: Administration of Disability Benefits under PERS

100 Purpose

The purpose of this regulation is to provide the rules to be applied in the administration of disability benefits for the Public Employees' Retirement System of Mississippi (PERS) and the Supplemental Legislative Retirement Plan (SLRP).

101 Fees for disability determination

The Board of Trustees shall adopt and maintain a schedule of fees for disability determination services. The schedule of fees will be reviewed on a periodic basis.

102 Application for disability benefits

1. An active member who has the requisite membership service credit as noted below or an active member who is disabled as a direct result of a physical injury sustained from an accident or a traumatic event caused by external violence or physical force occurring in the performance of duty may file an application for disability benefits. Miss. Code Ann. § 25-11-113 (1)(a) and § 25-11-114 (6) (1972, as amended).

Membership service required to apply for non-duty-related disability benefits:

- a. If a member joined PERS before July 1, 2007, the member must have at least four years of membership service credit; or
 - b. If a member joined PERS on or after July 1, 2007, the member must have at least eight years of membership service credit.
2. Any inactive member who has the requisite membership service credit as noted below is not eligible for disability retirement benefits unless the disability occurs within six months of termination of active service and unless satisfactory medical evidence is presented to establish that the disabling condition was the direct cause of withdrawal from state service. Application for a disability retirement allowance must be filed within one (1) year of termination from active service. This period may be extended by an additional year if it can be factually demonstrated to the satisfaction of the board of trustees that throughout the initial one-year period the member was incapable of applying for benefits by reason of mental or physical impairment as certified by a medical doctor. § 25-11-113 (1)(c)

Membership service required to apply for non-duty-related disability benefits:

- a. If a member joined PERS before July 1, 2007, the member must have at least four years of membership service credit; or
 - b. If a member joined PERS on or after July 1, 2007, the member must have at least eight years of membership service credit. Any inactive member seeking to establish eligibility for non-duty-related disability benefits must have met the applicable vesting period for eligibility at the time he or she withdrew from covered employment.
3. Any member who is or becomes eligible for service retirement benefits under § 25-11-111 while pursuing a disability retirement allowance under § 25-11-113 or § 25-11-114 may elect to receive a service retirement allowance pending a final determination of eligibility for a disability retirement allowance in accordance with Board Regulation 35, *Filing an Application for Monthly Benefits and Establishing an Effective Date of Retirement*, Section 101.2.d. In such a case, an application for the disability retirement allowance must be on file with the system before the commencement of a service retirement allowance. If the application for disability benefits is approved, the option selected and beneficiary designated on the retirement application shall be used to determine the disability retirement allowance. If the application is not approved or if the application is withdrawn or voided pursuant to Board Regulation 35, Section 101.2.e, the service retirement allowance shall continue to be paid in accordance with the option selected. No person may apply or reapply for a disability retirement allowance after the person begins to receive a service retirement allowance. No person electing to receive a service retirement allowance while pursuing eligibility for a disability retirement allowance may select Option 6, the partial lump sum distribution option, as provided under Miss. Code Ann. § 25-11-115.
4. Any inactive member who is vested for benefits in accordance with § 25-11-113 and who has previously applied for and been denied disability benefits or whose application is voided pursuant to § 25-11-113 (1)(f) and Section

105.2 of this Regulation must return to covered service for a period in excess of six calendar months to be eligible to again apply for non-duty related disability benefits. Upon application for non-duty related disability benefits, such member will be required to establish that he or she was, at the time of such employment, physically capable of performing the job for which he or she was hired.

103 Effect of death on disability application

1. If a vested member who has filed a claim for disability benefits dies prior to the review and determination of his or her claim by the Medical Board, his or her beneficiary or beneficiaries shall be eligible for death benefits in the form of spouse/survivor benefits or a refund of contributions, unless a PERS Form 16, *Advanced Application*, has been completed by the member prior to death and is on file with PERS.
2. If a vested member who has filed a claim for disability benefits dies after his or her claim has been approved by the Medical Board but before his or her effective date of disability retirement, his or her beneficiary or beneficiaries shall be eligible for death benefits in the form of spouse/survivor benefits or a refund of contributions, unless a PERS Form 16, *Advanced Application*, has been completed by the member prior to death and is on file with PERS.
3. If a vested member who has filed a claim for disability benefits dies after his or her claim has been approved by the Medical Board and on or after the effective date of disability retirement but before benefits have begun, his or her beneficiary or beneficiaries shall be entitled to benefits in accordance with the option selected by the member on the disability retirement application.

104 Effective date of benefits

1. The effective date of benefits shall be the first of the month following receipt of a completed application for a disability retirement allowance but in no event before termination from covered service. § 25-11-113 (1)(a)
2. For purposes of determining the effective date of benefits as referenced in Section 104.1 of this Regulation, termination from covered service shall mean the cessation of the employee/employer relationship as characterized by resignation or termination from employment with or without cause. While a member may not be performing the duties of the job, if the member has not resigned or been terminated by the employer, the member is still considered employed and thus ineligible for initiation of disability retirement benefit payments. In cases where the member is on authorized leave with or without pay, such member is considered an employee of the agency, and thus not eligible to simultaneously receive disability retirement benefit payments.
3. A member must terminate from all positions in state service, whether covered or not, to be eligible for any benefit. If a determination is made that a member who is employed in one covered position is disabled from that position, he or she must terminate from all positions in state service, whether

covered or not, to receive a disability retirement allowance. If the member does not terminate all state service within 90 days of approval for a disability retirement allowance, both the disability retirement and the application shall be void.

4. If a member is reemployed by a covered employer in any capacity, including that of an independent contractor, within 90 days from his or her effective date of retirement, or is promised before retiring that he or she will be reemployed following the 90-day separation period, (i) the member shall be considered to have continued in the status of an employee and not to have separated from service, (ii) the retirement allowance will be canceled, and (iii) any retirement allowance payments received by the member shall be repaid to PERS. The member's wages and contributions will continue to be reported to PERS, provided that the member is employed in a covered position.

105 Medical determination of eligibility for disability benefits

1. The employer must provide the following information that will be considered by the Medical Board in its determination for eligibility:
 - a. The job description and duties of the member; § 25-11-113(1)(a)
 - b. Whether the employer has offered the member other duties without material reduction in compensation; § 25-11-113 (1)(a)
 - c. Whether the employer has complied with the applicable provisions of the Americans with Disabilities Act in affording reasonable accommodations that would allow the employee to continue employment; § 25-11-113 (1)(a) and
 - d. In the case of an application for duty-related disability benefits, the employer shall certify whether, to the best of its knowledge, a physical injury was sustained from an accident or a traumatic event caused by external violence or physical force that occurred in the performance of duty. § 25-11-114 (6)
2. The member shall submit medical evidence of the disability to the Medical Board for review. The Medical Board may require an independent medical evaluation or such other examination or report as is necessary to determine the member's eligibility for benefits. Failure to provide the requested information within 90 days of such request or refusal to submit to an examination shall result in the member's application being considered void. The executive director may extend the 90-day period if the applicant can demonstrate that failure to submit to such examination or to provide the requested information or report(s) was due to circumstances beyond his or her control. § 25-11-113 (1)(f)

To be considered eligible for disability benefits, the Medical Board must certify to the Board of Trustees (i) that the member is mentally or physically incapacitated for the further performance of duty, (ii) that such incapacity is likely to be permanent, and (iii) that the member should be retired.

The Board of Trustees does not automatically accept a Social Security Administration disability determination as evidence of disability benefit eligibility. If, however, a Social Security Administration disability benefit determination has been received during the medical evaluation process, such determination along with (i) the supporting medical documentation, (ii) the condition upon which PERS disability benefits are claimed, and (iii) the facts of the case will be taken into consideration as a part of the Medical Board's independent evaluation and determination. § 25-11-113 (1)(a)

3. For purposes of § 25-11-113, medical evidence shall be defined as "objective medical evidence," which means: reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that are observed and documented by medical professionals; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that are shown by medically acceptable laboratory diagnostic techniques, including, but not limited to, chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests. Non-medical information not documented by test results, such as an applicant's description of pain, is not considered objective medical evidence.

4. The applicant is responsible for providing sufficient objective medical documentation to the Medical Board in support of his or her claim for disability. PERS does not have the burden of proving that an applicant is not disabled. The Medical Board shall certify to the Board of Trustees whether, based on the objective medical evidence, the member is mentally or physically incapacitated for further performance of duty and that such incapacity is likely to be permanent and whether, based on all other facts, the member should be retired on a disability allowance. In making this determination, the Medical Board shall use the following definition:

Disability shall be defined as the inability to perform the usual duties of employment or the incapacity to perform such lesser duties, if any, as the employer in its discretion may assign without material reduction in compensation or the incapacity to perform the duties of any employment covered by the PERS that is actually offered and is within the same general territorial work area without material reduction in compensation. § 25-11-113

(1)(a) As part of the determination process, the Medical Board shall consider certification from the employer as to whether reasonable accommodations have been requested by the employee and agreed to by the employer as provided under the Americans with Disabilities Act.

For purposes of disability determination, a material reduction in compensation shall be defined as a salary not in excess of 10 percent less than the current salary of the applicant.

5. In applying for duty-related disability benefits, a member must provide medical proof satisfactory to the Medical Board that his or her disability is a direct result of a physical injury sustained from an accident or a traumatic event caused by external violence or physical force occurring in the performance of duty. In addition, permanent and total disability resulting from a cardiovascular, pulmonary, or musculoskeletal condition that was not a direct result of a physical injury sustained from an accident or a traumatic event caused by external violence or physical force occurring in the performance of duty shall be deemed an ordinary disability. A mental disability based exclusively on employment duties occurring on an ongoing basis shall be deemed an ordinary disability. Further, the employer must certify on a form prescribed by PERS or by means of other acceptable documentation that an accident or injury has occurred in the performance of duty which precipitated the employee's claim for disability benefits. Acceptable documentation may include an accident or injury report, a Workers' Compensation claim form, or such other similar document signed by an authorized representative of the employing agency as proof of the occurrence of an event in the nature of an accident or injury while on the job. A duty-related disability benefit determination by PERS is independent of any determination of benefit eligibility that may be made by an insurance company or other agency of the State. § 25-11-114 (6)
6. No inactive member shall be eligible to apply for duty-related disability benefits regardless of years of service if withdrawal from service occurred before July 1, 1984, which was the date that such benefits were first authorized.
7. Any active or inactive member must provide a statement certifying all gainful employment at the time the disability is claimed, whether such employment is covered employment or not.
 - a. Any inactive member applying for disability after one calendar year from date of termination from covered service must provide copies of tax returns with corresponding income documentation to provide information as to the type of employment and income from any gainful occupation during the period of inactive service.
 - b. Where the inactive member is found to have engaged in any gainful occupation paying an amount equal to or more than the average compensation used in calculating the benefits, the inactive member shall be deemed ineligible for benefits.
8. If the Medical Board determines that a member is not eligible for disability benefits, a final administrative determination will be issued to the member. The member may appeal the determination to the Board of Trustees in accordance with the provisions of Board Regulation 42, *Rules of Hearing Practice and Procedure before the Board of Trustees*, and Miss. Code Ann. § 25-11-120 (1972, as amended).

9. Upon certification of eligibility by the Medical Board, if the Board of Trustees concurs with such report of eligibility, the member will be added to the retiree payroll. The Board of Trustees authorizes the executive director to initiate benefits on behalf of the members who are certified by the Medical Board as being disabled in accordance with the statutes to ensure timely payment of benefits to such members, provided that the executive director shall present such approved members along with any supporting information to the Board of Trustees for ratification at a subsequent meeting of the Board.
10. A disability determination will be made based on the member's inability to perform the job duties associated with a covered position and not a second position where only wages are covered pursuant to Miss. Code Ann. § 25-11-103 (k) (1972, as amended); however, the average compensation will be calculated taking into consideration all covered wages from all positions.

106 Continuing qualification for disability benefits

1. Medical reexaminations

- a. A disability retiree under the age of 60 or until the termination age of the temporary allowance under § 25-11-113 (2)(c) shall be required to submit to medical reexamination once each year during the first five years following retirement on a disability retirement allowance and once in every period of three years thereafter unless otherwise determined by the Medical Board. The Medical Board may specify both the frequency and the nature of such reexamination.
- b. Upon the attainment of age sixty or upon the attainment of the termination age of the temporary allowance period, any member receiving a disability benefit shall be considered to have retired under a service retirement benefit with no further requirement for reexaminations and with no recalculation of benefits. A disability retiree reaching age sixty or the termination age of the temporary allowance shall not be required to submit to medical reexaminations. § 25-11-113 (3)
- c. If after 90 days from a request a disability retiree refuses to provide a physician's statement of reexamination, his or her allowance shall be discontinued until his or her withdrawal of such refusal, and should his or her refusal continue for one year, all rights to a disability benefit shall be revoked by the Board of Trustees. § 25-11-113 (3)
- d. If following reexamination the Medical Board determines that a disability retiree is physically and mentally able to return to the employment from which he or she is retired, the Board of Trustees, upon certification of such finding from the Medical Board, shall terminate the disability allowance as provided hereunder whether or not the retiree is reemployed or seeks such reemployment. § 25-11-113 (6)
- e. Further, if upon such reexamination, the Medical Board reports and certifies that the disability retiree is engaged in or is able to engage in a gainful occupation paying more than the difference between his or her disability allowance, exclusive of cost-of-living adjustment, and his or her average compensation, and if the Board of Trustees concurs in such

report, the disability benefit shall be reduced to an amount that together with the amount earnable by him or her shall equal his or her average compensation. § 25-11-113 (4)

2. Earnings limitations while receiving disability benefits

- a. Until the disability retiree reaches age 60 or until the termination age for the temporary allowance under § 25-11-113(2)(c), as applicable, a disability retiree shall be required to submit annually a copy of his or her federal income tax return, including supporting documentation, or other earnings statements acceptable to the Board of Trustees, no later than 30 days following the due date of such return. The earnings limitations pursuant to the statute will be based on the earned income of the disability retiree.
- b. If based on a review of earnings during the year, the disability retiree has earned more than the difference between the disability benefit, exclusive of the cost-of-living adjustment, and the average compensation used in calculating the benefit, the benefit shall be reduced to an amount that, when added to the disability benefit, exclusive of the cost-of-living adjustment, shall equal the average compensation. The benefit may be adjusted to recover the excess benefits as well as to recalculate benefits to account for the new earnings capability for the following year. The adjusted benefit will continue to be paid to the extent that the earnings when added to the adjusted benefit as provided above do not exceed the average compensation. § 25-11-113 (4)
- c. If documented earnings meet or exceed the average compensation for a period in excess of six months, a medical review shall be required, and the Medical Board shall report to the Board of Trustees whether the retiree is mentally and physically able to return to his or her regular duties or to any gainful employment earning the equivalent of the average compensation and whether the eligibility for benefits should be continued. Upon a report and certification by the Medical Board, the Board of Trustees may terminate the disability benefit or continue issuing a reduced benefit based upon the retiree's earning ability. § 25-11-113 (4)
- d. If income information is not submitted as required by the Board of Trustees, it will be presumed that the disability retiree is engaged in or is able to engage in a gainful occupation earning more than the average compensation used in calculating the disability benefits, and benefits shall be suspended until such time as the retiree submits proper documentation as required above. § 25-11-113 (4)
- e. Until the disability retiree reaches age 60 or until the termination age for the temporary allowance under § 25-11-113(2)(c), as applicable, a disability retiree reemployed by a covered employer must notify PERS in writing of the terms of the eligible employment within five days from the date of employment and also from the date of termination on a form prescribed by the Board of Trustees. Such form must be certified by the employer.

- f. Disability retirees who have attained the age of 60 or the age at which the temporary allowance ends as provided under § 25-11-113(2)(c), as applicable, shall be considered to have retired under service retirement, and, for purposes of reemployment with a covered employer, shall be subject to the reemployment limitations as provided under Board Regulation 34, *Reemployment After Retirement*.

107 Termination of disability benefits

1. In the event a retiree is determined to no longer qualify for disability benefits, such member will be provided with notice of such determination and benefits will continue for a period of three months unless the retiree has returned to covered employment in the position from which he or she was retired on disability or to other covered service in which he or she is earning an amount equal to or more than his or her average compensation or where such termination is a result of the retiree's refusal to submit to a medical reexamination, in which case benefits shall be terminated immediately.
2. The Medical Board shall review the objective medical information as with an initial claim for disability benefits and determine whether the medical condition for which benefits were previously approved has improved sufficiently to allow a return to previous employment. The Medical Board may also consider additional information concerning any new medical condition which may have occurred while in receipt of disability benefits.
3. Notice of termination of disability benefits shall constitute a final administrative determination, and the retiree may appeal the determination to the Board of Trustees in accordance with the provisions of Board Regulation 42.
4. If a disability retirement allowance is terminated because the retiree has returned to covered employment in the position from which he or she was retired or to other covered employment in which he or she is earning an amount equal to or more than his or her average compensation and the retiree terminates such covered employment due to his or her disability before contributing for a period of time that exceeds six calendar months, PERS shall credit both the employee and employer contributions paid during such period to the employer who shall then refund to the employee the employee contribution. The original disability retirement allowance shall be reinstated prospectively the first of the month following termination from covered employment.
5. If the disability is terminated due to the Medical Board's determination that a member is mentally and physically able to return to his or her former employment, the disability retiree may subsequently qualify for a service retirement allowance based on actual years of service credit plus credit for the period during which a disability allowance was paid as follows:
 - a. If the disability retiree received benefits under the age limited plan, he or she will receive service credit for the period of time he or she received disability benefits up to age 60; and

- b. If the disability retiree received benefits under the Tiered Disability Plan, he or she will receive service credit for the period of time he or she received disability benefits up to the end of the temporary allowance.
6. If the disability is terminated due to the Medical Board's determination that a member is mentally and physically able to return to his or her former employment, and the disability retiree is eligible for service retirement at the time of such termination or later becomes eligible for service retirement, the disability retiree may subsequently make application for a service retirement benefit and select a new option.

108 PERS Medical Board

1. The Board of Trustees may designate a medical board to be composed of three physicians or may contract with another governmental agency or non-governmental disability determination service that is qualified to make disability determinations. If required, other physicians may be engaged to report on special cases. A physician shall be considered a medical doctor or a doctor of osteopathy with a license to prescribe drugs.
2. The Board of Trustees authorizes the executive director to appoint special medical board members on a case-by-case basis to serve in the absence of one or more board-appointed medical board members or where a board-appointed Medical Board member may have a conflict of interest. Such special appointments to the Medical Board shall be limited but shall continue for the duration of the claim or claims upon which determinations have been made by such special appointed member.

109 Duty-related disability benefits excluded from income

Internal Revenue Code Section 104 and applicable Department of the Treasury Regulations provide that, if disability payments (i) are mandated by statute and (ii) are compensation for occupational injury, such payments are excluded from income, provided that the payments are not based upon the employee's age or length of service. Accordingly, the minimum duty-related disability benefits paid pursuant to § 25-11-114 (6) are excluded from income under Code Section 104.

