

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Given the complex organizational chart that seems to be at work within the state retirement system, I have some questions about which agency has the authority to adopt Rules for all of the 10 agencies listed in 02A .0101.

Looking at Art. 4 of Ch. 143A, it looks like 4 of the 10 agencies listed in 02A .0101 were transferred to the Department of State Treasurer in a Type II transfer. Those would be TSERS (143A-34), LGERS (143A-35), and Legislative Retirement Fund (143A-37). The Public Employee's Social Security Agency was a Type I transfer (143A-36). 143A-38.1 refers to the Law Enforcement Officers' Benefit and Retirement Fund, but I don't see that agency referenced in 02A .0101.

Then there are the Consolidated Judicial Retirement System, the Disability Income Plan, the Firefighters and Rescue Squad Workers' Pension Fund, the Register of Deeds' Supplemental Pension Fund, and now the National Guard Pension Fund. It appears each of these agencies' statutory schemes include a provision stating that the Boards of Trustees of either TSERS or LGERS have authority to administer the programs.

This leaves the Public Employee's Social Security Agency and the Supplemental Retirement Income Plan within the authority of the Department of the State Treasurer, not TSERS or LGERS.

First, please clarify whether any of the Rules (02A, 02B, 02C, etc) apply to all 10 of the agencies listed in 02A .0101.

Second, is it TSERS and LGERS' understanding that by virtue of their statutory power to administer the aforementioned agencies, they can engage in rulemaking on their behalf?

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

Third, can you explain why TSERS and LGERS have the statutory authority to adopt rules for the Public Employee's Social Security Agency and the Supplemental Retirement Income Plan? Should any rules pertaining to these agencies have been adopted by the Department of State Treasurer, instead?

Fourth, what about the Law Enforcement Officers' Benefit and Retirement Fund? Why is it not included here?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0101

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In item (4), G.S. 120-4 was "Repealed by Session Laws 1985 (Reg. Sess. 1986), c. 1014, s. 40(b)." I believe you mean Chapter 120 of the G.S. If so, please clarify.

For consistency, in item (5), change "N.C." to "North Carolina".

The end of item (9) should end with a semi-colon followed by "and".

If TSERS and LGERS are attempting to engage in rulemaking on behalf of each of the 10 agencies referenced here, I believe the History Note should contain statutory references giving either TSERS or LGERS the authority to administer on behalf of those agencies.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0101 is amended as published in 36:23 NCR, page 1836, as follows:

2
3 **CHAPTER 02 – RETIREMENT SYSTEMS**
4 **SUBCHAPTER 02A - DIVISIONAL RULES**

5
6 **SECTION .0100 - ORGANIZATIONAL RULES**

7
8 **20 NCAC 02A .0101 ORGANIZATION: AUTHORITY**

9 The ~~retirement systems division~~Retirement Systems Division of the Department of State Treasurer provides the
10 staffing for the administration of the following agencies. The agencies and the statutory authority of each are:

- 11 (1) Teachers' and State Employees' Retirement System of North Carolina -- G.S. 135, Article 1;
- 12 (2) North Carolina Local Governmental Employees' Retirement System -- G.S. 128, Article 3;
- 13 (3) Public Employees' Social Security Agency -- G.S. 135, Article 2; G.S. 143A, Article 4;
- 14 (4) Legislative Retirement System of North Carolina -- G.S. 120-4, Article 1A;
- 15 (5) Consolidated Judicial Retirement System of N.C. -- G.S. 135, Article 4;
- 16 (6) Supplemental Retirement Income Plan of North Carolina -- G.S. 135, Article 5;
- 17 (7) Disability Income Plan of North Carolina -- G.S. 135, Article 6;
- 18 (8) ~~Firemen's~~Firefighters' and Rescue Squad Workers' Pension Fund -- G.S. 58, Article 86;
- 19 (9) Register of Deeds' Supplemental Pension Fund -- G.S. 161, Article 3.
- 20 (10) National Guard Pension Fund – G.S. 127A, Article 3.

21
22 *History Note: Authority G.S. 128-28(g); 135-6(f);*
23 *Eff. February 1, 1976;*
24 *Readopted Eff. September 21, 1977;*
25 *Amended Eff. October 1, 1993; August 1, 1988; April 1, 1985; October 1, 1983;*
26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 21,*
27 *2018-2018;*
28 *Amended Eff. January 1, 2023.*
29

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0102

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Is this Rule necessary? As documented above in the "All Rules" request, it appears that the content of this Rule is reproduced in various locations throughout the G.S. I understand if you want to keep it, as a catch all, but I would then ask that you add to your History Note a statutory reference for each of the 10 agencies that are governed by this Rule.

