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**BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT FUND**

**Resolution No. 2010-2-01**

Adopting rules related to the administration of the Fund as described herein.

WHEREAS, the Indiana Public Employees' Retirement Fund exists to provide retirement benefits to its members, their survivors, and beneficiaries;

WHEREAS, the Board of Trustees of the Indiana Public Employees' Retirement Fund, by statute, administers the Fund;

WHEREAS, the Board of Trustees, pursuant to [IC 5-10.3-3-8](#), may establish and amend rules and regulations for the administration of the Fund without adopting a rule under Indiana Code 4-22-2; and

WHEREAS, the Board of Trustees of the Indiana Public Employees' Retirement Fund wishes to adopt, amend, and/or repeal certain rules contained or to be contained in the Indiana Administrative Code related to the administration of the Fund as described herein;

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Indiana Public Employees' Retirement Fund that:

SECTION 1. [35 IAC 1.2-2-1](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 1.2-2-1](#) Definitions**

**Authority:** [IC 5-10.3-3-8](#)

**Affected:** [IC 5-10.2-3-2](#); [IC 5-10.3-2-1](#); [IC 5-10.3-7](#)

Sec. 1. As used in ~~the rules~~, **this title**, unless the context otherwise clearly requires:

"Annuity savings account (**ASA**)" consists of the member's contributions whether paid by the member or picked up by the employer, additional annuity contributions, and interest credits on these contributions.

"Board" means the board of trustees of the public employees' retirement fund of Indiana.

**"Ceases service" means when a member stops earning creditable service.**

"Full-time employee" means an employee occupying a position covered by the fund as set out in [IC 5-10.3-7](#).

"Employer" means the state for employees of the state and a participating political subdivision for its employees.

"Employer contributions" means contributions made by the state and political subdivisions to the retirement allowance account.

"Fund" means the public employees' retirement fund of Indiana.

"Gender and number" for the purpose of ~~these rules~~, **this title**, the masculine gender shall include the feminine, and the singular the plural as the context may require.

"Governing body" means the county council, city council, trustees of a town, the township board, board of school commissioners, library board, or any board which by law is authorized to fix a rate of taxation on property of a political subdivision, or any other board which is empowered to administer the affairs of any department of a political subdivision, which department receives revenue independently of, or in addition to, funds obtained from taxation.

"Member" means persons qualifying for membership under [IC 5-10.3-7-1](#).

"Member's contribution" means contribution which each member shall, as a condition of employment, contribute to the fund, which is three percent (3%) of the member's compensation (basic salary as defined in [35 IAC 1.2-5-5](#)), and which includes contributions paid by the employer for the member pursuant to [IC 5-10.2-3-2](#)

and [IC 5-10.3-7-9](#), and additional annuity contributions.

**"PERF" is the public employees' retirement fund.**

"Political subdivision", as used in this article, means a county, city, town, township, political body corporate, public school corporation, public library, public utility of a county, city, town, township, and any department of, or associated with, a county, city, town or township, which department receives revenue independently of, or in addition to, funds obtained from taxation.

"Retirement allowance account" consists of employer contributions for pensions and separate accounts shall be maintained for contributions by the state and by each political subdivision.

"Vested status" means the status of having ten (10) years of creditable service. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-2-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1078; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#)*)

SECTION 2. [35 IAC 1.2-3-2](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 1.2-3-2](#) Reemployment after termination of employment; suspension of membership; withdrawal of contributions**

**Authority:** [IC 5-10.3-3-8](#)

**Affected:** [IC 5-10.2-3-5](#); [IC 5-10.2-3-6](#); [IC 5-10.3](#)

Sec. 2. (a) To cancel previous suspension, after termination of employment and withdrawal of contributions or by operation of [IC 5-10.2-3-5](#), and qualify prior service as creditable service, the individual must be reemployed in a PERF or TRF-covered position for a period of not less than six (6) consecutive months; however, if the employee shows to the satisfaction of the fund that there was bona fide intent to return to employment and comply with this rule and the employee was capable of performing such employment, but was prevented from working the full six (6) month period due to illness, injury, or death which occurred subsequent to the date of the reemployment, then such six (6) month requirement shall be waived.

(b) Whenever a member is suspended pursuant to [IC 5-10.2-3-5\(c\)](#), the fund shall conduct an investigation to locate the member.

(c) Reasonable costs of locating the member may be charged against the member's ASA.

(d) Pursuant to [IC 5-10.2-3-6\(d\)](#), whenever a valid address can be determined for the member, the fund shall automatically make a lump sum distribution to the member from the member's ASA not to exceed one thousand dollars (\$1,000).

(e) Prior to the distribution, the Fund shall serve the member with any required notices, as well as notice to the member explaining the reason for the distribution.

