

# PROPOSED RULEMAKING

## PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

[22 PA. CODE CHS. 211 AND 213]  
Change in Benefit Payment Plan

The Public School Employees' Retirement Board (Board) proposes to amend §§ 211.2 and 213.45 (relating to definitions; and change in benefit payment plan) as set forth in Annex A, by removing the requirement that once an application for an annuity (benefit payment plan) has been filed, the option selection is irrevocable.

### *Purpose of the Proposed Amendments*

The amount of a member's retirement annuity depends on many factors, chief of which are the member's final average salary and years of service. Although the Public School Employees' Retirement System (PSERS) maintains records on these factors for each of its 300,000 members, the source of this information is the members' employers. The timely collection and verification of this data, particularly when a member retires, has the potential to delay a member's annuity.

As a consequence, PSERS, in an effort to provide an immediate source of income to newly retired members, calculates the amount of a member's annuity using the information then available to the PSERS. This results in a member receiving his first annuity check within 2 to 3 weeks of retirement and thus avoids a major disruption in a member's lifestyle. Once benefit payments commence, PSERS proceeds to collect the final salary and service information from the member's employer. When PSERS has all final salary and service information, a final audit of the member's account is performed. If the final audit reveals that the initial annuity payments made to the member were either overstated or understated, then an adjustment is made prospectively to reflect the correct final annuity. Over or under payments, if any, made to the member from the date of retirement to the date of the final audit of the annuity are collected from or paid to the member, as the case may be.

Because of this delay between the initial payment and final audit of the member's account, a trap is created to the unwary member by the current regulations. The purpose of the present amendment is to eliminate that trap.

Specifically, the present regulations require a member to finalize his benefit payment plan (by selecting from a series of complex retirement options) when the member files his application for an annuity. Since this application is what commences PSERS' process in determining a member's initial and final annuity, the member is, in effect, forced to make irrevocable choices that could adversely affect the member's pension for the rest of the member's life, without full knowledge of the final status of his account. For example, a member may decide to retire believing that he has 30 years of service and thus eligible to retire below the normal retirement age (known as "30 and out") without suffering an early retirement reduction. Having made the decision to retire with expectations of an annuity at a certain amount, the member

learns for the first time after the final audit is conducted that, in fact, he has only 29.9 years of service. The result is that the member suffers a large and permanent reduction in his benefit.

These proposed amendments seek to correct this problem by making the member's benefit payment plan final not when the application for an annuity is filed with incomplete knowledge, but when the final audit has occurred and the member has had a reasonable period of time to make an informed and final election. In short, PSERS is seeking to revise the present definition and regulation to conform its rule on the finality of the application for an annuity with its current practice on the payment of final, audited retirement benefits. By doing so PSERS will not only have a consistent operating procedure but, more important, will eliminate a potential significant hardship for its members.

### *Statutory Authority*

The Board's authority to promulgate rules and regulations for the uniform administration of the PSERS is set forth in the Public School Employees' Retirement Code at 24 Pa.C.S. § 8502(h) (relating to administrative duties of board). The Board has promulgated these rules and regulations at 22 Pa. Code Chapters 201, 211, 213 and 215.

The proposed amendments to §§ 211.2 and 213.45 are authorized by 24 Pa.C.S. § 8102 (relating to definitions); 24 Pa.C.S. § 8507(j) (relating to changes in beneficiaries, survivor annuitants and benefit payment plans); 24 Pa.C.S. § 8505(g) (relating to duties of the Board regarding the initial annuity payment and certification); 24 Pa.C.S. § 8345(a) (relating to the retirement options a member may select); 24 Pa.C.S. § 8307 (relating to members' eligibility for annuities); and by the Board's authority to promulgate rules and regulations for the uniform administration of the PSERS under 24 Pa.C.S. § 8502(h).

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.4(a)), the Board submitted a copy of the notice of proposed rulemaking on January 2, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Education Committee and the Senate Finance Committee. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the agency within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the agency, the Governor and the General Assembly to review these objections before final publication of the amendments.

### *Fiscal Impact and Paperwork Requirements*

The proposed amendments do not impose increased costs or increased paperwork requirements on the Com-

monwealth, local governments, the private sector or the general public. The agency will be required to provide additional benefit counseling to members seeking to amend their original benefit payment plan.

