

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

(This document contains only the last version of each regulation as of August 1, 2007. All prior versions of each regulation can be found in the "Cumulative" or "All Versions" Regulations Document located in the Legal Documents on both the Shared Drive or the Intranet.)

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PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI
REGULATIONS ADOPTED 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 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)

100 Purpose

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

101 Definition of Teacher for coverage in Social Security and State Retirement Annuity

Section 1, subsection 3, of Senate Bill 280, Laws of 1952 provides that "teacher" shall mean any licensed teacher, librarian, registrar, supervisor, principal, or superintendent, who is principally engaged in any one or any combination of, the above mentioned educational and/or administrative capacities in the public elementary and high schools of this state, instructors, whether licensed, or not, in the state schools for the blind and deaf; also "teacher" in all cases where a teacher's license is held, shall mean county superintendent of education, county school supervisor, state superintendent of education, head of division of the state department of education, Mississippi School for the Blind, Mississippi School for the Deaf, chancellor, registrar, president, dean, or teacher in any senior or junior college in this state, or secretary to the board of trustees of the institutions of higher learning; and also the word "teacher" shall include the head of any administrative department in any senior or junior college in this state whose appointment

is made by the chancellor or president and approved by the board of trustees of such institution and who shall be the active head of such administrative department and have under his direct supervision and authority at least three subordinate employees; the word "teacher" shall also include any licensed teacher engaged in an educational capacity in any day or night school conducted under the supervision of the State Department of Education as a part of the adult education program provided for under the laws of the United States of America; provided that such county superintendent or state superintendent was an active teacher or school administrator prior to being elected; and provided further that such county superintendent or state superintendent resumes within two (2) years the work of an active teacher or administrator after he leaves the office to which he was duly elected, unless within the said two (2) years he be eligible for retirement. The word "teacher" does not include extension workers or employees, or experiment station workers or work other than public school teaching or public school administration. The word "teacher" shall include any person who has been engaged in teaching as a life's work and who has continued in work connected with the public schools as an employee of the public school system, even though such person may not have spent his entire active career in actual classroom teaching.

102 Coverage for Social Security

Teachers, as defined by Section 1, subsection 3, of Senate Bill 280, Laws of 1952, who were in active service on the last month of the school year preceding the date of signing the agreement, who have not resigned or retired, or whose services have not been otherwise terminated prior to the date of signing the agreement between the State and the Federal Security Administration, and teachers on leave of absence who qualify for "education leave", and exchange teachers are presumed to be in service on the date of signing the agreement, and shall be included in coverage under Article I of Senate Bill 273, Laws of 1952, and may receive retroactive Social Security benefits to the effective date of the agreement.

103 Coverage for State Retirement Annuity

Teachers, as defined by Section 1, subsection 3, of Senate Bill 280, Laws of 1952, are automatically covered under the state retirement annuity program, [now Article III beginning at Miss. Code Ann. §25-11-101 (1972, as amended)], and shall be reported for retirement annuity coverage effective February 1, 1953.

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

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 superceded 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 -- \$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 thereunder 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 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 postmarked by the U. S. Post Office (including metered mail) by the fifth working day of the month shall be considered as received timely, provided the payment or report was mailed with postage paid and was correctly addressed. 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.

(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)

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

100 Purpose

The purpose of this regulation is to provide for the manner in which members of the Board of Trustees are elected.

101 Responsibility for conducting elections

The Elections Committee, as duly appointed, shall conduct all elections. The Executive Director shall prepare and furnish the Election 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 eligible to participate in the election, or to the retirees and beneficiaries, in the case of the election of a retiree member representative, a notice of such impending expiration, and shall simultaneously prepare and distribute, or make available as noted below, appropriate petitions for the nomination of candidates. In the event a vacancy occurs in the office of a trustee prior to expiration of term of office, the Executive Director shall initiate such election proceedings within 90 days of declared vacancy, in accordance with Miss. Code Ann. § 25-11-15(3) (1972, as amended).
 - a. In the case of the election of an active employee member of the Board, the Executive Director shall distribute to such executive officers a petition for the nomination of candidates for such office in similar form as follows:

"We, the undersigned, hereby certify that we are employees of _____ (insert Institutions of Higher Learning, Public Schools, Community/Junior Colleges, State, County, or Municipality, Instrumentality or Juristic Entity thereof) and members of a Public Retirement System administered by the Public Employees' Retirement System and that we qualify to vote in the election of _____ a _____ (insert Institutions of Higher Learning, Public School and Community/Junior College, State, County, or Municipality, Instrumentality or Juristic Entity thereof) member on the Board of Trustees. We do hereby place in nomination the name of:

Name:(Miss,Ms.,Mrs.,Dr., Mr.) _____

Job title: _____
 Social Security Number: _____
 Employed by Agency: _____
 Home Phone No.: _____
 Home Address: _____
 Office Phone No.: _____
 Office Address: _____

We certify that the above nominee is a member with at least ten years of creditable _____ service _____ in _____ the _____ administered by the Public Employees' Retirement system (*) and we hereby request that the name of said nominee be placed on the ballot as a candidate for said office."

* Insert the following for only county and municipal elections: and the above nominee is not holding office in the legislative or judicial department of said county or municipality

- b. For retired member representative elections, the following petition for the nomination of candidates will be substituted and furnished upon request:

"We, the undersigned, hereby certify that we are receiving a monthly retirement allowance from a public retirement system administered by the Public Employees' Retirement System, as provided in Miss. Code Ann. § 25-11-15(f) (1972, as amended), in which case we are qualified to vote in the election of a retired member for the Board of Trustees for the term expiring _____. We hereby place in nomination for a trustee representing retired members on the Board of Trustees, the name of _____, whose correct mailing address is _____. We certify that the nominee is receiving a monthly retirement allowance from the _____ administered by the Public Employees' Retirement System.

Sufficient lines shall be provided on each petition for at least 25 signatures of members or retirees, as applicable, of systems administered by PERS and a minimum of 25 signatures shall be necessary to place the name of any candidate in nomination for the office.

- 2. The petition nominating candidates for said office shall be filed with the Executive

- Director of the System 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.
3. Approximately one week after the deadline provided above for filing of petitions, the Executive Director shall initiate the preparation of an official ballot for said election, listing thereon in alphabetical order the names of all candidates placed in nomination pursuant to these regulations, along with a short biography of twenty-five (25) words or less, which includes title, agency and years of service, on each candidate, as certified by the Election Committee. In addition each candidate will be allowed to provide PERS with a statement of up to one hundred (100) words which will be included with the ballots. Such ballots shall be sent by the Executive Director to the employers for distribution to the members entitled to vote in said election, or to retirees 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.
 4. Employees who are members of a public retirement system administered by the Public Employees' Retirement System and retirees and beneficiaries who are receiving a monthly retirement allowance from a public retirement system administered by the Public Employees' Retirement System 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).
 5.
 - a. In the election of an active employee member, the chief executive of the various municipalities, counties, state departments, institutions, public schools, community/junior colleges or agencies, qualified to vote in said election, shall require each of his employees to sign a register, which register shall be furnished by the Executive Director of the System, when each such employee casts his ballot in said election, and shall return said register to the Executive Director with the ballots of employees voting in said election. No employee shall be required to sign the ballot, but no ballots from any agency shall be counted or tabulated unless such register shall have been filed with the Executive Director.
 - b. In the election of a retiree representative, no such register is required. Ballots shall be mailed to each retiree and beneficiary receiving a monthly retirement allowance from a public retirement system administered by the PERS.
 6. Within thirty (30) days after the mailing of such ballots to the chief executive of the agencies or to retirees and beneficiaries entitled to vote in said election, the same shall be returned to the Executive Director, and, within one week after the deadline for the return of such ballots, the Election Committee shall meet and tabulate the same, and declare the results of the election. Any candidate in said election, or his or her representative or attorney, shall have the right to be present during tabulation and canvassing of such returns. 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.