(f) Pursuant to [IC 5-10.2-3-6\(b\)](#), if the member is not located or does not claim his monies, or both, within five (5) years after suspension, the monies shall be credited to the fund and the fund shall retain the monies until the member or the member's beneficiary claims them with no further interest credits or earnings after the monies are credited to the fund. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-2; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Nov 21, 2008: [20090107-IR-035080955ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#)*)

SECTION 3. [35 IAC 1.2-3-13](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 1.2-3-13](#) Purchase of service**

**Authority:** [IC 5-10.3-3-8](#)

**Affected:** [IC 5-10.3-7](#)

Sec. 13. (a) Eligible PERF members may purchase service under [IC 5-10.3-7-4.5](#), [IC 5-10.3-7-4.6](#), [IC 5-10.3-7-4.8](#), and [IC 5-10.3-7-5](#).

**(b) The cost to purchase such service shall be the total actuarial cost of the service. The fund shall provide the eligible fund member with information with respect to the cost of such service.**

**(c) The eligible fund member may purchase such service subject to the following:**

- (1) Service may be purchased in one (1) month increments. The minimum service purchase is one (1) year for a member who elects to purchase service through a finance agreement.**
- (2) Installment payments are subject to the terms of the finance agreement.**
- (3) Any such purchase may be made via a direct cash payment, a direct rollover as allowed by statute, or a combination of both.**
- (4) Any direct rollover may not exceed the actual cost of such service as established by the fund.**
- (5) Payment may be made in a lump sum or in annual installments for a period not to exceed five (5) years. Any installment may bear interest at the actuarial interest rate (defined within this section) effective on the date of the first installment. Any payments are subject to applicable Internal Revenue Service limits, and the fund may limit any payments in a manner necessary to comply with these limits.**

**(d) In the event of a payment default under the terms of the finance agreement, a partial service credit amount will be determined by PERF. The partial service credit amount will be based on the payments made as of the date of payment default and the actuarial cost of the service. The minimum amount of partial service credit will be one (1) month. Partial service will be credited in monthly increments. The fund member is not eligible to make service purchase payments after the date of the payment default.**

**(e) A partial service credit will be determined by PERF if the service purchase is not completed. The minimum amount of partial service credit will be one (1) month. Service will be credited in monthly increments based on the total payments and the actuarial cost of the service. Payments for a service purchase may not be made after the date of a payment default or the date of separation of employment.**

**(f) Any interest rate used will be the actuarial rate of return as set forth in PERF's annual report.**

*(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-3-13](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))*

SECTION 4. [35 IAC 1.2-5-1](#) IS AMENDED TO READ AS FOLLOWS:

#### **[35 IAC 1.2-5-1](#) Retirement options**

**Authority:** [IC 5-10.3-3-8](#)

**Affected:** [IC 5-10.2-4](#); [IC 5-10.3](#); [IC 33-38-8-14](#)

Sec. 1. (a) A member who retires or becomes eligible for a disability retirement cannot change the retirement option, nor may a member who chooses a lump sum payment under [IC 5-10.2-4-2](#)(a) change this choice, nor may the beneficiary designation on the application for benefits be changed under joint and survivorship options 30, 40, or 50, after the first day of the month that benefit payments are scheduled to begin. It is immaterial whether or not a check has been sent, received, or negotiated. (See also section 13 of this rule.) A member of the fund after June 30, 2008, may change a beneficiary designation pursuant to [IC 5-10.2-4-7](#) or [IC 5-10.2-4-7.2](#).

(b) Under [IC 5-10.2-4-7](#), in the event that the increased retirement benefit under the integration with Social Security option prior to Social Security eligibility is calculated to be greater than an amount which is the actuarial equivalent of the retirement benefit under the normal guaranteed retirement benefit payable as a life annuity which ceases on the date of the member's death or, if later, the member's Social Security age of eligibility, then the increased retirement benefit shall be limited to such actuarial equivalent and there will be no retirement benefit payable after the age of Social Security eligibility. (In no event shall fewer than sixty (60) payments be made.)

~~(c) The integration with Social Security option and the cash refund annuity option may each be made only with the normal guaranteed retirement benefit.~~

~~(c)~~ **(c) None of the retirement benefit payment options may be made in connection with any other retirement benefit payment option.**

**(d) Under [IC 33-38-8-14](#), a judges' retirement benefit is calculated upon the date the member applies to receive a retirement benefit. As used in [IC 33-38-8-14](#), "applies to receive a retirement benefit" is defined as the date upon which PERF receives and accepts a member retirement application. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-5-1](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1081;**

SECTION 5. [35 IAC 1.2-5-9](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 1.2-5-9](#) Survivor benefits**

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3](#); [IC 5-10.2-3-7.5](#)

Sec. 9. (a) If the total amount of survivor benefits paid to a surviving spouse or surviving dependent does not exceed the member's total contributions plus accumulated interest, the difference shall be paid to the surviving dependent or his estate or, in the case of a surviving spouse, the surviving spouse's estate.

(b) If an active member with more than fourteen (14), but less than fifteen (15), years of creditable service dies, the surviving spouse or dependent is entitled for a benefit if:

- (1) the member dies after December 31, 2006;
- (2) the member was at least sixty-five (65) years of age at the time of death;
- (3) the member died in service in a PERF-covered position; and
- (4) the surviving spouse or dependent qualifies for a benefit.

