

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Jeffrey E. Fleck
Authorized Signature
Koss Taylor

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 22, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Consolidated Public Retirement Board
4101 MacCorkle Ave. SE
Charleston, WV 25304
(304) 558-3570

LEGISLATIVE RULE TITLE: _____
Title 162, Series 4
Teachers' Retirement System

1. Authorizing statute(s) citation _____
W. Va. Code § 5-10D-1

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 6, 2012 - Public Comment Period

b. What other notice, including advertising, did you give of the hearing?
The proposed rule was posted on the CPRB website from 7/6/12 through 8/6/12 and was mailed to the following: William G. Milam, Retired School Emp; Joshua Sword, AFT; Ken Legg, School Service Personnel; Judy Hale, WV AFT; Robert Brown, School Service Personnel; David Lee, WVEA; David Haney, WVEA; Senate & House Pension Committees.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 6, 2012 at 1:00 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 22. 2012

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jeffrey E. Fleck, Executive Director
Consolidated Public Retirement Board

4101 MacCorkle Ave., SE
Charleston, WV 25304
(304)558-3570 Phone
(304)558-6337 Fax Jeffrey.E.Fleck@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Terasa L. Miller, Deputy Executive Director/Chief Operating Officer
Consolidated Public Retirement Board

4101 MacCorkle Ave., SE
Charleston, WV 25304
(304)558-3570 Phone
(304)558-6337 Fax Terasa.L.Miller@wv.gov

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached



Board Members

Governor Earl Ray Tomblin
Auditor Glen B. Gainer III, Vice Chairman
Treasurer John D. Perdue
Acting Cabinet Secretary Ross Taylor

**State of West Virginia
Consolidated Public Retirement Board**

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Executive Director
Jeffrey E. Fleck

Board Members

David L. Wyant, Chairman
Thomas Bradley
Joseph Bunn
Captain Michael G. Corsaro
Drema B. Evans
David Fletcher
Joe Lynch
D. Todd Murray
Sgt. Tony Payne
Andrew Richardson

BRIEF SUMMARY OF PROPOSED AMENDMENT TO
TITLE 162, SERIES 4

The West Virginia Consolidated Public Retirement Board (Board), as administrator of the West Virginia Teachers' Retirement System (TRS), proposes an amendatory revision to Title 162, Series 4, of the West Virginia Code of State Regulations. The proposed rule defines "accumulated contributions" and "retirant", and clarifies the definition of "substitute teacher" to include someone who fills a vacant position due to someone transferring to another position. In addition, the proposed rule specifically states substitute teachers, non-teaching substitutes and temporary employees, except as permitted pursuant to W. Va. Code §18A-4-15, are not eligible for membership in TRS.

Other technical changes are also proposed to clarify current administrative practices.



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**STATEMENT AND CIRCUMSTANCES REQUIRING PROPOSAL AND
PROMULGATION OF PROPOSED RULE CHANGE TO SERIES 4 OF TITLE 162 OF
THE WV CODE OF STATE REGULATIONS**

The West Virginia Consolidated Public Retirement Board (Board), as administrator of the West Virginia Teachers' Retirement System (TRS), finds it necessary to: propose a definition for "accumulated contributions" and "retirant"; modify the definition of "substitute teacher"; and specifically state that substitute teachers, non-teacher substitutes and temporary employees are not eligible for membership in TRS, except as permitted pursuant to W. Va. Code §18A-4-15 .

Additional changes are technical in nature to clarify current administrative practices.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 162 (Series 4) Teachers Retirement System

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Consolidated Public Retirement Board

Address: 4101 MacCorkle Ave. S.E.
Charleston, West Virginia 25304

Phone Number: (304) 558-3570 X 52465 Email: Harry.W.Mandel@WV.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Rule generally provides clarifications in the administrative provisions to conform to CPRB current administrative practices of the Teachers Retirement System. These include:

1. Clarifications to various definitions for terms used to administer TRS.
2. Confirms that certain Substitute Teachers, Substitute Non-teachers and Temporary Employees are not eligible to participate in TRS for such employment.
3. Clarifies certain optional benefit definitions and provisions.

