

Form #3

OFFICE WEST VIRGINIA
SECRETARY OF STATE


Authorized Signature

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 24, 2004

TO: **LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

FROM: **West Virginia Consolidated Public Retirement Board
State Capitol Complex
Building 5, Room 1000
1900 Kanawha Boulevard, East
Charleston, WV 25305**

LEGISLATIVE RULE TITLE: Title 162, Series 3; Consolidated Public Retirement Board; Teachers' Defined Contribution 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 1, 2004

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- b. What other notice, including advertising, did you give of the hearing?

Written notice, along with a copy of the proposed rule amendments, were forwarded to various members of the WV Federation of Teachers, WV Education Association, WV Assoc. of Retired School Employees, and to WV School Service Personnel for review and circulation to their potentially interested members. Copies were also provided to the Chairs of the House and Senate Committees on Pension and Retirements.

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- c. Date of Public Hearing(s) *or* Public Comment Period ended: August 2, 2004
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

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

August 24, 2004

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- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to

receive all *written correspondence* regarding this rule: (Please type)

Joseph J. Jankowski, Jr., Executive Director
WV Consolidated Public Retirement Board
State Capitol Complex
Building 5, Room 1000
1900 Kanawha Boulevard, East
Charleston, WV 25305
(304) 558-6244 x 403
(304) 558-6337 (fax)
jjankowski@wvretirement.com

- 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)

Karen S. Copeland, Membership Manager
WV Consolidated Public Retirement Board
State Capitol Complex
Building 5, Room 1000
1900 Kanawha Boulevard, East
Charleston, WV 25305
(304) 558-6244 x 414
(304) 558-6337 (fax)
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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.
 - 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:

BRIEF SUMMARY OF PROPOSED AMENDMENT TO TITLE 162, SERIES 3

The West Virginia Consolidated Public Retirement Board (Board), as administrator of the State's Teachers' Defined Contribution System, proposes certain amendatory changes to the provisions of Title 162, Series 3 of the West Virginia Code of State Regulations. A new third party administrator has been selected to administer the Teachers Defined Contribution System, therefore warranting procedural amendments to the legislative rule. Proposals to delete obsolete provisions of the rule are also included.

The Board proposes an amendment to clarify the general purpose of this rule and the members to which it applies. The proposal to delete the definition of "accrued benefit" is due to this retirement system being a defined contribution plan and not a defined benefit plan. The term "account balance" has been substituted throughout the rule in place of "accrued benefit." The definition of "cash-out" has been amended to discontinue involuntary cash-outs, and the definition of "employment day" has been added for clarity.

In the interest of the members, language is proposed to require the employer to remit employee and employer contributions to the system within ten days of the pay period. Proposed amendments have been made to the administration of the annuity accounts to reflect enhancements now available to members and to clarify federal law with which we must comply. Also proposed is language to clarify that a member can not exceed one year of service for vesting purposes within any one fiscal year.

Additionally, the Board proposes that language pertaining to the distribution of benefits be modified or deleted to reflect the distribution options currently available to members. The Board also proposes that language referring to installment distributions and segregation of accounts be deleted. Clarification of the suspense account for terminated members is also proposed.

Other non-substantial changes are also sought to ensure clarity for members.

STATEMENT OF CIRCUMSTANCES REQUIRING
PROPOSAL AND PROMULGATION OF PROPOSED RULE CHANGES TO SERIES 3
OF TITLE 162 OF THE WV CODE OF STATE REGULATIONS

As statutory administrator of the State's Teachers' Defined Contribution retirement system, the West Virginia Consolidated Public Retirement Board proposes amendatory additions to Title 162, Series 3 of the West Virginia Code of State Regulations. A new third party administrator has been selected to administer the Teachers Defined Contribution retirement system, and the legislative rule warrants amendments due to the procedures that now must be followed. Proposals to delete obsolete provisions of the rule are also included.

Definitions within this legislative rule need to be deleted and amended to reflect procedural changes and to discontinue involuntary cash-outs. In order to protect the integrity of the system, language to ensure that employee and employer contributions are made within ten days of the pay period has been added. The rule has also been amended to reflect enhancements now available to members through the new third party administrator. Additionally, the Board proposes clarification that a member not be eligible to receive more than one year of service within one fiscal year.

The Board also proposes that language pertaining to the distribution of benefits be modified or deleted to reflect the distribution options currently available to members. Additionally, the Board proposes that language referring to installment distributions and segregation of accounts be deleted. Clarification of the suspense account for terminated members is also proposed.