(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-5-9](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))

SECTION 6. [35 IAC 1.2-5-21](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 1.2-5-21](#) ASA valuation**

Authority: [IC 5-10.2-2-1](#); [IC 5-10.2-2-3](#)

Affected: [IC 5-10.2-2-3](#)

Sec. 21. After August 2, 2010, a member may direct an allocation in the amount credited to the member among the guaranteed program and any available alternative accounts subject to the following conditions:

- (1) PERF shall allow a member to make a change or selection at least once a day.
- (2) PERF shall implement the member's selection the same day the selection is received by PERF, unless such selection is received after 4:00 p.m. EST on a business day, or anytime on a weekend or holiday, or any other date the New York Stock Exchange is closed, then PERF shall implement the member's selection beginning the next business day after the selection is received. This date is the effective date of the member's selection.
- (3) A member may select any combination of the guaranteed program or any of the available alternative accounts in one percent (1%) increments.
- (4) A member's selection remains in effect until a new selection is made.
- (5) On the effective date of a member's selection, PERF shall reallocate the member's existing balance or balances in accordance with the member's direction, based on:
  - (A) for an alternative investment program balance, the market value on the effective date; and
  - (B) for any guaranteed program balance, the account balance on the effective date.

(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-5-21](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))

SECTION 7. [35 IAC 1.2-5-22](#) IS ADDED TO READ AS FOLLOWS

**[35 IAC 1.2-5-22](#) Unclaimed ASA assets within dormant accounts**

Authority [IC 5-10.2-2-1](#)

Affected: [IC 5-10.2-2-3](#); [IC 5-10.2-2-4](#)

Sec. 22. (a) Whenever a vested member's account has received no contributions for a period of twenty (20) years and it has been determined by PERF that the member is otherwise age and service eligible to receive a benefit, the fund may conduct an investigation to locate the member.

(b) Reasonable costs of locating the member or the member's beneficiary may be charged against the member's ASA.

(c) If the member or the member's beneficiary is not located after an investigation to locate the member, the monies in the member's ASA shall be credited to the fund and the fund shall retain the monies until the member or the member's beneficiary claims the monies with no further interest credits or earnings after the monies are credited to the fund. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-5-22](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))

SECTION 8. [35 IAC 1.2-6-1](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 1.2-6-1](#) Employer payments**

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2](#); [IC 5-10.3-7-12.5](#)

Sec. 1. (a) ~~A quarterly report and payment of employee contributions and employer contributions shall be due in the PERF office no later than the fifteenth day following the end of each calendar quarter. Specifically, January 15, April 15, July 15, and October 15 each year. If the fifteenth day following the end of the quarter falls on a Saturday, Sunday, or a legal holiday, the due date becomes the next working day. It shall be the responsibility of the local official to employ such method of delivery to insure that the report and payment will reach the PERF office, Suite 800, Harrison Building, 143 West Market Street, Indianapolis, Indiana 46204, on or before the due date.~~

(a) As allowed in [IC 5-10.3-7-12.5](#), the PERF board of trustees herein sets the due date for contributions as seven (7) days after a covered employer's payroll unless otherwise approved by the board.

(b) ~~Any employer who fails to make payments by the dates specified may be assessed a penalty. The penalty will be determined by the fund~~ payments not made on the due date automatically accrue interest at a rate equal to the actuarial assumed rate of return as set forth in PERF's annual report.

(c) Any employer who fails to submit required contributions and reports within thirty (30) days of the due date will be subject to a penalty as set forth in [IC 5-10.3-7-12.5](#). If the thirtieth day following the due date falls on a Saturday, Sunday, or a legal holiday, the due date becomes the next working day. It shall be the responsibility of the local official to employ such method of delivery to insure that the report and payment will reach PERF, 143 West Market Street, Indianapolis, Indiana 46204 on or before the due date. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-6-1](#); filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))

SECTION 9. [35 IAC 1.2-6-5.5](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 1.2-6-5.5](#) Overpayments and underpayments**

Authority: [IC 5-10.2-2-1.5](#)

Affected: [IC 5-10.2-3-2](#); [IC 5-10.2-2-11](#); [IC 5-10.3](#)

Sec. 5.5. (a) When there has been an overpayment of picked up member contributions, the principal amount of the overpayment will be credited to the employer. The principal amount of the overpayment will not be adjusted for earnings/interest.

(b) When there has been an overpayment of after-tax member contributions, the principal amount of the overpayment will be credited to the employer. The principal amount of the overpayment will not be adjusted for earnings/interest.

(c) When there has been an underpayment of picked up member contributions and after-tax member contributions, the principal amount of the underpayment will be billed to the employer. The principal amount of the underpayment will be adjusted by a rate equal to the actuarial assumed rate of return as set forth in PERF's annual report. The principal amount plus interest will be credited to the member's ASA.

(d) When there has been an overpayment of employer contributions, the principal amount of the overpayment will be credited to the employer. The principal amount of the overpayment will not be adjusted for earnings/interest.