(History: Adopted effective August 1, 1996; amended effective February 1, 2000; amended effective January 1, 2002; amended effective July 1, 2002; amended June 21, 2005 to be effective 8/1/2005; amended and reformatted effective July 1, 2007; amended effective July 1, 2009; amended effective August 1, 2010; amended effective August 1, 2012, amended effective October 1, 2016, amended effective February 1, 2022)

Chapter 45B: Administration of Disability Benefits for Municipal Systems

100 Purpose

The purpose of this regulation is to provide the rules to be applied in the administration of disability benefits for the municipal retirement plans administered by the PERS Board of Trustees.

101 Fees for determining disability benefits

The Board of Trustees shall adopt and maintain a schedule of fees for disability determination services which shall be reviewed on a periodic basis.

102 Application for Disability Benefits

1. Article 1 - General Municipal Employees (Biloxi and Meridian)

- a.** An active General Municipal System member may file an application for disability benefits provided a) such member has at least five (5) years of membership service, or b) such member is permanently and totally disabled from any gainful occupation and such disability occurred as the natural and proximate result of the actual performance of duty, without willful negligence. (Miss. Code Ann. § 21-29-35 and 21-29-39 (1972, as amended))
- b.** Any member who has filed a claim for disability benefits, regardless of whether he or she has terminated covered service, but who dies prior to the review and determination by the PERS Medical Board shall be eligible for death benefits, including spouse/survivor benefits or a refund of contributions.
- c.** Any member who has filed a claim for disability benefits who has been approved by the Medical Board to receive such benefits but who dies after approval but prior to termination from covered service shall have benefits paid to the surviving spouse and/or dependent children as if he or she had died after disability retirement.

- a.** An active Firemen's and Policemen's Disability and Relief Fund member may file an application for disability benefits provided a) such member has at least five (5) years of membership service, or b) such member is totally disabled from duties by reason of sickness or injury caused or sustained by reason of service or discharge of duties. (Miss. Code Ann. §§ 21-29-133, 21-29-135, and 21-29-241 (1972, as amended))
- b.** Any member who has filed a claim for disability benefits, regardless of whether he or she has terminated covered service, but who dies prior to the review and determination by the PERS Medical Board shall be eligible for death benefits, including spouse/survivor benefits or a refund of contributions.
- c.** Any member who has filed a claim for disability benefits who has been approved by the Medical Board to receive such benefits but who dies after approval but prior to termination from covered service shall have benefits paid to the surviving spouse and/or dependent children as if he or she had died after disability retirement.

103 Effective date of benefits

1. The effective date of benefits shall be the first of the month following receipt of an application for a disability retirement allowance, but in no event before termination of state service. (Miss. Code Ann. §§25-11-113 (1) (a) and 21-29-35 (1972, as amended))
2. For purposes of determining the effective date of benefits as referenced in number one (1) above, termination from covered service shall mean the cessation of the employee-employer relationship as characterized by resignation or termination from employment, with or without cause. While a member may not be performing the duties of the job, if the member has not resigned or been terminated by the employer, the member is still considered employed and thus, ineligible for initiation of disability retirement benefit payments. In cases where the member is on authorized leave without pay or administrative leave or is receiving Workers' Compensation benefits, such member is considered an employee of the agency, and thus, not eligible to receive disability retirement benefit payments.

104 Medical determination of eligibility for disability benefits

1. The employer must provide the following information, which will be considered by the Medical Board in its determination for eligibility:
 - a. The job description and duties of the member; (Miss. Code Ann. § 25-11-113 (1) a) (1972, as amended))
 - b. Whether the employer has offered the member other duties without material reduction in compensation; (Miss. Code Ann. § 25-11-113 (1) (a) (1972, as amended))
 - c. Whether the employer has complied with the applicable provisions of the Americans With Disabilities Act in affording reasonable accommodations which would allow the employee to continue employment. (Miss. Code Ann. § 25-11-113 (1) (a) (1972, as amended))
 - d. In the case of an application for hurt on the job benefits, the employer shall certify whether, to the best of its knowledge, the sickness or injury was caused or sustained by reason of service or discharge of duties. (Miss. Code Ann. §§ 21-29-35, 21-29-133, 21-29-241 (1972, as amended))
2. The member shall submit medical evidence of the disability to the Medical Board for review. The Medical Board may require an independent medical evaluation or such other examination or report as is necessary to determine the member's eligibility for benefits. Refusal to submit to such examination or to otherwise provide the requested additional information within ninety (90) days of such request shall result in the member's application being considered void. (Miss. Code Ann. § 25-11-113 (1) (d) (1972, as amended))
 - a. In order to be considered eligible for disability benefits the Medical Board must certify to the Board of Trustees that the Firemen's and Policemen's Disability and Relief Fund member is mentally or physically incapacitated for the further performance of duty, (ii) that such incapacity is likely to be permanent, and (iii) that the member should be retired.

- b. The Board of Trustees does not automatically accept a Social Security Administration disability determination as evidence of disability benefit eligibility. If, however, a Social Security Administration disability benefit determination has been received during the medical evaluation process, such determination along with (i) the supporting medical documentation, (ii) the condition upon which Municipal System disability benefits are claimed, and (iii) the facts of the case, will be taken into consideration as a part of the Medical Board's independent evaluation and determination. (Miss. Code Ann. § 25-11-113 (1) (a) (1972, as amended))
- 3. The Medical Board shall certify to the Board of Trustees whether the member, based on the medical evidence, is mentally or physically incapacitated for further performance of duty and that such incapacity is likely to be permanent and whether, based on all other facts, the member should be retired on a disability allowance. In making this determination, the Medical Board shall use the following definition:
 - a. Disability, for members of the General Municipal Retirement System, governed by MCA Chapter 29, Article 1, shall be defined as a total and permanent incapacity from duty as well as from any gainful occupation for compensation or profit. (Miss. Code Ann. § 21-29-35 and 21-29-39 (1972, as amended))
 - b. Disability, for members of the Firemen's and Policemen's Disability and Relief Fund, governed by MCA, Chapter 29, Articles 3 and 5, shall be defined as a total inability to discharge duties as a fireman or policeman. Such disability may be due to physical or mental incapacity/illness.
 - c. As part of the determination process, the Medical Board shall consider certification from the employer as to whether or not reasonable accommodations have been requested by the employee and agreed to by the employer as provided under the Americans with Disabilities Act.
- 4. In applying for job related disability benefits, a member must provide medical proof satisfactory to the Medical Board that his disability is a.) the natural and proximate result of the actual performance of duty without willful negligence, if a member under Article 1, the General Municipal System, or b.) a sickness or injury caused or sustained by reason of service or discharge of his duty, if a member under Article 3 or 5, the Firemen's and Policemen's Disability and Relief Fund. (Miss. Code Ann. §§ 21-29-35, 21-29-133, and 21-29-241 (1972, as amended))
- 5. A disability benefit applicant must provide a statement certifying all gainful employment or other such income statements as may be requested by PERS.
- 6. If the Medical Board determines that a member is not eligible for disability benefits, a final administrative determination will be issued to the member. The

member may appeal the determination to the Board of Trustees in accordance with the provisions of Regulation 42. (Miss. Code Ann. § 25-11-120 (1972, as amended) and Regulation 42)

- a.** Appeals of decisions made under Regulation 42 by the PERS Board of Trustees may be made by members of the Firemen's and Policemen's Disability and Relief Fund to the Board of Disability and Relief Appeals as provided in Miss. Code Ann. § 21-29-113 and 21-29-215 (1972, as amended).
- 7.** Upon certification of eligibility by the Medical Board, if the Board of Trustees concurs with such report of eligibility, the member will be added to the retiree payroll. The Board of Trustees authorizes the Executive Director to initiate benefits on behalf of the members who are certified by the Medical Board as being disabled in accordance with the statutes in order to ensure timely payment of benefits to such members, provided that the Executive Director shall present such approved members along with any supporting information to the Board of Trustees for ratification at a subsequent meeting of the Board.
- 8.** Retirement on and receipt of service retirement benefits results in the member's forfeiture of any rights to pursue disability benefits.

105 Continuing Qualification for Disability Benefits

- 1.** Disability retirees with less than 20 years of service shall be required to submit to medical reexaminations once each year during the first five (5) years following retirement on a disability retirement allowance and once in every period of three (3) years thereafter, unless otherwise determined by the Medical Board. The Medical Board may specify both the frequency and the nature of such reexamination. Upon the attainment of 20 years of service credit, calculated by adding service credit at retirement plus credit for the service during which a disability benefit is paid, the disability retiree shall be considered to have retired under a service retirement benefit with no further requirement for reexaminations and with no recalculation of benefits. (Miss. Code Ann. §§ 21-29-43, 21-29-137, 21-29-243 (1972, as amended) and PERS Regulation 39)
 - a.** In the event a General Municipal System disability retiree refuses to provide a physician's statement of reexamination, his allowance shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all rights to a disability benefit shall be revoked by the Board of Trustees. (Miss. Code Ann. § 21-29-43 (1972, as amended) In the event a Firemen's and Policemen's Disability and Relief Fund disability retiree refuses to provide a statement of reexamination, his allowance shall be discontinued until his withdrawal of such refusal. (Miss. Code Ann. § 21-29-137 and 21-29-243 (1972, as amended))
 - b.** If, following reexamination, the Medical Board determines that a disability retiree is physically and mentally able to return to the employment from which he is retired, the Board of Trustees, upon certification of such finding from the Medical Board, shall terminate the disability allowance as provided hereunder, whether or not the retiree is

reemployed or seeks such reemployment. (Miss. Code Ann. § 21-29-43 (2) (1972, as amended))

- c. Disability retirees shall be required to submit annually a copy of their federal income tax return, including supporting documentation, or other earnings statements acceptable to the Board of Trustees, no later than 30 days following the due date of such return.
 - d. Any General Municipal disability retiree, who has not completed twenty (20) years of service prior to retirement, who secures gainful employment over a period of three (3) consecutive months shall have his disability benefit revoked by the Board. (Miss. Code Ann. § 21-29-43 (3) (1972, as amended))
 - e. If income information is not submitted as required by the Board of Trustees, benefits shall be suspended until such time as the retiree submits proper documentation as required above. (Miss. Code Ann. § 25-11-113 (4) (1972, as amended))
2. The Medical Board shall review the objective medical information as with an initial claim for disability benefits and determine whether or not the medical condition for which benefits were previously approved has improved sufficiently to allow a return to previous employment. The Medical Board may also consider additional information concerning any new medical condition which may have occurred while in receipt of disability benefits.

106 Termination of Disability Benefits

1. In the event a retiree is determined to no longer qualify for disability benefits, such retiree will be provided with notice of such determination and benefits will continue for a period of three (3) months prior to termination, unless the retiree has returned to covered employment in the position from which he was retired, or under Article 1, such retiree has returned to any gainful employment over a period of three (3) consecutive months in which case benefits shall be terminated immediately.
2. Notice of termination of disability benefits shall constitute a final administrative determination, and the retiree may appeal the determination to the Board of Trustees in accordance with the provisions of Regulation 42.
3. Appeals of decisions made under Regulation 42 by the PERS Board of Trustees may be made by members of the Firemen's and Policemen's Disability and Relief Fund to the Board of Disability and Relief Appeals as provided in Miss. Code Ann. § 21-29-113 and 21-29-215 (1972, as amended).

107 PERS Medical Board

1. The Board of Trustees may designate a Medical Board to be composed of three (3) physicians or may contract with another governmental agency or non-governmental disability determination service that is qualified to make disability determinations. If required, other physicians may be engaged to report on special cases. A physician shall be considered a medical doctor or a doctor of osteopathy with a license to prescribe drugs.

2. The Board of Trustees authorizes the Executive Director to appoint special Medical Board members on a case by case basis to serve in the absence of one or more Board appointed Medical Board members or where a Board appointed Medical Board member may have a conflict of interest. Such special appointments to the Medical Board shall be limited but shall continue for the duration of the claim or claims upon which determinations have been made by such special appointed member.

(History: Adopted August 1, 1996; amended effective January 1, 2002; amended on June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 46: Submission of Monthly Reports and Contributions for the Mississippi Government Employees' Deferred Compensation Plan & Trust

100 Purpose

This regulation establishes the due date for contributions and contribution reports for employers participating in the Mississippi Government Employees' Deferred Compensation Plan and Trust (MDC).

101 Due Date

All contributions and billing (contribution) reports on behalf of participants in MDC administered by the Public Employees' Retirement System of Mississippi (PERS) are due from the participating employer as of the fifth working day of each month.

102 Electronic reporting of contributions and reports

All employers are authorized and shall transfer all funds due to MDC electronically and shall transmit any contributions and billing reports by computerized reporting systems. An employer may submit a written request for a temporary exemption from the application of the above requirements setting forth the reasons for the inability to comply with the requirement. Where the Board finds that an employer cannot comply with the above requirements due to circumstances beyond its control, such temporary exemption may be granted.

- a. The Board has previously established guidelines for PERS for determining whether such requests shall be granted. These same guidelines shall apply to the reporting of funds and reports of MDC.
- b. The Board of Trustees may assess a processing fee for noncompliance with the mandatory electronic funds transfer and/or computerized reporting.

(History: Adopted July 1, 1999; amended July 1, 2000; reformatted August 1, 2007; amended effective August 1, 2014)

Chapter 47: Tax-free Rollovers into Plans Administered by the Board of Trustees of the Public Employees' Retirement System

100 Purpose

This regulation sets forth the conditions under which a retirement plan administered by PERS can receive an eligible retirement distribution from another plan.

101 Plans from which an eligible rollover distribution can be received by PERS

1. Where allowed under and subject to the provisions of federal law, plans administered by the Board of Trustees of the Public Employees' Retirement System of Mississippi, (hereafter referred to as PERS) may accept an "eligible rollover distribution" as defined under the Internal Revenue Code of 1986 (Code) in payment of all or a portion of the payment for previously withdrawn contributions and interest or the purchase of optional service credit.
2. For purposes of these rules, "eligible rollover distribution" or "rollover distribution" means all or any portion of a taxable amount that qualifies as an eligible rollover distribution under Section 402(c)(4) of the Code, as amended, and paid to a member or the surviving spouse of the member from:
 - a. Another employer plan qualified under Section 401(a) of the Code, including a qualified plan described in Section 401(k) of the Code;
 - b. A traditional individual retirement account or annuity under Section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be included in gross income;
 - c. A tax-sheltered annuity qualified under Section 403(b) of the Code;
 - d. A governmental deferred compensation plan under Section 457(b) of the Code; or
 - e. An annuity plan under Section 403(a) of the Code;
 - f. A Simplified Employee Pension Plan (SEP IRA) under Section 408(k) of the Code; and
 - g. A Savings Incentive Match Plan for Employees (SIMPLE IRA) under Section 408(p) of the Code, if there has been participation in the plan for at least two years.

102 Qualifying transfers and/or rollovers must meet the following conditions:

1. Funds may be transferred by the member (or surviving spouse who is a member) only for the purpose of establishing service credit as a member through (i) the repayment of part or all of previously withdrawn contributions and interest, or (ii) purchase of optional service credit as allowed by law. The amount of the contribution accepted by the retirement system shall not exceed the cost of the service to be purchased.

2. The member should contact PERS to obtain a cost schedule for the service to be purchased or reinstated. If the member makes less than full payment for the total service credit, payment must be made in increments of not less than one month of creditable service beginning with the most recent service. All service credit purchased or repaid is subject to verification and correction as deemed necessary by PERS.
3. Rollovers from other plans may take one of the following forms:
 - a. Direct Rollovers:

The plan will accept a direct rollover of an eligible rollover distribution from an eligible retirement plan authorized by federal law including the following:

 - i. A qualified plan described in Section 401(a) of the Code or an annuity plan described in Section 403(a) of the Code, excluding after-tax contributions.
 - ii. An annuity contract described in Section 403(b) of the Code, excluding after-tax contributions.
 - iii. An eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
 - iv. A traditional individual retirement account or annuity described in Section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.
 - v. A SEP IRA described in Section 408(k) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.
 - vi. A SIMPLE IRA described in Section 408(p) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.
 - b. Participant Rollover Contributions:

The plan will accept a participant contribution of an eligible rollover distribution from an eligible retirement plan as authorized by federal law as follows:

 - i. A qualified plan described in Section 401(a) of the Code, including a qualified plan described in Section 401(k) of the Code.
 - ii. An annuity contract described in Section 403(b) of the Code.
 - iii. An eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
 - iv. A traditional individual retirement account or annuity described in Section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.
 - v. A SEP IRA described in Section 408(k) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.
 - vi. A SIMPLE IRA described in Section 408(p) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.
 - c. Trustee-to-Trustee Transfer:

If permitted under and subject to the provisions of federal law, plans administered by PERS may accept a direct trustee-to-trustee transfer of funds from a plan described under 403(b) or 457(b) of the Code in payment of previously withdrawn contributions and interest or the purchase of optional service credit.

4. The amount of the rollover distribution accepted by the retirement system shall not exceed the cost of the service to be purchased or reinstated.
5. A rollover check from an eligible plan must be payable to the Public Employees' Retirement System of Mississippi, or other applicable plan administered by PERS, for the benefit of the member. The member's name and Social Security number should be clearly noted on the check. The check and accompanying documentation should be directed to the attention of Member Account Support. The check must be accompanied by the required documentation and a copy of the cost schedule for the service to be purchased or reinstated. (Note: No wire transfers will be accepted unless authorized by the executive director.)
6. If the distribution from the originating institution is greater than the cost of such service to be purchased or reinstated, the originating institution must generate separate checks, making the one payable to the appropriate retirement plan for only the exact cost of the service credit to be purchased or reinstated. If the distribution from the originating institution is less than the cost of the service credit to be purchased or reinstated, a personal check or cashier's check for the difference must accompany the rollover proceeds.
7. Neither partial payments for less than a month of service nor payments in excess of the cost of service to be purchased or reinstated will be accepted.
8. It is the responsibility of the member to see that all forms are properly completed and submitted to PERS along with the appropriate funds.
9. Upon PERS' review and acceptance of documentation and payment as provided within this regulation, the member will be notified of the applicable funds and service credit posted to the member's account.

(History: Adopted effective July 1, 2000; amended effective March 14, 2002; reformatted August 1, 2007; amended effective December 1, 2012, amended effective July 1, 2017)

Chapter 48: Partial Lump Sum Option (PLSO)

100 Purpose

The purpose of this regulation is to provide for the conditions under which the partial lump sum option may be selected by a retiree.