Other non-substantial changes are also sought to ensure clarity for members of the Teachers' Defined Contribution System.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 162 (Series 3) Teachers' Defined Contribution System

Type of Rule: X Legislative Interpretive Procedural

Agency: The State of West Virginia Consolidated Public Retirement Board

Address: 1900 Kanawha Boulevard, East, Building 5, Room 1000, Capitol Complex
 Charleston, West Virginia 25305

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$0				
PERSONAL SERVICES	\$0				
CURRENT EXPENSE	\$0				
REPAIRS & ALTERATIONS	\$0				
EQUIPMENT	\$0				
OTHER	\$0				

2. Explanation of Above Estimates:

The rule provides for certain technical modifications and clarifications and does not increase or decrease any benefits currently provided.

Rule Title: Title 162 (Series 3) Teachers' Defined Contribution System

3. Objectives of These Rules:

- a. Provides for mandatory participation in Plan of eligible employees.
- b. Clarification of certain definitions.
- c. Clarification language for certain technical provisions.
- d. Elimination of automatic distribution for terminated members with balances under \$5,000.
- e. Clarification that disability is defined as unable to perform current covered position which is identical to Teachers' Retirement System.
- f. Requires participating employers to deposit contributions within 10 days.
- g. Limits service for vesting to one year in a 12 month Plan year.
- h. Eliminates five year rule for vesting reinstatement if member does not withdraw vested funds on termination.
- i. Clarification and expansion of distribution options available to members.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Allows for the more efficient processing of benefits.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

Allows certain members to leave balances on deposit in anticipation of possible rehire into covered employment. Encourages continued saving for retirement. Requires earlier contribution deposits maximizing member interest earnings. Allows greater flexibility in retirement option planning.

C. Economic Impact on Citizens/Public at Large:

None.

Date: June 30, 2004

Signature of Agency Head and/or Authorized Representative:


Harry W. Mandel
Member, American Academy of Actuaries
Board Actuary, WVCPRB

FILED

TITLE 162
LEGISLATIVE RULE
CONSOLIDATED PUBLIC RETIREMENT BOARD

2004 AUG 24 P 3:11

SERIES 3
TEACHERS' DEFINED CONTRIBUTION SYSTEM

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§162-3-1. General.**

1.1. Scope. -- The scope of this Rule is the interpretation, administration and application of the Teachers' Defined Contribution System by the Board.

1.2. Authority. -- W. Va. §5-10D-1.

1.3. Filing Date. --

1.4. Effective Date. --

credited to the member's annuity account.

3.1.2. 3.1.1. "Annuity account" means a two-part account established for each individual member to record the deposit of: (1) member contributions and interest, dividends or other accumulations credited on the contributions to the account on behalf of the member (the "member account"); and (2) employer contributions and interest, dividends or other accumulations credited on the contributions to the account on behalf of the member (the "employer account").

§162-3-2. Purpose.

2.1. General. The purpose of the Teachers' Defined Contribution System is to provide a mandatory defined contribution retirement program for all employees hired on or after July 1, 1991 which is fully funded on a current basis from employer and member contributions.

2.2. Exclusive benefit. The System has been created for the exclusive benefit of the members and their beneficiaries subject to the limitations in W. Va. Code §18-7B-11 with respect to forfeiture. The Board shall interpret the system in a manner consistent with this intent and with the intention that the System satisfy the applicable provisions of Section 401 and Section 501 of the Internal Revenue Code of 1986, as amended, with respect to governmental plans.

3.1.3. 3.1.2. "Beneficiary" means any person, estate or trust who by operation of law, or under the terms of the System, or otherwise, is entitled to receive any accrued benefit of a member under the System. A "designated beneficiary" means any individual designated or determined in accordance with this Rule, except that it shall not include any person who becomes a beneficiary by virtue of the law of inheritance or intestate succession.

§162-3-3. Definitions.