(e) When there has been an underpayment of the employer contribution, the principal amount of the underpayment will be billed to the employer. The principal amount will be adjusted by a rate equal to the actuarial assumed rate of return as set forth in PERF's annual report. The principal amount plus interest will be credited to the member's ASA. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-6-5.5](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))

SECTION 10. [35 IAC 1.2-6-8](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 1.2-6-8](#) Annuity savings account contributions received by PERF subsequent to processing of retirement benefit**

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2-4-2](#)

Sec. 8. (a) Notwithstanding a member's election to receive an annuity provided by the amounts credited to the member's annuity savings account at retirement, annuity savings account contributions posted to a member's account subsequent to the final date on which the member's benefit is processed may be distributed to the member in a lump-sum payment.

(b) Pursuant to [IC 5-10.2-4-2\(b\)\(2\)](#), a member electing to annuitize the member's annuity savings account in contemplation of retirement will have the entire amount in the member's annuity savings account moved into a fixed value account, set at the same rate as the guaranteed fund. Once the annuity savings account is moved into a fixed value account in contemplation of retirement, the election cannot be changed. In addition, any annuity savings account contributions posted to a member's account subsequent to the final date on which the member's benefit is processed shall be held in a fixed value account, set at the same rate as the guaranteed fund, until such time as that amount is distributed to the member. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 1.2-6-8](#); adopted Dec 21, 2007: [20080109-IR-035080003ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))

SECTION 11. [35 IAC 1.2-6-9](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 1.2-6-9](#) Direct deposit of benefits**

Authority: [IC 5-10.3-3-8](#)

Affected: [IC 5-10.2-4-1.2](#)

Sec. 9. (a) Direct deposit is the preferred way for members and beneficiaries to receive monthly benefits. A member or beneficiary who does not wish to have payments to the person deposited by direct deposit or another method approved by the board may request a waiver of the requirement of direct deposit or another method approved by the board. The member or beneficiary must:

- (1) state the reason for requesting the waiver; and
- (2) sign a waiver form.

(b) PERF shall grant the member's or beneficiary's request for a waiver, approval of which shall not be unreasonably denied, if any of the following apply:

- (1) The member or beneficiary currently does not have a savings or checking account.
- (2) The member or beneficiary is unable to establish a savings or checking account within the geographic area of the home of the member or beneficiary without payment of a service fee. In support of this reason, the member or beneficiary must submit a written statement of the inability to establish the account without the payment of a fee with the waiver request.
- (3) The home of the member or beneficiary is too remote to have access to a financial institution where direct deposit or another method approved by the board may be made.
- (4) The financial institution of the member or beneficiary is unable to:
  - (A) accept direct deposit or another method approved by the board; or
  - (B) process electronic withdrawal.

The member or beneficiary must submit with the waiver a written statement from the financial institution of the member or beneficiary that the financial institution is unable to accept direct deposit or another method approved by the board or process electronic withdrawal.

(5) PERF determines that the facts of the particular case warrant a waiver of the requirement of direct deposit or another method approved by the board. A member or beneficiary who is in pay status as of July 1, 2009, and is receiving monthly benefits in a manner other than direct deposit or another method approved by the board shall not have the monthly benefits stopped for receiving monthly benefits in a manner other than direct deposit or another method approved by the board.

SECTION 12. [35 IAC 2-1-5](#) IS ADDED TO READ AS FOLLOWS:

**[35 IAC 2-1-5](#) 1977 Fund service purchases**

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-8-3](#)

Sec. 5. (a) Under various provisions under [IC 36-8-8](#), eligible members of the 1977 Fund may purchase service.

(b) The cost to purchase such service shall be the total actuarial cost of the service. The fund shall provide the eligible fund member with information with respect to the cost of such service.

(c) An eligible fund member may purchase such service subject to the following:

(1) Service may be purchased in one (1) month increments. The minimum service purchase is one (1) year for a member who elects to purchase service through a finance agreement.

(2) Installment payments are made under the terms of the finance agreement.

(3) Any such purchase may be made via a direct cash payment, a direct rollover as allowed by statute, or a combination of both.

(4) Any direct rollover may not exceed the actual cost of such service as established by the fund.

(5) Payment may be made in a lump sum, quarterly or annual installments for a period not to exceed five (5) years. Any installment may bear interest at the actuarial interest rate (defined within this section) effective on the date of the first installment. Any payments are subject to applicable Internal Revenue Service limits, and the fund may limit any payments in a manner necessary to comply with these limits.

(d) In the event of a payment default under the terms of the finance agreement, a partial service credit amount will be determined by the 1977 Fund. The partial service credit amount will be based on the payments made as of the date of payment default and the actuarial cost of the service. The minimum amount of partial service credit will be one (1) month. Partial service will be credited in monthly increments. The fund member is not eligible to make service purchase payments after the date of the payment default.

(e) A partial service credit will be determined by the 1977 Fund if the service purchase is not completed. The minimum amount of partial service credit will be one (1) month. Service will be credited in monthly increments based on the total payments and the actuarial cost of the service. Payments for a service purchase may not be made after the date of a payment default or the date of separation of employment.

(f) Any interest rate used will be the actuarial rate of return as set forth in PERF's annual report.