7. If no candidate receives a majority of the total votes cast in said election, the Election Committee shall certify the names of the two candidates receiving the highest number of votes, and the Executive Director shall, thereupon, within a period of approximately one week after such certification, prepare official second primary ballots which shall be prepared, distributed, voted and returned, counted, tabulated and the results of such second primary declared, in the same manner and within the same time as hereinabove provided for the first primary balloting.
8. 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.
9. The Board of Trustees shall be the sole judge of all questions touching on the qualifications of candidates, of employees of the various political subdivisions, agencies, institutions, departments, of retirees, and voters in such elections, and shall likewise determine any and all other questions arising incident to or connected with such election.
10. Any legal holidays falling within any period of time set forth in these policies shall extend the time for that period by one (1) 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

1. Each trustee shall, within ten (10) days after his appointment or election, take an oath of office as provided by law that he will diligently and honestly administer the affairs of the said Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to any public retirement system administered by the Public Employees' Retirement System. Such oath shall be signed by the member making it, certified and immediately filed in the office of the Secretary of State.
2. The form of the oath to be executed by the trustee shall be substantially in the following form:

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, _____ do
solemnly swear (or affirm) that I will faithfully support the Constitution of
the United States and the Constitution of the State of Mississippi, and
obey the laws thereof; that I am not disqualified from holding the office of
Trustee of Public Employees' Retirement System of Mississippi; that I will

faithfully discharge the duties of the office upon which I am about to enter. That I will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to any public retirement system administered by the Public Employees' Retirement System. So help me God.

Trustee

By: _____

(NOTARY PUBLIC)

My Commission Expires _____

(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)

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 19 Members may leave contributions in System

100 The purpose of this regulation was to address how long and under what circumstances a member could leave contributions in the System.

101 This regulation, which required the refund of member contributions if a member remained inactive for five years, was repealed by the Board of Trustees on February 10, 1981.

(History: Adopted 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

100 Purpose

The purpose of this regulation is 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 State retirement annuity coverage for teachers obtaining a contract before July 1, 1953

Subject to the age requirement of Regulation No. 8, any person who was not employed in covered public employment in Mississippi between April 15, 1952 and July 1, 1953, but who obtained a contract or was elected to public office on or before July 1, 1953 (or who was employed by school systems and such employment was entered on the minutes of the Board of Trustees on or before July 1, 1953) to teach in public schools, or State supported colleges of Mississippi in the fall session of the school year, or who became employed in other public employment covered by the Retirement System and who applied for membership in the State Retirement Annuity part of the Public Employees' Retirement System within 60 days after July 1, 1953 and who actually fulfilled his or her contract, shall be considered employed on or before July 1, 1953, and upon furnishing such satisfactory proof of this employment to the Public Employees' Retirement System Board of Trustees, and after remaining in covered public employment and contributing to the Public Employees' Retirement System for a period of four years after July 1, 1953, shall, at the expiration of this four year period be granted credit for prior years of service in employment in Mississippi which was covered under the Retirement System of Mississippi on July 1, 1953. In the event such person is unable to complete the full four year requirement because of total and permanent disability or the attainment of age 70, this requirement shall be reduced and credit allowed.

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

Chapter 21 Eligibility of Teachers retired under Teacher Retirement System

100 Purpose

The purpose of this regulation is 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 Eligibility of former disability recipients under the Teacher Retirement System who return to covered public employment

1. Disability recipients who return prior to attaining age 60

Teachers who retired under the total and permanent disability provisions of the Teachers' Retirement Act, and who return to active duty or obtain work in other covered public employment in Mississippi prior to attaining age 60, may join Article II [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)] of Senate Bill 273, Laws of 1952, and upon remaining in covered public employment in Mississippi and contributing to the Retirement Annuity part of the System for a period of at least 5 years may be allowed credit for their prior years of actual service to the state or its instrumentalities or subdivisions at the expiration of five years. Only full time employment shall be considered as fulfilling the service requirement for the additional 5 years of covered employment and payment during the period of such service shall conform to the payment usually made for similar services by the agency in which the employee works. Of the employee's contributions made under the Teachers' Retirement System which had been transferred to the reserve account of that system, any remainder shall be transferred to the reserve account of the Public Employees' Retirement System.

2. Disability recipients who return upon or after attaining age 60

Teachers retired under the total and permanent disability provisions of the Teachers' Retirement Act, who are over age 60 when they return to active duty may not become members of the State Retirement Annuity part (Article II), [now Article III beginning at Miss. Code Ann. §25-11-101 et seq. (1972, as amended)] of Senate Bill 273, Laws of 1952, but of their contributions which they had made to the former Teachers' Retirement System, any reserve remaining to their credit shall be refunded to them in cash upon their return to active duty.

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

Chapter 22 Employees of political subdivisions not employed on April 15, 1952

100 Purpose

The purpose of this regulation is to clarify eligibility for retirement annuity coverage of certain individuals who were employed by a political subdivision on the effective date of its state retirement annuity coverage, but no on or before April 15, 1952.

101 Employees of political subdivisions not employed on or before April 15, 1952.

Persons employed by a political subdivision, (which executes an agreement with the P.E.R.S.) on the date on which the agreement was executed but which persons were not employed by the subdivision on or before April 15, 1952, shall be required to qualify under Regulation 8.

(History: Adopted July 2, 1953, page 110; reformatted August 1, 2007)

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 shall 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 27 Eligibility of Members on Inactive Status for Total and Permanent Disability Retirement Benefits

100 Purpose

The purpose of this regulation was to clarify the eligibility for total and permanent disability retirement benefits of members who had withdrawn from employment and who were on inactive status at the time of application.

101 This regulation was repealed by the Board of Trustees as this provision was covered in the comprehensive disability provisions of Regulation 45A.

(History: Adopted November 22, 1955, page 223; amended June 21, 2005, to be effective August 1, 2005; reformatted and repealed August 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 is eligible for service retirement benefits when the member withdraws from service prior to age 60 with less than twenty-five (25) years of creditable service.

101 Persons who become a member before July 1, 2007

Persons who become a member before July 1, 2007, who withdraw 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 do not receive a refund of their 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 Persons who become a member on or after July 1, 2007

Persons who become a member on or after July 1, 2007, who withdraw 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 do not receive a refund of their 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)

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 PERS retirees eligible for a monthly retirement allowance.

101 Minimum retirement allowance from May 6, 1958 to June 30, 1971.

Members of the Retirement System 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.

102 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.

103 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.

104 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.

105 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.

106 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)(4) (1972, as amended.)

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

Chapter 31 Extension Of Service

100 Purpose

The purpose of this regulation was to provide for the extension of service when retirement was mandatory.

- 101** This Regulation is repealed by the Board of Trustees as the provisions for a mandatory retirement age were eliminated effective January 1, 1987 by the Age Discrimination in Employment Act Amendments of 1986 (Public Law 99-592).

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

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 member 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 33 Value of Maintenance

100 Purpose

The purpose of this regulation is to explain the conditions under which the value of cash maintenance must be reported as part of earned compensation.

101 Requirement for reporting maintenance provided by an employer.

In accordance with the provisions of Miss. Code Ann. §§ 25-11-5 and 25-11-103(k), (1972, as amended), all agencies, departments, institutions, and political subdivisions who are covered under Social Security through PERS or who have joined the Retirement System for retirement annuity coverage are required to report and the employee and employer to pay contributions on the value of both cash and **non-cash** maintenance allowed employees in addition to their salaries. Each agency, department, institution, and political subdivision shall be required to notify the Executive Director of the Retirement Board in writing the name, position, type of maintenance furnished (such as room, home, meals, and utilities) for each such individual and such position so covered and shall state the total amount of maintenance allowed in each case which shall be uniform for the same type of maintenance furnished throughout the agency.