To avoid ambiguity as to what "above named" is referencing, include a reference to the rule, 20 NCAC 02A .0101, instead, if that is what is intended. Otherwise, please clarify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0102 is amended as published in 36:23 NCR, page 1836 as follows:

2

3 **20 NCAC 02A .0102 EXERCISE OF AUTHORITY**

4 All of the above named agencies, with the exception of the ~~N.C.~~Public Employees' Social Security Agency, exercise
5 their prescribed statutory powers independently of the State Treasurer. However, those functions such as planning,
6 organizing, staffing, directing, coordinating, ~~reporting-reporting,~~ and budgeting are performed under the direction and
7 supervision of the State Treasurer. In the case of the N.C. Public Employees' Social Security Agency, all its prescribed
8 statutory authority, powers, ~~duties,duties~~ and functions, including rule-making, are vested in the State Treasurer.

9

10 *History Note: Authority G.S. 135-6(f); 128-28(g);*

11 *Eff. February 1, 1976;*

12 *Readopted Eff. September 21, 1977;*

13 *Amended Eff. October 29, 1979;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 21,*
15 *~~2018~~2018;*

16 *Amended Eff. January 1, 2023.*

17

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0103

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Where is your statutory authority to delegate to the Director decisions that "the statutes specify" are to be made by the Board?

On line 4, please be more specific with your reference to "the statutes".

Also on line 4, please delete "itself".

On lines 5-6, what does it mean for the Director to "make... decisions administratively"?

What "previous decisions of this Board" is the Director bound to? Are these codified somewhere for the public to see?

Which decisions may be appealed under this Rule? Only those decisions made "administratively" and covering "specific findings in specific matters relating to specific persons"?

What procedures for contested cases apply? Consider making reference to Section .0400 of Title 20, Chapter 02.

Are you saying that the Director's decision, made on behalf of the Board, is the final agency decision that can be appealed to OAH? Note this is also an issue for Rule 02A .0401.

In your History Note, consider adding a reference to G.S. 150B-22.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0103 is readopted with changes as published in 36:23 NCR, page 1837, as follows:

2

3 **20 NCAC 02A .0103 DELEGATION OF AUTHORITY TO DIRECTOR**

4 Whenever the statutes specify that the ~~board~~Board of ~~trustees~~Trustees itself will make specific findings in specific
5 matters relating to specific persons, the ~~director~~Director of the Retirement Systems Division may make the decisions
6 administratively in accordance with law and the rules, ~~regulations~~regulations, and previous decisions of this
7 ~~board~~Board. Appeals may be made from the decision of the ~~director~~Director under the same procedures used for
8 contested cases.

9

10 *History Note: Authority G.S. 128-28(g); 135-6(f);*

11 *Eff. September 21, 1977;*

12 *Amended Eff. October 29, ~~1979~~1979;*

13 *Readopted Eff. January 1, 2023.*

14

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0104

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 5, who makes the "election of an optional element of a retirement system"? The employer? Please rephrase in the active tense.

On line 6, who shall provide and who shall receive the "minutes of the governing board of the employer"? Please rephrase in the active tense.

On line 6, what is the "Retirement System"? To which of the 10 systems enumerated in R .0101 does this apply?

On line 6, please delete "duly".

On lines 7-8, please define "highly compensated employees."

On lines 7, what does the phrase "the terms under which the option is elected" mean?

On lines 7-8, what do you mean by "discriminate in favor of" highly compensated employees?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0104 is readopted with changes, as published in 36:23 NCR, page 1837, as follows:

2

3

4 **20 NCAC 02A .0104 EXERCISE OF EMPLOYER OPTIONS**

5 No election of an optional element of a retirement system shall be considered effective by the ~~retirement~~
6 ~~system~~Retirement System unless a duly certified copy of the minutes of the governing board of the employer is
7 received and the terms under which the option is elected do not discriminate in favor of the more highly compensated
8 employees.