(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-1-5](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))

SECTION 13. [35 IAC 2-5-4](#) IS AMENDED TO READ AS FOLLOWS:

**[35 IAC 2-5-4](#) Applicable disability structure; member transfers**

Authority: [IC 36-8-8-5](#)

Affected: [IC 36-8-4-11](#); [IC 36-8-8](#)

Sec. 4. (a) For purposes of determining which disability benefit provisions apply, the 1977 Fund shall interpret the phrase "hired for the first time" by using the member's first date of employment by the local unit where the member is currently employed. However, in the case of a fund member who directly transfers from covered employment with one (1) local unit to covered employment with another local unit, the fund member's date of employment with the first local unit shall be used.

(b) Members who directly transfer from covered employment with one (1) local unit to covered employment with another local unit shall not be subjected to any additional preexisting conditions or excludable conditions that may be detected at the time of such transfer.

(c) For purposes of this section, "directly transfer" and "directly transfers" means the following:

(1) For those members laid off from employment pursuant to [IC 36-8-4-11](#), a transfer between covered employment with one (1) local unit to covered employment with a different local unit occurs within ~~three (3)~~ **years of the layoff: reinstatement period set forth in IC 36-8-4-11.**

(2) For all other members, a transfer between covered employment with one (1) local unit to covered employment with a different local unit occurs within thirty (30) days. Furthermore, "directly transfer" and "directly transfers" shall not include any situation where the member files an application for a refund of his or her contributions from the fund.

*(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-4](#); filed May 7, 1998, 4:15 p.m.: 21 IR 3329; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Nov 20, 2009: [20091209-IR-035090927ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))*

SECTION 14. [35 IAC 2-5-5.1](#) IS AMENDED TO READ AS FOLLOWS:

### **[35 IAC 2-5-5.1](#) Standard to determine degree of impairment for a covered impairment**

**Authority:** [IC 36-8-8-5](#)

**Affected:** [IC 36-8-8-13.1](#)

Sec. 5.1. To determine the degree of impairment, for a member who has been found to have a covered impairment, the impairment standards contained in the ~~United States Department of Veterans Affairs Schedule for Rating Disabilities~~ **most current edition of the American Medical Association: Guidelines of Disability Ratings** in effect at the time the application for disability benefits is filed with the PERF board shall be used to determine the degree of impairment. *(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-5-5.1](#); adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))*

SECTION 15. [35 IAC 2-9-4](#) IS AMENDED TO READ AS FOLLOWS:

### **[35 IAC 2-9-4](#) Components of examinations**

**Authority:** [IC 36-8-8-5](#); [IC 36-8-8-19](#)

**Affected:** [IC 36-8-8-7](#)

Sec. 4. (a) The first component of the baseline statewide physical examination consists of a comprehensive general medical history. The comprehensive general medical history shall cover the applicant's known health problems, such as major illnesses, surgeries, medication use, and allergies. Symptom review is also important for detecting early signs of disqualifying conditions and excludable conditions. The comprehensive general medical history shall include the following:

- (1) A personal health history.
- (2) A family health history.
- (3) An immunization history.
- (4) A reproductive history.

An occupational history shall also be completed to collect information about the person's past occupational and environmental exposures.

(b) After the examining physician completes the comprehensive medical history, the physician shall conduct a general physical examination of the candidate. Requirements for the baseline statewide physical examination shall be as follows:

(1) The baseline statewide physical examination is intended to test the following organ systems:

- (A) Dermatological system.
- (B) Ears, eyes, nose, mouth, and throat.
- (C) Cardiovascular system.
- (D) Respiratory system.
- (E) Gastrointestinal system.
- (F) Genitourinary system.
- (G) Endocrine and metabolic systems.
- (H) Musculoskeletal system.

(2) The baseline statewide physical examination shall include the following tests:

- (A) Vital signs, such as pulse, respiration, blood pressure, and, if indicated, temperature.
- (B) Visual testing, using a Snellen chart or other comparable chart. Vision testing shall also include field of vision testing and color vision testing.
- (C) Audiometric testing. (An audiogram should be performed in a soundproof booth pursuant to the American National Standards Institute (ANSI) standard S3.1-1991 with equipment calibrated to ANSI

standard S3.6-1989). If a booth is unavailable, the test room sound pressure levels should not exceed those specified in 29 CFR 1910.95 (July 1, 1992 edition).

(D) Pulmonary function testing. Only a spirogram that is technically acceptable and demonstrates the best efforts by an individual should be used to calculate the forced vital capacity (FVC) and forced expiratory volume in one (1) second (FEV1).

~~(E) Tuberculosis (Tbc) skin test. The skin test shall be applied and interpreted unless the candidate has a past history of positive purified protein derivative (PPD) or pulmonary Tbc.~~

**(E) Quantiferon test (TB blood test).**

(F) Laboratory testing must include the following:

(i) Baseline blood testing, including complete blood count (CBC) and HIV testing.

(ii) Biochemical test battery (SMA), including, at a minimum, **liver function tests (bilirubin, direct & indirect, SGOT, SGPT, GGT), fasting blood glucose, electrolytes, BUN, creatinine, fasting serum lipids, and test for syphilis.**

(iii) **Routine** urinalysis to detect specific illnesses.

(iv) Drug abuse testing.