1. Maintenance reportable from and after July 1, 2001.

The Executive Director shall have authority to approve such maintenance allowances up to a maximum of \$ 1500.00 per month, but any maintenance claimed in excess of \$ 1500.00 per month must be submitted to the Board of Trustees of the Retirement System for final determination of the amount of maintenance to be allowed for retirement purposes. Effective July 1, 2001, the monthly maximum maintenance allowance, which includes the value of employer provided housing, utilities and meals, etc., is as follows:

Maximum Monthly Maintenance Allowed	Title or Position of Recipient
\$ 750.00	Public School Personnel
\$1,125.00	Presidents of community or junior colleges
\$ 750.00	Other personnel of community or junior colleges
\$1,125.00	Heads of state institutions
\$ 750.00	Other personnel of state institutions

\$1,500.00	Presidents or chancellors of universities
\$ 750.00	Other personnel of universities

2. Maximum maintenance reportable from July 1, 1992, to June 20, 2001.

From July 1, 1992, to June 30, 2001, the maximum monthly maintenance allowed was as follows:

Maximum Monthly Maintenance Allowed	Title or Position of Recipient
\$ 600.00	Public School Personnel
\$ 900.00	Presidents of community or junior colleges
\$ 600.00	Other personnel of community or junior colleges
\$ 900.00	Heads of state institutions
\$ 600.00	Other personnel of state institutions
\$1,200.00	Presidents or chancellors of universities
\$ 600.00	Other personnel of universities

3. Maximum maintenance reportable from July 1, 1984, to June 30, 1992.

From July 1, 1984, to June 30, 1992, the maximum monthly maintenance allowed was as follows:

Maximum Monthly Maintenance Allowed	Title or Position of Recipient
\$ 300.00	Public School Personnel
\$ 450.00	Presidents of junior colleges
\$ 300.00	Other personnel of junior colleges
\$ 450.00	Heads of state institutions
\$ 300.00	Other personnel of state institutions
\$ 600.00	Presidents or chancellors of universities
\$ 300.00	Other personnel of universities

4. Maximum maintenance reportable from July 1, 1980, to June 30, 1984.

From July 1, 1980, to June 30, 1984, the maximum monthly maintenance allowed was as follows:

Maximum Monthly Maintenance Allowed	Title or Position of Recipient
\$ 200.00	Public School Personnel
\$ 300.00	Presidents of junior colleges
\$ 200.00	Other personnel of junior colleges
\$ 300.00	Heads of state institutions

\$ 200.00	Other personnel of state institutions
\$ 400.00	Presidents or chancellors of universities
\$ 200.00	Other personnel of universities

5. Maximum maintenance reportable from April 1, 1971, to June 30, 1980.

From April 1, 1971, to June 30, 1980, the maximum monthly maintenance allowed was as follows:

Maximum Monthly Maintenance Allowed	Title or Position of Recipient
\$ 100.00	Public School Personnel
\$ 150.00	Presidents of junior colleges
\$ 100.00	Other personnel of junior colleges
\$ 150.00	Heads of state institutions
\$ 100.00	Other personnel of state institutions
\$ 200.00	Presidents or chancellors of senior colleges
\$ 100.00	Other personnel of senior colleges

6. Conditions for reporting the value of maintenance.

- a. **Travel Expenses.** No reimbursement for travel may be reported to PERS.
- b. **Housing Furnished.** PERS has the right to require that the value of non-cash maintenance provided by the employer, such as housing, be certified by an independent source, i.e., certification by a real estate agent or appraiser knowledgeable as to the fair market value of such maintenance to be provided. The value of the maintenance once fixed shall remain the same for the next person who receives such maintenance.
- c. **Meals Provided.** The value of meals shall be based on the true value of the meals actually provided to the employee.

7. Liability for improper reporting of maintenance.

If the value of maintenance is not reported as required, it is the liability of the agency to make the proper payment of employer contributions and to ensure the proper collection of contributions from each employee for the entire retroactive period if, at any time in the future, it is discovered that there has been an error in reporting of such maintenance.

(History: Adopted January 31, 1962, page 568; amended June 30, 1992; amended July 1, 2001; amended June 21, 2005 to be effective August 1, 2005; reformatted and amended August 1, 2007)

Chapter 34 Reemployment After Retirement

100 Purpose

The purpose of this regulation is to identify the terms and conditions under which a retiree may be reemployed by a covered employer after retirement.

101 Background

In accordance with Miss. Code Ann. § 25-11-127 (1972, as amended), the Board of Trustees of the Public Employees' Retirement System 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.

102 Loss of Monthly Benefits upon Employment or Reemployment

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 the Retirement System, except as provided in Section 103 of this Regulation. This provision specifically applies to all PERS service retirees employed or reemployed by or providing services for any and all covered employers as 1) an employee, 2) a contractual employee/worker, or 3) any other contract personnel paid directly or indirectly by a covered employer who do not meet the criteria of an independent contractor as determined by PERS. **(See Sections 110 and 111 for work as an independent contractor or for work through a third party.)**

1. Elected offices are deemed to be full time positions. 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. below.
2. Elected or appointed officials paid on a per diem basis as provided by statute are not considered employees for purposes of this Regulation on reemployment.

103 Exceptions under which a retiree may be reemployed while in receipt of a retirement allowance**1. Retirees reemployed in other than an Elected Position**

The Retirement System 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 (1/2) of the normal working days for the position in any fiscal year during which the retiree will receive no more than one-half (1/2) 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 twenty-five percent (25%) of the retiree's average compensation.

“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

Any retiree may continue in municipal or county elected office or be elected to a 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 elected office in an amount not to exceed twenty-five percent (25%) of the retiree’s average compensation, which shall be prorated over a twelve month time frame.

A retiree who continues in or is elected to 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 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 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% 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 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. Section 25-11-127(5) (1972, as amended), municipal or county elected office shall include:

Municipal: Mayor, Board of Aldermen (Councilmen or Selectmen), 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. Section 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, Elected Superintendent of Education, 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, or other office not included in the municipal or county elected offices listed under this section.

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 (1/2) of the required number of working days or up to one-half (1/2) of the equivalent number of hours and receive up to one-half (1/2) of the salary for the position. In the case of employment with multiple employers, the limitation shall equal one-half (1/2) 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 the Retirement System 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 the Retirement System may result in the assessment of a \$300.00 penalty per occurrence payable by the employer.

A service retiree reemployed under Section 103 may make one election per fiscal year to either **a)** limit the number of days/ hours worked for all covered employers to that allowed under Section 103.1.a. , or **b)** 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 municipal or county office (and who is not also reemployed in a non-elective position) may make one election per fiscal year to either **a)** waive his or her salary and continue to receive a retirement allowance under Section 103.2.a. or **b)** elect to receive an amount not to exceed twenty-five (25%) 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 forty-five (45) days from the effective date of retirement, or is guaranteed such reemployment, 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 such forty-five (45) day period of separation, any retirement allowance payments received by the retired member shall be repaid to the Retirement System 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 shall continue to be reported to the Retirement System.
2. In order to fall within one of the exceptions of Miss. Code Ann. § 25-11-127 (1972, as amended), as outlined in Section 103, or the provisions for waiver of compensation 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, with a covered employer for a minimum of forty-five (45) consecutive calendar days beginning with the effective date of retirement. Provided, however, any employee of an educational institution employed on less than a twelve-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 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. § 25-11-127 (1972, as amended), such retiree retiring at the end of one school year may not be reemployed in an educational institution any earlier than forty-five (45) consecutive calendar days after the beginning of the next school year. Where such retiree is reemployed prior to the expiration of such forty-five (45) day time frame, any benefits received during the summer months prior to reemployment shall be recovered.
3. An exception to the forty-five (45) day separation period for reemployment may be granted by PERS under the following circumstances:
 - a. For a retiree who is to be reemployed as a certificated classroom teacher at the beginning of a school year, or
 - b. For any other retiree who is reemployed in state service, where sufficient documentation is provided to demonstrate that such emergency employment is necessary. The employer shall provide documentation to PERS for approval prior to any emergency reemployment. Such documentation shall include, but may not

be limited to: 1) a notarized certification setting forth the facts upon which the emergency exists which is signed by the chief executive officer of the employing entity and the chairman of the governing board, if applicable, 2) information and/or documentation supporting efforts to fill such vacant position, and 3) a statement by the employer that no prior promises or guarantees of reemployment have been made by the employer to the employee.