9

10 *History Note: Authority G.S. 128-28(g); 135-6(f);*

11 *Eff. November 9, ~~1979~~, 1979;*

12 *Readopted Eff. January 1, 2023.*

13

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0201

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Why is this Rule necessary? It doesn't appear to establish any new requirements and instead only points the public to another Subchapter.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0201 is amended as published in 36:23 NCR, page 1837 as follows:

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3

SECTION .0200 - RULE-MAKING PROCEDURES

4

20 NCAC 02A .0201 ESTABLISHMENT OF PROCEDURAL RIGHTS

6 The rules in 20 NCAC 01F .0100 establish rule-making procedures for the Retirement Systems Division of the

7 Department of State Treasurer. ~~All correspondence with the Retirement Systems Division shall be addressed to:~~

8 ~~Director of the Retirement Systems~~

9 ~~Longleaf Building~~

10 ~~3200 Atlantic Avenue~~

11 ~~Raleigh, North Carolina 27604.~~

12

13 *History Note: Authority G.S. 128-28(g); 135-6(f);*

14 *Eff. February 1, 1976;*

15 *Readopted Eff. September 21, 1977;*

16 *Amended Eff. October 1, 1993; October 29, 1979;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 21,*
18 *2018;*

19 *Amended Eff. September 1, ~~2019~~2019;*

20 *Amended Eff. January 1, 2023.*

21

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0202

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Why is this Rule in Chapter 02A when it is defining terms in Chapter 01F? Why isn't it there?

On line 4, add a 0 before "1F".

On line 5, what do you mean the Division "includes" the agencies enumerated in R. 0101?

On line 6, add a 0 before "2A".

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0202 is amended as published in 36:23 NCR, page 1837 as follows:

2

3 **20 NCAC 02A .0202 DEFINITIONS**

4 The following definitions apply to rule-making in 20 NCAC 1F .0100:

5 (1) The "Division" is the Retirement Systems Division and includes the agencies enumerated in 20
6 NCAC 2A .0101.

7 (2) The "~~Chief Officer~~" "Director" is the Director of the Retirement ~~Systems~~Systems Division.

8

9 *History Note: Authority G.S. 135-6(f); 128-28(g);*

10 *Eff. February 1, 1976;*

11 *Readopted Eff. September 21, 1977;*

12 *Amended Eff. October 1, 1993; October 29, 1979;*

13 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 21,*
14 *~~2018-2018;~~*

15 *Amended Eff. January 1, 2023.*

16

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0301

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

I do not understand why this Rule is necessary. There are only 2 rules in 02F .0200, Rule .0201 which more or less repeats the first sentence of this Rule, and Rule .0208 which outlines the process for requesting a declaratory ruling. Why not include this lone exception to Rule .0208 there?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0301 is readopted as published in 36:23, page 1837, follows:
2

3 **SECTION .0300 - DECLARATORY RULINGS**

4
5
6 **20 NCAC 02A .0301 ESTABLISHMENT OF PROCEDURAL RIGHTS**

7 The rules in 20 NCAC 1F .0200 establish declaratory ruling procedures for the Retirement Systems Division of the
8 Department of State Treasurer, with the following exception. All requests for declaratory rulings from the Retirement
9 Systems Division shall be in writing and mailed to the attention of the Director at the following address:

10 Director of the Retirement Systems Division
11 Department of State Treasurer
12 3200 Atlantic Avenue
13 Raleigh, North Carolina 27604.

14
15 *History Note: Authority G.S. 135-6(f); 128-28(g);*
16 *Eff. February 1, 1976;*
17 *Readopted Eff. September 21, 1977;*
18 *Amended Eff. October 1, ~~1993-1993~~;*
19 *Readopted Eff. January 1, 2023.*
20

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0302

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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In reviewing this Rule, the staff recommends the following changes be made:

Again, I do not understand why this Rule is not included in 01F. Please explain.

My review of the 2 rules in 01F.0200 indicates that the terms "Division" and "Director" are not used there. Why is this necessary?

Please change the format of the definitions. Definitions should be formatted as such: "Definition" means...

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0302 is amended as published in 36:23, page 1837 as follows:

2

3 **20 NCAC 02A .0302 DEFINITIONS**

4 The following definitions apply to declaratory rulings in 20 NCAC 1F .0200:

5 (1) The "Division" is the Retirement Systems Division;

6 (2) The "~~Chief Officer~~" "Director" is the Director of the Retirement ~~Systems~~.Systems Division.