AS clarifications of current practices, there is no increase in the costs and revenues to state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2013 Increase/Decrease (use "-")	2014 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$ 0	\$ 0	\$ 0
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other	\$ 0	\$ 0	\$ 0
2. Estimated Total Revenues			

Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The provisions included in the legislative rule provide clarifications to the administrative provisions to correspond to the administrative practices applied by the CPRB in respect to the Teachers Retirement System.

As clarifications of current practices, there is no increase in the costs and revenues to state government.

Rule Title: Title 162 (Series 4) Teachers Retirement System

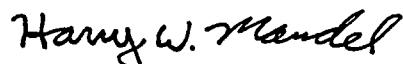
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The Rule does not modify benefits payable under any CPRB administered system.

Date: June 29, 2012

Signature of Authorized Representative



Harry W. Mandel

Board Actuary

Member American Academy of Actuaries

Member Society of Pension Actuaries

Enrolled Actuary #11-2527

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**TITLE 162
LEGISLATIVE RULE
CONSOLIDATED PUBLIC RETIREMENT BOARD**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 4
TEACHERS' RETIREMENT SYSTEM**

§ 162-4-1. General.

1.1. Scope. — This rule establishes the eligibility for membership and the general administrative procedures in the Teachers' Retirement System.

1.2. Authority. — W. Va. Code § 5-10D-1.

1.3. Filing Date. — ~~April 12, 2010.~~

1.4. Effective Date. — ~~July 1, 2010.~~

§ 162-4-2. Definitions.

2.1. "Accumulated contributions" means all employee retirement deductions from the gross salary of a member plus regular interest.

2.2 "Disabled" means the inability to substantially do all the material acts necessary in the performance of assigned duties, by reason of a total and likely to be permanent physical or mental impairment, in the usual or customary manner for a period of six (6) months beginning with the last day of service.

~~2.2.2.3.~~ 2.2.3. "Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall also include retroactive payments made to a member to correct a clerical error, or pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all such retroactive salary payments to be allocated to and deemed paid in the periods in which the work was or would have been done. Gross salary shall not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

~~2.3.2.4.~~ 2.3.2.4. "Money purchase annuity" means that portion of total monthly benefits from the member's contributions plus state matching plus interest, times the actuarial factor for attained age.

~~2.4. 2.5.~~ 2.4. 2.5. "Monthly benefit" means the total monthly payment, including a member's money purchase annuity, received by a retiree based upon the option chosen.

~~2.5.2.6.~~ 2.5.2.6. "Option" means the form of benefit payments to the member and the member's beneficiary which shall be the actuarial equivalent of the normal benefit payable to the member only.

~~2.6.2.7.~~ 2.6.2.7. "Prior service" means service performed before the date the member became eligible to make contributions.

2.8. "Retirant" means any member who commences an annuity payable by the retirement system.

~~2.7:~~2.9. "Retirement system" means the Teachers' Retirement System as provided in West Virginia Code § 18-7A-1 et seq.

~~2.8:~~2.10. "Schools" means all educational units supported by moneys appropriated by the West Virginia Legislature.

~~2.9:~~2.11. "Substitute teacher" means any teacher who is assigned (1) to fill the temporary absence of any teacher or the unexpired school term made vacant by the resignation, transfer, death, suspension or dismissal of any teacher, (2) to fill a teaching position of a regular teacher on leave of absence or (3) to perform instructional services of any teacher who is authorized by law to be absent from class with loss of pay, providing the absence is approved by the Board of Education in accordance with the law. The substitute shall be a duly certified teacher.

§ 162-4-3. Membership Eligibility.

3.1. Membership eligibility in this system closed as of July 1, 1991. Provided, That membership eligibility in this system is reopened for any individual who becomes a member of the Teachers' Retirement System for the first time on or after July 1, 2005, or any individual who becomes a member of the Teachers' Retirement System as a result of the voluntary transfer contemplated in W. Va. Code § 18-7D-1 et seq.