3.1. For the purposes of the Teachers' Defined Contribution System, the following definitions apply, unless the context clearly requires a different meaning:

3.1.1. "Accrued benefit" is the amount

3.1.4. 3.1.3. "Cash-out" may be voluntary or involuntary. ~~An involuntary cash-out is a distribution of an accrued benefit to a former member which meets the following requirements: (1) the former member's entire non-forfeitable accrued benefit is distributed to him or her, (2) the present value of the non-forfeitable accrued benefit of the member does not exceed \$5,000 and (3) the distribution is made on account of the employee's termination of participation in the System and is made no later than thirty (30) days after the end of the calendar quarter following the termination. Where the present value of the non-forfeitable accrued benefit of a former member is in excess of \$5,000, or ever exceeded \$5,000 the Board shall not make an immediate distribution from the Teachers' Defined Contribution System~~

~~without the consent of the member and, when applicable, the member's spouse. A voluntary cash-out is a distribution of an accrued benefit to a former member which meets the following requirements: (1) the former member has voluntarily elected to receive the distribution of contributions from the system and (2) the distribution is made on account of the employee's termination of participation in the system. and is made no later than thirty (30) days after the end of the calendar quarter following such termination.~~

~~3.1.5:~~ 3.1.4. "Compensation" refers to all compensation paid during the plan year as wages, salary or commissions by a participating employer to a member including overtime payments and amounts contributed to any welfare benefit plans maintained by the employer or by the State through a reduction in the member's compensation which pursuant to Internal Revenue Code §125 are not included in the gross income of the member for the year in which the amounts are contributed. However, compensation does not include the value of accrued but unused sick leave or vacation leave. Compensation also does not include all contributions by the employer to the plan and to any other retirement or deferred compensation plan maintained by the employer or amounts ~~in excess of \$150,000 for the plan year or any other amount as provided in exceeding the provisions of~~ W. Va. Code §5-10D-7.

3.1.5 "Employment day" means a day a member is paid compensation for full-time service by an existing employer.

3.1.6. "Existing employer" means any employer who employed or employs a member of the Teachers' Defined Benefit Retirement System.

3.1.7. "Forfeiture" means the employer contributions and investment income on such contributions held in the suspension account created pursuant to W. Va. Code §18-7B-11 that have been irrevocably forfeited by reason of lapse of time.

3.1.8. "I.R.C." refers to the Internal Revenue Code of 1986, as amended.

3.1.9. "Leave of absence" refers to that period during which the member is absent from his or her employment without compensation and for which the ~~Board~~ employer has determined the member to be on a "leave of absence" instead of having separated from his or her employment.

3.1.10. "Permanent and total disability" means a mental or physical incapacity from service as a teacher or current position requiring a member to be absent from employment service for at least six (6) months. Provided, that the incapacity is shown by a physician or physicians selected by the Board in accordance with this Rule.

3.1.11. "Plan year" means the period commencing on the first day of July and ending on the thirtieth day of June, the following year.

3.1.12. "Public schools" means all publicly supported schools, including normal schools, colleges and universities in the State.

3.1.13. "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the numbers of hours worked or the method of pay.

3.1.14. "Retirement age" means at least fifty-five (55) years of age for the member.

3.1.15. "State" means the State of West Virginia, its political subdivisions and state agencies.

3.1.16. "Termination date" means the date on which the earliest of the following events occurs: (1) a member's retirement, (2) a member's termination of employment as a result of permanent and total disability, (3) a member's death or (4) a member's termination of employment for any other reason.

3.1.17. "Trust" means the trust created by State law pursuant to W. Va. Code §18-7B-1 et seq.

3.1.18. "Trust fund" consists of the employer ~~and contributions, member contributions, and money in any revenue sharing account, held by the System and invested in various investment options and any income or appreciation thereon, all of which are invested in various investment options and are held by the Teachers' Defined Contribution System, with income or appreciation thereon.~~

§162-3-4. Contributions to the Trust.

4.1. Member contributions. Each employee who is a member of the Teachers' Defined Contribution System shall contribute four and one-half percent (4 ½%) of his or her gross compensation. Member contributions shall be picked up by each participating employer pursuant to W. Va. Code §5-10C-1 et seq. The Teachers' Defined Contribution Retirement System is subject to U. S. Internal Revenue Code §414(h)(2) [25 U.S.C. §414(h)(2)]. Each participating employer shall cause the member contributions to be paid to the Teachers' Defined Contribution System within fifteen (15) days of the end of the pay period. Any participating employer who fails to make any payment due the Teachers' Defined Contribution System by the fifteenth (15th) day following the end of the pay period shall be considered delinquent and may be required to pay earnings lost on the member contributions at the actuarial rate of return as determined for the Teachers' Defined Benefit Retirement System. Payment for the loss in earnings owed by the delinquent employer shall commence after the fifteen (15) day grace period and continue until receipt of the delinquent member contributions.