101 Eligibility for Partial Lump Sum Option

Any eligible member of the Public Employees' Retirement System (PERS), the Supplemental Legislative Retirement System (SLRP), or the Mississippi Highway Safety Patrol Retirement System (MHSPRS), upon withdrawal from service and application for service retirement benefits, or completion of an Advanced Application, may elect to

receive a partial lump sum payment on the date of retirement (or commencement of benefits under an Advanced Application in the case of death prior to retirement) in exchange for a reduced annuity provided such member meets the following age and/or service requirements:

- a. Any member of PERS/SLRP who became a member before July 1, 2007, and who
 - (i) has at least twenty-eight (28) years of creditable service in PERS; or
 - (ii) has four (4) or more years of membership service in PERS and who is at least age sixty-three (63); or
- b. Any member of PERS/SLRP who became a member on or after July 1, 2007, but before July 1, 2011, and who has at least twenty-eight (28) years of creditable service in PERS; or
- c. Any member of PERS/SLRP who became a member on or after July 1, 2011, and who has at least thirty-three (33) years of creditable service in PERS; or
- d. Any member of the MHSPRS eligible for an unreduced benefit.

SLRP members must meet the eligibility requirements in PERS and are not required to meet the requirements in both PERS and SLRP.

1. Selection of Partial Lump Sum Option (PLSO) Payout Amount

- a. A member may elect to receive the partial lump sum payment in an amount equal to the unreduced retirement benefit (Maximum Retirement Allowance) which would have been paid over a period of 12, 24 or 36 months had the lump sum option not been selected. Once the pay out amount is selected, a reduced Maximum Retirement Allowance is then calculated using factors based upon the member's age at retirement and the pay out option (12, 24, or 36 months) selected. This reduced Maximum Retirement Allowance then serves as the basis upon which other optional payment alternatives are calculated.
- b. Where a partial lump sum distribution is elected on an Advanced Application in conjunction with either the Maximum Retirement Allowance or an allowable option as noted in Section 101.2 of this Regulation, a different beneficiary may not be named for the purpose of receiving only the PLSO payment. The partial lump sum distribution shall be paid to the same beneficiary as named under the optional benefit payment selected.
- c. From and after January 1, 2003, if there is an election of the Partial Lump Sum Option (Option 6) after the member has attained the age of sixty-five (65) years, the actuarial equivalent factor based on the retiree's age at the time of retirement shall be used to compute the reduced maximum monthly retirement allowance.

2. PLSO Not Available with Certain Options

The lump sum payment option shall be paid only in conjunction with service retirement benefits selected by the member and shall not be combined with Option 1 (the pro-rated straight life annuity), a disability benefit, a statutory

spouse/dependent child benefit, or a benefit calculated after reemployment of a former retiree.

3. Effect of PLSO Selection on Calculation of Retirement Benefit at Subsequent Retirement

Further, should a retiree, after having received a partial lump sum payment, be reemployed, the new maximum benefit, including salary and service credit upon subsequent retirement, shall be reduced by the same dollar amount plus one percent (1%) of that amount for each month that the retiree's benefit was terminated due to the retiree's return to covered employment.

4. Payment of PLSO Amount

- a. At retirement, a member must name a beneficiary, as applicable, under the maximum retirement allowance or optional payment plan. When the partial lump sum distribution is selected on a service retirement application, the lump sum amount shall be paid to the retiree.
- b. The partial lump sum payment shall be paid in a check separate from the regular monthly retirement benefit.
- c. The total amount of the partial lump sum payment shall be deducted from the member's account balance consisting of the employee contributions plus interest for purposes of determining unused contributions remaining in the account.
- d. The member (or the beneficiary where benefits are payable to a beneficiary pursuant to an Advanced Application) may elect to rollover the taxable portion of the partial lump sum payment to an eligible retirement plan or individual retirement account (IRA). The non-taxable portion of the partial lump sum payment can be rolled over to an IRA or another qualified retirement plan as allowed by Internal Revenue Service regulations.

5. Taxation of PLSO Amount

This partial lump sum payment shall be subject to federal income tax in accordance with the Internal Revenue Code Section 72 or other such Internal Revenue rules and regulations as may be applicable. This partial lump sum benefit is subject to the same restrictions for assignment and attachment as all other retirement benefits. The appropriate portion of the partial lump sum distribution will be reported to the IRS as taxable income and appropriate tax withholdings will be withheld, unless the member elects to make a direct rollover of the taxable portion of the funds. Should the member have after-tax contributions, a portion of such after-tax contributions will be allocated to the partial lump sum payment and to the remaining annuity on a pro-rata basis.

6. Calculation of PLSO Amount

The partial lump sum payment will be based on the service credit and average compensation, including projected wages, at the time of retirement, and will be issued along with the initial monthly benefit check. Since this may be as early as the first of the month after termination and receipt of the completed application and before final wages and contributions are posted to the member's account, PERS reserves the right to correct any overpayment or underpayment in benefits discovered at the time of final benefit recalculation which includes the final wage

and contribution postings. Should the member have been overpaid, PERS will collect such overpayment from the member based on an actuarial adjustment to the monthly benefit. Likewise, should the member have been underpaid, PERS will issue an additional payment equal to the amount of the underpayment, as part of the regular monthly benefits. While a recalculation of benefits may result in a difference between the partial lump sum amount actually paid and the partial lump sum amount which could have been paid based on final postings, any difference in the amount actually paid and the amount calculated upon final wage and service credit posting, shall be paid as part of the monthly benefits, not subject to rollover provisions, or in the case of overpayment, monthly benefits will be actuarially reduced, as appropriate.

(History: Adopted effective July 1, 2000; amended effective April 1, 2002; amended effective July 1, 2002; amended and reformatted July 1, 2007; clarified effective July 1, 2010; amended effective July 1, 2011)

Chapter 49 Military Service

100 Purpose

This regulation provides information to the member regarding the types of military service that are eligible for service credit under the retirement systems administered by the Public Employees' Retirement System of Mississippi (PERS) and at what cost, if any.

101 Background information

Service credit for certain active-duty military service has been available at no cost to members of the Public Employees' Retirement System of Mississippi (PERS) and the Mississippi Highway Safety Patrol Retirement System (MHSPRS) for many years. Service qualifying for credit at no cost under PERS and MHSPRS are discussed in this regulation. Military service used in the calculation of benefits of a retirement system administered by PERS may not be used in another such system.

Credit for military service is different in the Municipal Retirement Systems (MRS). Each municipality with a separate retirement system has the option to enact changes in the military service provision that allows credit to members at no cost.

The following information describes eligible active-duty military service available at no cost to members of PERS and MHSPRS in addition to qualified military service based on interrupted employment under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act). The provisions for interrupted employment under USERRA and HEART Act apply to members of all retirement systems administered by PERS, including MHSPRS, MRS, and the Optional Retirement Plan.

102 Military Service Available at No Cost to Member (PERS and MHSPRS Members Only)

1. Description of Active-Duty Military Service Available at No Cost

To be eligible to receive credit for Active-Duty military service (including Active Duty for Training for which a DD214 or comparable documentation is available), the member must:

- a. Have served on Active Duty as follows:
 - i. For PERS, in an eligible branch of the U. S. Armed Forces (Army, Air Force, Navy, Marine Corps, or Coast Guard), or in the Commissioned Corps of the United States Public Health Service prior to 1972, or in maritime service during periods of hostility in World War II;
 - ii. For MHSPRS, in an eligible branch of the U. S. Armed Forces (Army, Air Force, Navy, Marine Corps, or Coast Guard) or in maritime service during periods of hostility in World War II;
- b. Have not received a dishonorable discharge, which for purposes of this regulation includes a discharge for bad conduct, or discharge due to court martial, or discharge under other than honorable conditions;
- c. Have entered or returned to state service after discharge from qualifying military service;
- d. Be vested in his or her retirement system:
 - i. a member who joined PERS before July 1, 2007, must have a minimum of four years of membership service credit in PERS;
 - ii. a member who joined PERS on or after July 1, 2007, must have a minimum of eight years of membership service credit;
 - iii. or a member of the MHSPRS must have a minimum of five years of membership service credit;
- e. Not have credit for this service in any other retirement system administered by PERS; and
- f. Not have overlapping service credit for the same period of time.
- g. Service credit for service in the Commissioned Corps of the United States Public Health Service is only available to those members who retire on or after July 1, 2002.

2. Limitations

If eligible, the member may receive up to a maximum of four years of active-duty military service credit at no cost. This period may be extended if proof is furnished that the member was retained in the Armed Forces during World War II or in maritime service during World War II by causes beyond the member's control and without opportunity of discharge.

3. Certification

- a. The member must submit to PERS a copy (not the original) of his or her military DD214 discharge form (or other documentation acceptable to PERS) that verifies:
 - i. That the service was Active Duty (including Active Duty for Training);
 - ii. The eligible branch of the Armed Forces or Commissioned Corps in which the member served;
 - iii. The member's dates of service; and
 - iv. The member's discharge status.
- b. If the member does not have a copy of his or her DD214, he or she may obtain one by contacting the National Personnel Records Center.

4. National Guard or Reserve Service

- a. Service credit is not available for National Guard or Reserve Service. However, if the member is or was a member of the National Guard or in the Reserve Service and was activated into the Armed Forces of the United States (or Commissioned Corps of the United States Public Health Service prior to 1972) as verified by a DD214, he or she may be eligible for free service as provided under this section of this regulation.
- b. Weekend drills and annual two-week training periods are not eligible for credit.
- c. Military service is not allowed for periods during which the member received credit for employment with his or her public employer.
- d. Neither the National Guard NGB Form nor the U.S. Army Reserve Personnel Center Chronological Statement of Retirement Points will be accepted to establish eligibility for Active-Duty military service.

5. Military Service Performed after Withdrawal from State Service

Military service performed after the member withdraws from covered public service or retires does not qualify for service credit under this section. In order to have military service considered for service credit, the member must enter or return to covered state service after discharge from active duty in the Armed Forces (or from service in the Commissioned Corps of the United States Public Health Service prior to 1972). Should the member enter active duty after retirement and later return to covered state service, no service credit for active-duty military service is available for any period in which the member was drawing a retirement allowance.

103 Military Service Credit for Public Service Interrupted by Qualified Military Service Upon Payment of Employer and Employee Contributions

1. Description of Service That May Be Eligible

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) requires employers to reemploy and preserve job security, pension and welfare benefits for “qualified” employees whose employment was interrupted by military service. If qualified interrupted military service does not meet the qualifications for Active-Duty military service available to the member at no cost as provided under § 102 of this regulation, a member may be awarded credit for time spent in the military that interrupted public service provided that the appropriate employee and employer contributions (and interest, if applicable) are paid.

- a. Service in the “Uniformed Services” means the performance of duty on a voluntary or involuntary basis in a Uniformed Service under competent authority and includes active duty, active and inactive duty for training, National Guard duty under Federal statute, and a period during which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform such duty. The term also includes a period for which a person is absent from employment to perform funeral honors duty as authorized by law. In addition, service as an intermittent disaster-response appointee upon activation of the National Disaster Medical System or as a participant in an authorized training program is deemed service in the Uniformed Services in accordance with Public Law 107-188. The definition of “Uniformed Services” shall conform to the definition as provided from time to time pursuant to federal law.

- b. Uniformed Service means any of the following:
 - i. the Army, Navy, Air Force, Marine Corps, Coast Guard, or any reserve components of such services;
 - ii. the National Guard or Air National Guard;
 - iii. the Commissioned Corps of the United States Public Health Service; or
 - iv. any other category of persons designated by the President in time of war or emergency.

2. Limitations

The member must have worked for an employer covered by one of the retirement systems administered by PERS, have left that employer for a military leave of absence, and returned to work for the same public employer within three months of discharge or release from the “Uniformed Services.”

a. To qualify to purchase this service, the member must have:

- i. Held a job with the state or other public employer participating in PERS, MHSPRS, MRS, or ORP immediately prior to entering the uniformed services; and
- ii. Given written or verbal notice (or verification upon return where such notice could not be provided), to the member’s public employer that he or she was leaving the job for military training or service; and
- iii. Not exceeded the five-year cumulative limit on periods of service or the period to complete an initial enlistment, or such other period as provided under applicable federal law; and
- iv. Have been discharged under honorable conditions or as otherwise provided by applicable federal law (Note that the following types of service do not qualify for purchase under USERRA: a. where the member separated from the service with a dishonorable or bad conduct discharge; b. where the member separated from the service under other than honorable conditions; c. where a member was dismissed or discharged from the service as the result of a court martial; or d. where the member was dropped from the rolls due to absence without authority for more than three months or imprisoned by a civilian court.); and
- v. Reported back to the same public employer within 90 days after the member’s discharge, unless he/she was hospitalized for or convalescing from a service-connected injury or illness in which case the deadline for reporting to work may be extended for up to two years; and
- vi. Met any other requirements provided by applicable federal law.

b. Military Service Performed after Withdrawal from State Service

No military service is available for service credit under this provision after the member leaves covered public service or retires. In order to begin drawing a retirement allowance the individual must have withdrawn or terminated from service. To have military service considered for service credit, the member must have left state service for the purpose of entering the military and later returned to covered state service after discharge from qualifying service under USERRA. Should the member enter military service after retirement or termination of employment and later return to covered state service, no service credit for such military service is available under this section.

c. Ineligible Service

Weekend drills and temporary annual training periods for which the employee is granted paid leave under State Law (e.g., summer camp) do not qualify for purchase under this provision as contributions have already been made on compensation paid during such periods. Further, a member may not receive additional service credit for periods of time for which he or she has already received service credit (i.e., where the individual is on paid personal leave). Where periods of public and qualified military service overlap, such may not result in more than one year of service credit being awarded during the same fiscal year.

d. Payment

- i. To obtain a cost statement, the member's employer shall complete and submit a Form 25D, *Determination of Entitlement to Purchase Pension Service Credit under the Veteran's Reemployment Rights Laws*, which certifies the employee's eligibility to purchase service, and a Form 25M, *Statement of Qualified Military Service*, along with a copy of the member's military DD214 honorable discharge forms or other comparable documentation showing the date of entry and separation from service in the uniformed services and discharge status.
- ii. The member and his or her employer shall remit the retirement contributions that would have been due pursuant to applicable state law.
- iii. The member must make payment within a period of time beginning with the date of return to membership service and not exceeding three times the member's qualified military service, but in no case shall the member have in excess of five years from the date of his return to make such payment.
- iv. Employer contributions required by the employer with which service was interrupted that are due pursuant to applicable state and federal law shall be billed to the employer for payment after the member has paid the employee contributions.
- v. Such service in defined benefit plans must be purchased in minimum increments of one month. As contributions for each month of service (or multiples thereof) are received, service will be credited to the account.

e. Certification

In order to purchase service credit, the member and employer must provide the following:

- i. A certificate of service or discharge (DD214) that shows the date of entry into and the date of separation from service in the uniformed services and the discharge status; and
- ii. Form 25D, *Determination of Entitlement to Purchase Pension Service Credit under the Veteran's Reemployment Rights Laws*; and
- iii. Form 25M, *Statement of Qualified Military Service*, certifying the salary the member would have earned during the period the member was out of service as a public employee by reason of service in the uniformed services.

104 Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) Provisions

1. With respect to the death of a member that occurs while the member is performing qualified military service within the meaning of Section 414(u) of the Internal Revenue Code:
 - a. The deceased member's period of qualified military service must be counted for vesting purposes.
 - b. To the extent required by Section 401(a)(37) of the Internal Revenue Code, the deceased member's survivors are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as those purchase rights the deceased member could have exercised under Miss. Code Ann. Section 25-11-109(7) (1972, as amended).
2. To the extent required by Section 414(u)(12) of the Internal Revenue Code, a member receiving differential wage payments within the meaning of Section 3401(h)(2) of the Internal Revenue Code from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on an annual addition under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(History of PERS Board Regulation 49: Adopted July 1, 2001; amended July 1, 2002; amended June 21, 2005, to be effective August 1, 2005; amended effective April 1, 2007; amended and reformatted effective July 1, 2007; amended effective January 19, 2009; amended December 1, 2010; amended effective April 1, 2014; amended effective August 1, 2015, amended effective October 1, 2016, amended effective July 1, 2017)

Chapter 50: Direct Rollover of Plan Distributions

100 Purpose

The purpose of this regulation is to clarify the types of plans to which eligible distributions from the defined benefit plans administered by PERS may be rolled over in a direct transfer of funds to another eligible plan.

101 Definition of "Eligible retirement plan"

Effective for all distributions made after December 31, 1992, the following definition of "eligible retirement plan" shall apply for purposes of a direct rollover. An "eligible retirement plan" shall mean any plan as defined in Section 402(f)(2)(B) of the Internal Revenue Code (Code) including a qualified retirement plan under IRC 401(a) or 403(a), or an IRA under 408(a) and 408(b). Effective January 1, 2002, "eligible retirement plan" shall also include an annuity contract described in section 403(b) of the Code and an eligible plan under 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into such plan from this plan. Effective January 1, 2008, "eligible retirement plan" may also include a Roth IRA as described in Internal Revenue Code Section 408A.

102 Eligible Rollover Distributions

For purposes of the direct rollover provisions in the defined benefit plans administered by PERS, an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the member or his or her surviving spouse. A distribution of all or any portion of the balance to the credit of a deceased member payable to a non-spouse beneficiary is also qualified as an eligible rollover distribution. However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an “inherited” individual retirement account or annuity.

103 Distributions not qualified for rollover

An eligible rollover distribution does not include the following: (a) any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan; (b) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the member or the joint lives (or joint life expectancies) of the member and the member’s designated beneficiary, or for a specified period of ten (10) years or more; and (c) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a) (9).

104 After-tax contributions eligible for rollover

For purposes of the direct rollover provision, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code, or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(History: Adopted January 1, 2002; reformatted August 1, 2007; amended July 1, 2008; amended effective January 19, 2009; clarified February 24, 2009)

Part 210 Chapter 51 Administration of Certification of Accumulated Unused Leave for Service Credit and Lump Sum Payments of Leave at Termination/Retirement

100 Purpose

The purpose of this regulation is to outline the conditions under which service credit may be awarded at retirement for lawfully accumulated unused leave.

101 General Requirements for Certification of Accumulated Unused Leave

The following regulation confirms and reaffirms prior construction of law, practice, and procedure of the Public Employees' Retirement System of Mississippi (PERS) relative to the administration of additional service credit for lawfully accumulated unused leave and for the payment of unused leave for retirement purposes. Since May 15, 1984, Miss. Code Ann. §25-11-109 (1972, as amended) has allowed for the certification of accumulated unused leave upon termination of employment or retirement on or after that date. Such leave must be certified to PERS by the governing authority. Effective July 1, 1984, the state's leave law was amended to allow accumulated unused personal and major medical leave of state and university employees to be certified to PERS upon termination of employment.

Except as otherwise provided by law, PERS follows the specific statutory provisions which authorize or limit the accrual of, or payment for, leave applicable to state and university employees, public school personnel, employees of counties, municipalities and other juristic entities, elected officials, court reporters, etc. The following guidelines apply in the accumulation, record keeping, and certification of leave by the employer.