7

8 *History Note: Authority G.S. 135-6(f); 128-28(g);*

9 *Eff. February 1, 1976;*

10 *Readopted Eff. September 21, 1977;*

11 *Amended Eff. October 1, 1993;*

12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 21,*

13 *2018-2018;*

14 *Amended Eff. January 1, 2023.*

15

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0401

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

With respect to the formatting of this Rule, I don't understand why you've chosen to do an opening paragraph and then a list. Items (1)-(3) don't appear to stem from the opening paragraph, but are independent ideas. Thus, I would recommend making the opening paragraph (a), and then change (1)-(3) to (b)-(d), moving the tabs to the left accordingly.

It appears to me that Items 1-3 are the steps for "trying to reach a settlement through informal procedures" as referenced in G.S. 150B-22(a). If so, that is not clear from the text of the Rule. I would suggest adding language to clarify that these steps take place before the filing of a contested case at OAH if that is indeed your intent.

In item (1), line 14, what is a "problem"? Is this a "dispute" as referenced in G.S. 150B-22?

In item (1), line 14, instead of "person" do you mean "member"? Or can anyone call and begin informal review or a contested case?

In Item (2), lines 17-18, what does it mean to allow a complainant to "request an administrative review of the Division's decision or action"? Do you mean that this is the beginning of a contested case, as referenced in G.S. 150B-22(b)?

In Item (2), how must the complainant make the request, and to whom must the request be submitted?

In Item (3), line 23, should "the" be deleted in "Director of the Retirement Systems"?

In Item (3), line 23, the term "Final Agency Decision" is used in G.S. 150B-42, which is part of Article 3A of the APA, and does not apply to the Department of the State Treasurer. I would suggest just using the term "agency decision" or "written decision".

Brian Liebman

Commission Counsel

Date submitted to agency: 12/6/22

In item (3), line 23, it looks like you deleted the period after “Systems”, added a comma, and continued the text. When you do that, you need to strike through the whole word, not just the punctuation (which is missing, by the way). So it should look like this: “... Director of Retirement ~~Systems~~. Systems, or the Directors’ designee...”

Does the issuance of the “Final Agency Decision” follow with the requirements of G.S. 150B-23(f) to send the decision “to all persons aggrieved that are known to the agency by personal delivery, electronic delivery, or by [mail]...”?

In (3), line 24, change “will” to “shall”.

In your History Note, please add a reference to G.S. 150B-22.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0401 is readopted as published in 36:23 NCR page 1837 as follows:

2
3 **SECTION .0400 - CONTESTED CASE PROCEDURES**

4
5
6 **20 NCAC 02A .0401 ESTABLISHMENT OF PROCEDURAL RIGHTS**

7 Article 3 of G.S. 150B establishes ~~The rules in 20 NCAC 1F .0300 establish~~ contested case procedures for the
8 Retirement Systems Division of the Department of State Treasurer, ~~with following amendments:~~ All correspondence
9 with the Retirement Systems Division shall be addressed to:

10 Director of the Retirement Systems Division

11 Department of State Treasurer

12 3200 Atlantic Avenue

13 Raleigh, North Carolina 27604.

14 (1) Informal resolution of the problem begins when a person calls, writes, or visits the ~~state~~
15 ~~retirement~~Retirement systemSystems Division’s Member Services sectionoffice and describes the
16 problem to a ~~counselor/field~~representative;

17 (2) If the problem is not resolved during this initial contact, the person may request an administrative
18 review of the Division’s decision or action; ~~will be referred to the administrator of the appropriate~~
19 ~~section;~~

20 ~~(3) If the problem is not resolved at this level, the person may discuss it with the Assistant Director of~~
21 ~~the Retirement Systems;~~

22 ~~(4)(3) The~~ If the aggrieved person is dissatisfied at this point, he may discuss his difficulty with the
23 Director of the Retirement Systems, or the Director’s designee, will issue a Final Agency Decision
24 in writing, which will serve as the “agency decision” for purposes of G.S. 150B-23(f).

25
26 *History Note: Authority G.S. 128-28(g); 135-6(f); 150B-23;*

27 *Eff. February 1, 1976;*

28 *Readopted Eff. September 21, 1977;*

29 *Amended Eff. October 1, 1993-1993;*

30 *Readopted Eff. January 1, 2023.*

31

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0503

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

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In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 5, put "Dual membership" in quotation marks.

In (a), line 5, when you say "two systems", does this refer to the systems in Rule .0101?

In (b), line 8, insert an Oxford comma after "disability retirement".

Paragraph (c) is very unclear. Can you explain what you're trying to require here? Please consider revising, where possible, for clarity.

In (d), line 16, what is the "eligibility period"? This seems unclear to me when the context is calculating benefits of members who held dual membership for "one or more periods".