(v) Alcohol abuse testing, if indicated.

Additional laboratory testing should be conducted as indicated.

(G) Chest x-ray. Posterior-anterior (PA) and lateral views required; **spine x-rays and** other diagnostic imaging, if indicated.

(H) Twelve (12) lead electrocardiogram (resting) test.

~~(I) Treadmill cardiac stress test. if indicated.~~

**(J) Each candidate must complete a respirator clearance questionnaire.**

**(K) Submax (Bruce protocol) treadmill evaluation.**

**(L) Functional movement screening or orthopedic screening, or both.**

(c) The local board shall determine the standards for passage of the baseline statewide mental examination. The local board may designate a community health center, a hospital, a licensed physician, or a licensed psychologist to administer the baseline statewide mental examination required under [IC 36-8-8-7](#) and [IC 36-8-8-19](#). **The examining physician must have no pre-existing personal relationship with the applicant.** The baseline mental examination shall consist of the Minnesota Multiphasic Personality Inventory II. The results of the baseline statewide mental examination shall be interpreted by a licensed physician or a licensed psychologist. (*Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 2-9-4; filed May 27, 1993, 12:00 p.m.: 16 IR 2339, eff Jul 1, 1993; filed May 7, 1998, 4:15 p.m.: 21 IR 3332; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Feb 19, 2010: 20100310-IR-035100124ONA*)

SECTION 16. [35 IAC 2-10-2](#) IS AMENDED TO READ AS FOLLOWS:

### **[35 IAC 2-10-2](#) Preexisting excludable medical conditions**

**Authority:** [IC 36-8-8-5](#); [IC 36-8-8-13.6](#)

**Affected:** [IC 36-8-8-13.5](#)

Sec. 2. (a) As determined by the PERF board or the PERF board's designee and based on the results of the general medical history and the physical examination of the candidate, the preexisting conditions identified in subsection (b) will result in the candidate being ineligible under certain circumstances for the Class 3 impairment benefits established in [IC 36-8-8-13.5](#)(e).

(b) Each of the following preexisting conditions constitutes an excludable condition under [IC 36-8-8-13.5](#) and [IC 36-8-8-13.6](#):

(1) A history of myocardial infarction.

(2) Angina pectoris or other evidence of coronary artery disease.

(3) Arteriosclerotic **Congenial** [*sic*] heart disease.

(4) Hypertrophy or dilation of the heart as evidenced by examination.

(5) Pericarditis, endocarditis, or myocarditis unless the examining physician determines that the condition is now stable and unlikely to recur.

~~(6) Functional Arrhythmias.~~

~~(7) Diabetes. requiring insulin or oral hypoglycemics. An individual with diabetes whose condition is effectively controlled by diet alone would not be considered to have an excludable condition.~~ A candidate with a history of **hyperglycemia or** glucosuria or albuminuria must be considered to have an excludable condition unless a report from the physician that treated the candidate can be obtained which assures the absence of diabetes mellitus.

(8) Pancreatitis.