1. Lawfully Adopted Leave Policy

Any accumulated unused leave certified to PERS by the employer must have been accumulated by the employee pursuant to a lawfully adopted and written leave policy. Such policies may be found in statutory law, as in the case of state employees and employees of the institutions of higher learning, and/or in written policies adopted by the applicable governing body of a public school, county, municipality, community college or other juristic entity covered by PERS. Such policies, or the modification thereof, may not be adopted or applied retroactively. Accumulated unused leave certified to PERS pursuant to such policies may not exceed that which could have been accrued under the state's leave law.

Accumulated unused leave certified to PERS by the employer upon termination or retirement of the employee must be leave that is viable under the terms of the policy and available for use by the employee in accordance with the intended purpose, i.e., personal (vacation) leave or major medical (sick) leave. Employers may not create or authorize leave to be accrued for "retirement purposes only" nor may employers certify leave which expires because it may not be carried forward from year to year. Further, employers may not create and certify other categories of leave which are not available to and certifiable on behalf of state employees. Leave certified to PERS must be eligible for use or payment in the form of wages as any other leave under the applicable policy to be certifiable to PERS.

2. Requirement that Records Be Maintained

Inherent in the certification of accumulated unused leave is the requirement that accurate leave records be kept of such leave by the employer. In the absence of appropriate records, no leave may be certified to or granted by PERS. Leave certified to PERS by an employer must be based on documented policies and records which exist at the time of certification of such leave and which reflect any remaining lawfully accumulated unused leave.

Generally, once accumulated unused leave is properly certified to PERS, it may not be later “decertified” by the employer or reinstated by the same or another employer, except in the case of wrongful termination where an employee is reinstated to employment back to the date of termination with full compensation, rights, and privileges.

3. Qualifying Leave that May Be Certified to PERS

The state leave law provides that only accumulated unused personal leave and major medical leave accrued under Miss. Code Ann. §§25-3-93 and 25-3-95 (1972, as amended) by the individual employee can be certified to PERS at the time of termination or retirement. Accumulated unused personal or major medical leave (or their equivalent) certified to PERS pursuant to other lawfully adopted policies or statutes may not exceed that which could have been accrued and certified under the state’s leave law.

4. Leave That May Not Be Certified to PERS

- a. Accumulated unused compensatory leave or any other employer created category of leave other than personal leave or major medical leave may not be certified to PERS for additional service credit.
- b. Leave donated or transferred from one employee to another employee may not be certified to PERS as unused leave of the recipient employee. The accumulation of leave is personal to the individual employee. Only qualifying leave which has actually been accumulated by and which remains unused by the individual employee at termination of employment may be certified to PERS for service credit.
- c. Leave created, granted, or available “for retirement purposes only” may not be certified to PERS. There is no authority for the creation of a category of leave that is available for “retirement purposes only.” Leave provided to an employee which cannot be carried over from year to year, and which expires at the end of each year, may not be certified or “banked” for purposes of later certification to PERS.
- d. Accumulated unused leave associated with a refund of contributions may not be used for service credit. Leave accumulated and unused during a period of employment for which contributions are made to PERS and subsequently refunded to the terminated employee becomes void when the refund is made. If the refund is repaid in full, any accumulated unused leave associated with the reinstated service credit may also be reinstated, provided that such leave is or has been certified to PERS. If only a portion of the refund is repaid, the leave remains void and no part of it may be used for additional service credit.
- e. Leave accumulated with a governmental employer outside the State of Mississippi, i.e., leave associated with out-of-state service, or under the limited reemployment provisions as a retiree under Miss. Code Ann. §25-11-127 (1972, as amended), may not be certified to PERS for additional service credit. Further, leave accumulated with any other non-covered employment, including leave accumulated with an employer prior to the employer joining PERS or any leave earned while participating in the Optional Retirement Plan or any other plan administered by PERS, may not be certified to PERS for additional service credit.

5. When Leave Can Be Certified to PERS

- a. Leave may be certified by the employer only upon termination of employment of the employee. Termination is defined as a withdrawal from service that means a complete severance of employment in state service by resignation, dismissal, or discharge. Qualifying leave can be certified by the employer after termination of employment of the employee so long as official policies and records exist to support the certification.

Special Circumstances:

- i. If unused leave accrued pursuant to a lawfully adopted leave policy of personal employees of an out-going elected chancery or circuit clerk is not assumed by the in-coming elected chancery or circuit clerk, such leave may be certified to PERS on behalf of the employee by the out-going clerk. If so certified for service credit, such leave may no longer be used by the employee while employed under the new clerk.
 - ii. If unused leave accrued pursuant to a lawfully adopted leave policy of employees of an out-going elected district attorney is not assumed by the in-coming elected district attorney, such leave may be certified to PERS on behalf of the employee by the out-going district attorney. If so certified for service credit, such leave may no longer be used by the employee while employed under the new district attorney.
 - iii. Where an employee of a covered employer is elected to office with that same covered employer without a break in service between the non-elected and elected employment, all unused leave accumulated by the employee under a policy of the employer prior to taking office as an elected official, must be certified to PERS at the time of transition from the non-elected to the elected position.
- b. If an employee transfers from one state agency (including the institutions of higher learning) to another without a break in service (i.e., without a lapse of one eight-hour workday between the termination date at the old agency and effective date of employment at a new agency), any unused leave is transferable to the state agency to which the employee is transferring. Since July 1, 1998, major medical and personal leave earned by employees are transferable between or among any and all state agencies and senior colleges as well as community and junior colleges.
 - c. If leave is eligible for transfer to another covered employer, such leave should not be certified to PERS.

6. Conversion of Accumulated Unused Leave from Hours to Days

- a. **Conversion under policy where leave accrual is no greater than that of the state's leave law.**

The maximum accrual rates as provided under the state's leave law is predicated on a normal eight- (8) hour workday and a five- (5) day workweek. To determine the number of days to be certified to PERS, the number of accumulated hours should be divided by eight (8). Only hours that equate to whole days will be used to determine additional service credit upon retirement. Any remaining hours or fraction of a day after accumulated unused leave from all sources has been added together and converted into days will not be used in computing the number of whole days for retirement credit.

b. Conversion under policy where leave accrual is greater than under the state's leave law.

If an employee (e.g., fireman or policeman) accrues leave at a rate in excess of the maximum combined personal and major medical state accrual rate as set forth in Miss. Code Ann. §§25-3-93 and 25-3-95 (1972, as amended), the following formula shall be used to convert the accumulated unused leave hours to days:

- i. Divide the maximum monthly or annual accrual rate under state's leave law by the employee's actual accrual rate (i.e. actual number of hours accrued per month or per year under the applicable policy) at the time of termination;
- ii. Multiply the ratio found in Step (i) by the total number of accumulated unused leave hours to find the adjusted allowable hours;
- iii. Divide the result from Step (ii) by eight (8) to determine the appropriate number of adjusted days that should be certified to PERS.

7. Certification of Accumulated Unused Leave

- a. State law at Miss. Code Ann. §25-3-97(1) (1972, as amended) imposes a duty upon agencies to maintain accurate records of employee leave. Hence, all PERS reporting employers who have a leave policy under which accumulated leave is or will be certified to PERS, have a like duty to maintain accurate leave records. For service credit based on accumulated unused leave to be granted for retirement purposes, there must be both a) evidence of a policy established by law or a lawfully adopted leave policy, spread upon the minutes of the appropriate authority or otherwise adopted by formal resolution, and b) records documenting accumulated unused leave remaining at termination of employment.
- b. When accumulated unused leave is certified to PERS by an employer on a form prescribed by the PERS Board of Trustees, such leave is subject to audit by PERS and a copy of the actual leave records and policy may be requested. Upon request, the employer must provide a copy of the leave policy under which any leave is accrued, documentation as to when and how the policy was adopted, and leave records.
- c. No leave may be certified to PERS where an employee terminated employment prior to May 15, 1984 (or July 1, 1984 in the case of state and university employees), or the effective date of a formally adopted leave policy, if later.
- d. Only accumulated leave, which has not been used or paid, may be certified. Any lump sum payment of leave automatically reduces the number of accumulated unused leave days which can be certified to PERS by the number of days for which payment is made.
- e. Service credit for accumulated unused leave is not posted to a member's account until the time of application for retirement, at which time all eligible accumulated unused leave days certified from all employers are accumulated and converted to retirement service credit. Accumulated unused leave may not be used to determine minimum eligibility (i.e., a minimum of four (4) years of contributing membership service in PERS for members who joined the System before July 1, 2007, or a minimum of eight (8) years of contributing membership services for

members who joined the System on or after July 1, 2007,) for service retirement, disability, or survivor benefits.

8. Certification of Leave in Cases of Dual Employment

- a. Miss. Code Ann. § 25-11-109(2) (1972, as amended) provides in part that "... nor shall more than one (1) year of service be creditable for all services rendered in any one (1) fiscal year; . . ." As a result, no employee may be granted more than one day of creditable service for each calendar day worked regardless of the number of hours worked or number of positions held.
- b. Participants in PERS may be employed by two or more covered employers simultaneously. In such case, an employee may accumulate leave under separate leave policies. No employee may receive credit twice for vacation or sick leave earned for the same period of employment. For retirement purposes, upon termination of employment or retirement, a regular employee who has accumulated leave under two or more separate leave policies for the same period of time may elect to use accumulated unused leave credit from only one position. If an employee is simultaneously covered in two positions, one as an elected official and one as a regular employee under a leave policy, the individual as an elected official will automatically receive credit under the special provisions for elected officials.

9. Additional Statutory Leave Granted at Retirement

- a. Members of PERS who retire after July 1, 2010, shall receive credit for one-half day of leave for each full fiscal year of membership service accrued after June 30, 2010, which shall not be prorated for less than one (1) full fiscal year of service. Such additional leave granted under Miss. Code Ann. Section 25-11-109(2) (1972, as amended) shall be added to the lawfully credited unused leave certified to PERS for which creditable service is allowed under Section 25-11-103(i).
- b. Additional statutory leave granted at retirement shall be calculated by PERS based on membership service accrued for periods after July 1, 2010. Employers should not credit this leave to any member, nor should an employer certify this additional leave to PERS at retirement or termination of employment.

10. Calculation of Leave for Elected Officials

- a. Prior to July 1, 1987, there was no provision for additional service credit for elected officials based on leave. An elected official is presumed available for official duties at all times. Effective July 1, 1987, special statutory provisions for "elected official leave" were enacted for those elected officials retiring on or after July 1, 1987. (An elected official, such as a district attorney or elected superintendent of education, does not accrue personal and major medical leave pursuant to a leave policy for employees of the District Attorney or School District. Such officials are covered by the "elected official leave" noted below.)
- b. For retirement purposes, elected officials are entitled to additional service credit at retirement for "elected official leave" calculated as follows:

- i. For service prior to July 1, 1984, the member shall receive credit for leave (combined personal and major medical) for service as an elected official prior to that date at the rate of thirty (30) days per year.
- ii. For service on and after July 1, 1984, the member shall receive credit for personal and major medical leave beginning July 1, 1984, at the rates authorized in Miss. Code Ann. §§25-3-93 and 25-3-95 (1972, as amended), computed as a full-time employee.

Elected official leave for each period of continuous elected official service should be calculated using the above guidelines. This calculation applies whether the elected service was reported as membership service, prior service, or purchased as non-covered or retroactive service. If there is a break in service, the calculation should take the break in service into account, and the accumulation for the subsequent period started again at the lower accrual rate as provided in Miss. Code Ann. §§25-3-93 and 25-3-95 (1972, as amended).

- c. Where an employee is a regular employee in one position but also serves as an elected official in another position, he/she may not receive retirement credit for accumulated unused leave under both positions at retirement. Where such service is simultaneous, special “elected official leave” under the statutory provision applies automatically for that period of time.

102 Calculation of Service Credit Attributable to Unused Leave Days

Once the cumulative number of unused leave days is determined at the time of retirement, service credit using whole days is calculated in accordance with the provisions of Miss. Code Ann. §25-11-109(2), which provides that

1. No credit will be allowed for less than fifteen (15) days; and
2. Twenty-one (21) days of unused leave shall constitute one (1) month of service credit.

CONVERSION TABLE
ACCUMULATED UNUSED, NON-COMPENSATED LEAVE TIME
(This table is based on the state's leave law,
using an 8-hour workday and a 21-day work month)

COMBINED ACCUMULATED UNUSED PERSONAL AND MAJOR MEDICAL LEAVE	CREDIT EQUIVALENT
15 DAYS TO 77 DAYS	3 months
78 DAYS TO 98 DAYS	6 months
99 DAYS TO 119 DAYS	7 months
120 DAYS TO 140 DAYS	8 months
141 DAYS TO 161 DAYS	9 months
162 DAYS TO 182 DAYS	10 months
183 DAYS TO 203 DAYS	11 months
204 DAYS TO 224 DAYS	12 months
225 DAYS TO 245 DAYS	13 months
246 DAYS TO 266 DAYS	14 months

(Only whole days are used in determining
service credit)

- 103 Payment of Unused Leave at Termination, Retirement, Death, or Disability** Miss. Code Ann. §25-1-98 defines a workday for a state employee in a full-time employment position as eight (8) hours in duration. PERS law provides that leave policies for the administration of personal or vacation leave and major medical or sick leave as it relates to PERS cannot exceed that of the state leave law. Thus, for purposes of the payment of leave, the maximum allowable number of days paid will be calculated based on an eight-hour day. Upon termination or retirement, the maximum amount that may be reported to PERS for the payment of accumulated unused leave is 240 hours, which is the product of 30 days times 8 hours per day as provided in Miss. Code Ann. §25-3-93(4).

The following statutes control the payment of leave upon termination of employment:

Statutory Authority	Leave Payment Authorized	Type Employee Affected
Miss. Code Ann §25-3-93(4) (1972, as amended)	Up to 30 days of personal leave payable upon termination	State and University employees (other than 9 month faculty employees)
Miss. Code Ann §25-3-97(3) (1972, as amended)	Up to 120 days of major medical leave (No more than a combined total of 30 days of personal leave and major medical leave can be reported to PERS)	State and university employees who can no longer work in any capacity of state government due to total disability
Miss. Code Ann §25-3-97(6) (1972, as amended)	All personal leave payable upon death (Note that a lump sum payment of no more than 30 days of personal leave can be reported to PERS.)	State and university employees upon the death of the employee
Miss. Code Ann §25-3-99 and Miss. Code Ann §25-11-103(f) (1972, as amended)	Authorizes the payment of frozen leave payable upon termination (Up to 20 days	State employees who worked with the MESC prior to 1976 and who had excess leave still credited on their records

	with the Miss. Employment Security Commission only)	
Miss. Code Ann §25-3-95(5) (1972, as amended)	Up to 30 days of major medical leave payable only upon retirement	Nine-month faculty members of the eight (8) institutions of higher learning
Miss. Code Ann §37-7-307(5) (1972, as amended)	Up to 30 days of personal and sick leave at the rate paid to substitute teachers payable upon retirement	Licensed (certificated) employees with the public school districts in a position that requires a license
Miss. Code Ann §37-7-307(5) (1972, as amended)	Up to 30 days of personal and sick leave at the applicable federal minimum wage rate payable upon retirement	Non-Licensed (non-certificated) employees with the public school districts
Miss. Code Ann §25-11-103(k) (1972, as amended)	Up to 30 days of leave upon termination	All employees covered under a lawfully adopted leave policy of a county, municipality or any other local governing authority that specifically provides for the payment of leave upon termination
Miss. Code Ann §9-13-19 (1972, as amended)	NONE	Court Reporters
Miss. Code Ann §25-11-109(2) (1972, as amended)	NONE	All Elected Officials

All payments of leave should be designated with the appropriate wage code when reported to PERS; i.e., 30 days lump sum payment of leave as Wage Code 02 and Service Credit Flag 00; 30 days lump sum payment of personal leave due to death as Wage Code 04 and Service Credit Flag 00; etc. Any compensatory leave paid in a lump sum should be reported as Wage Code 03 and should be allocated to the period in which the leave was actually earned.

INDEX OF STATUTORY AND OPINION AUTHORITY

Authority to use leave as additional service credit – Miss. Code Ann. §§25-11-103(i) and 25-11-109(2) (1972, as amended)

Requirement for written policy and records - Miss. Code Ann. §25-3-97(1) (1972, as amended) and Opinions dated 1/25/1989 to Joseph F. Mooney; 8/14/1998 to Edward Ranck; 9/6/2002 to Wendell H. Trapp; 11/01/2002 to Olen C. Bryant, Jr.

Maximum accrual limits for retirement purposes - Miss. Code Ann. §§25-3-93, 25-3-95 and 25-11-103(i) (1972, as amended) and Opinions dated 1/25/1989 to Joseph Mooney; 9/13/1994 to Walter P. Cartier; 6/27/1994 to Richard G. Noble; 3/23/2001 to Paula S. Yancey

Compensatory leave may not be certified to PERS for additional service credit- Miss. Code Ann. §§25-3-92, 25-3-93, and 25-3-95 (1972, as amended)

Leave policy may not be retroactive – Opinions dated 8/14/1998 to Edward Ranck; 9/6/2002 to Wendell H. Trapp; 11/01/2002 to Olen C. Bryant, Jr.

Unused leave may not be accumulated for “retirement purposes only”; Leave which expires at the end of each year may not be certified or “banked” for certification to PERS; Other categories of leave which are not available to state employees may not be certified - Opinions dated 6/27/1994 to Richard G. Noble; 5/26/1998 to Frank Ready; 11/01/2002 to Olen C. Bryant, Jr.

Transfer of leave between and among state agencies, universities and community colleges - Miss. Code Ann. §25-3-97 (1972, as amended); Opinion dated 4/27/2001 to Ronald D. Michael

Accumulated leave associated with a refund of contributions becomes void - Miss. Code Ann. §25-11-117 (1972, as amended)

When leave may be certified to PERS (e.g. upon withdrawal from service) - Miss. Code Ann. §25-11-103(i) (1972, as amended)

Leave may not be used to qualify for minimum four-year service requirement for retirement, disability or survivor benefits – Miss. Code Ann. § 25-11-109(1) (1972, as amended)

Certification of leave in cases of dual employment – Opinions dated 12/28/1992 to Milton G. Walker and 2/16/2001 to Frank Ready

Calculation of leave for elected officials – Miss. Code Ann. 25-11-109(2) (1972, as amended) and Opinion dated 2/16/2001 to Frank Ready

Authority of public school districts to establish a leave policy - Miss. Code Ann. §37-7-307(2) (1972, as amended)

Authority for counties, municipalities or other juristic entities to establish leave policies - Miss. Code Ann. §25-11-103(i) (1972, as amended); Opinions dated 7/18/1997 to William Dean Stark; 9/10/1999 to Jane Ward; 3/23/2001 to Paula S. Yancey

Leave for Court Reporters - Miss. Code Ann. §9-13-15; §9-13-17; §9-13-19 (1972, as amended); Opinion dated 5/26/1998 to Frank Ready

Leave for Compulsory School Attendance Officers - Miss. Code Ann. §37-13-89(6) (a) (1972, as amended); Opinion dated 8/18/1998 to Edward Ranck

Leave for employees of Community and Junior Colleges – Opinions dated 3/8/1990 to David M. Haraway; 4/27/2001 to Ronald D. Michael; and 10/31/2003 to Frank Ready.