3.2. Membership ceases:

3.2.1. Upon death of the member;

3.2.2. Upon the effective retirement date of the member;

3.2.3. Upon withdrawal of accumulated contributions by the member;

3.2.4. Upon transfer of assets to the West Virginia Teachers' Defined Contribution Plan; or

3.2.5. Upon the date, if any, when after the cessation of service, the outstanding loan balance of any loan obtained by a member, plus accrued interest, equals or exceeds the member's accumulated contributions.

3.3. Beneficiary:

3.3.1. Each member may name a refund or surviving beneficiary;

3.3.2. A member may change his or her beneficiary prior to retirement by filing a proper record with the Board;

3.3.3. Beneficiary changes after retirement are subject to the terms of the retirement option chosen.

3.4. Substitute teachers, non-teaching substitutes and temporary employees are not eligible for membership in the Teachers' Retirement System, except as provided in W. Va. Code §18A-4-15.

§162-4-4. Service Credit.

4.1. One year service credit. A member of the system shall receive one year of service credit for each school term or fiscal year completed. The Board shall determine in each case what part of a year taught constitutes a year of credit.

4.1.1. Summer teaching shall not generate additional service credit when the time taught is included in the year of service credit already granted and the member's salary is subject to regular contributions and inclusion in the member's fiscal year salary.

4.2. Prior service credit. The Board shall grant the member prior service as follows:

4.2.1. Teachers and professional employees as distinguished from non-teachers for service prior to July 1, 1941;

4.2.2. Non-teachers and former teachers for service prior to March 9, 1945;

4.2.3. Financial secretaries and county agents, agriculture extension at West Virginia University except secretaries and clerks, for service prior to March 9, 1945;

4.2.4. School nurses for services prior to June 30, 1945;

4.2.5. Non-teaching employees (except cooks) for service prior to July 1, 1947;

4.2.6. Employees of the board of school finance for service prior to October 1, 1952, if they were formerly employed as a teacher in the public school system;

4.2.7. Employees of the Department of Education, if they are classified as a present teacher, for service rendered prior to November 4, 1958; and

4.2.8. Cooks for service rendered prior to July 1, 1962, or according to the date on which the employer became responsible for the salary of the employee.

4.3. Non-teaching assignment. Any member placed on a paid special assignment after November 1, 1978, (such as a sabbatical) by an employer is considered regularly employed for the purpose of this Rule. The employer shall collect and remit to the Board the member's contributions to ensure proper credit for a non-teaching assignment.

4.4. Credit for leave time. Any member shall be considered employed as long as the member remains on the payroll of any employer and contributes on salary earned. For purposes of determining service credit, the Board shall count annual or vacation leave or sick leave paid by the employer as service credit.

4.4.1. When computing service credit for annual or personal leave, the last day of service shall be verified as last day paid for leave. The effective date of retirement is the first day of the following month.

4.5. Maximum yearly service credit. Under no circumstances shall a member of the system receive more than one year of service credit for any one fiscal year even though he or she may have reciprocal service with both the Public Employees Retirement System and the Teachers' Retirement System or service with both the Teachers' Defined Contribution Retirement System and the Teachers' Retirement System, which under the Rules of both systems could conceivably entitle him or her to more than one year service credit.

4.6. Service credit. Fractional part of year. The Board shall give fractional credit for service as a teacher for a teacher who taught parts of school terms and who taught at least half-time throughout the term. The fractional parts may be combined to form one year's credits and all fractions shall be included in the final statement of total credits.

4.6.1. The Board shall give members absent from service for more than one month in a school year a fractional credit for service that year. The numerator of the fraction shall be the number of days paid and the denominator shall be the number of contract days, not to exceed two hundred and forty (240) days, minus twenty.

4.6.2. If a member renegotiates his or her contract term during the fiscal year, the Board shall prorate the twenty days referenced in subdivision 4.6.1. of this Rule and apply the prorated days to each contract term.

4.7. When service verification records or other legal documents are not available and the Board has contributions credited to the account of a member for that service, the service may be proven by affidavits from two (2) persons with knowledge of the employment; official minutes; education directories or other records showing proof of employment.