4.2. Employer contributions. Each participating employer shall annually make a contribution equal to seven and one-half percent (7 ½%) of each member's gross compensation. A pro-rata share of the employer contributions shall be paid upon each date that a member contribution is made. The employer contribution shall be immediately credited to the annuity account established in the name of the member and held in trust for the benefit of the member. Each participating employer has a fiduciary duty to its employees to insure that the employer contributions are timely made to the Board. In the

event that any employer contribution is not timely made, it is a State debt, contracted as a deficit in State revenues, to be accorded preferred status over other expenditures. Each participating employer shall cause the employer contributions to be paid to the Teachers' Defined Contribution System within fifteen (15) days of the end of the pay period. Any participating employer who fails to make any payment due the Teachers' Defined Contribution System by the fifteenth (15th) day following the end of the pay period shall be considered delinquent and may be required to pay earnings lost on the employer contributions at the actuarial rate of return as determined for the Teachers' Defined Benefit Retirement System. Payment for the loss in earnings owed by the delinquent employer shall commence after the fifteen (15) day grace period and continue until receipt of the delinquent employer contributions.

§162-3-5. Administration of Annuity Accounts.

5.1. Investments. The amounts allocated to the employer account and member account of each member's annuity account shall be invested by the Board in one or more investment options elected by the member. Each member may elect; ~~in writing, at least fifteen (15) days before the beginning of each calendar quarter,~~ to have the balance accumulated in his or her annuity account invested by the Board in one or more investment options made available by the Board. The investment options may include: (1) a money market fund; (2) a bond fund; (3) a stock fund, and (4) other investment options offered by the Board. If the member elects more than one investment option, the member's and employer's contributions shall be allocated to each investment option in increments of five one percent (5%) (1%) of the total contribution.

5.2. Investment in a single trust fund. The Board may cause all contributions paid to it by the employer and member, and any income earned on such contributions without distinction between principal and income, to be held and administered in a single trust fund. The Board may adopt reasonable rules for the administration of the common fund and for the determination of the proportionate interest of each member in the fund.

5.3. Evaluation of assets and allocation of changes. The Board shall evaluate the assets of each investment fund or other investment options at the close of the last day of each calendar quarter of the plan year at their fair market value. The Board shall adjust ~~the member account and employer account, including any employer account held in suspense,~~ of each member's annuity account, including any employer account held in suspense, for any net appreciation gain or net depreciation loss in the value of the assets of the fund and any net income or net loss of each fund for the calendar quarter, with each individual annuity account of each member participating in the investment funds being credited or charged in a proportionate ratio with each other annuity account with the earnings or losses of the investment funds.

5.4. Limitations on allocations to each member. Notwithstanding any other provisions of the Teachers' Defined Contribution Retirement System, except the provisions of W. Va. Code § 18-7B-13, the maximum annual addition for any plan year which can be made to an annuity account of an individual member is ~~the lesser of \$30,000 (or, if greater, one-fourth (1/4) of the defined benefit dollar limitation set forth in the amount specified and indexed in the U. S. Internal Revenue Code §415(b)(1) §415(c)(1) as in effect for the plan year) or twenty-five percent (25%) of the member's compensation.~~ In no event shall the annual additions to any member's annuity account exceed ~~the lesser of the limitations set forth in this subsection.~~ The annual addition for a plan year which is the limitation year for the purpose of U. S. Internal Revenue Code §415, under this and any other defined contribution type plans maintained by the State or the employer is the sum of the following:

5.4.1. Employer contributions;

5.4.2. Forfeitures (if applicable); and

5.4.3. Member contributions.

5.5. Designation of beneficiary. Each member may designate from time to time in writing one or more beneficiaries, who will receive the member's

vested ~~accrued benefit~~ account balance in the event of the member's death. If the member dies without having made a beneficiary designation, the Board shall distribute the benefits ~~in accordance with this Rule to the member's estate.~~

§162-3-6. Vesting.

6.1. Member contributions one-hundred percent (100%) vested. The ~~accrued benefit in a member's portion of the annuity account is comprised of member contributions, reinstatements, and rollover contributions, and earnings on the contributions of a member and is one hundred percent (100%) vested at all times.~~

6.2. Vesting employer contributions on death or permanent and total disability. If a member's employment with a participating employer is terminated on account of death or for permanent and total disability, one hundred percent (100%) of the employer contributions, with earnings on such contributions, in the member's annuity account, is non-forfeitable and immediately vests ~~in the member, or his or her beneficiary as the case may be, and the Board shall distribute or set aside the contributions in accordance with the provisions of Section 10 of this Rule.~~