Payment of personal leave to state and university employees (other than 9 month faculty employees) upon termination– Miss. Code Ann. §25-3-93(4) (1972, as amended) ; Opinion dated 9/2/1992 to Thomas H. Dyson

Payment of major medical leave to state and university employee in event of disability - Miss. Code Ann. §25-3-93(3) (1972, as amended)

Payment of personal leave to state and university employee in event of death - Miss. Code Ann. §25-3-97(6) (1972, as amended)

Payment of frozen leave- Miss. Code Ann. §25-3-99 and §25-11-103(f) (1972, as amended)

Payment of major medical leave to nine-month faculty member of 8 institutions of higher learning upon retirement- Miss. Code Ann. §25-3-95(5) (1972, as amended)

Payment of up to 30 days personal and sick leave for licensed and non-licensed public school employees upon retirement- Miss. Code Ann. §37-7-307(5) (1972, as amended)

Payment of upon to 30 days leave upon termination for employees of political subdivisions - Miss. Code Ann. §25-11-103(k) (1972, as amended)

Payment of leave to employees of a county, municipality or other political subdivision - Miss. Code Ann. §25-11-103(k) (1972, as amended)

(History: Adopted effective February 1, 2004; amended 6/21/2005 to be effective 8/1/2005; amended and reformatted July 1, 2007; amended December 1, 2009; amended July 1, 2010, amended effective July 1, 2017)

Chapter 52: Payroll Deduction of Retiree Group Life and Health Insurance

100 Purpose

The purpose of this regulation is to define the circumstances under which PERS is authorized to deduct group life and health insurance premiums from the retirement allowances of retirees.

101 Payroll Deduction

1. Any retired member or beneficiary receiving a retirement allowance or benefit pursuant to any retirement system administered by the Board of Trustees of the Public Employees' Retirement System (PERS) may authorize the system to make

- deductions there from for the payment of insurance premiums for employer or system sponsored group life and health insurance.
2. The executive director shall prescribe, subject to these rules, the procedures and forms for the filing of authorizations.
 3. The sponsoring entity must adopt a resolution approving payment by payroll deduction.
 4. Unless otherwise authorized by the executive director, payment to a sponsoring entity/insurance provider must be made by direct deposit from PERS.
 5. Unless otherwise authorized by the executive director, billing from any sponsoring entity/insurance provider will be automated and in the format specified by the system, known as the “Vendor Billing Requirements.”
 6. Not fewer than 500 retirees must initially authorize the deduction for payment to the same group health or life insurance provider.
 7. Authorization shall be filed in the office of the board. However, the executive director may prescribe in the alternative, filing such authorization with the insurer issuing the group life or health insurance plan, if such insurer has undertaken in a writing filed with the board to:
 - a. Supply to the board with statements of deductions as specified in authorizations received by it and to hold the State, the board and its employees harmless from liability for any errors in withholding or transmitting deductions pursuant to such statements except for moneys actually withheld but not transmitted.
 - b. Keep all authorizations received by it available for inspection by authorized representatives of the board.
 - c. Sign a statement that any information provided by PERS with regard to its retirees, including but not limited to names, addresses, identification numbers, etc, must be kept confidential and will not be shared with or released to any third party or used in any way except for the express purposes of providing the insurance coverage pursuant to which the withholding authorization is executed.
 8. Authorizations or changes thereto must be received by PERS no later than the 10th of any month to become effective on the 1st day of the following month. The system shall make the deductions authorized and pay to the organization the amounts deducted, until the authorization is revoked in writing by the person.
 9. PERS may charge the insurance provider an amount not exceeding the actual costs incurred by the system in making the deductions.

(History: Adopted effective July 1, 2004; reformatted August 1, 2007)

Chapter 53: PERS’s Organization and Method of Operation

100 Purpose

The purpose of this regulation is to describe the organizational structure of the Public Employees' Retirement System of Mississippi (PERS), the composition of its Board of Trustees, and the programs for which it is responsible

101 Organization of PERS

1. Composition of the Board of Trustees

The Board of Trustees of the Public Employees' Retirement System of Mississippi (PERS Board) was created by legislative enactment in 1952. Membership of the PERS Board is set forth in Miss. Code Ann. §25-11-15 (1972, as amended) and consists of the following ten (10) representatives: the state treasurer; one representative who is a member of the System and who is appointed by the Governor; two members elected by state employees; one member elected by county employees; one member elected by municipal employees; one member elected by employees of the State Institutions of Higher Learning; two retirees elected by retired members; and one member elected by employees of the public schools and employees of the public community/junior colleges. Each member fills a term as specified in the statute, generally a six-year term unless the member serves ex officio or is appointed.

2. Programs Administered by the Board of Trustees

This PERS Board is responsible for the administration of a number of retirement systems and retirement related programs including the following:

- a. Social Security coverage pursuant to the Federal-State Agreement executed in 1952;
- b. Public Employees' Retirement System of Mississippi, established effective February 1, 1953;
- c. Mississippi Highway Safety Patrol Retirement System, established effective July 1, 1958;
- d. Mississippi Government Employees' Deferred Compensation Plan and Trust, established in 1973 with administration transferred to PERS in 1974;
- e. 19 Local Retirement Systems (now closed to new members and which are comprised of 17 Firemen's and Policemen's Disability and Relief Funds and 2 Municipal Retirement Systems), with administration transferred to PERS in 1987;
- f. Supplemental Legislative Retirement Plan, established effective July 1, 1989;
- g. Retiree's Insurance Program, established effective July 1, 1988; and
- h. The Optional Retirement Plan for teaching and administrative faculty of the Institutions of Higher Learning, established effective July 1, 1990.

3. Day-to-Day Operations of the Retirement Programs

The PERS Board has the authority to appoint the Executive Director, who serves at the will and pleasure of the PERS Board, and to employ staff for the administration of the programs under its purview. The Executive Director and

staff, in concert with various consultants, provide the day-to-day operations of the various programs under the administrative authority of the PERS Board.

The staff of PERS oversees the collection of contributions and the payment of benefits for all the retirement plans, except the following:

- a. The Social Security coverage where benefits are administered by the Social Security Administration;
- b. The Mississippi Government Employees' Deferred Compensation Plan and Trust, which is administered by a third party administrator selected by the PERS Board;
- c. The Retiree's Insurance Program, which is administered by life and health insurance companies selected by the PERS Board; and
- d. The Optional Retirement Plan, which is funded with contributions made directly to annuity contracts or mutual fund accounts underwritten by annuity carriers or offered by other providers and from which benefits are distributed.

4. Place of Business

The Public Employees' Retirement System of Mississippi is located at 429 Mississippi Street, Jackson, Mississippi 39201. The phone numbers for reaching PERS are 601-359-3589 and 800-444-7377.

(History: Adopted effective August 1, 2005; reformatted effective August 1, 2007; amended effective April 1, 2012)

Chapter 54: Administration of Retired Public Safety Officer Retirement Distribution for Health Insurance

100 Purpose

The purpose of this regulation is to provide the administrative framework for implementing the special tax exclusion made available by Section 845 of the Pension Protection Act of 2006 to an "eligible retired public safety officer" of all qualifying retirement systems administered by the Board of Trustees of the Public Employees' Retirement System.

101 Description of Tax Exclusion

Section 845 of the Pension Protection Act of 2006 amends IRC §402 to allow an "eligible retired public safety officer" to make an election to exclude from federal gross income up to \$3,000 of his or her retirement plan benefits if such amount is deducted from the retired member's benefit and paid directly by the retirement plan for health insurance or long term care insurance premiums. For this purpose, all eligible retirement plans must be treated as a single plan, i.e., a retiree gets only one \$3,000 exclusion per calendar year.

The income exclusion is only available if and to the extent the retirement plan agrees to deduct and then remit qualifying premiums directly to the insurance provider. Statutory authority as found in Miss. Code Ann. §25-11-129, 25-13-31 and 21-29-307 allows a retired member receiving a retirement benefit to authorize deductions from his or her

retirement benefit for the payment of employer or system sponsored group health insurance, subject to the rules and regulations adopted by the Board of Trustees of the Public Employees' Retirement System on behalf of the retired members of the Public Employees' Retirement System (PERS), the Mississippi Highway Safety Patrol Retirement System (MHSPRS), and the Municipal Retirement Systems (MRS). This tax exclusion is only available to those Eligible Retired Public Safety Officers who have health insurance premiums deducted by PERS from their retirement or disability benefits.

102 **Definition of Retired Public Safety Officer**

“Retired Public Safety officer” means an individual who served and retired from public service by reason of disability or attainment of normal retirement age with a public agency in an official capacity as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew, as those terms are defined in section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 which is codified in 42 U. S. C. 3796b(8)(A) and as interpreted from time to time by the Department of Justice.

1. The term “**official capacity**” means an individual who served a public agency in an official capacity only if
 - a. he was officially authorized, recognized, or designated by such agency as functionally within or part of it; and
 - b. his acts and omissions, while so serving, were legally those of such agency, which legally recognized them as such.
2. The term “**law enforcement officer**” means an individual who was involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), including, but not limited to police, corrections, probations, parole and judicial officers.
 - a. The term “**involved**” means an individual who was involved in crime (an act or omission punishable as a criminal misdemeanor or felony) and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), only if he was an officer of a public agency and, in that capacity, had legal authority and responsibility to arrest, apprehend, prosecute, adjudicate, correct or detain (in a prison or other detention or confinement facility), or supervise (as a parole or probation officer), persons who were alleged or found to have violated the criminal laws, and was recognized by such agency, or the relevant government to have such authority and responsibility.
 - b. The term “**criminal laws**” means that body of law that declares what acts or omissions are crimes and prescribes the punishment that may be imposed for the same.
 - c. The term “**correctional facility**” means any place for the confinement or rehabilitation of offenders or individuals charged with or convicted of criminal offenses.
3. The term “**firefighter**” means an individual who
 - a. Was trained in (i) suppression of fire; or (ii) hazardous-materials emergency response; and

- b. Had the legal authority and responsibility to engage in the suppression of fire, as an employee of the public agency he served, which legally recognized him to have such.
- 4. The term “**chaplain**” means a clergyman or other individual trained in pastoral counseling who served as an officially recognized or designated member of a legally organized police or fire department.
- 5. The term “**member of a rescue squad or ambulance crew**” means an officially recognized or designated public employee member of a rescue squad or ambulance crew.
- 6. Examples of positions that appear to be “Public Safety Officers,” assuming the above conditions are met:

Police officer (including a member of the Mississippi Highway Safety Patrol)
 Firefighter
 Chaplain of a police or fire department
 Sheriff
 Deputy Sheriff
 Constable
 Regular Member of a rescue squad or ambulance crew
 Narcotics Agent
 Department of Wildlife, Fisheries & Parks Conservation Officer
 Department of Wildlife, Fisheries & Parks Game Warden
 Corrections Officer
 Parole Officer
 Department of Transportation Enforcement Officer
 Department of Transportation Weight Enforcement Officer
 Forestry Commission Forest Ranger
 Gaming Commission Enforcement Agent
 Public Service Commission Regulated Carrier Enforcement Officer
 State Hospital Security Officer
 University Police Officer
 Tax Commission ABC Enforcement Agent
 Tax Commission Scale Enforcement Officer
 Judge whose responsibility it was to adjudicate criminal matters
 Attorneys whose responsibility it was to prosecute criminal matters

103 Eligible Retired Public Safety Officer

The election is only available to individuals who, by reason of disability or attainment of normal retirement age, retired from service as a Public Safety Officer.

1. Attainment of Normal Retirement Age

a.PERS- For purposes of this regulation, and except as otherwise provided by the Internal Revenue Service, the “attainment of normal retirement age” under the Public Employees’ Retirement System shall be defined as:

- (i) having twenty-five (25) or more years of creditable service if the member entered PERS-covered service before July 1, 2011;
- (ii) having four (4) or more years of membership service at age 60 or later if the member entered PERS-covered service before July 1, 2007;
- (iii) having eight (8) or more years of membership service at age 60 or later if the member entered PERS-covered service on or after July 1, 2007, but before July 1, 2011;
- (iv) having thirty (30) or more years of creditable service if the member entered PERS-covered service on or after July 1, 2011.

- b. MHSPRS - For purposes of this regulation, and except as otherwise provided by the Internal Revenue Service, the “attainment of normal retirement age” under the Mississippi Highway Safety Patrol Retirement System shall be defined as the age at which an eligible Public Safety Officer retires on an unreduced benefit, i.e., someone who retired with 5 or more years of membership service at age 55 or older, or someone who retired with 25 or more years of service regardless of age. Any Retired Public Safety Officer whose retirement benefit was subject to an early retirement benefit reduction at the time of retirement is not eligible for this election, i.e., someone who retired with 20 or more but less than 25 years of service.
- c. MRS - For purposes of this regulation, and except as otherwise provided by the Internal Revenue Service, all members who have retired or will retire under one of the Municipal Fire and Police Retirement Systems will be considered to have “attained normal retirement age.”

2. Disability retirement benefits eligible for the exclusion

A Retired Public Safety Officer receiving a disability retirement allowance is eligible for the tax exclusion up to the allowable limit for premiums withheld to the extent that his or her disability retirement benefit is taxable. Duty-related disability benefits paid are already tax-exempt, and thus amounts withheld for health insurance premiums would not be subject to the tax-exclusion provisions of Section 845 of the Pension Protection Act of 2006. However, if any portion of a disabled Retired Public Safety Officer’s disability benefit is taxable, an election may be made to exclude amounts withheld for the payment of eligible insurance premiums to the extent such benefits would otherwise be taxable.

104 Premiums eligible for the exclusion

To be eligible for the tax exclusion, insurance premiums must be withheld from the retirement benefit of the Eligible Retired Public Safety Officer. Such premiums may be for the benefit of the retiree and his or her spouse and/or dependents. Only the Eligible Retired Public Safety Officer may elect to have the insurance premiums excluded from taxation.

105 Qualified health insurance plans

1. While federal law allows a governmental retirement plan to agree to deduct and then remit premiums directly to the provider of an accident or health insurance plan or qualified long-term care insurance contract, state law only allows PERS, on behalf of retirees of the retirement plans administered by the Board, to make such premium deductions for employer or system sponsored group health insurance in accordance with PERS Board Regulation 52. Therefore, an election may only be made with regard to such health insurance premiums.
2. For purposes of the election for the tax exclusion provided by Section 845 of the Pension Protection Act of 2006, an employer-provided accident or health insurance plan receiving the payments may be an insured plan as well as a self-insured plan.

106 Election

1. When the election must be made - An Eligible Retired Public Safety Officer may elect to have the tax exclusion apply in any taxable year to eligible premiums withheld from his or her retirement or disability retirement benefit and paid by the retirement plan directly to the insurance provider. An Eligible Retired Public Safety Officer will make the election on the retiree's IRS Form 1040, in accordance with the instructions thereto
2. Amount of Tax Exclusion- An Eligible Retired Public Safety Officer is only permitted to have actual eligible insurance premiums excluded from taxation in an aggregate amount from all plans not to exceed \$3,000, even if he or she is receiving benefits from more than one retirement plan, e.g., a defined benefit plan such as PERS, MHSPRS or MRS, and an IRC Section 457 (Mississippi Deferred Compensation Plan) or 403(b) plan.

107 Responsibility for Income Taxes

1. In administering the tax exemption, PERS is only responsible for performing the administrative functions associated with the deduction and payment of qualifying health insurance premiums. The retired member is and remains responsible for income tax liability for retirement benefits paid pursuant to the retirement plans administered by PERS. PERS has no responsibility for tax liability, including interest and penalties that may arise from an Eligible Retired Public Safety Officer's participation in this tax exclusion.
2. By making the election, the Retired Public Safety Officer agrees that any benefit or privilege granted under this election is subject to change or revocation, and that PERS is not responsible for any consequence of any change in the availability of the exclusion, including unexpected tax liability, interest, and penalties.

108 Effective Date

As the provisions of Section 845 of the Pension Protection Act of 2006 are effective for eligible distributions made in tax years beginning on or after January 1, 2007, and as the Board of Trustees determines that this regulation only confers a benefit to those Retired Public Safety Officers eligible for the tax exclusion, the effective date of this regulation shall be January 1, 2007.

(History: Adopted effective January 1, 2007; amended effective January 19, 2009; amended effective July 1, 2011)

Chapter 55: Administration of Excess Benefit Arrangements for all Defined Benefit Plans Administered by the PERS Board of Trustees

100 Purpose

The purpose of this regulation is to provide the administrative framework for the implementation of an excess benefit arrangement for each defined benefit pension plan administered by the PERS Board of Trustees where retirement benefits as provided by state statute must be limited based on the restrictions of Internal Revenue Code Section 415 and corresponding provisions of state law.

101 Administration of excess benefit arrangements

- 1.** The Board of Trustees of the Public Employees' Retirement System (Board), pursuant to the authority vested in it by virtue of Miss. Code Ann. Sections 25-11-15, 25-11-301, 25-13-7 (Rev. 2006), 21-29-105 and 21-29-207 (Rev. 2001) shall maintain and administer a qualified governmental excess benefit arrangement under Section 415(m) of the Internal Revenue Code of 1986 (the Code), as amended from time to time, for the purpose of providing the retirement allowances payable from the Public Employees' Retirement System, the Supplemental Legislative Retirement Plan, the Mississippi Highway Safety Patrol Retirement System or the Municipal Retirement Systems that would otherwise be limited by Section 415 of the Code.
- 2.** The excess benefit arrangement, as provided herein, shall be maintained solely for the purpose of providing participants in the excess benefit arrangements that part of the participant's annual benefit, otherwise payable under the applicable state law, that exceeds the limitations on benefits imposed by Section 415 of the Code. Participants do not make an election, directly or indirectly, to defer compensation to the excess benefit arrangement.
- 3.** The Board shall have the authority to establish the necessary and appropriate policies and procedures for the administration of such benefit arrangements under the Code and to determine all questions arising in connection with the arrangements (including its interpretation and factual questions arising there under). The Board shall have the duty and responsibility to maintain records, perform calculations, and determine benefits payable there under.
- 4.** The qualified excess benefit arrangement shall be a separate portion of each system noted in sub-section 101.1. Each system shall establish a separate account to hold employer contributions from which excess benefits shall be paid.
- 5.** These excess benefit arrangements shall be administered by the Board of Trustees of the Public Employees' Retirement System. The Board shall have the same authority in its administration as it has in the administration of the Public Employees' Retirement System, the Supplemental Legislative Retirement Plan, the Mississippi Highway Safety Patrol Retirement System, and the Municipal Retirement Systems.
- 6.** The excess benefit arrangements shall constitute qualified governmental excess benefit arrangements as provided in Section 415(m) of the Code.