4.8. Public employee service. The Board shall grant prior service credit to a member for service in a position which would not be covered by the Public Employees Retirement System if the service was rendered prior to July 1, 1947, and the member never became a member of the Public Employees Retirement System.

4.8.1. In giving credit for service as a public employee, the Board shall consider the service "non-teaching service" as defined in W. Va. Code § 18-7A-1 et seq.

4.8.2. A member shall have completed more than three (3) years of contributory service before any service from another department or agency of West Virginia covered by the Public Employees Retirement System may be transferred to the Teachers' Retirement System.

4.8.3. Members transferring service from another department or agency to the West Virginia Teachers' Retirement System shall make payments for services performed between July 1, 1947, and the date the member became a contributing member of the Public Employees Retirement System.

4.8.4. When transferring Public Employees Retirement System service which was performed prior to the establishment of the Public Employees Retirement System and for which salaries are not available, the Consolidated Public Retirement Board shall charge contributions equal to the maximum contributions in effect at the time the services were performed.

4.9. Credit for military service.

4.9.1. Pursuant to the provisions of W. Va. Code § 18-7A-17(b) service credit with respect to qualified military service shall be provided by the Board in accordance with Section 414(u) of the Internal Revenue Code.

4.9.2. Unless otherwise required by the provisions of W. Va. Code § 18-7A-17(b), twenty-eight (28) days in the Armed Services is considered one month of service as a "member".

4.9.3. Not more than one year shall be credited for each year of service in the Armed Forces.

4.9.4. Members who are eligible for fractional credit for military service and for actual teaching within the same fiscal year shall receive credit in the following order of preference:

4.9.4.a. Credit for actual teaching; and

4.9.4.b. Prior service credit for military service.

4.9.5. Subject to the provisions of W. Va. Code § 18-7A-17(b) military service cannot be duplicated by the Teachers' Retirement System when it has been credited by an out-of-state Teachers' Retirement System or by any of the retirement systems administered by the West Virginia Consolidated Public Retirement Board.

4.10. Out-of-state service credit. The Board shall grant out-of-state service credit for service as a teacher performed while in the employment of federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory: Provided, That

4.10.1. The member pays to the system double the amount he or she contributed during the first full year of current employment performed in West Virginia following the out-of-state service to be purchased, plus interest at a rate to be determined by the Consolidated Public Retirement Board from the date of the first full year of current employment to the date of payment times the number of years for which credit is granted; and

4.10.2. Any service that is fully vested, eligible to be fully vested without further service or from which the member is currently receiving benefits is not subject to purchase.

4.11. Individual payments. Unless provided for by specific legislation or prohibited by law, payments, other than loans, due the system may be paid in the following manner:

4.11.1. Payment in full prior to retirement; or

4.11.2. By borrowing from the individual's account. Provided, That any teacher or non-teacher who becomes a member of the Teachers' Retirement System for the first time on or after July 1, 2005, is not eligible to borrow from his or her individual account.

4.12. Conversion of accrued unused sick and annual leave. The Board shall permit conversion of accrued unused sick and annual leave only as follows:

4.12.1. Conversion privilege. The Board shall permit a member, who is a participating employee under the West Virginia Public Employees Insurance Act at the time of retirement, to convert accrued unused sick and annual leave, standing to the credit of that member with the member's last employer, to service credit upon the basis permitted by W. Va. Code § 5-16-13(f).

4.12.2. Calculation of conversion. The conversion of accrued unused sick and annual leave shall be based on the average annual length of a member's actual contract status over the entirety of the member's employment history. The calculation shall treat the accrued unused sick and annual leave as having been accrued equally over the entirety of the member's employment history, and shall be calculated as follows:

4.12.2.a. The number of days of actual accrued unused sick and annual leave shall be multiplied by two;

4.12.2.b. The number of months in each contract period shall be added and the sum thereby obtained divided by the number of contract periods to obtain the average monthly length of each year of employment;

4.12.2.c. The result of the calculation obtained in paragraph 4.12.2.b. of this subdivision shall be multiplied by twenty to obtain the number of average days for each year of employment;

4.12.2.d. The Board shall subtract twenty from the result of the calculation obtained in paragraph 4.12.2.c. of this subdivision to adjust for the provisions of W. Va. Code § 18-7A-17; and

4.12.2.e. The result of the calculation obtained in paragraph 4.12.2.a. shall be divided by the result of the calculation obtained in paragraph 4.12.2.d. of this subdivision, which quotient shall be the additional service credit in years to which a member is entitled as a result of the conversion.