6.3. Employer account vesting on termination. If a member's employment is terminated, except for death or permanent and total disability, the following percentages ~~of the member's accrued benefit in the employer account portion of the member's annuity account vest in the member and the Board shall distribute to or set aside the money for the member in accordance with Section 7 of this Rule.~~

Total Years of Employment Service for Vesting	VESTED PERCENTAGE OF EMPLOYER CONTRIBUTIONS AND EARNINGS THEREON
At least 6 completed years, but less than 9	33 1/3%
At least 9 completed years, but less than 12	66 2/3%
At least 12 completed years	100%

6.3.1. The ~~accrued benefit~~ employer's

portion of the member's annuity account of a terminated member which is not vested as provided in this subsection shall be retained by the Board in a suspension account in accordance with W. Va. Code §18-7B-11

6.4. Partial vesting. A member who has less than two hundred (200) employment days during a plan year is entitled to partial vesting credit for purposes of computing years of employment service based upon the actual number of employment days worked during the plan year. For example, if a member was a regular employee of a participating employer, but only had one hundred employment days during the plan year, that individual would be given one half ($\frac{1}{2}$) year of employment service ($100/200 = \frac{1}{2}$).

6.4.1. Maximum yearly service credit. For purposes of vesting in the Teachers' Defined Contribution Plan, no member shall receive more than one year total service credit for any fiscal year due to service being transferred from the Teachers' Defined Benefit Retirement System to the Teachers' Defined Contribution Plan which under the Rules of both systems could conceivably entitle him or her to more than one year service credit.

6.5. Leave of absence. The Board shall consider as an approved leave of absence any leave approved by each the member's participating employer, pursuant to a written policy of the participating employer, provided that the said employer provides the Board on an annual basis, or a more frequent basis if directed by the Board, a list of all members who are currently on an approved leave of absence.

6.6. Reemployment with participating employer. A member of the Teachers' Defined Contribution System who terminates employment with a participating employer ~~and does not withdraw any funds from his or her annuity account~~ and becomes reemployed with a participating employer ~~within five (5) years from the date of termination~~ retains his or her previous years of employment service for purposes of vesting.

6.7. Workers' compensation. Members who

are receiving workers' compensation benefits and who are not ~~actively employed and not~~ contributing to the Teachers' Defined Contribution System shall not receive any vesting credit until such time as they return to active employment and commence contributing to the System. The Board shall consider a member receiving workers' compensation as being on approved leave of absence therefore allowing the member's reentry into the system.

§162-3-7. Distribution of Benefits.

7.1. Method of distribution of vested member annuity account. A terminated member shall elect in writing to receive a distribution of the vested portion of his or her annuity account in one of the following forms, to the extent not inconsistent with the applicable provisions of the Internal Revenue Code or W. Va. Code §18-7B-12a: (1) a lump-sum distribution; (2) ~~a joint and survivor annuity;~~ (3) ~~an increasing annuity which provides for the gradual increase in monthly retirement payments funded solely by the existing current blue of the member's annuity account at the time that the member's retirement payments commence;~~ (4) ~~a cash-out; or~~ (5) ~~any other annuity forms approved by the Board.~~ However, if a member's ~~vested accrued benefit in his or her annuity account at the time the member terminates employment (on account of severance, death or permanent and total disability) does not exceed \$5,000, the Board shall distribute the entire amount of the accrued benefit in the form of a cash-out within thirty (30) days following the end of the calendar quarter after the termination of employment.~~ periodic payments as selected by the member; (3) a rollover; or (4) any other annuity forms approved by the Board.

7.2. Time of distribution. The following provisions applicable to the timing of distributions are subject to the provisions of W. Va. Code §18-7B-12a.

~~7.2.1. After the member has attained retirement age, he or she may elect to take retirement by notifying the Board or its designee in writing, on a form approved by the Board, of that intention not less than sixty (60) days prior to~~

~~the effective date of retirement. If these requirements are met, retirement payments shall commence within thirty (30) days of the retirement date under the retirement payment option or options provided by the Board and elected by the member.~~

~~7.2.2. 7.2.1.~~ If the member dies, terminates his or her employment with a participating employer, or has been certified to be permanently and totally disabled, in accordance with the provisions of the System, then the Board shall make the first ~~installment, the periodic or lump-sum payment or cash-out, as the case may be, no more than thirty (30) days following the end of the calendar quarter after the member or the beneficiary, as the case may be, files a~~ upon written election of said member or beneficiary, on a form approved by the Board, of the intention to receive a distribution of benefits.