For purposes of this section, “emergency” shall mean a sudden unexpected happening, an unforeseen occurrence or condition, a sudden or unexpected occasion for action, or an unforeseen combination of circumstances that call for immediate action. Reemployment under this provision shall be limited to emergencies beyond the control of the employer. Any employment during this period shall be included in the employment limitation of Section 2.

4. If such member is reemployed prior to the requisite forty-five (45) day separation period and continues employment in a noncovered position in accordance with Regulation 36, the member will become eligible for service retirement benefits once a complete severance of employment has been made as provided herein.

107 Effect of Waiver for Elected Officials

Pursuant to Miss. Code Ann. § 25-11-127 (1972, as amended), county and municipal elected officials who are in office and elect to retire and waive salary under Section 103.2.a. or to receive compensation for that elective office in an amount not to exceed twenty-five (25%) of the retiree’s average compensation under Section 103.2.b. may continue in office and begin to draw a retirement allowance without the required separation period. County and municipal elected officials who continue in office are not subject to the forty-five (45) day waiting period.

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

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 the System from compensation for that employment.

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

1. Where a retiree is reemployed under PERS after retirement in a covered position outside one of the exceptions in Section 103 of this Regulation, such retiree shall have his benefits terminated, and he shall again become a contributing member of the Retirement System with contributions paid by both the employer and the employee. The retiree shall not be entitled to benefits for any month in which 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 calendar months, the member shall have his 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 by the Retirement System along with the contributions of the employer and the original benefits 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 the Retirement System 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 (based on the ages of the member and his beneficiary(ies)) 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 so as to draw additional retirement benefits from PERS, pending eligibility for receipt of Social Security benefits, then to the extent PERS has not recovered all benefits advanced pursuant to such additional optional provision at the time of reemployment of the retiree, then PERS may 1) reduce the retiree's benefit upon his subsequent retirement over the retiree's actuarial life expectancy to recover such unrecovered advances, or 2) 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 on initial retirement, then upon subsequent retirement, the new maximum benefit as noted above, shall be reduced by the same dollar amount plus 1% 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 1st of a given year, the retiree's annual benefit adjustment shall resume immediately with the first benefit payment upon such subsequent retirement. 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.

110 Reemployment as an Independent Contractor

A retiree must have separated from service with all covered employers after retirement for the forty-five (45) 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 own methods without being subject to the control of his 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 forty-five (45) 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, then the retirement allowance will be terminated and benefits repaid unless such reemployment follows the guidelines and limitations of this Regulation.

111 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, then 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 the Public Employees' Retirement System. In making such determination, PERS will use the Internal Revenue Service 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.

112 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 thirty (30) days to return any benefit overpayment without an interest penalty. If any overpayment is not returned within thirty (30) days from the date that notification is issued, the retiree shall be liable for the return of the overpayment plus interest thereon at ten percent (10%) per annum plus all costs of collection with a minimum interest assessment of \$50.00.

(History: 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)

Chapter 35 Effective Date of Retirement

100 Purpose

The purpose of this regulation is to clarify the effective date of retirement and the conditions under which a retirement option may be changed.

101 When a member is determined to have received his or her first check for purposes of changing the option selected.

Any member, who has made application for Superannuation Retirement (maximum allowance or Option 1) under Miss. Code Ann. Section 15 (now Miss. Code Ann. §25-11-111 (1972, as amended)) or Disability Retirement under Section 16 of the Retirement Act (now Miss. Code Ann. §25-11-113 (1972, as amended)), may change the application anytime prior to cashing the first retirement check, or in the event of the death of the member prior to cashing the first retirement check, the spouse and/or dependent children, who qualifies in accordance with Section 15 (now Miss. Code Ann. §25-11-111 (1972, as amended)), may make application for spouse benefits and/or dependent child benefits;

provided, however, the benefits would become effective the first of the month after the last application or change in application is received by the Board.

102 When a member may change an options after receipt of his or her first check.

No change in an option selected under Section 17 (now Miss. Code Ann. §25-11-115 (1972, as amended)) of the Retirement Act shall be permitted after the member's death or after the member has cashed his first retirement check, except as otherwise provided by law.

(History: Adopted November 17, 1971; amended June 21, 2005, to be effective August 1, 2005; reformatted August 1, 2007)

Chapter 36 Clarification of Covered Position for Membership Purposes

100 Purpose

The purpose of this regulation is to clarify which employees are eligible for coverage in the retirement system.

101 Covered position

Participation in the Public Employees' Retirement System 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 (2) or more of them, the duties of which call for services to be rendered by one (1) person, including positions jointly employed by federal and state agencies administering federal and state funds. Effective July 1, 1999, any member in a covered position, as defined by Public Employees' Retirement System laws and regulations, who is also employed by another covered agency or political subdivision shall have the earnings of that additional employment reported to the Public Employees' Retirement System 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 below.

102 Covered employee

1. In order to participate in the Public Employees' Retirement System an individual must be an employee in a covered position subject to the control of the covered public employer as defined in 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;
 - c. Be paid regular periodic compensation; and
 - d. Be treated as an employee for all purposes, including but not limited to eligibility for fringe benefits, payment of employment related expenses, payroll tax withholding, etc.

2. For purposes of eligibility for participation in the Retirement System, a position means any position in which the employee personally performs services and receives compensation for not less than 20 hours per week or a total of 80 hours per month, or in which school personnel personally perform services and receives compensation for half-time or more for the academic year. 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 service per week or for a total of 80 hours per month. However, 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.
3. Any person whose employment is anticipated to exceed 4 and 1/2 months shall be covered, whether probationary or otherwise.

103 Temporary or intermittent employment not eligible for retirement coverage.

Persons whose employment is temporary in nature or which is intermittent and who are not employed at least 4 and 1/2 consecutive months shall not be in a covered position, and shall not be covered by the Retirement System. 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. Note also, that any employee engaged on a day-to day basis to replace another employee who is temporarily absent shall be considered a “substitute” 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” if such employment is for a period of 4 and ½ consecutive months or longer and therefore must be covered under PERS.

104 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 received 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 they are employed in such position.

105 Work requirement exception for members performing professional services.

Any active member employed on July 1, 2002, by a covered governmental entity 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.

(History: 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)

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 System. 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 the Retirement System, 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 which 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 4 and 1/2 months or less, i.e. summer employment, is employed on a temporary basis and shall not be covered by the System.

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.

102 Ineligibility of student employee for membership in retirement system.

Student employees who are not eligible for membership in the Retirement System 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 the System 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)

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 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 Public Employees' Retirement System.

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 shall be charged the actual cost per page of

mechanically reproduced copy. Copies of pages printed on both sides (front and back) shall be considered as two pages. This fee is for the cost of searching, reviewing, and duplicating the public record.

i. However, 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, then the requesting party shall 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 for the hours shall be based upon the hourly salary of the lowest paid employee of the Public Employees' Retirement System (hereinafter referred to as the PERS) 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, then the requesting party must pay the charge for the computer use, including programming time and actual computer time as well as any other costs incurred. This charge 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 Public Employees' Retirement System.

