

## CHAPTER 02 – RETIREMENT SYSTEMS

### SUBCHAPTER 02A - DIVISIONAL RULES

#### SECTION .0100 - ORGANIZATIONAL RULES

##### **20 NCAC 02A .0101 ORGANIZATION: AUTHORITY**

The Retirement Systems Division of the Department of State Treasurer provides the staffing for the administration of the following agencies where either the Board of Trustees of the Teachers' and State Employees' Retirement System or the Board of Trustees of the Local Governmental Employees' Retirement System is a rulemaking body. The agencies and the statutory authority of each are:

- (1) Teachers' and State Employees' Retirement System of North Carolina -- G.S. 135, Article 1;
- (2) North Carolina Local Governmental Employees' Retirement System -- G.S. 128, Article 3;
- (3) Legislative Retirement System of North Carolina -- G.S. 120, Article 1A;
- (4) Consolidated Judicial Retirement System of North Carolina -- G.S. 135, Article 4;
- (5) Disability Income Plan of North Carolina -- G.S. 135, Article 6;
- (6) Firefighters' and Rescue Squad Workers' Pension Fund -- G.S. 58, Article 86;
- (7) Register of Deeds' Supplemental Pension Fund -- G.S. 161, Article 3; and
- (8) National Guard Pension Fund – G.S. 127A, Article 3.

*History Note:* Authority G.S. 58-86-10; 120-4.9; 127A-40(f); 128-28(g); 135-6(f); 135-52; 135-102; 161-50.1(b);  
Eff. February 1, 1976;  
Readopted Eff. September 21, 1977;  
Amended Eff. October 1, 1993; August 1, 1988; April 1, 1985; October 1, 1983;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 21, 2018;  
Amended Eff. March 1, 2023.

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

*History Note:* Authority G.S. 128-28(g); 135-6(f);  
Eff. February 1, 1976;  
Readopted Eff. September 21, 1977;  
Amended Eff. October 29, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 21, 2018;  
Repealed Eff. March 1, 2023.

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

Whenever the statutes under Article 58 of G.S. 86, Article 1A of G.S. 120, Article 3 of G.S. 127A, Article 3 of G.S. 128, Articles 1, 4, or 6 of G.S. 135, or Article 3 of G.S. 161 specify that the Board of Trustees will make specific findings in specific matters relating to specific persons, the Director of the Retirement Systems Division may make the decisions in accordance with law and the rules, regulations, and previous decisions of this Board. Appeals may be made from the decision of the Director under the procedures used for contested cases as provided under Section .0400 of this Subchapter.

*History Note:* Authority G.S. 128-28(g); 128-28(h); 135-6(f); 135-6(g); 150B-22;  
Eff. September 21, 1977;  
Amended Eff. October 29, 1979;  
Readopted Eff. March 1, 2023.

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

When an employer elects to participate in an optional element of a retirement system, the election shall not be considered effective by the Retirement System unless the employer provides the Retirement Systems Division with a certified copy of the minutes of the governing board of the employer and the terms under which the option is elected

do not discriminate in favor of the more highly compensated employees. The terms "discriminate" and "highly compensated employee" have the same meanings as under 26 CFR of the Internal Revenue Code. The Internal Revenue Code Title 26 CFR is hereby incorporated by reference, including subsequent amendments and editions, and is available online, at no cost, at <https://www.ecfr.gov/current/title-26/chapter-I/subchapter-A/part-1?toc=1>.

*History Note:* Authority G.S. 128-28(g); 135-6(f);  
Eff. November 9, 1979;  
Readopted Eff. March 1, 2023.

## **20 NCAC 02A .0105 REPAYMENT FOR RIGHT TO RETIRE**

*History Note:* Authority G.S. 128-27(a)(4); 128-28(g); 135-5(a)(3); 135-6(f); 135-57(d);  
Eff. December 1, 1983;  
Expired Eff. November 1, 2018 pursuant to G.S. 150B-21.3A.