In paragraph (e), line 17, replace "by" with "as follows".

In (e)(1), what is "split service"?

In (e)(2), why are (e)(2)(B) and (C) split on line 25-26? It seems to me the concept expressed in (B) carries over to (C), and that the new language added to (C) should stand alone as (C).

In (e)(2)(C), lines 26-28, please revise this first sentence for clarity.

Throughout (e)(2)(C), please change all references to "Subparagraph" to "Part".

In (f), line 9, what is "the effective date of this Rule"? 1981? 1985? 2023? Please specify.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0503 is amended as published 36:23 NCR, page 1838, as follows:

2
3 **20 NCAC 02A .0503 DUAL MEMBERSHIP - COMPUTATION OF SERVICE AND BENEFITS**

4 (a) This Rule applies to any individual case in which the member had one or more periods of dual membership in
5 those rare cases which are permitted by law. Dual membership means membership in two systems, at the same time,
6 by virtue of the same position.

7 (b) Eligibility shall be established for the death benefit, survivor's alternate benefit, service, early or disability
8 retirement or other benefits which are based on creditable or membership service for both systems whenever eligibility
9 is established in either one of the systems.

10 (c) A statute permitting transfer of membership and prior service shall apply when a person becomes a member of a
11 ~~retirement~~Retirement systemSystem to which the membership and prior service may be transferred from one or the
12 other of the systems in which the member had dual membership. This shall apply only where the member is paid
13 under only one ~~retirement~~Retirement systemSystem for services rendered subsequent to the last day of service in a
14 position in which the member had dual membership.

15 (d) Death ~~benefit~~benefits for active members shall be limited to twenty thousand dollars (\$20,000) and shall be
16 allocated pro rata between systems based on the total compensation paid during the eligibility period.

17 (e) Other benefits shall be calculated by:

18 (1) Compute "Average Final Compensation" on the basis of compensation on which the member would
19 have contributed had the member~~he~~ not been earning "split" service as an employee with dual
20 membership.

21 (2) Compute creditable service as follows:

22 (A) the number of months of creditable service the member earned or acquired which were
23 based on compensation for service in only one of the systems; plus

24 (B) the total of the fractional months earned by the member in each of the systems during
25 periods of dual membership; where

26 (C) the fractional months during periods of dual membership is equal to the same fraction of a
27 month that the compensation reported to the system bears to the total compensation
28 reported to all systems. The fractional months are to be computed as follows. First, identify
29 the total compensation earned by the member in each of the systems during periods of dual
30 membership, as determined in Subparagraph (e)(2)(B) of this Rule. Second, add together
31 the total compensation earned by the member in each of the systems during periods of dual
32 membership, as determined in Subparagraph (e)(2)(B) of this Rule, to produce a Grand
33 Total. Third, divide the total compensation earned by the member in each of the systems
34 during periods of dual membership, as determined in Subparagraph (e)(2)(B) of this Rule,
35 by the Grand Total, as determined in the previous sentence, to produce a factor, carried to
36 the fourth decimal place, known as the Modification Factor, for each system. Fourth,
37 multiply the total of the fractional months, as determined in Subparagraph (e)(2)(B) of this

1 Rule, by the Modification Factor for each system, as determined in the previous sentence,
2 to determine the actual creditable service allowed for each system during periods of dual
3 membership.

4 (3) Compute the annual allowance for a member by multiplying the average final compensation times
5 the creditable service as computed in Subparagraphs (1) and (2) of this Paragraph.

6 (4) Allocate the benefits to be paid from each system pro rata on share of creditable service in each
7 system as computed in ~~(d)(2)~~ Subparagraph (e)(2) of this Rule.

8 (f) This Rule shall apply to any individual case in which a member with dual membership commenced retirement
9 with one ~~retirement~~ Retirement system ~~System~~ prior to the effective date of this Rule and continued in service under
10 the other ~~retirement~~ Retirement system ~~System~~. In such cases, the retirement allowance of the member from the system
11 with which ~~he the member~~ first retired shall be recomputed in accordance with this Rule and paid retroactively to the
12 effective date of this Rule.

13
14 *History Note: Authority G.S. 128-28(g); 135-6(f);*
15 *Eff. December 1, 1981;*
16 *Amended Eff. March 1, ~~1985-1985~~;*
17 *Amended Eff. January 1, 2023.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0504

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Why is the first sentence of (a) necessary? It seems to me that it is effectively repeated in (b).