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 and address of the individual and/or organization requesting the record. Requests shall be addressed to the Executive Director of the Public Employees' Retirement System. Request forms are available in the office of the Public Employees' Retirement System.

- b. The PERS shall respond in writing within fourteen (14) working days from the date of the request. Requests for information in storage will be provided within 14 days of availability of such records to PERS. Denials shall be in writing and shall contain the specific reasons 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 during regular business hours, 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 the exempt material and make the non-exempt material available for examination and/or copying.
- e. When fees are appropriate as specified in Section I 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 I. Payment by personal or company check will be accepted subject to clearance within fourteen (14) working days.
- f. Non-exempt records furnished to PERS by third parties, which are not public bodies as defined in the Public Records Act, will not be released until notice to the third parties has been given. The records shall be released in fourteen (14) days from expiration of the time as provided in III, unless the third party obtains a court order protecting the records as confidential.
- g. The Executive Director of PERS or his 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 jurisdiction 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 which represent and constitute the work product of any attorney and which are related to litigation made by or against the PERS or any of the retirement programs administered by the Board of Trustees of the 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. For the purpose of providing advance notice to submitters of trade secret or confidential commercial or financial information, which is included in records furnished PERS by another party, twenty-five (25) 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.
- i. Records which would give information about any individual's tax payments or status.
- j. Financial and commercial information that an individual or business is required by law to submit to a governmental agency, except as provided by law.

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, twenty-five (25) 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)

Chapter 39 Physical Reevaluations of Disability Retirees of the Municipal Retirement System or Policemen's and Firemen's Disability and Relief Systems.

100 Purpose

The purpose of this regulation was to clarify when a physical re-examination was required for disability retirees retired under the general municipal retirement systems or policemen's and firemen's disability and relief funds.

- 101** This regulation was repealed by the Board of Trustees as the contents of the regulation were incorporated into the comprehensive provisions for disability benefits of the municipal systems reflected in Regulation 45B.

(History: Adopted August 20, 1991; reformatted and repealed August 1, 2007)

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. All meetings shall be at the call of the Chairman and should be at least once per quarter. Four member's present shall constitute a quorum for the transaction of business for the Committee.

103 Committee Reports to the Board of Trustees

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

104 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)

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' names and addresses on an annual basis. The Deferred Compensation Administrator should be permitted to contact the eligible employee at work, by phone or by mail, to request a mutually agreed upon time for a personal presentation, if the eligible employee desires such a meeting and/or is unable to attend a group meeting in his agency. 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 reviewed and approved by PERS. This is to include all sales material and video or slide presentations.

1. During any personal presentations, the Deferred Compensation Registered Representative may provide the eligible employee with written comparative material and computer projections to help the employee determine if Deferred Compensation is beneficial to them.
2. Full and complete provision disclosure under the various investment vehicles as required by the NASD shall be made.

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 at least once a year. 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 will 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. Once each year, the employer will furnish the Deferred Compensation Administrator with the names, addresses and phone numbers of new eligible employees.
4. The Deferred Compensation Administrator's representatives may contact eligible employees through brochure distribution, mail-outs, at employer sponsored meetings, or through telemarketing scheduling.
5. Gifts or any other monetary award or gratuity to employees or employers under the Deferred Compensation Plan contract are strictly prohibited.
6. No products other than PERS authorized Deferred Compensation products may be marketed by the Deferred Compensation Administrator's representatives.
7. PERS must approve all company sales literature and explanatory materials before any such materials may be distributed to employees in any way.
8. Each employer will make available to eligible employees the approved plan literature with the telephone numbers including the WATS line number of the Deferred Compensation Administrator.

(History: Adopted September 6, 1991; reformatted August 1, 2007)

Chapter 42 Rules of Hearing Practice and Procedure before the Board of Trustees

100 Purpose

The purpose of this regulation is to govern all practice and procedure before the Board of Trustees of the Public Employees' Retirement System (hereinafter referred to as "Board of Trustees") in all matters arising under all retirement plans or programs administered by the Board of Trustees, except where specifically otherwise provided by the statutes of such programs or retirement plans, for which a hearing is required in any contested case.

101 Construction of regulation

These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the Board. In special cases, 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 Exhaustion of remedies

1. No person may file an appeal with the Public Employees' Retirement System until there has been a final administrative decision by the Executive Director or, in the case of disability appeals, a final administrative decision by the PERS Medical Board. No aggrieved party may file an appeal in the Circuit Court of the First Judicial District of Hinds County, Mississippi, until a final written decision and order has been issued by the Board of Trustees. Any such appeal must be filed within thirty (30) days of the entry of the final written order of the Board of Trustees or such longer period of time as may be allowed by the Uniform Circuit and County Court Rules.
2. 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.

103 Perfection of appeal to the Board of Trustees by timely filing

1. All appeals to the Board of Trustees shall be initiated by filing a written Notice of Appeal. Notice of Appeal forms shall be made available by the Executive Director of the Public Employees' Retirement System (hereinafter referred to as "Executive Director") upon request.
2. A Notice of Appeal must be filed within sixty (60) days after the date a person receives written notice of the final administrative decision of an alleged grievable action. Such notice may be filed by mail or personally.
3. Failure to file a completed Notice of Appeal within the time specified shall be a bar to the filing of such appeal.

104 Content of Notice of Appeal

1. The Notice of Appeal must contain:
 - a. the names and mailing addresses of all parties and, if known, the name(s) and mailing address(es) of their attorney(s), if any;
 - b. if applicable, the appealing party's (a) employing agency and social security number or (b) employing agency and social security number of the member on whose account a claim is being made;
 - c. a statement, in detail, of the facts upon which the appeal is taken, including the effective date of any alleged grievable action, and why such action is alleged to be in error;
 - d. a statement of the final action taken and/or administrative decision, including the effective date of such final action;
 - e. a statement of the relief requested and the legal grounds on which such relief is based.
2. In order to be considered complete, the appealing party must answer all questions requests for information contained in the Notice of Appeal.

105 Filing of Documents

All documents relating to any proceeding pending or to be instituted before the Board shall be filed with the Executive Director of the Public Employees' Retirement System at 429 Mississippi Street, Jackson, Mississippi 39201-1005.

106 Assignment of Hearing Officer, setting of hearing and appearance

1. The Board of Trustees may, by order entered in its minutes, appoint a committee of the Board of Trustees or such other qualified personnel as Hearing Officer. The Executive Director shall set a date and time for the hearing. Unless otherwise ordered, hearings shall be held in the Board Room of the PERS Building located at 429 Mississippi Street, Jackson, Mississippi.
2. A Notice of Hearing shall be sent via mail to the appealing party and legal representative, if applicable.
3. If an appealing party fails to appear at the hearing, the Hearing Officer may proceed with the hearing and prepare a proposed statement of facts and recommendation to the Board of Trustees based on the evidence presented at such hearing.
4. Any request for a change or delay of a scheduled hearing must be made to the Executive Director in writing. All requests for changes or delays made prior to the scheduled hearing date shall be subject to the discretion of the Executive Director.

107 Conduct of hearing

1. Such hearing is an appeal of a prior administrative decision and the appealing party shall be afforded applicable safeguards of procedural due process.
2. The Hearing Officer shall have the authority to administer oaths and affirmations.
3. Each party may be represented by an attorney.
4. At any hearing, the parties shall be entitled to enter an appearance, personally or by an attorney, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding. The Hearing Officer will rule as to the admissibility of evidence that has not been submitted prior to the initial decision having been made by the Medical Board, which is the subject of the appeal.
5. The Hearing Officer may clear the hearing room of witnesses not under examination and may question a witness during any part of the direct or cross-examination of such witness.
6. The Hearing 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.
7. 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, legal or other representatives, witnesses, employer representatives, Hearing Officers, court reporter, and such other 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.