- (9) A history of a chronic bowel disorder such as Crohn's disease and ulcerative colitis. A candidate with a history of a bowel obstruction within the preceding ten (10) years shall be considered to have an excludable condition unless the candidate is able to obtain a letter from the treating physician to the examining physician explaining the nature of the obstruction and what was done to cure it.
- (10) Any hepatitis, chronic or acute, with impairment of liver function.
- (11) Cirrhosis or varices.
- (12) Inguinal or femoral hernia, hiatal hernia, if symptomatic, or ventral hernia, if symptomatic.
- (13) Interabdominal tumor or mass.
- (14) Any previous gastric resection unless there is sound x-ray evidence provided that there is little chance of recurrence of the condition which caused the first surgery.
- (15) Active gastric or duodenal ulcer unless the candidate is able to provide x-ray evidence that the ulcer is currently healed. A history of a gastric or duodenal ulcer shall be treated the same as any such active ulcer unless the candidate is able to provide x-ray evidence that the ulcer is currently healed.
- (16) Any evidence of rectal or prostatic malignancy.
- (17) Evidence of existing renal calculus or ureterovesical calculus, if symptomatic.
- (18) A person who has had a nephrectomy but with a functional remaining kidney will not be considered to have an excludable condition, provided there is no evidence of reduced renal function in the remaining kidney.
- (19) Any chronic nephritis or nephrosis, hydronephrosis, pyelonephrosis, pyelitis, pyelonephritis, or polycystic disease of the kidneys.
- (20) Urinary tract disease, whether or not the urinary tract has any significant abnormalities at this time, or whether any organic disease is present, or other related disorders adversely affecting the kidneys, excluding urinary tract infections.
- (21) A history of kidney stones. If there is a history of kidney stones, urological consultation must be sought in order to provide an estimate of the likelihood of the recurrence of long term incapacitating symptoms. A candidate exhibiting a high likelihood of recurrence must be considered to have an excludable condition.
- (22) Any proteinuria which is a result of renal disease.
- (23) Any malformation of the urinary tract organs, congenital or acquired.
- (24) Polycystic kidney.
- (25) Any current fistula, either congenital or acquired, including tracheostomy.
- (26) Any history of subarachnoid hemorrhage, cerebral aneurysm, or any cerebral vascular disease including any previous stroke within the preceding ten (10) years.
- (27) Hydrocephalus.
- (28) Abnormalities from recent head injury, such as severe cerebral concussion or contusion.
- (29) Any acute or chronic pathological condition in either eye or the adnexa of the eye.
- (30) Nystagmus of the eye, uncorrected strabismus, glaucoma, and aphakia, whether it is unilateral or bilateral, and active chorioretinitis should be considered for further examination by a qualified eye specialist to determine the likelihood and degree of future impairment.
- (31) Cataract, retinitis pigmentosa, and any papilledema or tumor.
- (32) Any retinal exudate, hemorrhage or edema, or detachment of the retina.
- (33) Inflammatory disease of the retina, the globe, or the other structures within the globe.
- (34) Heterophoria, hyperphoria, esophoria, or exophoria should be considered for further examination by a qualified eye specialist to determine the likelihood and degree of future impairment.
- (35) Bronchiectasis.
- (36) Bronchial asthma.
- (37) Emphysema or chronic obstructive pulmonary disease.
- (38) Pulmonary fibrosis.
- (39) Pleurisy with effusion or empyema.
- (40) Any spontaneous pneumothorax unless the examining physician determines that the condition is not likely to persist or recur.
- (41) Any evidence or history of tuberculosis, sarcoidosis, or congenital cystic disease of the lung, active histoplasmosis, or any other lung pathology unless the examining physician determines that the condition is now stable and unlikely to recur.
- (42) Tumor or cyst of the lung, pleura, or mediastinal.
- (43) Any disease of the blood forming organs or of the blood.
- (44) Anemia with the hemoglobin lower than twelve (12) grams per hundred cubic centimeters.
- (45) Polycythemia, leukemia, or any other progressive diseases of the blood system.
- (46) Hemophilia **or other bleeding disorder**.
- (47) High blood pressure, evidenced by any of the following:
  - (A) Any blood pressure reading above one hundred fifty (150) millimeters mercury (for systolic).
  - (B) Any blood pressure reading above ninety (90) millimeters mercury (for diastolic).

(C) Use of antihypertensive medication.

However, if systolic and diastolic readings without medication are produced at levels lower than one hundred fifty (150) millimeters mercury (for systolic) and ninety (90) millimeters mercury (for diastolic) on three (3) consecutive days, high blood pressure shall not be an excludable condition.

(48) If peripheral edema is present, the cause shall be determined and the disqualifying disorder identified.

(49) Aneurysm and arteriovenous malformation.

(50) Any active disease of bones and joints, including active arthritis, osteomyelitis, or marked deformity of the spinal column, including, but not limited to, the following:

(A) History of laminectomy.

(B) Amputation or deformity of a joint or limb.

(C) Joint reconstruction.

(D) Ligamentous instability.

(E) Joint replacement.

(51) Herniation of an intervertebral disk.

(52) Neurofibromatosis.

(53) Neuropathy or neuralgia, including sciatica.

(54) Recurrent syncope.

(55) Any seizure disorder within the preceding ten (10) years.

(56) ~~Parkinsonism~~ **Parkinsonian syndrome (includes Parkinson's disease).**

(57) Huntington's disease (chorea).

(58) Ankylosing rheumatoid spondylitis.

(59) Malignant melanoma or, if it had been removed, any evidence of metastatic disease.

(60) Hodgkin's disease, lymphadenopathy, lymphomas, or lymphosarcomas.

(61) Addison's disease, splenomegaly, or adenopathy secondary to systemic disease or metastasis.

(62) Disease of the adrenal gland, pituitary gland, parathyroid gland, or thyroid gland of clinical significance.

(63) Nutritional deficiency disease or metabolic disorder.

(64) Any malignant tumor of any type unless completely eradicated for at least ten (10) years.

(65) Alcohol or drug abuse within five (5) years.

(66) Anorexia nervosa or bulimia within three (3) years.

(67) Auto immune disorders, including, but not limited to, the following:

(A) Rheumatoid arthritis and myasthenia gravis.

(B) Dermatomyositis.

(C) Scleroderma.

(68) Lupus erythematosus.

(69) Multiple sclerosis.

(70) Amyotrophic lateral sclerosis (Lou Gehrig's disease).

(71) Muscular dystrophy.

(72) Obesity of such a degree so as to interfere with normal activities, including respiration.

(73) Peripheral atherosclerosis or arteriosclerosis, including any of the following peripheral vascular diseases:

(A) Intermittent claudication.

(B) Buerger's disease.

(C) A phenomenon of repeated thrombophlebitis.

(74) Acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) positive, as determined by a blood test.

(75) Sexually transmitted diseases should be considered for further examination by a qualified medical specialist to determine the likelihood and degree of future impairment.

(76) Narcolepsy **or hypersomnolence due to any cause.**

(77) Heart bypass surgery within the preceding ten (10) years.

(78) Primary pulmonary hypertension.

(79) Organ transplant.

(80) Pacemaker implant.