~~7.2.3. 7.2.2.~~ Distribution shall commence by the first day of April following the later of: (1) the calendar year in which the member attains the age of seventy and one-half (70 ½), or (2) the calendar year in which the member retires or otherwise ceases employment with the participating employer.

~~7.2.4. If distributions are made in installments rather than a lump sum distribution or a cash-out, then (1) the installments shall be over a period of ten (10) years or less or (2) the amount of the installment to be distributed each year shall be at least an amount equal to the quotient obtained by dividing the member's entire interest by the life expectancy of the member or the joint and last survivor expectancy of the member and his or her designated beneficiary. For purposes of the computation, the Board may recalculate a member's life expectancy no more frequently than annually; but the life expectancy of a non-spouse beneficiary may not be recalculated. If the member's spouse is not the designated beneficiary, the method of distribution selected by the member shall assure that at least fifty percent (50%) of the present value of the amount available for distribution is paid with the life expectancy of the member.~~

~~7.2.5. 7.2.3.~~ If the member dies after

distributions to him or her has begun but before his or her entire accrued benefit has been distributed to him or her, the Board shall distribute the remaining portion of his or her accrued benefit from the Teachers' Defined Contribution Retirement System at least as rapidly as under the method of distribution previously established for him or her, if that method is irrevocable at the time of his or her death.

~~7.2.6. 7.2.4.~~ If the member dies before full distribution of his or her interest commences, then distributions of the member's remaining accrued benefit shall be completed by the end of the fifth (5th) calendar year following the year of his or her death. However, installment distributions to a designated beneficiary which begin not later than the end of the calendar year following the death of the member comply with this five (5) year distribution requirement (even though the installment payments are not completed with five (5) year of the member's death) if the distributions are made at a rate which is not longer than that calculated (by using the rules set forth in the U. S. Internal Revenue Code Section 401(a)(9) and the corresponding Treasury Regulations §1.401(a)(9)) to provide payment of all member's accrued benefit during the anticipated life expectancy of the designated beneficiary. Provided that if the designated beneficiary is the surviving spouse of the deceased member, the distributions can begin as long after the member's death as the date on which the deceased member would have attained the age of seventy and one-half (70 ½). If the surviving spouse dies before distributions to the surviving spouse have begun, the Teachers' Defined Contribution Retirement System may make distributions to the beneficiary at the times as described in this Section as it would have if the surviving spouse had been a deceased member.

~~7.2.7. 7.2.5.~~ For purposes of this Section, any amount paid to a child of a member will be treated as if it had been paid to the surviving spouse of the member if the remaining amount becomes payable to the surviving spouse when the child reaches the age of majority.

~~7.3. Segregation of installment distribution: The Board may determine that the employer and~~

~~member accounts of a member who is no longer an employee shall be segregated and set aside. In such event the Board shall segregate the vested portion (as defined in Section 6 of this Rule) of the entire balance of the member's employer account and member account, if applicable, and deposit the portion in a separate interest bearing account. The account shall cease to participate in the income or net loss or appreciation or depreciation of the trust fund, as of the beginning of the subsequent calendar year for the plan year in which the segregation occurs, and instead will be credited with the full amount of interest earned thereon.~~

~~7.4. Non-segregation of installment distribution. In the event the Board does not segregate the employer account and the member account, of a member, (as provided in subsection of this Rule), the account shall continue to be treated, without interruption, in the same manner as when the member was an employee, and the installment distributions shall be adjusted upward or downward to reflect appreciation or depreciation, or income or loss in the account balance.~~

~~7.5. Distribution after death of participant. In the event of the death of a member after installment payments have begun, but prior to completion of the payments, the Board shall continue to pay the full amount of the unpaid benefits in the form of the previously established installments except that the beneficiary may request that the remaining accrued benefit be paid in a lump sum. In the event of the death of the member prior to the start of any payments of his or her accrued benefit, distributions shall be made in the form and at the time or times selected by the beneficiary pursuant to subsections 7.1 and 7.2 of this Rule.~~

~~7.6. 7.3. Distribution after death of beneficiary. In the event of the death of a beneficiary (or a contingent beneficiary, if applicable) prior to the completion of payments of benefits due the beneficiary from the plan, the full amount of the unpaid benefits shall immediately vest in and become the property of the estate of the beneficiary.~~