8. The Hearing Officer 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 Hearing Officer shall have the authority to defer a decision in order to request a medical evaluation or test or additional existing medical records not previously furnished by the claimant. In the event that the Hearing Officer requests further medical documentation or evaluation and such additional medical evidence, if reviewed by the Medical Board and said review results in a determination of eligibility for disability benefits, then such claim shall be processed and the appeal considered withdrawn.
9. At the conclusion of all testimony, the Hearing Officer will adjourn and conclude the hearing. Thereafter, the Hearing Officer will retire to deliberate, after which the Hearing Officer will submit its proposed statement of facts, conclusions of law and recommendation, where applicable, solely for consideration by the PERS Board of Trustees. The Board of Trustees has the sole authority to issue a decision relative to all claims on appeal by rendering its order.

108 Evidence

1. The hearing shall be informal and formal rules of evidence shall not apply. In conducting a hearing, the Hearing Officer 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 of Trustees.
2. All testimony to be considered by the Hearing Officer at the hearing, except matter noticed officially or entered by stipulation, shall be sworn testimony. Before taking the witness stand, each person shall swear or affirm that the testimony about to be given in the hearing before the Hearing Officer shall be the truth, the whole truth and nothing but the truth.
3. The Hearing Officer shall have the authority to admit into the record any evidence which, in the judgment of the Hearing Officer, has a reasonable degree of probative value and trustworthiness. The Hearing Officer shall have the authority to exclude evidence which is inadmissible, irrelevant, immaterial, lacking in probative value, or unduly cumulative.
4. Documents received into evidence by the Hearing Officer shall be marked by or under the direction of the Hearing Officer, and filed as a part of the record.
5. Summations of the evidence and the law may be heard in the discretion of the Hearing Officer.

109 Record of hearing

A Court Reporter will attend and record all hearings. Any party desiring a transcript 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 of Trustees to the Circuit Court, a certified copy of the transcript must be provided to the Executive Director with cost to be borne by the appealing party.

110 Opinion and order to be filed upon completion of hearing

After all evidence is heard or received and the hearing is completed and the Hearing Officer's deliberation is concluded, the Hearing Officer shall certify the record described in Miss. Code Ann. Section 25-11-120 (1972, as amended) to the Board of Trustees. The record shall include the Hearing Officer's proposed statement of fact and recommendation. In no case, other than those specifically left open for additional medical documentation requested by the Hearing Officer, shall additional evidence received after the hearing be included as part of the record for review by the Board of Trustees or other appeal. The Board of Trustees 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.

111 Service of notices and orders by Board

All notices and orders required to be served by the Board of Trustees, 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.

112 Continuances - rescheduling of hearings

1. Continuances requested by any party shall be granted within the discretion of the Hearing Officer or Executive Director only for good cause shown.
2. 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.

113 Filing of pleadings and other documents.

1. When an appeal is timely filed, it shall be assigned a docket number.
2. All pleadings and other documents filed in the appeal shall be maintained at the office of the Executive Director.
3. Copies, including certified copies, of pleadings and other documents filed in the appeal shall be made available to an appealing party in accordance with the fee schedule adopted by the Board of Trustees.
4. All documentation filed by any party to an appeal must specify the assigned docket number and should be directed to the Executive Director of the Public Employees' Retirement System.

114 Computation of time

In computing any period of time prescribed or allowed under these rules, the Board of Trustees shall be guided by the Mississippi Rules of Civil Procedure.

115 Amendment, validity, and enforcement of rules

1. The Board of Trustees 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 of Trustees shall have the authority, duty and responsibility to abide by and enforce these rules.

116 Fees

The Board of Trustees 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.

BEFORE THE BOARD OF TRUSTEES
OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

PARTY
(APPEALING PARTY)

APPEALING

AND

NO. _____

PUBLIC EMPLOYEES' RETIREMENT SYSTEM
PARTY

RESPONDING

NOTICE OF APPEAL

1. Name, mailing address and telephone number of Appealing Party:

2. Name, mailing address and telephone number of Appealing Party's attorney, if any:

3. Name of retirement plan or program under which claim is filed:

4. Appealing Party or Member's employing agency:

5. Appealing Party or Member's Social Security Number: _____

- 6. Appealing Party's statement in detail, of the facts upon which the appeal is taken. Be sure to include the effective date of the alleged grievable action. Attach supplemental page if needed, but do not write on the reverse side of this form or any supplemental page:

- 7. Appealing Party's statement of the final administrative disposition by the PERS staff and why such disposition is in error, including, where applicable, the effective date of the final disposition. Attach supplemental page, if needed, but do not write on the reverse side of this form or any supplemental page:

- 8. Appealing Party's statement of relief requested. Attach supplemental page, if needed:

- 9. List of any documents, exhibits, or supplemental pages which Appealing Party has attached to and in support of this Notice of Appeal. Attach supplemental page, if needed:

SIGNATURE OF APPEALING PARTY

DATE: _____

NOTE: To file an Appeal, the Appealing Party should fill out and return this form to the Executive Director of the Public Employees' Retirement System, 429 Mississippi Street, Jackson, Mississippi 39201. The rules governing appeals are attached to this form.

If you are a person with a disability and may need special services or accommodations in the appeals process, please contact the Public Employees' Retirement System at 359-3589.

(History: 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.)

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(2) (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 20, 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(2) (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(9).

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.

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(9) (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)

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. Section 25-11-117 (1972, as amended) provides refunds 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 January 1, 1994 refunds of accumulated contributions will be issued no sooner than forty-five (45) calendar days from the date of termination from covered employment. Refunds of accumulated contributions shall be processed after receipt of a properly completed PERS Form 5, Request for Refund of Accumulated Contributions and after the forty-five (45) calendar day period has lapsed. The forty-five (45) day period will be calculated on the basis of the termination date certified by the employer on the PERS Form 5. 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 forty-five (45) day period.

1. Refund upon death of member

The forty-five (45) day period shall not apply in cases of refunds due to the death of a member.

2. Refund to member in case of financial emergency

Refunds may be issued prior to the forty-five (45) day period in case of a documented 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 emergency is defined as follows:

- a. Illness of member or member's immediate family as documented by a physician's certification and where treatment for such illness is established to be the financial responsibility of the member or the member's spouse. Immediate family is defined as the member's spouse, parent, or dependent child.
- b. Foreclosure or repossession of real or personal property as documented by notices of such action.
- c. Eviction notice from house or apartment as documented by notices of such action.
- d. Any financial hardship not covered in the above items that, in the opinion of the Executive Director, or his designee, warrants waiver of the forty-five (45) day waiting period.

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

Chapter 45A Administration of Disability Benefits under PERS

100 Purpose

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

101 Fees for disability determination

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. An active member who became a member of the system before July 1, 2007, and who has at least four (4) years of membership service credit, or an active member who became a member of the system on or after July 1, 2007, who has at least eight (8) years of membership service credit, or a member who is disabled as a direct result of an accident or traumatic event resulting in a physical injury occurring in the line of performance of the job may file an application for disability benefits. (Miss. Code Ann. § 25-11-113 (1) (a) and §25-11-114 (6) (1972, as amended).
2. Any inactive member who became a member of the system before July 1, 2007, and who has four (4) or more years of membership service who has withdrawn from active state service, or any inactive member who became a member of the system on or after July 1, 2007, who has at least eight (8) years of membership service is not eligible for disability retirement benefits unless the disability occurs within six (6) 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. (Miss. Code Ann. § 25-11-113 (1) (b) (1972, as amended).