102 Participation in excess benefit arrangement.

All retired members and beneficiaries of the aforementioned four (4) defined benefit retirement plans administered by the Public Employees' Retirement System whose effective retirement dates are July 1, 1998, or after, and whose retirement allowances would be or have been limited by Section 415 of the Code shall be participants in the arrangements. Participation in the arrangements shall be determined each calendar year and will cease for any year in which the retirement allowance of a member or beneficiary is not limited by Section 415 of the Code.

103 Determination of benefit amount.

At such time during the calendar year as the participant or beneficiary receives the maximum benefit allowable under Section 415 of the Code, no additional benefits shall be paid out of the system. Thereafter, any benefit amount due as provided by applicable state law shall be paid from the excess benefit arrangement on a monthly basis. The excess benefit shall be subject to withholding for applicable state and federal taxes. The excess benefit shall be paid in accordance with the retirement payment option selected by the member or beneficiary.

104 Financing the Excess Benefit Arrangement.

1. The arrangements at all times shall be entirely unfunded and no provision shall at any time be made with respect to segregating any assets of any of the systems for payment of benefits hereunder.
2. The Board, in accordance with the recommendation of the actuary, shall determine the required employer contributions for each of the four (4) excess benefit arrangements to pay benefits each calendar year. The required contribution for each of the four (4) excess benefit arrangements respectively in each calendar year shall be the total amount of benefits payable under this excess benefit arrangement to all participants in each system plus the amount required to pay the administrative expenses of the excess benefit arrangement and the employer's share of any employment taxes on the benefits paid from the arrangement, where applicable.
3. The required contributions for the payment of said excess benefits shall be paid by the participating employers from an allocation of the employer contribution amount calculated by the actuary to fund the benefit prescribed by law without regard to the limitation.
4. The required contribution for each arrangement shall be deposited into the separate account for each arrangement. Each excess benefit arrangement is intended to be exempt from federal income tax under Internal Revenue Code Sections Section 115 and Section 415(m)(1).
5. The benefit liability of each arrangement shall be determined on a calendar year basis, and contributions shall not be accumulated to pay benefits in future calendar years. Any assets of the arrangements not used to pay benefits in the current calendar year shall be used for payment of the administrative expenses of the excess benefit arrangement for the current or future calendar

years or shall be paid to the appropriate retirement system as an additional employer contribution.

105 Treatment of Benefits – Benefits exempt from taxes, attachment or other process, and unassignable

The benefits payable from the excess benefit arrangements shall be treated in accordance with Miss. Code Ann. Sections 25-11-129, 25-11-319, 25-13-31 (Rev. 2006), and 21-29-307(Rev. 2001), respectively.

106 Effective Date

The provisions of any excess benefit arrangement created pursuant to the authority cited in this Regulation, and any administrative rules promulgated as a result of these provisions, shall apply to all retired members and beneficiaries of the defined benefit plans administered by PERS effective from and after July 1, 2007.

(History: Adopted April 24, 2007 to be effective July 1, 2007)

Chapter 56: Employer Contributions to the Government Employees’ Deferred Compensation Plan and Trust

100 Purpose

The purpose of the regulation is to provide administrative guidance for administering employer contributions to the Government Employees’ Deferred Compensation Plan and Trust.

101 Authority for Employer Contributions

Miss. Code Ann. Section 25-14-1 et. seq. (1972, as amended) authorizes the establishment of the Government Employees’ Deferred Compensation Plan and Trust. Pursuant to this authority, MCA Section 25-14-5 provides that a county, municipality, or other political subdivision, except community and junior college districts, may make contributions to the Plan on behalf of actively participating members, provided such contributions are made on a uniform basis through an employer contribution agreement as provided for in the Mississippi Deferred Compensation Plan and Trust Plan Document.

102 Actively Participating Member

An actively participating member is any employee of an employer authorized to make Employer Contributions to the Mississippi Deferred Compensation Plan and Trust who has enrolled as a participant in the Plan and who is actively contributing to the Plan. For purposes of this regulation, such employee will be referred to as an actively contributing participant.

103 Employer Election to Provide for Employer Contributions

1. Any employer eligible to make employer contributions as noted in Section 101 who participates in the Government Employees’ Deferred Compensation Plan and Trust may execute an **Employer Contribution Addendum** to provide an employer contribution to the account of actively contributing participants. The

employer contribution must be made available to all actively contributing participants of the employer, without regard to any probationary period, in accordance with one of the methodologies noted in Subsection 3 of this Section.

2. Each Employer Contribution Addendum shall expressly provide the following:
 - a. that the employer has the budgetary and statutory authority to make contributions to the Plan on behalf of actively contributing participants; and
 - b. that, if adopted, employer contributions will be available on a uniform basis to all actively contributing participants; and
 - c. the basis for making employer contributions as noted in Subsection 3.b of this Section; and
 - d. the time period for which employer contributions will be made, if such contributions are not anticipated, intended, or guaranteed to be on-going. Employer contributions shall be transferred to the Third Party Administrator as part of the regular payroll process and included with the employee contributions; and
 - e. the actively contributing participant will be 100% vested in the employer contributions at the time the contributions are made on the participant's behalf.
3. In order for employer contributions to be considered made on a "uniform basis," such contributions must:
 - a. be made for all actively contributing participants not to exceed the basic annual deferral amount specified in Section 4.1 of the Deferred Compensation Plan Document when aggregated with the employee contributions; and
 - b. be based on one of the following methodologies:
 - (i) a specific dollar amount per pay period; or
 - (ii) a dollar for dollar match per pay period; or
 - (iii) a specific dollar amount per pay period or a dollar for dollar match per pay period up to a specific percent of either salary or employee contribution.

104 Timing and Method of Payment of Employer Contributions

Each employer who has executed an Employer Contribution Addendum shall make all contributions to the Plan and Trust in the form of cash. Employer contributions shall be paid to the Plan and Trust monthly as part of the regular payroll process no later than the seventh (7th) working day of each month.

105 Allocation, Investment, and Accounting for Employer Contributions

The Third Party Administrator shall allocate the employer contributions to the account of each actively contributing participant on whose behalf such contributions are made. Such amounts shall be invested in accordance with the investment election of the participant. The amounts shall be accounted for as a part of the participant's account subject to the same limitations and rights as contributions made by the participant. The employer,

Board of Trustees, and Third Party Administrator shall be under no duty to question any investment direction of a participant; nor shall they be held responsible in any manner for investment loss or depreciation in asset value of any such investments.

106 Benefits, Withdrawals, and Distributions

All benefits, withdrawals, and distributions, whether attributable to employee contributions or employer contributions, will be disbursed according to the terms of the Plan and Trust.

107 Maximum Contribution Limits to Deferred Compensation Plan

Employer contributions shall be aggregated with any employee contributions for purposes of determining compliance with the applicable basic annual deferral amount

specified in Internal Revenue Code Section 457(e) and as outlined in Section 4.1 of the Deferred Compensation Plan Document.

(History: Adopted February 26, 2008, to be effective April 1, 2008)

Chapter 57: Release of Member Information to Participating Employers

100 Purpose

The purpose of this regulation is to identify the circumstances under which the System is authorized to disclose to the employer the name, address, or contents of an individual member's record without the prior written consent of the individual to whom the record pertains.

101 Authority for disclosure of information

Miss. Code Ann. § 25-11-119(3) (1972, as amended) provides that the System shall not disclose the name, address, or contents of any individual member records without the prior written consent of the individual to whom the record pertains, except to the member's current or former employer as authorized by regulations of the board.

102 Conditions for disclosure

Otherwise exempt information may be disclosed to a participating employer that is a department, agency, or instrumentality of this state, if the executive director determines that the disclosure:

1. is necessary or proper for the administration of the department, agency, or instrumentality, or
2. is necessary to enable the department, agency, or instrumentality to carry out the duties of the office.

103 Confidentiality requirements for release of information

The participating employer requesting otherwise exempt information must agree in writing to limit the use of such information solely for the purpose stated in the request

and to protect the confidential information from disclosure, whether directly or indirectly.

104 Information that may be disclosed

The following information may be disclosed pursuant to this regulation:

1. list of names and addresses on file for current or former employees of the department, agency, or instrumentality;
2. list of employees currently eligible to retire or eligible to retire within an employer-specified number of years based on service or age and service where such information is necessary for succession planning purposes;
3. list of employees retired from the agency; and
4. demographic information on current or retired employees necessary for an employer to provide health insurance coverage for active or retired employees.

(History: Adopted effective October 1, 2008; amended effective August 1, 2012)

Chapter 58: Payment of Additional Benefit (COLA) to Retirees of the Mississippi Highway Safety Patrol Retirement System

100 Purpose

The purpose of this regulation is to provide for the payment of the additional benefit authorized by Miss. Code Ann. § 25-13-12 (1972, as amended) to retirees of the Mississippi Highway Safety Patrol Retirement System.

101 Eligibility for an additional benefit.

Any member who is receiving a retirement allowance for service or disability retirement, or any beneficiary thereof, who has received a monthly benefit for at least one (1) full fiscal year, shall be eligible to receive an additional benefit, on December 1 or July 1 of the year as provided in Section 104 of this regulation.

102 Calculation of the additional benefit for a retiree

Effective July 1, 2002, the additional benefit shall be equal to the sum of:

1. An amount equal to three percent (3%) of the annual retirement allowance multiplied by the number of full fiscal years in retirement before the end of the fiscal year in which the member reaches age sixty (60) or the age established in the latest phase that has been implemented under subsection (3) of this section, plus
2. An additional amount equal to three percent (3%) compounded by the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age sixty (60) or the age established in the latest phase that has been implemented under subsection (3) of this section, multiplied by the amount of the annual retirement allowance.
3. The amount of the additional benefit provided is calculated using the following formula:

$[(1.03)^n - 1] \times [\text{annual retirement allowance}]$, where n is the number of full fiscal years in retirement beginning with the fiscal year in which the member reaches age sixty (60).

4. In the calculation of the additional benefit payment, the age at which the compounding begins may be lowered in accordance with § 25-13-12 (3), when, and only when, the mathematical calculations performed by the actuary using the assumptions adopted by the board reflect that compounding the portion of the additional benefit provided in paragraph 2 above at an age lower than 60 will not cause the unfunded accrued actuarial liability amortization period to exceed twenty (20) years.
5. Effective July 1, 2002, the age at which compounding begins is age sixty (60).

103 Calculation of the additional benefit for a beneficiary

The calculation of the beneficiary's additional benefit provided in § 25-13-12 shall be based on the member's age and full fiscal years in retirement as if the member had lived.

104 Payment of unpaid additional benefits upon death of retiree or beneficiary

1. If a retiree who is receiving a retirement allowance that will terminate upon the retiree's death is receiving the additional benefit in one (1) payment and dies on or before July 1 but before December 1, the beneficiary designated on the retirement application, if any, shall receive in a single payment a fractional part of the additional benefit based on the number of months in which a retirement allowance was received during the fiscal year. If there is no surviving beneficiary, payment shall be made in accordance with § 25-13-21.1 (1). Likewise, if a retiree is receiving a retirement allowance that will terminate upon the retiree's death in two (2) to six (6) monthly installments, any remaining payments of the additional benefit will be paid in a lump sum to the beneficiary designated on the application, or if none, in accordance with § 25-13-21.1(1).
2. Any similar remaining payments of the additional benefit payable to a deceased beneficiary who was receiving a monthly benefit shall be payable in accordance with the provisions of § 25-13-21.1(2). If the additional benefit is being received in one (1) payment each year, the additional benefit shall be prorated based on the number of months in which a retirement allowance was received during the fiscal year when (i) the monthly benefit payable to a beneficiary terminates due to the expiration of an option, remarriage or cessation of dependent status or due to the retiree's return to covered employment, and (ii) the monthly benefit terminates on or after July 1 and before December 1.

105 Methods of Payment of the additional benefit

1. The additional benefit shall be paid in one (1) payment in December of each year to those persons who are receiving a retirement allowance on December 1 of that

year, unless an election is made as noted below. However, the board, in its discretion, may allow a retired member or a beneficiary thereof who is receiving the additional benefit in one (1) payment each year to have the additional benefit paid in monthly installments if the retired member or beneficiary submits satisfactory documentation that the continued receipt of the additional benefit in one (1) payment each year will cause a financial hardship to the retired member or beneficiary.

2. Retired members or beneficiaries thereof who are receiving a retirement allowance may elect by an irrevocable agreement in writing filed in the Office of the Public Employees' Retirement System no less than thirty (30) days before July 1 of any year, to begin receiving the additional benefit provided in this section in twelve (12) equal monthly installments beginning on July 1 of the year. This irrevocable agreement shall be binding on the member and subsequent beneficiaries. Payment of the monthly installments shall not extend beyond the month in which a retirement allowance is due and payable. The board, in its discretion, may allow a retired member or a beneficiary thereof who is receiving the additional benefit in monthly installments to have the additional benefit paid in one (1) payment in December of each year if the retired member or beneficiary submits satisfactory documentation that the continued receipt of the additional benefit in monthly installments will cause financial hardship to the retired member or beneficiary.

3. The additional benefit or benefits provided in this section are for the fiscal year in which they are paid.
4. In the event of death of a retired member or a beneficiary thereof who is receiving the additional annual payment in two (2) to six (6) monthly installments under an election made before July 1, 2002, and who would otherwise be eligible to receive the additional benefit provided in this section in one (1) payment in December of the current fiscal year, any remaining amounts shall be paid in a lump sum to the designated beneficiary.

106 Resumption of additional benefit upon subsequent retirement

When a member retires after July 1 and has previously received a retirement allowance for one or more full fiscal years, the retired member shall be eligible immediately for the additional benefit. The additional benefit shall be based on the current retirement allowance and the number of full fiscal years in retirement and shall be prorated and paid in monthly installments based on the number of months a retirement allowance is paid during the fiscal year.

(History: Adopted effective January 19, 2009)

Title 27: Personnel

Part 210: PERS, Regulations for Retirement Plans Administered by the Board of Trustees

Chapter 59: Plan Assumptions

100 Purpose

This regulation reflects the applicable actuarial assumptions adopted by the Board of Trustees of the Public Employees' Retirement System of Mississippi (PERS Board) used to convert a retirement allowance from the normal (maximum) form of payment to an optional form of payment for the Public Employees' Retirement System of Mississippi, the Supplemental Legislative Retirement Plan, and the Mississippi Highway Safety Patrol Retirement System.

101 Actuarial Assumptions for the Public Employees' Retirement System of Mississippi

1. For purposes of determining an "actuarial equivalent" or of an "actuarial computation," effective July 1, 2024, the PERS Board shall use the following actuarial assumptions for service retirees:
 - a. For Service Retirees: The factors are based on the PubS.H-2010(B) Retiree Table with the following adjustments: for males, 95% of male rates from ages 18 to age 60, 110% for ages 61 to age 75 and scaled down to 101% for ages above 77. For females, 84% of the female rates from ages 18 to age 72 and scaled up to 100% for ages above 76. Projection scale MP-2020 is used to project future improvements in life expectancy generationally;
 - b. For Contingent Annuitants: The factors are based on the PubS.H-2010(B) Contingent Annuitant Table with the following adjustments: for males, 97% for all ages and for females, 110% for all ages. Projection scale MP-2020 is used to project future improvements in life expectancy generationally;
 - c. A 7.00 percent interest assumption;
 - d. An annual Cost-of-Living Adjustment (COLA) of 3 percent is assumed to be on a compounded basis for all ages; and
 - e. Unisex blends of mortality rates are assumed as follows:
 - i. Annuity Values – 30 percent male/70 percent female
 - ii. Full Cash Refund – 30 percent male/70 percent female
 - iii. Certain and Life – 40 percent male/60 percent female
 - iv. Partial Lump Sum – 40 percent male/60 percent female
 - v. Joint and Survivor – 60 percent male/40 percent female
2. For purposes of determining an "actuarial equivalent" or of an "actuarial computation," effective July 1, 2024, the PERS Board shall use the following actuarial assumptions for disability retirees:
 - a. The factors are based on the Pub.G.H-2010 Disabled Retiree Table with the following adjustments: 134% of male rates at all ages and 121% of female rates at all ages. Projection scale MP-2020 is used to project future improvements in life expectancy generationally;
 - b. A 7.00 percent interest assumption;
 - c. An annual Cost-of-Living Adjustment (COLA) of 3 percent is assumed to be on a compounded basis for all ages; and
 - d. Unisex blends of mortality rates are assumed as follows:
 - i. Annuity Values – 30 percent male/70 percent female
 - ii. Full Cash Refund – 30 percent male/70 percent female

- iii. Certain and Life – 40 percent male/60 percent female
- iv. Joint and Survivor – 60 percent male/40 percent female

102 Actuarial Assumptions for the Supplemental Legislative Retirement Plan

1. For purposes of determining an “actuarial equivalent” or of an “actuarial computation,” effective July 1, 2024, the PERS Board shall use the following actuarial assumptions for service retirees:
 - a. For Service Retirees: The factors are based on the PubS.H-2010(B) Retiree Table with the following adjustments: for males, 95% of male rates from ages 18 to age 60, 110% for ages 61 to age 75 and scaled down to 101% for ages above 77. For females, 84% of the female rates from ages 18 to age 72 and scaled up to 100% for ages above 76. Projection scale MP-2020 is used to project future improvements in life expectancy generationally;
 - b. For Contingent Annuitants: The factors are based on the PubS.H-2010(B) Contingent Annuitant Table with the following adjustments: for males, 97% for all ages. For females, 110% for all ages. Projection scale MP-2020 is used to project future improvements in life expectancy generationally;
 - c. A 7.00 percent interest assumption;
 - d. An annual Cost-of-Living Adjustment (COLA) of 3 percent is assumed to be on a compounded basis for all ages; and
 - e. Unisex blends of mortality rates are assumed as follows:
 - i. Annuity Values – 30 percent male/70 percent female
 - ii. Full Cash Refund – 30 percent male/70 percent female
 - iii. Certain and Life – 40 percent male/60 percent female
 - iv. Partial Lump Sum – 40 percent male/60 percent female
 - v. Joint and Survivor – 60 percent male/40 percent female
2. For purposes of determining an “actuarial equivalent” or of an “actuarial computation,” effective July 1, 2024, the PERS Board shall use the following actuarial assumptions for disability retirees:
 - a. The factors are based on the PubG.H-2010 Disabled Retiree Table for disabled retirees with the following adjustments: 134% of male rates at all ages and 121% of female rates at all ages. Projection scale MP-2020 is used to project future improvements in life expectancy generationally;
 - b. A 7.00 percent interest assumption;
 - c. An annual Cost-of-Living Adjustment (COLA) of 3 percent is assumed to be on a compounded basis for all ages; and
 - d. Unisex blends of mortality rates are assumed as follows:
 - i. Annuity Values – 30 percent male/70 percent female
 - ii. Full Cash Refund – 30 percent male/70 percent female
 - iii. Certain and Life – 40 percent male/60 percent female
 - iv. Joint and Survivor – 60 percent male/40 percent female

103 Actuarial Assumptions for the Mississippi Highway Safety Patrol Retirement System

1. For purposes of determining an “actuarial equivalent” or of an “actuarial computation,” effective July 1, 2024, the PERS Board shall use the following actuarial assumptions for service retirees:

- a. For Service Retirees: The factors are based on the PubS.H-2010(B) Retiree Table with the following adjustments: for males, 95% of male rates from ages 18 to age 60, 110% for ages 61 to age 75, and scaled down to 101% for ages above 77. For females, 84% of the female rates from ages 18 to age 72 and scaled up to 100% for ages above 76. Projection scale MP-2020 is used to project future improvements in life expectancy generationally;
 - b. For Contingent Annuitants: The factors are based on the PubS.H-2010(B) Contingent Annuitant Table with the following adjustments: for males, 97% for all ages. For females, 110% for all ages. Projection scale MP-2020 is used to project future improvements in life expectancy generationally;
 - c. A 7.00 percent interest assumption;
 - d. An annual Cost-of-Living Adjustment (COLA) of 3 percent is assumed to be on a compounded basis for all ages; and
 - e. 95 percent male/5 percent female mortality rates are assumed for all option factors.
2. For purposes of determining an “actuarial equivalent” or of an “actuarial computation,” effective July 1, 2024, the PERS Board shall use the following actuarial assumptions for disability retirees:
 - a. The factors are based on the PubG.H-2010 Disabled Retiree Table with the following adjustments: 134% of male rates at all ages and 121% of female rates at all ages. Projection scale MP-2020 is used to project future improvements in life expectancy generationally;
 - b. A 7.00 percent interest assumption;
 - c. An annual Cost-of-Living Adjustment (COLA) of 3 percent is assumed to be on a compounded basis for all ages; and
 - d. 95 percent male/5 percent female mortality rates are assumed for all option factors.