### **SECTION .0200 - RULE-MAKING PROCEDURES**

#### **20 NCAC 02A .0201 ESTABLISHMENT OF PROCEDURAL RIGHTS**

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

*History Note:* Authority G.S. 128-28(g); 135-6(f);  
Eff. February 1, 1976;  
Readopted Eff. September 21, 1977;  
Amended Eff. October 1, 1993; October 29, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 21, 2018;  
Amended Eff. March 1, 2023; September 1, 2019.

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

*History Note:* Authority G.S. 128-28(g); 135-6(f);  
Eff. February 1, 1976;  
Readopted Eff. September 21, 1977;  
Amended Eff. October 1, 1993; October 29, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 21, 2018;  
Repealed Eff. March 1, 2023.

### **SECTION .0300 - DECLARATORY RULINGS**

#### **20 NCAC 02A .0301 ESTABLISHMENT OF PROCEDURAL RIGHTS**

The rules in 20 NCAC 01F .0200 establish declaratory ruling procedures for the Retirement Systems Division of the Department of State Treasurer, with the following exception. All requests for declaratory rulings from the Retirement Systems Division shall be in writing and mailed to the attention of the Director at the following address:

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

*History Note:* Authority G.S. 128-28(g); 135-6(f);  
Eff. February 1, 1976;  
Readopted Eff. September 21, 1977;  
Amended Eff. October 1, 1993;  
Readopted Eff. March 1, 2023.

**20 NCAC 02A .0302      DEFINITIONS**

*History Note:*     Authority G.S. 128-28(g); 135-6(f);  
                          Eff. February 1, 1976;  
                          Readopted Eff. September 21, 1977;  
                          Amended Eff. October 1, 1993;  
                          Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October  
                          21, 2018;  
                          Repealed Eff. March 1, 2023.

**20 NCAC 02A .0303      RECONSIDERATION OF DECLARATORY RULINGS**

*History Note:*     Authority G.S. 128-28(g); 135-6(f);  
                          Eff. October 29, 1979;  
                          Repealed Eff. March 1, 2023.

**SECTION .0400 - CONTESTED CASE PROCEDURES**

**20 NCAC 02A .0401      ESTABLISHMENT OF PROCEDURAL RIGHTS**

(a) Article 3 of G.S. 150B establishes contested case procedures for the Retirement Systems Division of the Department of State Treasurer. All correspondence with the Retirement Systems Division shall be addressed to:

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

(b) Informal resolution of a dispute as described in G.S. 150B-22(a) begins when a person calls, writes, or visits the Retirement Systems Division's Member Services section and describes the dispute to a representative.

(c) If the dispute is not resolved during this initial contact, the person may request a review of the Division's decision or action in writing to the Director of the Retirement Systems Division at the address in Paragraph (a) of this Rule.

(d) The Director of the Retirement Systems Division, or the Director's designee, shall issue an agency decision in writing, which shall document the dispute for any contested case under G.S. 150B-22(b) and serve as the "agency decision" for purposes of G.S. 150B-23(f).

*History Note:*     Authority G.S. 128-28(g); 135-6(f); 150B-22; 150B-23;  
                          Eff. February 1, 1976;  
                          Readopted Eff. September 21, 1977;  
                          Amended Eff. October 1, 1993;  
                          Readopted Eff. March 1, 2023.

**20 NCAC 02A .0402      DEFINITIONS**

**20 NCAC 02A .0403      HEARING OFFICERS**

*History Note:*     Authority G.S. 135-6(f); 128-28(g);  
                          Eff. February 1, 1976;  
                          Readopted Eff. September 21, 1977;  
                          Amended Eff. October 1, 1993; October 1, 1983; December 1, 1982; October 29, 1979;  
                          Expired Eff. November 1, 2018 pursuant to G.S. 150B-21.3A.