Any inactive member seeking to establish eligibility for regular disability benefits must have met the 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 Miss. Code Ann. § 25-11-111 (1972, as amended) while pursuing a disability retirement allowance under this section or Miss. Code Ann. §25-11-114 (1972, as amended) may elect to receive a service retirement allowance pending a final determination on eligibility for a disability retirement allowance or withdrawal of the application for the disability retirement allowance. 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, the service retirement allowance shall continue to be paid in accordance with the option selected. No person may apply 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.
4. Any inactive member who has four (4) or more years of membership service who became a member of the system before July 1, 2007, or any inactive member who became a member of the system on or after July 1, 2007, who has at least eight (8) years of membership service credit who returns to covered employment, and who applies for non-duty related disability benefits during the first six months after returning to active employment, 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. Any inactive member who has terminated covered employment and who has previously applied for and been denied disability benefits shall be ineligible to reapply for disability benefits unless or until such applicant can prove he or she is an actively contributing member of the retirement system reemployed in covered service for a period in excess of six (6) months.
 5. 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 of his or claim by the PERS Medical Board shall be eligible for death benefits, including spouse/survivor benefits or a refund of contributions, unless an Advanced Application for Optional Settlement has been completed prior to death and is on file with PERS.
 6. Any member who has filed a claim for disability benefits whose claim has been approved by the Medical Board to receive such benefits but who dies after approval but prior to termination from covered service shall be paid disability benefits under the provisions of the optional benefit payment plan selected on his or her disability application.

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) (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; and (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, an accident or traumatic event resulting in a physical injury occurred. (Miss. Code Ann. § 25-11-114 (8) (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))

In order to be considered eligible for disability benefits the Medical Board, must certify to the Board of Trustees that the member is i) 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. (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:
- 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 Public Employees' Retirement System that is actually offered and is within the same general territorial work area, without material reduction in compensation. (Miss. Code Ann. §25-11-113 (1) (a) (1972, as amended)) 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.
- For purposes of disability determination, a material reduction in compensation shall be defined as a salary not in excess of ten percent (10%) less than the current salary of the applicant.
4. In applying for job related disability benefits, a member must provide medical proof satisfactory to the Medical Board that his disability is a direct result of an accident or traumatic event resulting in a physical injury occurring in the line of performance of duty. In addition, permanent and total disability resulting from a cardiovascular, pulmonary or musculoskeletal condition which was not a direct result of a traumatic event resulting in a physical injury 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 employees' 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. An on-the-job disability benefit determination by PERS is independent of any determination of benefit eligibility which may be made by an insurance company or other agency of the State. (Miss. Code Ann. §25-11-114 (6) (1972, as amended))

5. No inactive member shall be eligible to apply for hurt on the job disability benefits regardless of years of service if withdrawal from service occurred prior to the July 1, 1984, the date that such benefits were authorized in the PERS law.
6. 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 wage used in calculating the benefits, the inactive member shall be deemed ineligible for benefits.
7. 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]
8. 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.

105 Continuing qualification for disability benefits

1. Disability retirees under the age of sixty (60) or until the termination age of the temporary allowance under Section 25-11-113 (2) (c) 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 age 60 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. Disability retirees reaching age 60 or termination age of the temporary allowance shall not be

required to submit to medical reexaminations. (Miss. Code Ann. §25-11-113 (3) (1972, as amended))

- a. In the event a 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. § 25-11-113 (3)(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. § 25-11-113 (6) (1972, as amended))
- c. 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 disability allowance, exclusive of cost of living adjustment, and his average compensation, and if the Board of Trustees concurs in such report, the disability benefit shall be reduced to an amount which, together with the amount earnable by him, shall equal his average compensation. (Miss. Code Ann. § Section 25-11-113 (4) (1972, as amended))
- d. 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. The earnings limitations, pursuant to the statute will be based on the "earned income" of the disability retiree.
- e. If, based on a review of earnings during the year, the Medical Board determines and the PERS Board concurs, that 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 which 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. (Miss. Code Ann. § Section 25-11-113 (4) (1972, as amended))
- f. If documented earnings meet or exceed the average compensation for a period in excess of six (6) months, a medical review shall be required, and the Medical Board shall report to the Board of Trustees whether or not the retiree is mentally and physically able to return to his regular duties or to any gainful employment earning the equivalent of the average compensation and whether or not 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. (Miss. Code Ann. § Section 25-11-113 (4) (1972, as amended))

- g. 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. (Miss. Code Ann. § Section 25-11-113 (4) (1972, as amended))

106 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 was retired on disability or to other covered service in which he is earning an amount equal to or more than his average compensation or where such termination is a result of the member'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 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.
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 Regulation 42.

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 February 1, 2000; amended January 1, 2002; amended July 1, 2002; amended June 21, 2005 to be effective 8/1/2005; amended and reformatted July 1, 2007)

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.

2. Articles 3 and 5

- 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 Government Employees' Deferred Compensation Plan & Trust

100 Purpose

The purpose of this regulation is to establish the due date of contributions and contribution reports for participants in the Deferred Compensation Plan and Trust.

101 Due Date

Effective July 1, 1999, all contributions and billing (contribution) reports on behalf of participants in the Government Employees' Deferred Compensation Plan & Trust administered by the Public Employees' Retirement System are due from the employer as of the (7th) seventh working day of each month.

102 Electronic reporting of contributions and reports

Effective July 1, 2000 all employers are authorized and shall transfer all funds due to the Mississippi Deferred Compensation Plan and Trust 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 determining whether such requests shall be granted as concerns the reporting of PERS contributions and/or reports. These same guidelines shall apply to the reporting of funds and reports of the Mississippi Deferred Compensation Plan and Trust.
- 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 July 1, 2007)

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

100 Purpose

The purpose of this regulation is to provide 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

Where allowed under and subject to the provisions of federal law, plans administered by the Board of Trustees of the Public Employees' Retirement System, (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. 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:

1. Another employer plan qualified under section 401(a) of the Code;
2. A qualifying individual retirement account or annuity under section 408 of the Code;
3. A tax-sheltered annuity qualified under section 403(b) of the Code;
4. A governmental deferred compensation plan under 457 of the Code; or
5. An annuity plan under section 403(a) of the Code.

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 a) the repayment of

- part or all of previously withdrawn contributions and interest, or b) purchase of optional service credit as allowed by law. The amount of the rollover distribution 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-quarter year 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) or 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.
 - b. Participant Rollover Contributions from Other Plans:

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.
 - (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.
 - 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.
 - d. Participant Rollover Contributions from IRAs:

The plan will accept a participant rollover contribution of the portion of a distribution from an 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.
 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 as provided below. A rollover check from one of the eligible plans mentioned above must be payable to the

Public Employees' Retirement System or other applicable plan administered by the Public Employees' Retirement System of Mississippi 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 the Refund Department, Wage and Contribution Department, or Claims Department as appropriate. 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.)

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.

Neither partial payments for less than a quarter year of service nor payments in excess of the cost of service to be purchased or reinstated will be accepted.

5. It is the responsibility of the member to see that all forms are properly completed and submitted to PERS along with the appropriate funds.
6. Upon PERS' review and acceptance of documentation and payment as provided above, 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 July 1, 2007)

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 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 for Optional Settlement Under Service Retirement, 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, and who has at least twenty-eight (28) years of creditable service in PERS; or
- c) 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 requirement in both PERS and SLRP.