*Persons Affected*

The proposed amendments affect the retiring members of PSERS, including those members who have multiple service membership.

*Effective Date*

These amendments shall be effective upon final promulgation retroactive to April 15, 1994. An annuitant living on the date of final promulgation who received the statement provided for in § 215.5(e) (relating to duties of the Board), on or after February 14, 1994, and on or before the date of final promulgation of these amendments may declare an intent to change the final terms of the benefit payment plan selected by the member in the application for an annuity filed with the Board. Members who received the statement provided in § 215.5(e) on or after February 14, 1994, are eligible to change their benefit payment plan under these proposed amendments because the 60-day period from February 14, 1994, in which to make the election under the proposed amendments does not expire until after the April 15, 1994 effective date of the proposed amendments. A declaration of intent to change or void the final terms of the benefit payment plan shall be treated as if timely filed and shall grant the annuitant the rights and obligations provided for by the proposed amendments.

*Sunset Date*

A sunset date is not being established for these amendments because they are necessary for the administration of the substantive provisions of the Public School Employees' Retirement Code. The Board will closely monitor these amendments for their effectiveness.

*Public Comments*

Interested parties are invited to submit written comments, suggestions or objections regarding the proposed amendments to Frank Ryder, Director, Government Relations, Public School Employees' Retirement System, P. O. Box 125, 5 North Fifth Street, Harrisburg, PA 17101, within 30 days following the publication of the proposed amendment in the *Pennsylvania Bulletin*.

JAMES A. PERRY,  
*Executive Director*

**Fiscal Note:** 43-6. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 22. EDUCATION**

**PART XIII. PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

**CHAPTER 211. PRELIMINARY PROVISIONS**

**§ 211.2. Definitions.**

The following words and terms, when used in this part, have consistent with the code definitions, the following meanings, unless the context clearly indicates otherwise:

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*Effective date of retirement*—The first day following date of termination of service, if an application [ , ] for an annuity is [ **timely** ] filed [ , **but, if not timely filed** ]

**within 90 days after termination of service. If an application for an annuity is not filed, within 90 days after termination of service, then the date of actual filing or date specified on the application, whichever is later. In the case of a vestee, [ it shall mean ] the term means the attainment of superannuation age, if filed within 90 days thereof, otherwise the date of actual filing, and, in the case of a disability benefit, the date certified by the Board. A member, whether active, inactive or a vestee, may not file an application for an annuity with an effective date more than 90 days after the later of the date of termination of service or the date the application is filed. The application is not valid and will not be accepted by the Board. Any otherwise valid filing made with or as a part of the application for an annuity, such as a request to purchase service or a nomination of beneficiary, will be accepted if otherwise valid.**

**CHAPTER 213. CONTRIBUTIONS AND BENEFITS BENEFITS**

**§ 213.45. [ Member's options ] Change in benefit payment plan.**

**[ Once a member has filed an application for benefits and chose an option including, a single life annuity, such option shall be deemed to be irrevocable, except as otherwise provided in section 8507(j) of the code (relating to eligibility for annuities) or unless an annuitant returns to service for a period not less than 80 full-day sessions or 500 hours and subsequently retires with a recomputation of benefits. ]**

**(a) Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, an annuitant may, by written request received by the Board within 60 days of the date of the statement provided for in § 215.5(e) (relating to duties of the Board), declare an intent to change the final terms of the benefit payment plan selected by the member in the application for an annuity filed with the Board. The intended changes may include one or a combination of the following:**

- (1) A change in the amount of money withdrawn under Option 4.**
- (2) A change in the decision to elect to receive an annuity reduced upon attainment of age 65, in anticipation of the receipt of a social security benefit, in accordance with section 8345(a)(4)(i) of the code (relating to member's options).**
- (3) A change in the retirement type from a disability annuity to a superannuation or withdrawal annuity, or from a superannuation or withdrawal annuity to a disability annuity if the member is otherwise eligible for a disability annuity.**
- (4) A change in the retirement option including a change in the survivor annuitant under the existing option selection.**
- (5) A voiding of the application for an annuity totally and treatment as if the member did not elect to file an application.**
- (6) A change in the effective date of retirement to any date that meets the following conditions:**

(i) Not before the earliest date after termination of service that the member was eligible to select on the date the original application for an annuity was filed.

(ii) Not later than 90 days after the request for the changed date is made.