~~7.7. 7.4. Suspense account for terminated members. If a member has terminated his or her~~

employment but his or her employer account is not one hundred percent (100%) vested, all non-vested funds in his or her employer account shall be held in suspense until the happening of the earliest of the following: (1) the member returning returns to employment with the a participating employer; or (2) the occurrence of five (5) consecutive one year breaks in service with respect to the member the member fails to return to employment with a participating employer within five (5) years of the date of termination. At that time the member's employer account shall cease to be held in suspense. If a member has returned to employment with a participating employer prior to incurring five (5) consecutive one year breaks in service within five (5) years of the date of termination, and providing any distribution has been repaid, his or her employer account which has been held in suspense shall be restored to his or her credit, less any cash-out which is not repaid in accordance with Section 7 of this Rule. If five (5) consecutive one year breaks in service occur, Should the member not return to employment with a participating employer within five (5) years, the non-vested portion of the employer account held in suspense shall be irrevocably forfeited and reallocated in accordance with W. Va. Code §18-7B-11 for the plan year in which the forfeiture occurs. The Board shall distribute the vested portion in accordance with the provisions of Section 7 of the Rule. The suspension account shall share in any appreciation, depreciation or net income or loss as if it were not in suspense, except than an account which is in suspense shall have no forfeitures allocated to it for a plan year in which the employee does not have a year of service for accrual of benefits.

~~7.8. 7.5. Unable to locate member or beneficiary. If the Board is unable to locate the member or beneficiary to whom benefits are to be distributed and reasonable efforts have been made the Board staff has exercised due diligence to find him or her, including sending notification by certified or registered mail to his or her last known address: (1) the Board may distribute the benefits in question to an interest bearing savings account established in the name of the member or beneficiary; or (2) if the benefits are payable to a~~

~~member (as reasonably determined by the Board) the Board may distribute the funds to the member by placing them in a savings account in the member's name. Alternatively, if the Board has taken the reasonable efforts, as described in this subsection, to locate the member, the Board may allocate the member's accrued benefits to a segregated account in the manner described in this Section, as if an installment distribution were being made, the Board shall allocate the member's accrued benefits to the default fund. However, the All of said funds shall be held in the segregated account default fund for distribution to the member when located.~~

~~7.9: 7.6.~~ Repayment of cash-out. If a member receives a cash-out distribution from the plan as a result of ceasing to be an employee, ~~and is less than one hundred percent (100%) vested as to his or her accrued benefit at that time,~~ he or she may repay to the plan the cash-out distribution he or she has received from it, in full.

§162-3-8. Termination.

8.1. One hundred percent (100%) vesting on termination of plan. Upon termination or partial termination of the Teachers' Defined Contribution Retirement System and Trust by formal action of the State or for any other reason, or if employer contributions are permanently discontinued for any reason, there shall be vested one hundred percent (100%) in each member directly affected by that action the amount allocated to the annuity account of each member, and the Board shall make payment to the member in cash as soon as practicable after liquidation of the assets of the trust.

8.2. Plan merger of consolidation. In the case of any merger or consolidation with, or transfer of any assets or liability to, any other plan, each member in this plan is entitled to receive (if the surviving plan is then terminated) a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer (if this plan had terminated).

§162-3-9. Miscellaneous.

9.1. Laws of the State of West Virginia to apply. This plan shall be construed according to the laws of the State of West Virginia to the extent federal laws do not control.

9.2. Filing tax returns and reports. The Board, or its duly appointed designee, shall prepare, or cause to be prepared, all tax returns, reports and related documents, except as otherwise specifically provided.

**Board Members**

Governor Bob Wise
Auditor Glen B. Gainer III, Vice Chairman
Treasurer John D. Perdue
Acting Cabinet Secretary Tom Susman

Executive Director

Joseph J. Jankowski, Jr.

State of West Virginia
Consolidated Public Retirement Board

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August 1, 2004

Board Members

David L. Wyant, Chairman
David Anderson
F. Douglas Beasley
E. Gene Davis
Carl A. Guthrie
Frances A. Hughes
William B. McGinley
D. Todd Murray
Jerry A. Weaver
Janet F. Wilson

Mr. Joseph J. Jankowski, Jr.
Consolidated Public Retirement Board
Bldg. 5, Room 1000
State Capitol Complex
Charleston, WV 25305

RE: Legislative Rules Public Comment

Dear Mr. Jankowski:

Please accept this letter as public comment to Series 3 (Teachers Defined Contribution System), Series 4 (Teachers' Retirement System) and Series 10 (Deputy Sheriffs' Retirement System) of the West Virginia Code of State Regulations Title 162. I request that the daily limit allowed an employer to remit employee and employer contributions be extended from ten (10) days to fifteen (15) days in the following sections:

- § 162-3-4.1.
- § 162-3-4.2.
- § 162-4-10.
- § 162-10-14.