In (a), line 5, please delete "such" and revise with specific language. See below for several other instances.

In both (b) and (c), the Rule states that the Division "may" reimburse NSF or other service charges where the suspension of benefits was in error and the beneficiary sets out "satisfactory proof" (see below for changes in re "satisfactory"). This suggests that the Division may not pay these charges even if the suspension was in error and the beneficiary shows proof. If so, please revise to include what other factors the Division would use to determine whether to pay the charges. Otherwise consider changing "may" to "shall."

In (b), line 9, what does it mean for a beneficiary to be "properly notified"?

In (b), line 9, please delete "such" and revise.

In (b), line 10, please define or delete "satisfactory."

In (c), line 12, please delete or define "satisfactory."

In (c), line 12, please delete "such" and revise.

In (d), line 13, please delete "such" and revise.

In your History Note, you cite to G.S. 135-52, which places the Consolidated Judicial Retirement System under the administration of TSERS, and to 135-102(c), which does the same for the Disability Income Plan. What about the other retirement systems

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

included in R .0101? Or does this Rule only apply to TSERS, LGERS, Judicial, and Disability?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0504 is readopted with changes as published in 36:23 NCR page 1838, as follows:

2

3 **20 NCAC 02A .0504 DIRECT DEPOSIT OF MONTHLY BENEFIT PAYMENTS**

4 (a) This Rule applies to any individual case in which a beneficiary's monthly benefit was paid via electronic funds
5 transfer (EFT) or direct deposit, when such EFT was suspended by the Division in error. This Rule does not apply to
6 any individual case involving a delay by this Division to initiate an EFT or a change in an existing EFT arrangement
7 requested by a beneficiary.

8 (b) The Division may reimburse non-sufficient fund charges incurred by a beneficiary due to the suspension in error
9 of an existing EFT arrangement when the beneficiary was not properly notified of the suspension of such arrangement
10 and upon receipt of satisfactory proof that such charges were incurred.

11 (c) Any other bad check service charges or fees imposed by any financial institution or merchant may be reimbursed
12 at the discretion of the Division Director upon receipt of satisfactory proof that such charges were incurred.

13 (d) Any such reimbursement of non-sufficient fund NSF or bad check service charges shall be paid from the Pension
14 Accumulation Fund of the Retirement System in which the beneficiary is in receipt of a benefit.

15

16 *History Note: Authority G.S. 128-28(g); 135-6(f); 135-52; 135-102(c);*

17 *Eff. March 1, ~~1992~~1992;*

18 *Amended Eff. January 1, 2023.*

19

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Teachers' and State Employees' Retirement System Board of Trustees AND
Local Governmental Employees' Retirement System Board of Trustees

RULE CITATION: 20 NCAC 02A .0505

DEADLINE FOR RECEIPT: Friday, December 9, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

I assume that the "statutory provision[s]" referenced in (a), line 4 are those parts of G.S. 135-4 that provide for purchase of creditable service? Are there other statutes? I suggest adding G.S. 135-4 and any other applicable statutes to the History Note.

In (a), line 4, add "the" between "to" and "purchase."

In (a), lines 5-7, what is the sentence "An applicant... duly adopted" requiring? I would suggest deleting this language as it merely restates that an applicant has to comply with the law and rules without specifying what law and what rules.

In (a), line 7, if you keep this language, define or delete "duly."

In (b), lines 8-9, I think you need to add "against" following "members".

In (b), line 9, what does "as provided by law" mean here? Are you saying the payment will be assessed as provided by law? Or are you referring to when the law states the purchase may be made? Please revise.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: 12/6/22

1 20 NCAC 02A .0505 is adopted as published in 36:23 NCR, page 1838, as follows:
2

3 **20 NCAC 02A .0505 ADMINISTRATIVE FEES FOR SERVICE PURCHASES**

4 (a) This Rule applies to purchase of creditable service whenever a statutory provision prescribes that the
5 calculation of the amount payable shall include an administrative fee to be set by the Board. An applicant
6 shall be eligible to purchase creditable service under any such provision only after having met all
7 requirements of eligibility for purchase as defined by law and by rules duly adopted.

8 (b) An administrative fee in the amount of twenty-five dollars (\$25.00) for each payment shall be assessed
9 members at the time of purchase as provided by law.

10

11 *History Note: Authority G.S. 135-6(f); 128-28(g);*

12 *Eff. January 1, 2023.*

13