**(81) Sleep apnea syndrome.**

~~(84)~~ **(82)** Any disqualifying condition under [35 IAC 2-9-6](#) that has been accommodated by the local appointing authority.

**(83) Any other significant disease/disorder.**

*(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 2-10-2](#); filed May 27, 1993, 12:00 p.m.: 16 IR 2341, eff Jul 1, 1993; filed Mar 3, 2000, 7:45 a.m.: 23 IR 1606; readopted filed Oct 31, 2001, 2:21 p.m.: 25 IR 898; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))*

SECTION 17. [35 IAC 12-1-4](#) IS AMENDED TO READ AS FOLLOWS:

**35 IAC 12-1-4 Text**

**Authority:** [IC 2-3.5-3-4](#); [IC 5-10-5.5-3](#); [IC 5-10.3-3-8](#); [IC 5-10.3-11-2](#); [IC 33-38-6-23](#); [IC 33-39-7-11](#); [IC 36-8-8-5](#)

**Affected:** [IC 2-3.5](#); [IC 5-10-5.5](#); [IC 5-10.2](#); [IC 5-10.3](#); [IC 33-39-7](#); [IC 36-8](#)

Sec. 4. (a) The annual compensation limitations of Code Section 401(a)(17) shall be applied as follows:

- (1) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93 and EGTRRA, shall not apply to any eligible participant, in any future year, to the extent that the application of the annual compensation limit in Code Section 401(a)(17), as amended by OBRA '93 and EGTRRA, would reduce the amount of annual compensation that is allowed to be taken into account under the fund ~~below the amount that was allowed to be taken into account under the fund~~ as in effect on July 1, 1993. As used in this subdivision, "eligible participants" includes all members who participated in the fund prior to July 1, 1996.
- (2) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93, will be effective with respect to noneligible participants as of July 1, 1996. As used in this subdivision, "noneligible participants" includes all members who did not participate in the a fund prior to July 1, 1996.

(b) Effective for years beginning after December 31, 2001, the annual compensation limit under Code Section 401(a)(17), as amended by EGTRRA, will be effective with respect to noneligible participants. **The annual compensation limit will be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. Annual compensation means compensation during the plan year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.** (*Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 12-1-4](#); filed Jul 14, 2004, 9:35 a.m.: 27 IR 3871; adopted Nov 9, 2007: [20071205-IR-035070818ONA](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#)*)

SECTION 18. [35 IAC 13](#) IS ADDED TO READ AS FOLLOWS:

**ARTICLE 13. REQUIRED MINIMUM DISTRIBUTIONS**

**Rule 1. Procedures for Required Minimum Distributions**

**35 IAC 13-1-1 Required minimum distribution procedure**

**Authority:** [IC 5-10.2-2-1](#)

**Affected:** [IC 5-10.2-4-2](#); [IC 5-10.2-4-7](#)

Sec. 1. (a) Distribution of each member's entire interest must begin by April 1 of the calendar year following the later of the calendar year in which the member:

- (1) attains seventy years of age and one-half (70 1/2) [*seventy and one-half (70 1/2) years of age*]; or
- (2) retires (the required beginning date).

(b) If a nonvested member or a retired member who deferred withdrawal of his or her ASA reaches the required beginning date without taking an ASA distribution, they will be subject to a mandatory lump sum distribution of their account less any monies owed for taxes or penalties, or both.

(c) If a vested member has not started receiving his or her monthly pension benefit by the required beginning date, the member's account will be automatically processed utilizing the five (5) year guarantee as described in [IC 5-10.2-4-7\(b\)](#) and annuitizing any available ASA monies.

(d) PERF will attempt to notify members of a potential required minimum distribution prior to the member's required beginning date if PERF is able to locate a current valid address for the member utilizing an existing locator service. If PERF is unable to locate a current valid address for a member who has not taken a distribution from their pension or ASA, or both, by the required beginning date, no such distribution shall be made until the member is located. Once a valid address is located distributions will

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proceed as set forth in subsections (b) and (c), less any withholdings or penalties owed. (Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 13-1-1](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))

**[35 IAC 13-1-2](#) Compliance with Code Section 401(a)(9) for required minimum distributions**

Authority: [IC 5-10.2-2-1](#)

Affected: [IC 5-10.2-2-1.5](#)

**Sec. 2.** The retirement system will pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The retirement system is subject to the following provisions:

(1) Distribution of a member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the member attains seventy and one-half (70 1/2) years of age or April 1 of the year following the calendar year in which the member terminates.

(2) The member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.

(3) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution before the member's death.

(4) If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either:

(A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death; or

(B) distributed within five (5) years of the member's death.

(5) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q & A-2.

(6) The death and disability benefits provided by the retirement system are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five percent (25%) of the cost for all of the members' benefits received from the retirement system.

(7) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

(Board of Trustees of the Public Employees' Retirement Fund; [35 IAC 13-1-2](#); adopted Feb 19, 2010: [20100310-IR-035100124ONA](#))

DATED: February 19, 2010

Ken Cochran, Chairman of the Board of Trustees

Indiana Public Employees' Retirement Fund

Resolution adopted by 5 affirmative, 0 negative votes.

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