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

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. 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 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

The partial lump sum payment shall be paid in a check separate from the regular monthly retirement benefit. 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. The member, (or the spouse beneficiary, in the case of 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 IRS 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 prorata 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)

Chapter 49 Conditions for Existing Military Service At No Cost and Qualified Military Service Due to Interruption of Employment Available Upon Payment of Required Employer and Employee Contributions

100 Purpose

The purpose of this regulation is to provide information to the member regarding the types of military service that are eligible for service credit under the retirement systems administered by 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 (PERS) and the Mississippi Highway Safety Patrol Retirement System (MHSPRS) for many years. Service qualifying for credit at no cost under PERS and the MSHPRS are discussed below. (Note that the law provides that 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. 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 the PERS and the MHSPRS in addition to qualified military service based on interrupted employment under the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). The provisions for interrupted employment under USERRA apply to members of all retirement systems administered by PERS, including the Mississippi Highway Safety Patrol Retirement System, the Municipal Retirement Systems, 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, 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 state service after discharge from qualifying military service;
- d. Be vested in his or her retirement system, i.e., a member who joined PERS before July 1, 2007, must have a minimum of four (4) years of membership service credit in PERS, a member who joined PERS on or after July 1, 2007, must have a minimum of eight (8) years of membership service credit, or a member of the MHSPRS must have a minimum of five (5) years of membership service credit;
- e. Not have credit for this service in any other retirement system administered by PERS;
- f. Not have overlapping service credit for the same period of time.

***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 (4) years** of 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/her military DD214 discharge form (or other documentation acceptable to PERS) which verifies:
 - (i) That the service was Active Duty;
 - (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/her DD214, he/she may obtain one by contacting the:

National Personnel Record Center
9700 Page Boulevard
St. Louis, MO 63132

4. Special Note regarding National Guard or Reserve Service

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/she may be eligible for free service as noted above. However, weekend drills and annual two-week training periods are not eligible for credit. Note also, that military service is not allowed for periods during which the member received credit for employment with his/her public employer. (Special Note: 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 Which May Be Eligible.

The Uniform 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 noted above, 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 the Public Employees’ Retirement System, Mississippi Highway Safety Patrol Retirement System, one of the Municipal Retirement Systems, or the Optional Retirement Plan administered by PERS 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/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.

(SPECIAL NOTE: 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/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.)

c. 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 Qualifying Interrupted 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/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 (3) times the member's qualified military service, but in no case shall the member have in excess of five (5) years from the date of his return to make such payment.
- (iv) Employer contributions required by the employer with whom service was interrupted which 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-quarter year. As contributions for each quarter year of service (or multiples thereof) are received, service will be credited to the account.

d. Certification

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

- (i) A certificate of service or discharge (DD214) which 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/or the Uniformed Services Employment and Reemployment Rights Act (USERRA); and
- (iii) FORM 25M, Statement of Qualifying Interrupted 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.

(History: 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)

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 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, 2001, 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)A of the Internal Revenue Code (Code) including a qualified retirement plan under IRC 401(a) or 403(a), an IRA under 408(a) and 408(b), 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 and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a qualifying distribution to a surviving spouse of a deceased member, and, where applicable, of a deceased retiree.

102 Distributions not qualified for rollover. For purposes of the direct rollover provisions in the plans administered by PERS, 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).

- 103 After-tax contributions eligible for rollover from PERS.** 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 that agrees to separately account for amounts so transferred, 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 and the earnings on those contributions.

(History: Adopted January 1, 2002; reformatted August 1, 2007)

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 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.

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, 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 (a) by the total number of accumulated unused leave hours to find the adjusted allowable hours;
- iii. Divide the result from Step (b) 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.
- f. 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
 - (i) No credit will be allowed for less than fifteen (15) days; and thereafter

- (ii) 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	0.25 YEAR
78 DAYS TO 140 DAYS	0.50 YEAR
141 DAYS TO 203 DAYS	0.75 YEAR
204 DAYS TO 266 DAYS	1.00 YEAR
267 DAYS TO 329 DAYS	1.25 YEARS
330 DAYS TO 392 DAYS	1.50 YEARS
393 DAYS TO 455 DAYS	1.75 YEARS
456 DAYS TO 518 DAYS	2.00 YEARS
519 DAYS TO 581 DAYS	2.25 YEARS
582 DAYS TO 644 DAYS	2.50 YEARS
645 DAYS TO 707 DAYS	2.75 YEARS
708 DAYS TO 770 DAYS	3.00 YEARS
771 DAYS TO 833 DAYS	3.25 YEARS
834 DAYS TO 896 DAYS	3.50 YEARS
897 DAYS TO 959 DAYS	3.75 YEARS
960 DAYS TO 1,022 DAYS	4.00 YEARS
1,023 DAYS TO 1,085 DAYS	4.25 YEARS
1,086 DAYS TO 1,148 DAYS	4.50 YEARS
1,149 DAYS TO 1,211 DAYS	4.75 YEARS
1,212 DAYS TO 1,274 DAYS	5.00 YEARS
1,275 DAYS TO 1,337 DAYS	5.25 YEARS
1,338 DAYS TO 1,400 DAYS	5.50 YEARS

(Only whole days are used in determining service credit)

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. Note, however, 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 receive credit under the special provisions for elected officials.

9. 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. 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 PAYMENT OF UNUSED LEAVE AT TERMINATION, RETIREMENT, DEATH OR DISABILITY

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 (This payment is not 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 150 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 with the Miss. Employment Security Commission only)	State employees who worked with the MESC prior to 1976 and who had excess leave still credited on their records
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; 150 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 to 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)

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

- therefrom 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, 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 was created by legislative enactment in 1952. Membership of the 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 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 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 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. State Retirement Annuity, commonly know as PERS, effective February 1, 1953;
- c. Teachers' Retirement System (retirees only from the old system which was replaced in 1952 by PERS);
- d. Mississippi Highway Safety Patrol Retirement System, established July 1, 1958;
- e. Government Employees' Deferred Compensation Plan, established in 1973 and whose administration was transferred to PERS in 1974;
- f. 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), administration of which was transferred to PERS in 1987;
- g. Supplemental Legislative Retirement System, created effected July 1, 1989;
- h. Retiree's Insurance Program, created effective July 1, 1988; and
- i. The Optional Retirement Plan for teaching and administrative faculty of the

Institutions of Higher Learning, created July 1, 1990.

3. Day to Day Operations of the Retirement Programs

The Board of Trustees has the authority to appoint the Executive Director, who serves at the will and pleasure of the Board, and to employ staff for the administration of the programs noted above. 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 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 Government Employees' Deferred Compensation Plans which is administered by a Third Party Administrator selected by PERS;
- c. The Retiree's Insurance Program which is administered by life and health insurance companies selected by PERS; 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 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 August 1, 2007)

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 (MUNI) . 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

In making a final determination of eligibility, PERS will review submitted documentation and employer certification of the nature of the position.

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 having 25 or more years of service credit or four (4) or more years of service credit at age 60 or later.
- 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 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. MUNI - 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. Unless otherwise provided by federal law, for purposes of the election for the tax exclusion provided by Section 845 of the Pension Protection Act of 2006, the accident or health insurance plan receiving the payments may not be a self-insured plan. Rather, it must be a plan providing insurance issued by an insurance company regulated by a State (including a managed care organization that is treated as issuing insurance).

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. To the extent allowed by federal law, the retiree may make such election prospectively for the current and future taxable years. Elections shall be effective the first of the month following receipt of the election in the PERS office and shall remain in effect until revoked in writing by the Eligible Retired Public Safety Officer, or the death of the retiree.
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 MUNI, and a 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. The IRS has not issued final regulations to date on the application of or administration of Section 845 of the Pension Protection Act. PERS has proceeded with implementation of the exclusion based on its understanding of the information available with the anticipation that the administration of this provision may require revisions and adjustments as the applicable provisions of the Pension Protection Act are interpreted and clarified. By making the election, the Eligible Retired Public Safety Officer acknowledges that changes may be required and that changes could affect the Retired Public Safety Officer's eligibility for the exclusion. 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)

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 thereunder). The Board shall have the duty and responsibility to maintain records, perform calculations, and determine benefits payable thereunder.
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)