§ 162-4-5. Monthly Benefits.

5.1. Monthly benefit options. Members who make contributions to retirement accounts, who qualify for benefits because of age, disability or service, shall select one of the following options, subject to the provisions of W. Va. Code § 18-7A-1 et seq.:

5.1.1. Straight Life Annuity. Monthly benefits for the lifetime of the member retirant. The member's retirant's death terminates this option. In the event of the member's retirant's death before the total benefits received equal the member's accumulated contributions at retirement, the plan shall pay a sum equal to the balance of the contributions to the named beneficiary or the estate.

5.1.2. 100% Joint & Survivor Annuity. Monthly benefits payable for the lifetime of the member retirant. If the member retirant dies prior to the beneficiary, the monthly benefit would be continued in the same amount to the beneficiary for the lifetime of the beneficiary. If the beneficiary dies prior to the retirant, the monthly benefit would be continued in the same amount to the retirant for the lifetime of the retirant.

5.1.3. 50% Joint & Survivor Annuity. Monthly benefits payable for the lifetime of the member retirant. If the member retirant dies prior to the beneficiary, the monthly benefit would be continued for half the amount to the beneficiary for the lifetime of the beneficiary. If the beneficiary dies prior to the retirant, the monthly benefit would be continued in the same amount to the retirant for the lifetime of the retirant.

5.1.4. Ten Year Certain & Life Annuity. Monthly benefits payable for the lifetime of the member retirant. If the member retirant dies before having received a total of one hundred twenty (120) payments, the balance of payments continues to the member's retirant's named beneficiary or contingent beneficiary, if living; otherwise, the plan shall pay the commuted present value of the payments to the member's retirant's estate or plan contingent beneficiary.

5.2. Payment of monthly benefit. The Board shall pay all monthly benefits in twelve (12) monthly payments, with fractions of a cent considered a cent.

5.2.1. When an application for regular, deferred or early retirement has been submitted by a member who has met all the eligibility requirements and who dies before the application is approved processed by the Consolidated Public Retirement Board, the Board shall process the application as though the applicant were still alive.

5.3. Option chosen final. When the choice of an option has been made, that choice is final and cannot after that date be changed, except as provided in W. Va. Code § 18-7A-26 and § 18-7A-28. A beneficiary cannot affect or change the option chosen by the member.

5.4. Change in monthly benefit. A ~~member (active or retired)~~ retirant may submit new information at any time for the Board's consideration. ~~The Board shall change the monthly benefit in accordance with the approved data, the change being effective with the payment for the month within which the Board received the new data.~~ Upon the Board's acceptance of the new data, the Board shall change the monthly benefit accordingly effective the first day of the following month.

§ 162-4-6. Retirement.

6.1. A member's active membership ceases upon retirement and the status of a ~~retired member~~ retirant may only be affected by an action of the Board.

6.1.1. The Board shall, if requested by the ~~retiring member~~ retirant or beneficiary, make those withholdings from the monthly benefit that are necessary to provide for the continuance of the insurance program carried by the member with the West Virginia Public Employees Insurance Agency.

6.1.2. The Board shall, if requested by the ~~retired member~~ retirant or beneficiary or if required by law, make those withholdings from the monthly benefit that are necessary to pay federal withholding taxes.

6.1.3. The Board shall furnish, as required by state and federal law and regulations, those forms and reports related to the retirement annuity necessary for the ~~retired member~~ retirant or beneficiary to comply with the laws and regulations.