104 Application of Assumptions

Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions will be specified in PERS Board actions and regulations in a manner that precludes employer discretion.

(History of PERS Board Regulation 59: Adopted effective January 19, 2009; amended effective July 1, 2010; amended effective July 1, 2012; amended effective July 1, 2014, amended effective July 1, 2016; amended effective July 1, 2018; amended effective July 1, 2020; amended effective July 1, 2022, July 1, 2024)

Chapter 60: Contribution Rates

100 Purpose

This regulation reflects the current employee and employer contribution rates for the Public Employees’ Retirement System of Mississippi, the Supplemental Legislative Retirement Plan, the Mississippi Highway Safety Patrol Retirement System, and the Optional Retirement Program for Employees of the State Institutions of Higher Learning.

101 Contribution Rates for the Public Employees’ Retirement System of Mississippi

Pursuant to Miss. Code Ann. § 25-11-123 (1972, as amended), the employee and employer contribution rates are as follows:

1. Employee Contribution Rate - 9.00 percent of earned compensation effective July 1, 2010; and
2. Employer Contribution Rate - 17.90 percent of earned compensation effective July 1, 2024.

102 Contribution Rates for the Supplemental Legislative Retirement Plan

Pursuant to Miss. Code Ann. § 25-11-307 (1972, as amended), the Board of Trustees is authorized to set the employer contribution rate on the basis of the liabilities of the plan as shown by the actuarial valuation.

The employee and employer contribution rates are as follows:

1. Employee Contribution Rate – 3.00 percent of earned compensation effective July 1, 1989; and
2. Employer Contribution Rate – 8.40 percent of earned compensation effective July 1, 2024.

103 Contribution Rates for the Mississippi Highway Safety Patrol Retirement System

Pursuant to Miss. Code Ann. § 25-13-7 (1972, as amended), the Board of Trustees of the Public Employees’ Retirement System is authorized to set the employee contribution rate on the basis of the liabilities of the plan as shown by the actuarial valuation. Pursuant to Miss. Code Ann. § 25-13-29 (1972, as amended), the administrative board of the Mississippi Highway Safety Patrol Retirement System is authorized to set biennially the employer contribution percentage rate on the basis of the liabilities of the retirement system as shown by the actuarial valuation.

The employee and employer contribution rates are as follows:

1. Employee Contribution Rate – 7.25 percent of earned compensation effective July 1, 2008; and
2. Employer Contribution Rate – 49.08 percent of earned compensation effective July 1, 2018.

Pursuant to Miss. Code Ann. § 63-15-71 (1972, as amended), the Legislature has levied an additional fee for each certified abstract of operating record furnished by the Motor Vehicle Commission. This fee is deposited into the Mississippi Highway Safety Patrol Retirement System for application to the unfunded accrued liability.

Pursuant to Miss. Code Ann. § 63-1-46 (1972, as amended), the Legislature has levied a fee for the reinstatement of an individual’s suspended driver’s license and has provided that a portion of that fee shall be paid to PERS to provide additional funding for the Mississippi Highway Safety Patrol Retirement System.

104 Contribution rates for the Optional Retirement Program for Employees of the State Institutions of Higher Learning

1. Pursuant to Miss. Code Ann. § 25-11-411 (1972, as amended), each participant is required to contribute monthly to the optional retirement program the same amount that he or she would be required to contribute to the Public Employees' Retirement System of Mississippi if he or she were a member of that plan.

Each employer of a participant in the optional retirement program shall contribute on behalf of each participant therein the same amount the employer would otherwise be required to contribute on behalf of such participant if he or she participated in the Public Employees' Retirement System.

The employee and employer contribution rates are as follows:

- a. Employee Contribution Rate - 9.00 percent of earned compensation effective July 1, 2010; and
 - b. Employer Contribution Rate - 17.90 percent of earned compensation effective July 1, 2024.
2. Pursuant to Miss. Code Ann. § 25-11-415 (1972, as amended) the Board of Trustees is authorized to deduct not more than two percent (2%) of the employers' contribution to defray the cost of administering the plan. Effective July 1, 2009, this administrative fee shall be one percent (1%) of the employers' total contribution which shall be transferred each month to PERS when contributions are due.
 3. The full amount of the employee contribution which is 9.00 percent of the participant's earned compensation shall be remitted to the appropriate company or companies for application to the participant's contract or account or both.
 4. The employers' contribution of seventeen and nine tenths percent (17.90%) of the participant's earned compensation shall be disbursed as follows:
 - a. One percent (1%) of the employer contributions (or the equivalent of 0.179 percent of the participant's earned compensation) shall be paid to PERS as an administrative fee.
 - b. Two and one-half percent (2.5%) of the participant's earned compensation reduced by the pro-rata share of the 1% administrative fee, or an equivalent of 2.475 percent of the participant's earned compensation, shall be remitted to PERS for application to the unfunded accrued liability.
 - c. Fifteen and four tenths percent (15.40) of the participant's earned compensation reduced by the pro-rata share of the 1% administrative fee, or an equivalent of 15.246 percent of the participant's earned compensation, shall be remitted to the appropriate company or companies for application to the participant's contract or account or both.

(History of PERS Board Regulation 60: Adopted effective January 19, 2009; amended effective July 1, 2009; amended effective July 1, 2010; amended effective July 1, 2011; amended effective July 1, 2012; amended effective July 1, 2013; amended effective February 1, 2014; amended effective July 1, 2018; amended effective July 1, 2019; amended effective July 1, 2024)

Chapter 61: Compliance with Internal Revenue Service (IRS) Requirements

100 Purpose

The purpose of this regulation is to confirm that the defined benefit plans administered by the Board of Trustees of the Public Employees' Retirement System of Mississippi (PERS Board) shall be administered in accordance with Internal Revenue Service (IRS) requirements applicable to qualified governmental retirement plans.

101 Public Employees' Retirement System of Mississippi

1. The PERS Board shall hold the assets of the Public Employees' Retirement System of Mississippi (PERS) in trust for the exclusive purpose of providing benefits to participants and paying reasonable expenses of administration. The assets shall be maintained as a separate fund, separate from all other funds held by the PERS Board and shall be used only for the payment of benefits provided by Miss. Code Ann. §25-11-1 et seq., (1972, as amended) or amendments thereto.
2. It shall be impossible by operation of PERS, by termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the trust, or any funds contributed thereto, to inure to the benefit of any employer or otherwise be used for or diverted to purposes other than providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the system.
3. Benefits are provided in accordance with §25-11-1 et seq. Forfeitures of accrued benefits resulting from members electing to receive refunds of employee contributions will not be applied to increase the benefits any member would otherwise receive under these provisions.
4. Benefits payable pursuant to Title 25, Chapter 11 of the Mississippi Code Annotated shall be made in compliance with the limitations set forth in Section 415 of the Internal Revenue Code and any regulations issued there under as applicable to governmental plans. Further, distributions made from PERS shall conform to a good faith interpretation of Section 401(a)(9) of the Internal Revenue Code.
5. Any member of PERS who became a member before July 1, 2007, who is not otherwise vested and who has at least four (4) years of membership service credit will be fully vested in his or her accrued benefit on attaining age 60. Any member of PERS who became a member on or after July 1, 2007, who is not otherwise vested and who has at least eight (8) years of membership service credit will be fully vested in his or her accrued benefit on attaining age 60.

102 Supplemental Legislative Retirement Plan

1. The PERS Board shall hold the assets of the Supplemental Legislative Retirement Plan (SLRP) in trust for the exclusive purpose of providing benefits to participants and paying reasonable expenses of administration. The assets shall be maintained as a separate fund, separate from all other funds held by the PERS Board and shall be used only for the payment of benefits provided by Miss. Code Ann. §25-11-301 et seq., (1972, as amended) or amendments thereto.
2. SLRP provides benefits that supplement the benefits provided under PERS. Accordingly, the provisions of Miss. Code Ann. §25-11-1, et seq. are incorporated as part of SLRP to the extent they are not inconsistent with the provisions of Miss. Code Ann. §25-11-301, et seq.
3. It shall be impossible by operation of SLRP, by termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the trust, or any funds contributed thereto, to inure to the benefit of any employer or otherwise be used for or diverted to purposes other than providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan.
4. Benefits are provided in accordance with §25-11-301 et seq. Forfeitures of accrued benefits resulting from members electing to receive refunds of employee contributions will not be applied to increase the benefits any member would otherwise receive under these provisions.
5. Benefits payable pursuant to §25-11-301 et seq. shall be made in compliance with the limitations set forth in Section 415 of the Internal Revenue Code and any regulations issued there under as applicable to governmental plans. Further, distributions made from SLRP shall conform to a good faith interpretation of Section 401(a)(9) of the Internal Revenue Code.
6. Any member of SLRP who became a member of PERS before July 1, 2007, who is not otherwise vested and who has at least four (4) years of membership service credit in PERS will be fully vested in his or her accrued benefit on attaining age 60. Any member of SLRP who became a member of PERS on or after July 1, 2007, who is not otherwise vested and who has at least eight (8) years of membership service credit in PERS will be fully vested in his or her accrued benefit on attaining age 60.

103 Mississippi Highway Safety Patrol Retirement System

1. The PERS Board shall hold the assets of the Mississippi Highway Safety Patrol Retirement System (MHSPRS) in trust for the exclusive purpose of providing benefits to participants and paying reasonable expenses of administration. The assets shall be maintained as a separate fund, separate from all other funds held by the PERS Board and shall be used only for the payment of benefits provided by Miss. Code Ann. §25-13-1 et seq., (1972, as amended) or amendments thereto.

2. It shall be impossible by operation of MHSPRS, by termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the trust, or any funds contributed thereto, to inure to the benefit of any employer or otherwise be used for or diverted to purposes other than providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the system.
3. Benefits are provided in accordance with §25-13-1 et seq. Forfeitures of accrued benefits resulting from members electing to receive refunds of employee contributions will not be applied to increase the benefits any member would otherwise receive under these provisions.
4. Benefits payable pursuant to Title 25, Chapter 13 of the Mississippi Code Annotated shall be made in compliance with the limitations set forth in Section 415 of the Internal Revenue Code and any regulations issued there under as applicable to governmental plans. Further, distributions made from MHSPRS shall conform to a good faith interpretation of Section 401(a)(9) of the Internal Revenue Code.
5. All members of MHSPRS who are not otherwise vested will be fully vested in their accrued benefit on attaining age 55 with at least five (5) years of membership service credit.

104 Municipal Retirement Systems

1. The PERS Board shall hold the assets of the Municipal Retirement Systems in trust for the exclusive purpose of providing benefits to participants and paying reasonable expenses of administration. The assets of each municipal retirement system (including general municipal retirement funds as well as disability and relief funds for firemen and policemen) shall be maintained as separate funds, separate from all other funds held by the PERS Board and shall be used only for the payment of benefits provided by Miss. Code Ann. §§ 21-29-1 et seq., 21-29-101 et seq. and 21-29-201 et seq., (1972, as amended) respectively.
2. It shall be impossible by operation of the Municipal Retirement Systems, by termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the trust, or any funds contributed thereto, to inure to the benefit of any employer or otherwise be used for or diverted to purposes other than providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the systems.
3. Benefits are provided in accordance with §§ 21-29-1 et seq., 21-29-101 et seq. and 21-29-201 et seq. respectively. Forfeitures of accrued benefits resulting from members electing to receive refunds of employee contributions will not be applied to increase the benefits any member would otherwise receive under these provisions.

4. Benefits payable pursuant to §§ 21-29-1 et seq., 21-29-101 et seq. and 21-29-201 et seq. respectively, shall be made in compliance with the limitations set forth in Section 415 of the Internal Revenue Code and any regulations issued there under as applicable to governmental plans. Further, distributions made from these plans shall conform to a good faith interpretation of Section 401(a)(9) of the Internal Revenue Code.
5. All members of the Municipal Retirement Systems who are not otherwise vested will be fully vested in their accrued benefit on attaining twenty (20) years of service with the municipality, the last ten (10) of which are continuous in the city in which retirement application is made.

(History: Adopted effective January 19, 2009; amended effective April 1, 2012)

Chapter 62: Crediting of Interest on Member Accumulation Accounts

101 Purpose

The purpose of this regulation is to reflect the rate of interest credited to a member's accumulation account in the Public Employees' Retirement System of Mississippi (PERS), the Supplemental Legislative Retirement Plan (SLRP), and the Mississippi Highway Safety Patrol Retirement System (MHSPRS).

102 Statutory Authority to Set Interest Rate

PERS

Miss. Code Ann. § 25-11-103 (1972, as amended) defines "accumulated contributions" as the sum of all the amounts deducted from the compensation of a member and credited to his individual account in the annuity savings account, together with regular interest as provided in Miss. Code Ann. § 25-11-123 (1972, as amended). Miss. Code Ann. § 25-11-121(7) (1972, as amended) authorizes the PERS board of trustees to credit regular interest to the member's annuity savings account in an amount determined by the board. Section 25-11-123 authorizes the interest to be posted to the member's account on a monthly basis.

SLRP

Miss. Code Ann. § 25-11-303 (1972, as amended) provides that for purposes of the Supplemental Legislative Retirement Plan the definitions found in the PERS law at § 25-11-103 will apply unless a different meaning is plainly expressed by the context of the specific provisions of the Supplemental Plan. Thus, the definition of "accumulated contributions" as found in § 25-11-103, which includes "regular interest" as provided in §§ 25-11-121 and 25-11-123 above, applies to members of the Supplemental Legislative Retirement Plan.

The Supplemental Legislative Retirement Plan was established effective July 1, 1989.

MHSPRS

Miss. Code Ann. § 25-13-28 (1972, as amended) provides that regular interest as determined by the PERS Board of Trustees shall be credited to employee's account. Interest was authorized to be credited to member accounts effective July 1, 1991.

103 Calculation of Interest Rate

Effective July 1, 2016, the interest rate shall be calculated based on the money market rate as published by the Wall Street Journal on December 31 of each preceding year with a minimum rate of one percent and a maximum rate of five percent.

104 Current Rate of Interest

The phrase "regular interest" as used in this Regulation shall mean the interest credited to the accumulated contributions of the member's account in the annuity savings account of any system covered by this Regulation during the period his or her membership therein.

As applied to such interest for any period beginning July 1, 1953, through June 30, 1955, "regular interest" shall mean interest credited at the rate of two per cent (2%) per annum.

As applied to such interest for any period beginning July 1, 1955, through June 30, 1982, "regular interest" shall mean interest credited at the rate of one percent (1%) per annum.

As applied to such interest for any period beginning July 1, 1982, through June 30, 1995, "regular interest" shall mean interest credited at the rate of five per cent (5%) per annum.

As applied to such interest for any period beginning July 1, 1995, through June 30, 1996, "regular interest" shall mean interest credited at the rate of two and one-half percent (2 ½ %) per annum.

As applied to such interest for any period beginning July 1, 1996, through June 30, 2016, "regular interest" shall mean interest credited at the rate of three and one-half percent (3 ½ %) per annum.

As applied to such interest for any period beginning July 1, 2016, and thereafter, until changed by the Board, "regular interest" shall mean interest credited at the rate of one percent (1%) per annum.

(History: Adopted effective October 1, 2009; amended July 1, 2010; amended effective August 1, 2016, amended effective July 1, 2017)

Chapter 63: Temporary Benefit

100 Purpose

This regulation sets forth the terms and conditions under which a temporary benefit in the form of a partial distribution of a member's accumulated contributions under Miss. Code Ann. § 25-11-117(4) (1972, as amended) can be paid to an inactive member of the Public Employees' Retirement System of

Mississippi (PERS) and the Supplemental Legislative Retirement Plan (SLRP) to provide such member with a temporary source of income while awaiting a final determination of eligibility for disability retirement benefits.

101 Authority

Section 25-11-117(4) allows the Board of Trustees to establish rules and regulations for carrying out the provisions authorizing the payment of a temporary benefit to an eligible inactive member of PERS and/or SLRP who is awaiting a final determination on an application for disability retirement benefits.

102 Eligibility Requirements for the Temporary Benefit

To qualify for a temporary benefit as provided in § 25-11-117(4), a PERS and/or SLRP member who has applied for disability retirement benefits must meet all of the following requirements:

1. Must have no more than a total of 14 days of unused personal (vacation) and/or major medical (sick) leave from the last employer;
2. Must have terminated from employment;
3. Must not be eligible for service retirement benefits;
4. Must have a contribution balance in his or her accumulation account; and
5. Must have completed the required disability retirement application forms as defined in Board Regulation 35, Section 101.2.

103 Application for the Temporary Benefit

An eligible inactive member must make application for the temporary benefit on a form prescribed by the Board.