(b) An annuitant who has declared an intent to change the final terms of the benefit payment plan, as set forth in subsection (a), will not be permitted to make the change until the annuitant has received counseling on the terms and conditions of the benefits available under the code from an employe of the System or other individual designated by the Board to provide the counseling. Counseling shall be received within 30 days from the date the Board receives the declaration of intent to change the benefit payment plan. The period for counseling may be changed by the Secretary of the Board as generally applying to all members or after either the member or the System requests an extension in writing received within the 30-day period, but in no case shall the period for counseling be greater than 90 days. If the counseling takes place over several sessions, all of the counseling sessions shall take place within the allowed time period. Failure to receive the appropriate counseling within the allowed time period will result in the originally filed application for an annuity becoming final and the request to change the benefit payment plan being denied. Changed applications will not be accepted or approved without the counseling.

(c) A formal request to void the application for an annuity or a changed application for an annuity shall be received by the Board within 30 days of the date of the retirement counseling required by subsection (b). If the counseling takes place over several sessions, the 30 days will run from the last session. If the Board does not receive the formal request to void the application for an annuity or the changed application for an annuity within 30 days of the date of the retirement counseling, the originally filed application will become final and the request to void or change the application will be denied. A request to void the application for an annuity or a changed application for an annuity will not be accepted or approved until filed with and received by the Board.

(d) The original application for an annuity will remain in effect and is presumptively valid and binding upon the annuitant until the final filing is received by the Board. An annuitant who declares an intent to void or change an application for an annuity is not obligated to continue to receive counseling, but failure to do so within the 30-day time period will be deemed a withdrawal of the request to void or change the application. An annuitant who receives counseling to void or change an application is not obligated to void or change an application, but failure to do so within the 30-day time period will be deemed a withdrawal of the request to void or change the application. The right to change a benefit payment plan is personal to the member and may only be exercised by the annuitant or an authorized attorney in fact as evidenced by a properly executed power of attorney satisfactory to the Board or guardian, or by operation of a

valid order of a court of competent jurisdiction or by law. The estate, spouse, alternate payee, survivor annuitants or beneficiaries of an annuitant may not request a change in the benefit payment plan under this section and may not consummate or complete a declared intention to void or change an application for an annuity. If an annuitant dies before voiding the application for an annuity or filing a changed application for an annuity, the original application will be in full force and effect.

(e) The reason for the change will have no bearing on the member's right to change the benefit payment plan.

(f) An annuitant will not have the right to file a second changed application for an annuity.

(g) Once a changed application for an annuity is filed, it will be considered effective as of the annuitant's original effective date of retirement unless the effective date of retirement selected as part of the changed application for an annuity is different from the original effective date of retirement. Changes will be retroactive to the member's original effective date of retirement unless the effective date of retirement selected as part of the changed application for an annuity is different from the original effective date of retirement. The annuitant will be required to return excess annuity payments in a lump sum payment within 30 days after the date of certification of the amount due or accept an actuarial reduction in benefits that results from the change of benefit payment plan. To validate the changed benefit payment plan, excess Option 4 payments shall be returned in a lump sum within 30 days after the date of certification of the amount due. If an application for an annuity is to be voided, all monies shall be returned in a lump sum within 30 days after the date of certification of the amount due. Failure to return the required amounts will result in a cancellation of the request and the imposition of the original application for an annuity.

(h) For purposes of this section, a document required to be filed with the Board will be considered to be filed only upon its actual receipt in the offices of the Board or the System. Delivery of documents to employers or former employers, collective bargaining unit officials, personal financial and legal advisors, posting by mail or other forms of attempted filing will not be effective until actual receipt by the Board or the System. Receipt shall be during the time periods allowed by this section to be effective.

(i) This section is effective \_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposal) and applies retroactively to April 15, 1994. An annuitant living on \_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposal) who received the statement provided for in § 215.5(e), on or after February 14, 1994, and on or before \_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposal) may declare an intent to change the final terms of the benefit payment plan selected by the member in the application for an annuity filed with the Board. A declaration of intent to change or void the final terms of the benefit payment plan shall be treated as if timely

filed and shall grant the annuitant the right and obligations provided for by this section.

**(j) Nothing in this section allows the member to change a benefit payment plan in a manner that conflicts with or is inconsistent with the terms of**

**an approved domestic relations order under sections 8533.1—8533.4 of the code.**

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