6.2. Post retirement employment. Any retirant who accepts employment by a participating employer, other than as a college teacher, for a relatively short period (no more than a one hundred-forty (140) day contract) who is not considered in any way a permanent or regular employee is considered a temporary, part-time or substitute employee and shall continue to receive his or her normal monthly benefit during the temporary employment. The days may be consecutive. However, if the allowed number of employment days is exceeded, the retirant shall not receive a prior service allowance for each month during which an excess day is worked, for the balance of that fiscal year.

6.2.1. A retirant may teach college on a non-contract basis less than seven (7) hours of college credits per semester without a loss of benefits. The Board shall discontinue the payment of the prior service allowance to such retirants who teach seven (7) or more college credits hours per semester, with benefits being discontinued on the first day of the month within which employment begins. Payment of the prior service allowance shall be resumed on the first day of the month succeeding the month within which the employment ceases.

6.2.2. Any employer employing a ~~retired member~~ retirant, on any basis but a day-to-day basis, shall report that employment and conditions of employment to the Board within thirty (30) days of the employment.

6.2.3. For retirants not engaged in substitute teaching, each day a retiree is paid constitutes one day worked regardless of the number of hours or the amount of pay.

6.2.4. This section applies only to employers whose employees are participants in any pension or

retirement operated directly or indirectly by the State of West Virginia.

6.2.5. A member who has been retired on the basis of disability is ineligible to return to service in a substitute, full or part time capacity while continuing to receive disability retirement benefits. The Board shall discontinue the payment of disability retirement benefits to retirants who return to service. The Board shall discontinue payment on the first day of the month within which return to service occurs.

6.2.6. For retirants who return to employment as a substitute service employee, retirement contributions shall not be withheld from gross salary.

§ 162-4-7. Termination of Membership and Withdrawal.

7.1. Termination of membership by death. If a member who dies was at least fifty (50) years of age and had twenty-five (25) years of service credit, the surviving spouse shall receive a 100% Joint & Survivor Annuity, provided the surviving spouse is designated as the member's sole refund beneficiary.

7.1.1. In the event the member's spouse does not qualify for an annuitized benefit at the death of the member, the member's beneficiary shall receive the sum prescribed in W. Va. Code § 18-7A-23(b)(2).

7.2. Termination of membership by withdrawal prior to retirement. Any member who ceases covered service prior to retirement may terminate membership by making written application for refund of his or her accumulated contributions, subject to offset of any outstanding loan balance, plus accrued interest, pursuant to W. Va. Code § 18-7A-34 and section 8 of this rule.

7.2.1. ~~An actively contributing~~ A member who has at least five (5) years of West Virginia service may be eligible to elect to receive a retirement annuity in accordance with the provisions of W. Va. Code § 18-7A-23(a)(2). The member shall notify the Board in writing of the election.

7.3. Termination of membership when loan balance equals or exceeds accumulated contributions. A member who is no longer in covered service, but has not elected to terminate membership and withdraw his or her accumulated contributions, will have his or her membership terminated, and be considered to have requested a withdrawal prior to retirement, if and when the outstanding balance of any loan obtained by the member, plus accrued interest, equals or exceeds his or her accumulated contributions. The member's withdrawal shall be offset at the time of membership termination by the outstanding loan balance, pursuant to W. Va. Code § 18-7A-34 and subsection 8.2. of this rule.

§ 162-4-8. Loan Repayment.

8.1. In order to comply with the provisions of section 72(p) of the Internal Revenue Code of 1986 as required by W. Va. Code § 18-7A-34, upon the retirement of a member including retirement for disability or withdrawal prior to retirement, any unpaid loan balance including any compounded interest due shall be repaid in full by the member prior to retirement or withdrawal in one of the following manners:

8.1.1. Payment in full with personal funds;

8.1.2. Offset by means of lump sum deduction from the member's refund of accumulated contributions; or

8.1.3. Offset by means of an actuarial reduction of the member's monthly benefit. The reduction of

the member's monthly benefit shall be determined by deducting from the actuarial reserve for the accrued benefit the lump sum amount of the unpaid loan balance including any compounded interest due and then converting the remainder of the reserve to a monthly benefit payable in the form elected by the member.