**SECTION .0500 - GENERAL PROCEDURES**

**20 NCAC 02A .0501      GENERAL GUIDELINES**

**20 NCAC 02A .0502      RETIRING PROCEDURES**

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

*Eff. February 1, 1976;*  
*Readopted Eff. September 21, 1977;*  
*Amended Eff. October 29, 1979;*  
*Repealed Eff. March 1, 1985.*

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

(a) This Rule applies to any individual case in which the member had one or more periods of dual membership in those rare cases which are permitted by law. "Dual membership" means membership in both the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System, at the same time, by virtue of the same position.

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

(c) A statute permitting transfer of membership and prior service shall apply only after the period of dual membership, when a person becomes a member employed fully under a Retirement System to which the membership and prior service may be transferred from one or the other of the systems in which the member had dual membership.

(d) Death benefits for active members shall be allocated pro rata between systems based on the total compensation paid during the period when the member was eligible for dual membership.

(e) Other benefits shall be calculated as follows:

- (1) Compute "Average Final Compensation" on the basis of compensation on which the member would have contributed had the member's service not been divided between two retirement systems as a result of dual membership.
- (2) Compute creditable service as follows:
  - (A) the number of months of creditable service the member earned or acquired which were based on compensation for service in only one of the systems; plus
  - (B) the total of the fractional months earned by the member in each of the systems during periods of dual membership, where the fractional month earned during each month of dual membership is equal to the compensation reported to the system divided by the total compensation reported to all systems.
  - (C) The fractional months are to be computed as follows. First, identify the total compensation earned by the member in each of the systems during periods of dual membership, as determined in Part (e)(2)(B) of this Rule. Second, add together the total compensation earned by the member in each of the systems during periods of dual membership, as determined in Part (e)(2)(B) of this Rule, to produce a Grand Total. Third, divide the total compensation earned by the member in each of the systems during periods of dual membership, as determined in Part (e)(2)(B) of this Rule, by the Grand Total, as determined in the previous sentence, to produce a factor, carried to the fourth decimal place, known as the Modification Factor, for each system. Fourth, multiply the total of the fractional months, as determined in Part (e)(2)(B) of this Rule, by the Modification Factor for each system, as determined in the previous sentence, to determine the actual creditable service allowed for each system during periods of dual membership.
- (3) Compute the annual allowance for a member by multiplying the average final compensation times the creditable service as computed in Subparagraphs (1) and (2) of this Paragraph.
- (4) Allocate the benefits to be paid from each system pro rata on share of creditable service in each system as computed in Subparagraph (e)(2) of this Rule.

(f) This Rule shall apply to any individual case in which a member with dual membership commenced retirement with one Retirement System prior to the original effective date of this Rule, December 1, 1981, and continued in service under the other Retirement System. In such cases, the retirement allowance of the member from the system with which the member first retired shall be recomputed in accordance with this Rule and paid retroactively to the original effective date of this Rule.

*History Note: Authority G.S. 128-28(g); 128-34(b); 135-6(f); 135-18.1(a);*  
*Eff. December 1, 1981;*  
*Amended Eff. March 1, 2023; March 1, 1985.*

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

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

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

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

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

*History Note: Authority G.S. 58-86-10; 120-4.9; 127A-40(f); 128-28(g); 135-6(f); 135-52; 135-102(c); 161-50.1(b);  
Eff. March 1, 1992;  
Readopted Eff. March 1, 2023.*

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

(a) This Rule applies to the purchase of creditable service whenever a statutory provision prescribes that the calculation of the amount payable shall include an administrative fee to be set by the Board.

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

*History Note: Authority G.S. 58-86-45; 120-4.15; 120-4.16; 128-26; 128-28(g); 135-4; 135-6(f); 135-56;  
Eff. March 1, 2023.*

**SECTION .0600 - INVESTMENTS**

**20 NCAC 02A .0601 INVESTMENT OF FUNDS**

**20 NCAC 02A .0602 INVESTMENT COMMITTEE**

*History Note: Authority G.S. 135-6(f); 128-28(g);  
Eff. September 21, 1977;  
Repealed Eff. March 1, 1985.*