I request that this change be made to be consistent with the other comments received regarding the Public Employees Retirement System Series 5 Legislative Rule. Oftentimes, ten days is not sufficient in order to have checks signed by authorized signers and to allow for mailing time. Therefore, the limit of ten days is not always a reasonable or sufficient amount of time. Also, consistency between the multiple plans is much desired for the administrative process.

I appreciate your taking these comments into consideration. Should you have any questions regarding my concerns, please do not hesitate to contact me.

Sincerely,

Terasa L. Miller
Deputy Executive Director



State of West Virginia

OFFICE OF THE STATE TREASURER

CHARLESTON, WV 25305

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July 26, 2004

Joseph J. Jankowski, Jr., Executive Director
Consolidated Public Retirement Board
Building 5, Suite 1000
State Capitol Complex
Charleston, West Virginia 25305

Dear Joe:

I have reviewed the various legislative rules that were presented to the Board at their June 30, 2004 meeting. I have one concern relating to the revised rules for the Teachers Defined Contribution System which is the requirement that the participating employer be required to remit the member's and employer's contributions within ten (10) days of the end of the pay period.

This addition to the rule is a good start, but it does not contain any penalty for late payments. Therefore, I would suggest that sections 4.1 and 4.2 of the rule be changed to read as described in the attachment.

If you have any questions or need additional information, please call me.

Sincerely,

Jerry Simpson
Assistant Treasurer

CPRBJUL27'04

TITLE 162
LEGISLATIVE RULE
CONSOLIDATED PUBLIC RETIREMENT BOARD

SERIES 3
TEACHERS' DEFINED CONTRIBUTION SYSTEM

§162-3-4. Contributions to the Trust.

4.1. Member contributions. Each employee who is a member of the Teachers' Defined Contribution System shall contribute four and one-half percent (4 ½%) of his or her gross compensation. Member contributions shall be picked up by each participating employer pursuant to W. Va. Code §5-10C-1 et seq. The Teachers' Defined Contribution Retirement System is subject to U. S. Internal Revenue Code §414(h)(2) [25 U.S.C. §414(h)(2)]. Each participating employer shall cause the member contributions to be paid to the Teachers' Defined Contribution System within ten (10) days of the end of the pay period. Any participating employer who fails to make any payment due the Teachers' Defined Contribution System by the tenth (10'th) day following the end of the pay period shall be considered delinquent and may be required to pay earnings lost on the member contributions at the actuarial rate of return as determined for the Teachers' Defined Benefit Retirement System. Payment for the loss in earnings owed by the delinquent employer shall commence after the ten (10) day grace period and continue until receipt of the delinquent member contributions.

4.2. Employer contributions. Each participating employer shall annually make a contribution equal to seven and one-half percent (7 ½%) of each member's gross compensation. A pro-rata share of the employer contributions shall be paid upon each date that a member contribution is made. The employer contribution shall be immediately credited to the annuity account established in the name of the member and held in trust for the benefit of the member. Each participating employer has a fiduciary duty to its employees to insure that the employer contributions are timely made to the Board. In the event that any employer contribution is not timely made, it is a

State debt, contracted as a deficit in State revenues, to be accorded preferred status over other expenditures. Each participating employer shall cause the employer contributions to be paid to the Teachers' Defined Contribution System within ten (10) days of the end of the pay period. Any participating employer who fails to make any payment due the Teachers' Defined Contribution System by the tenth (10'th) day following the end of the pay period shall be considered delinquent and may be required to pay earnings lost on the employer contributions at the actuarial rate of return as determined for the Teachers' Defined Benefit Retirement System. Payment for the loss in earnings owed by the delinquent employer shall commence after the ten (10) day grace period and continue until receipt of the delinquent employer contributions.

RESPONSE TO PUBLIC COMMENT RECEIVED ON TITLE 162, SERIES 3

The West Virginia Consolidated Public Retirement Board (Board) received public comment regarding the proposed surcharge for the delinquency of employer and employee contributions. The Board agrees that requiring the contributions to be remitted by the tenth day following the end of the pay period may not allow a reasonable or sufficient amount of time to get checks signed by authorized personnel and mail time. The Board has modified the rule to assist its participating employers in the timely remittance of employer and employee contributions.

Additionally, the Board received public comment suggesting a penalty for the late payment of employer and employee contributions. The Board agrees that to impose a penalty for the late payment of contributions may provide incentive to its participating employers to remit contributions in a more timely manner. The Board has modified the rule to include penalty language.