8.2. If, after the cessation of covered service and prior to a withdrawal of accumulated contributions or the commencement of an annuity, a member's membership in the Retirement System terminates as a result of the outstanding balance of any loan obtained by the member, plus accrued interest, equaling or exceeding the member's accumulated contributions, then as of the date of the membership termination the member will be considered to have requested a distribution from the Retirement System in the form of a withdrawal of accumulated contributions, so that offset of the outstanding loan balance may be made at that time pursuant to W. Va. Code § 18-7A-34.

8.3. If a member dies prior to full repayment of any unpaid loan balance including any compounded interest due, the loan amount due shall be offset in a lump sum from either the refund benefit payable to the refund beneficiary or the annuity or death benefit otherwise payable to the survivor beneficiary, whichever is applicable. The reduction of a survivor beneficiary's monthly benefit shall be determined by deducting from the actuarial reserve for the benefit the lump sum amount of the unpaid loan balance including any compounded interest due and then converting the remainder of the reserve to a monthly benefit payable in the applicable form.

8.4. If a member's refund of accumulated contributions or the actuarial reserve for the accrued benefit, whichever is applicable, is not sufficient to repay the unpaid loan balance in full including any compounded interest, the member (or the member's estate, if deceased) shall pay the amount necessary to fully repay the amount due.

8.5. All loan payments remitted by an employer are due the Retirement System within fifteen (15) days following the end of the calendar month for which the payment is made.

8.6. All loan payments remitted by personal payment, if permitted, are due the Retirement System by the last day of the calendar month for which the payment is due.

8.7. Any term used in this section shall have the same meaning as when used in a comparable context in the laws of the United States, unless a different meaning is clearly required.

§ 162-4-9. Refunds of Contributions Where an Annuity May Be Payable.

9.1. Any member of the Retirement System who terminates employment after attaining age sixty (60) and who has five (5) or more years credited service and is otherwise entitled to an annuity payable from the Retirement System, is not eligible for a refund of contributions made to the Retirement System, but, in lieu thereof, is entitled to a monthly annuity payable pursuant to W. Va. Code § 18-7A-25.

9.2. Any member of the Retirement System who terminates employment before attaining age sixty (60) and who is otherwise entitled to a regular annuity payable from the Retirement System at the time of his or her application for a refund, is not eligible for a refund of contributions made to the Retirement System, but, in lieu thereof, is entitled to a monthly annuity payable pursuant to W. Va. Code § 18-7A-25.

9.3. Any member of the Retirement System who terminates employment before attaining age sixty (60) and who is not immediately entitled to a regular annuity payable from the Retirement System, even though he or she may be entitled to deferred benefits, is entitled to a refund of contributions upon written application

filed with the Retirement System.

§ 162-4-10. Surcharge for Delinquency of Employer and Employee Contributions.

10.1. Any participating employer who fails to make any payment due the Retirement System by the fifteenth (15th) day following the end of each calendar month in which the contributions are due may be required to pay the actuarial rate of interest lost on the total employee and employer contributions owed for each day the payment is delinquent. Accrual of the loss in earnings owed by the delinquent employer commences after the fifteenth (15th) day following the end of the calendar month in which the contributions are due and continues until receipt of the delinquent employee and employer contributions. Interest compounds daily and the minimum surcharge is fifty (50) dollars.

§ 162-4-11. Refund of Erroneous Contributions.

11.1. To the extent permissible under the provisions of section 401(a) et seq. of the Internal Revenue Code and the guidance issued thereunder, the State Auditor and State Treasurer may refund from the funds of the Retirement System any erroneous contributions made to the System upon proper transmittals by the Board's staff. The Board's staff may request the refund if it determines it is appropriate and permissible under the provisions of section 401(a) et seq. of the Internal Revenue Code and guidance issued thereunder, after receiving from the executive officer of the payroll records of a participating employer an explanation of the reason for making the erroneous contributions and the amount of the erroneous contributions.