104 Amount of the Temporary Benefit

The temporary benefit in the form of a partial distribution of an eligible member's accumulated contribution account will be paid in equal monthly installments for a limited time. The total temporary benefit payable will equal no more than 50 percent of the member's accumulated contributions and will be paid in equal monthly installments over a period of not more than 18 months. The monthly payment shall be no more than one-half of the estimated monthly disability retirement allowance to which the member would become entitled under the applicable optional benefit payment plan selected by the member if approved for disability retirement benefits.

105 Payment of the Temporary Benefit

1. The temporary benefit will cease at the end of the 18-month time frame or at the time a final disability determination is made, whichever occurs first.
2. If the Medical Board approves the claim for disability retirement benefits, the temporary benefit will end and disability retirement benefits will commence.

3. If the claim for disability retirement benefits is denied by the Medical Board and appealed to the Disability Appeals Committee, the temporary benefit will continue for the 18-month time frame or until a final decision by the Board of Trustees is rendered, whichever occurs first.
4. In no case will the temporary benefit continue to be paid after a final decision is made by order of the Board of Trustees.
5. Payment of the temporary benefit is dependent upon active pursuit of a claim for disability retirement benefits. Inactivity on a claim for a period of 90 days from the effective date of disability retirement established upon receipt of the member's completed Form DSBL 1, *Pre-Application for Disability Retirement Benefits*, will void the application and suspend the temporary benefit.
6. If death occurs during the disability application process after a temporary benefit has been initiated but prior to the final determination of disability, the temporary benefit will cease and future benefits, if any, will be paid under the survivor benefit provisions of the law.
 - a. If monthly survivor benefits are payable under the law, the survivor benefit will be actuarially adjusted to take into account the partial distribution of contributions paid under the temporary benefit provisions.
 - b. In the event the member dies prior to a final determination, the disability application is void and no disability retirement benefits can be paid pursuant to such application.
7. No deductions for life and/or health insurance will be made from the temporary benefit.

106 Impact of Temporary Benefits on Member's Service Credit

Receipt of temporary benefits will not affect the member's service credit. However, the member's account will be marked as an account from which temporary benefits are or have been paid until a recovery has begun through an actuarially reduced monthly benefit payment as noted in Section 108 below.

107 Taxation of the Temporary Benefits

1. The temporary benefit is not a disability retirement benefit. The temporary benefit is a partial distribution of the member's accumulated contributions and is subject to mandatory federal income tax withholding.
2. The temporary benefit will have federal income taxes withheld in accordance with Internal Revenue Service requirements.
3. The temporary benefit may also be subject to a tax penalty if the member is younger than age 55 (age 50 for a qualified public safety employee) at the time of the distribution.
4. An IRS Form 1099-R will be issued at least annually for the temporary benefits paid during the applicable calendar year.

108 Recovery of the Temporary Benefits

All amounts paid under the temporary benefit provisions will be recovered by PERS. No interest will be charged on the recovery of the temporary benefit when

recovered through actuarially reduced disability, service, or survivor retirement benefits.

1. Member Approved for Disability Retirement Benefits

A member approved for disability retirement benefits who previously elected to receive a temporary benefit shall have the disability retirement allowance actuarially reduced to ensure full recovery of any temporary benefit paid.

2. Member Denied Disability Retirement Benefits Who Later Elects to Receive Refund of Remaining Accumulated Contributions

A member who is not approved for disability retirement benefits and who had previously elected to receive a temporary benefit may apply for and receive a refund of the remaining contributions in his or her account. Where a member applies for and receives a refund of his or her accumulated contributions and interest, the member waives and relinquishes all accrued rights to future benefits from PERS or SLRP, as applicable. Any member who subsequently returns to covered employment and who wishes to repay the refund will be responsible for the payment of interest on the full balance of the member's account previously distributed including the portion distributed under the temporary benefit provision.

3. Member Denied Disability Retirement Benefits Who Later Applies for Service Retirement Benefits

A member who has previously elected to receive a temporary benefit and who is not approved for disability retirement benefits may elect to leave the remaining unused contributions in his or her account in anticipation of returning to covered employment or later becoming eligible to apply for service retirement benefits. The member shall have his or her benefit reduced actuarially to recover the total temporary benefit previously paid over his or her life expectancy.

4. Member Denied Disability Retirement Benefits and Later Dies Before Retirement

The spouse and/or dependent children of a member who has previously elected to receive a temporary benefit and who is not approved for disability retirement benefits who dies prior to retirement and having left his or her remaining contributions with PERS or SLRP, as applicable, may be entitled to statutory benefits provided that the deceased member was vested at the time of death. If a deceased member's spouse or dependent children are eligible for survivor benefits, a reduced actuarial equivalent of the normal benefit will be paid to the spouse and/or dependent children to recover the total temporary benefit previously paid.

(History: Adopted effective October 1, 2009; amended effective December 1, 2012)

Chapter 64: Purchase of Service Credit in the Public Employees' Retirement System at Actuarial Cost

100 Purpose

The purpose of this regulation is to specify the terms, conditions, and cost of purchasing service credit as allowed by law at actuarial cost as provided in Miss. Code Ann. § 25-11-103(z) and § 25-11-109 (1972, as amended).

101 Eligibility to purchase allowable service credit

A vested member of the Public Employees' Retirement System of Mississippi (PERS), whether active or inactive, may purchase eligible service at actuarial cost, provided the member has entered or reentered state service after completion of the service to be purchased. A member is vested if he or she has the required number of years of membership service to receive a service retirement allowance at age 60.

102 Purchasing eligible out-of-state service

1. Public service that qualifies as eligible out-of-state service includes service as a public employee in (i) another state, (ii) political subdivision of another state, (iii) public education system of another state, (iv) governmental instrumentality of another state, or (v) service rendered as a teacher in American overseas dependent schools conducted by the Armed Forces of the United States for children of citizens of the United States residing in areas outside the continental United States.
2. The service in an eligible governmental entity must satisfy the requirements for membership in PERS as outlined in PERS Board Regulation 36, *Eligibility for Membership in PERS*, except for the requirement that the employment be in the state of Mississippi or a public education system of the state or a governmental instrumentality of the state.
3. A member may not establish out-of-state service for any period of time that the member has previously been awarded service credit under PERS.
4. Service credit for out-of-state service is awarded in the same manner that it would have been awarded if the service had been covered under PERS.
5. To be eligible to purchase out-of-state service, the member must have entered or reentered state service after completion of the out-of-state service to be purchased. Out-of-state service performed after the member withdraws from covered public service or retires does not qualify for purchase under this section. In no case shall out-of-state service be eligible for purchase for any period in which the member was drawing a retirement allowance.
 6. To be eligible to purchase out-of-state service, the member must furnish the following from the out-of-state public employer and out-of-state public retirement system: (i) documentation from the employer showing the position held, the employment classification of the position held, and the dates of service performed and (ii) certification from the out-of-state public retirement system that the member is not receiving nor will be entitled to receive benefits from the out-of-state public retirement system on the basis of the out-of-state service being certified to PERS.
7. The member must have received a full refund of all contributions, if any, to his or her credit in the out-of-state public retirement system to be eligible to establish out-of-state service, including distributions from an optional retirement plan, for which the member is seeking to purchase service.

8. A maximum of five years of creditable service may be purchased based on out-of-state public employment.

103 Purchasing eligible professional leave

1. An eligible employee who has received professional leave without compensation for professional purposes directly related to his or her employment in state service may be eligible to purchase such service at actuarial cost.
2. The professional leave must be or have been performed with a public institution or public agency of this state, or another state or federal agency.
3. A member may not establish credit for professional leave for any period of time that the member has previously been awarded service credit under PERS.
4. Service credit for professional leave is awarded in the same manner that it would have been awarded if the service had been covered under PERS.
5. The employee must provide documentation from the employer showing (i) the reason the employer had for granting the leave and (ii) that a determination has been made by the employer that the professional leave will benefit the employee and employer.
6. Professional leave granted after the member withdraws from covered public service or retires does not qualify for purchase under this section. In no case shall professional leave be eligible for purchase for any period in which the member was drawing a retirement allowance.
7. To be eligible for purchase, (i) the professional leave may not have exceeded two years within any 10-year period of state service and (ii) immediately following the termination of the professional leave, the employee must have served the employer on a full-time basis for a period of time equivalent to the professional leave period granted.

104 Purchasing eligible non-covered service

1. An eligible employee may purchase certain non-covered service with a public entity of the state. Service that may be purchased includes: (i) any service rendered as an employee of any political subdivision of the state, or any instrumentality thereof, that does not participate in PERS; (ii) any service rendered as an employee of any political subdivision of the state, or any instrumentality thereof, that participates in PERS but did not elect retroactive coverage; or (iii) any service rendered as an employee of any political subdivision of the state, or any instrumentality thereof, for which coverage of the employee's position was or is excluded.
2. Service with an eligible governmental entity must satisfy the requirements for membership in PERS as outlined in PERS Board Regulation 36.
3. A member may not establish credit for non-covered service for any period of time that the member has previously been awarded service credit under PERS.
4. Service credit for non-covered service is awarded in the same manner that it would have been awarded if the service had been covered under PERS.

5. To be eligible to purchase non-covered service, the member must have entered or reentered state service after completion of the non-covered service to be purchased. Non-covered service performed after the member withdraws from covered public service or retires does not qualify for purchase under this section. In no case shall non-covered service be eligible for purchase for any period in which the member was drawing a retirement allowance.
6. To establish eligibility to purchase non-covered service, the employee must:
 - a. Provide documentation to demonstrate that the employment would have been eligible for coverage under PERS had the position been covered at the time by a joinder agreement and
 - b. Provide documentation of the employment including the dates of service, the salary or wages earned, and the number of hours worked per week or per month.
7. A maximum of 10 years of creditable service may be purchased based on non-covered public service in the state, except in the case of retroactive coverage where either a joinder agreement or retirement law [Reference Miss. Code Ann. § 25-11-103(z) (1972, as amended)] allows for the purchase of more than 10 years.

105 Calculation of the cost of purchasing eligible service

1. The member shall pay to PERS on the date he or she is eligible for credit for such service or at any time thereafter prior to the date of retirement the actuarial cost as determined by the actuary for each year of creditable service.
2. The cost is a “point in time” determination using an actuarial calculation based on the member’s service credit before the purchase, the member’s service after the purchase, the member’s age, and the greater of the member’s current annual salary or the average of the highest four years of compensation.
 - a. Computation of cost for **active** members
 - i. An active member is an individual who is currently employed in covered employment.
 - ii. PERS will determine the member’s average compensation and current annual salary based on his or her membership account.
 - iii. Using the actuarial factors for active members as provided by the actuary, PERS will determine the actuarial factor based on the member’s current age and years of service and the actuarial factor based on the member’s current age and years of service including the service eligible for purchase.
 - iv. The difference between the two actuarial factors will be multiplied by the higher of the active member’s average compensation or current annual salary as determined by PERS. The result is the total cost for the service.
 - b. Computation of cost for **inactive** members
 - i. An inactive member is an individual who is no longer employed in covered employment and who has not retired or received a refund of his or her contributions.

- ii. PERS will determine the member's average compensation from his or her membership account.
 - iii. Using the actuarial factors for inactive members as provided by the actuary, PERS will determine the actuarial factor based on the member's current age and years of service and the actuarial factor based on the member's current age and years of service including the service eligible for purchase.
 - iv. The difference between the two actuarial factors will be multiplied by the inactive member's average compensation. The result is the total cost for the service.
3. The cost schedule will reflect the total cost of all eligible service, as well as the cost of the individual increments of service credit. The member may purchase all or any part of the service prior to his or her effective retirement date with PERS. All purchases must be in not less than monthly increments.
 4. If a member does not purchase the service before the date stated on the cost schedule, the cost of any remaining eligible service not purchased by the stated date will be recalculated. The cost will change as the member's age and service credited to the member's account change.

106 Subject to IRC Section 415 Limitations

Payments for the purchase of service credit at actuarial cost shall be paid in a manner consistent with any applicable limitations of 26 United States Code, § 415. For any member of PERS who became a member on or after July 1, 1999, Code § 415(c)(1) limits employee after-tax contributions to the lesser of (i) an applicable annual dollar limit or (ii) 100 percent of compensation. A member may be precluded from purchasing some or all years of service credit at actuarial cost if payments exceed applicable annual limitations on after-tax contributions.

107 Expiration of time to purchase eligible service

The purchase of all eligible service at actuarial cost must be completed by the member prior to the member's death or retirement.

108 Funds used to purchase service

Service credit at actuarial cost can be purchased using after-tax funds received directly from the member. Alternatively, such credit may be purchased using tax-deferred (pre-tax) money from certain retirement plans as allowed by the Internal Revenue Code (IRC).

1. Direct payment of funds by the member

PERS will accept funds remitted directly by the member for purchase of service at actuarial cost. These payments are not tax-deductible at the time of the purchase, but are considered after-tax contributions. These funds will be used in the calculation of the tax exclusion applied to the benefit at retirement. Treatment of the funds as after-tax contributions applies even if the source of

the funds is from a retirement plan from which the member could have made a direct rollover or transfer of the funds.

2. Direct transfer or rollover of funds to purchase service

PERS will accept qualifying tax-deferred direct trustee-to-trustee transfers or rollovers from the trustee/custodian of a 401(a) or 401(k) qualified plan, IRC Section 457 deferred compensation plan, qualified 403(a) annuity, IRC Section 403(b) annuity, or distributions from an Individual Retirement Account (IRA) for the purchase of service. These funds will be treated as tax-deferred funds and will be taxed when distributed to the member.

(History: Adopted effective February 1, 2011; amended effective August 1, 2012, amended effective July 1, 2017)

Chapter 65: Earned Compensation for the Public Employees' Retirement System of Mississippi

100 Purpose

This regulation further defines the term “earned compensation” for purposes of reporting compensation to the Public Employees' Retirement System of Mississippi (PERS).

101 Statutory definition

Except as otherwise provided by law, the term “earned compensation” means the total amount earned during a fiscal year by an employee not to exceed the employee compensation limit set pursuant to § 401(a)(17) of the Internal Revenue Code for the calendar year in which the fiscal year begins and proportionately for less than one year of service. The intent of this definition is to limit earned compensation to the regular periodic compensation paid to an employee, except as otherwise specifically provided by law.

102 Employment with more than one covered employer

Earned compensation shall include wages from a second position if the second position is independently covered under PERS or if the second position is less than half time but would otherwise be covered independently if the employee worked the requisite number of hours as required in PERS Board Regulation 36, *Eligibility for Membership in the Public Employees' Retirement System of Mississippi (PERS)*. Conversely, where a position is expressly excluded by law or where the position is expressly excluded by joinder agreement, wages from the second position should not be reported to PERS. In no case is compensation paid to an individual as an independent contractor reportable to PERS as earned compensation.

103 Exclusions from the term “earned compensation”

The term “earned compensation” does not include the following:

1. amounts paid by an employer for health or life insurance premiums or the value of such benefits;
2. litigation fees;
3. bond fees;
4. other similar nonrecurring payments;

5. amounts in excess of the lump sum payment for unused leave upon termination from employment as authorized under state law;
6. payments not authorized by law, including but not limited to:
 - a. the value of personal use of automobile or automobile allowance;
 - b. the value of personal use of employer provided cell phones or reimbursement for business use of a personal cell phone;
 - c. the value of personal use of employer-provided Internet or reimbursement for business use of personal/home Internet;
 - d. monetary awards, honorariums, or bonuses;
 - e. amounts paid in excess of statutory limitations set on salaries; and
 - f. retroactive pay increases, other than bona fide administrative errors;
7. any form of severance or termination pay, other than lump sum payments for leave upon termination from employment as authorized under state law;
8. any additional compensation received in anticipation of retirement, such as early retirement incentives, reduction in force programs, or retroactive payments;
9. commuting and reimbursed travel expenses, whether taxable or not;
10. cash remuneration, if any, selected by an employee in lieu of medical or other insurance benefits within the salary averaging period before retirement; and
11. other employer paid fringe benefits, including, but not limited to:
 - a. educational assistance;
 - b. dependent care assistance;
 - c. transportation benefits;
 - d. nonpaid major medical (sick) and personal (vacation) leave; and
 - e. employer contributions for Social Security and retirement.
12. any form of payment to a state employee outside of budgetary funds appropriated by the legislature.

104 Reporting of maintenance

1. Maintenance provided to employees before July 1, 2013

- a. The definition of “earned compensation” includes the value of either cash or non-cash maintenance furnished by the employer before July 1, 2013, in accordance with the maximum reportable allowances set in PERS Board Regulation 33, *Value of Maintenance*.
- b. From and after July 1, 2013, the value of maintenance furnished to an employee shall be reported as earned compensation as that term is defined in Miss. Code Ann. § 25-11-103(k) (1972, as amended) only if the employee was receiving maintenance and having maintenance reported to PERS as of June 30, 2013.
- c. Where maintenance was not properly reported when furnished by the employer, the employee and employer shall have underreported the earnings of the affected employee and service credit for the underreported period(s) shall not be available until proper contributions and interest, if applicable, on the value of maintenance are made to PERS.

2. Maintenance provided to employees on or after July 1, 2013

Except as otherwise provided in § 105.1.b of this regulation, maintenance provided to employees on or after July 1, 2013, is excluded from earned compensation as that term is defined in § 25-11-103(k) and as further clarified in this regulation.

105 Reportable income for constables

In the case of constables, the net earnings from their office after deduction of expenses shall apply, except that in no case shall earned compensation be less than the total direct payments made by the state or governmental subdivisions to the official.

106 Reportable income for chancery and circuit clerks

In the case of chancery or circuit clerks, the net earnings from their office after deduction of expenses shall apply as expressed in Miss. Code Ann. § 25-11-123(f)(4) (1972, as amended).

107 Reportable income for members of the State Legislature

In the case of members of the State Legislature, all remuneration or amounts paid, except mileage allowance, shall apply.

108 Reportable income for local elected officials

In the case of local elected officials, all compensation must be set in good faith and may not be arbitrary and unreasonable when considered with the resources of the employer and the duties of the office.

109 Performance-based incentive payments

1. Performance-based incentive payments paid to employees before July 1, 2013

Performance-based incentive payments that were paid to employees before July 1, 2013, under a plan or policy adopted by the employer that continued from year to year and that were (i) contracted for by the employer and the employee before the date when services were performed by the employee, (ii) determined in accordance with objective standards of measurement, and (iii) earned by personal services performed by the employee were included in earned compensation as that term was defined in § 25-11-103(k) before July 1, 2013.

2. Performance-based incentive payments paid to employees on or after July 1, 2013

Performance-based incentive payments paid to employees on or after July 1, 2013, are excluded from earned compensation as that term is defined in § 25-11-103(k) and as further clarified in this regulation.

110 Compensatory leave payments

Compensatory leave paid in a lump sum is included in earned compensation; however, any such payment must be allocated by the employer to the period in which the compensatory leave was actually earned.

(History of PERS Board Regulation 65: Adopted effective August 1, 2011; amended effective April 1, 2012; amended effective August 1, 2013; amended effective August 1, 2017)