



MINUTES

**Meeting of the Board of Trustees
of the State Universities Retirement System
Thursday, January 30, 2020, 4:25 p.m.
Northern Trust
50 S. LaSalle St., Global Conference Center
Chicago, Illinois**

The following trustees were present: Mr. John Atkinson, chair, Dr. Fred Giertz, Mr. John Lyons, Dr. Steven Rock, Mr. Collin Van Meter and Mr. Mitch Vogel

Others present, Mr. Martin Noven, Executive Director; Mr. Doug Wesley, Chief Investment Officer (CIO); Ms. Ellen Hung, Deputy CIO; Mr. Brain DeLorica, Investment Officer; Ms. Bianca Green, General Counsel; Mr. Albert Lee, Associate General Counsel; Ms. Suzanne Mayer, Chief Benefits Officer; Ms. Kristen Houch, Head of Legislative Affairs; Ms. Kelly Carson and Ms. Chelsea McCarty, Executive Assistants; Ms. Tiffany Reeves of Reinhart, Boerner, Van Deuren and Mr. Anton Britton of Northern Trust.

Board of trustees roll call attendance was taken. Trustee Ammons, absent; Trustee Atkinson, present; Trustee Figueroa, absent; Trustee Flaherty, absent; Trustee Giertz, present; Trustee Lyons, present; Trustee Rock, present; Trustee Van Meter, present; Trustee Vasquez, absent; and Trustee Vogel, present.

Trustee Vasquez physically joined the meeting at 4:29 p.m.

Trustee Flaherty physically joined the meeting at 4:40 p.m.

APPROVAL OF MINUTES

Trustee Atkinson presented the minutes from the board of trustee meetings of December 6, 2019.

Trustee Rock made the following motions:

- That the minutes from the December 6, 2019 Board of Trustees meeting be approved as presented.

Trustee Giertz seconded and the motions carried with all trustees present voting in favor.

APPROVAL OF CLOSED SESSION MINUTES

Trustee Atkinson presented the closed session minutes from the SURS Board of Trustees' meeting of December 6, 2019.

Trustee Rock made the following motion:

- That the closed session minutes from the December 6, 2019 Board of Trustees meeting be approved and remain closed.

Trustee Giertz seconded and the motions carried with all trustees present voting in favor.

CHAIRPERSON'S REPORT

Chairman Atkinson stated that he was reappointed by Governor Pritzker as the SURS board chair as of January 24, 2020 as part of the pension consolidation bill. Chairman Atkinson also provided an update regarding a recent meeting in Springfield with other pension systems and legislators where the legislative buyout process was discussed.

EXECUTIVE DIRECTOR'S REPORT

Mr. Noven did not have an executive director report.

BOARD TRAVEL

Mr. Noven presented the board with travel and conference opportunities suggested by members of the board. Mr. Noven encouraged trustees to continue to make suggestions for future educational opportunities.

Trustee Vogel made the following motion:

- That the board of trustees travel to attend conferences or trainings listed on the January 2020 list of upcoming training opportunities be approved, with the addition of the NASP conference, and that all resulting allowable expenses consistent with the SURS travel policy be reimbursed.

Trustee Van Meter seconded and the motion carried with all trustees present voting in favor.

A copy of the staff memorandum titled "Board Training Requirements and Travel Approval" with the list of upcoming training opportunities as of January 2020 are incorporated as part of these minutes as [Exhibit 1](#) and [Exhibit 2](#).

DISCUSSION AND APPROVAL OF JCAR RULE CHANGES

Mr. Albert Lee presented the board with staff's proposed rulemaking changes.

Trustee Giertz made the following motion:

- That the board of trustees approve the proposed rulemaking for First Notice publication by JCAR and the Secretary of State as presented.

Trustee Rock seconded and the motion carried with all trustees present voting in favor.

A copy of the staff memorandum titled "January 2020 Proposed Rulemakings" is incorporated as part of these minutes as [Exhibit 3](#).

REVIEW OF COMMITTEE ACTIONS

Investment Committee:

On behalf of the Investment Committee, Trustee Atkinson presented the committee actions.

The Investment Committee recommends to the board:

- That the SURS Board of Trustees approve FIS Group to be retained to coordinate the evolution of the existing Progress Non-US equity portfolio to a global equity manager of emerging managers program subject to successful completion of contract negotiations.
- That the SURS Board of Trustees adopt the revised investment beliefs as presented.
- That the SURS Board of Trustees approve the investment lineup for the defined contributions plans as presented.
- That the SURS Board of Trustees retain Principal Financial Group as the annuity provider for the defined contribution plans, subject to successful contract negotiations.
- That the SURS Board of Trustees approve the Third Restatement of the Self-Managed Plan, effective June 1, 2020, and the 457(b) Supplemental Plan, effective September 1, 2020, substantially as presented.
- That the SURS Board of Trustees approve the revised Defined Benefit Investment Policy as presented.
- That the SURS Board of Trustees approve the revised Defined Contribution Plan Investment Policy as presented.

The motion carried with all trustees present voting in favor.

FIDUCIARY EDUCATIONAL SESSION

Ms. Tiffany Reeves provided an educational presentation regarding fiduciary duties, prudence, delegation, transparency, accountability, board governance and responsibilities of the board.

The educational session lasted for 75 minutes, concluding at 6:00 p.m.

A copy of the Reinhart educational presentation titled “Fiduciary Training” is incorporated as part of these minutes as [Exhibit 4](#).

ATTORNEY BILLS AND WORK ESTIMATES

Ms. Tiffany Reeves discussed the costs associated with the first legal invoice sent to SURS, stating that the attendance of two fiduciary attorneys at multiple onboarding meetings, along with the initial fact-

finding process, elevated the cost. Ms. Reeves provided work plans and cost estimates for completion of the priority items identified by the board and staff that were scheduled for completion in January. She assured the board that she will address committee structures and present results of the self-assessment survey during the March meeting.

CLOSED SESSION

Trustee Lyons moved that the board of trustees go into closed session pursuant to §2(c)(1) of the Open Meetings Act. Trustee Vasquez seconded and the motion carried into a roll call vote:

Trustee Ammons	-	absent
Trustee Atkinson	-	aye
Trustee Figueroa	-	absent
Trustee Flaherty	-	aye
Trustee Giertz	-	aye
Trustee Lyons	-	aye
Trustee Rock	-	aye
Trustee Van Meter	-	aye
Trustee Vasquez	-	aye
Trustee Vogel	-	aye

RETURN TO OPEN SESSION

Upon motion by Trustee Rock that was seconded by Trustee Vasquez and carried, the board of trustees resumed the meeting in open session.

TRUSTEE COMMENT

There were no trustee comments presented to the SURS Board of Trustees.

PUBLIC COMMENT

There were no public comments presented to the SURS Board of Trustees.

There was no further business brought before the board and Trustee Rock moved that the meeting be adjourned. The motion was seconded by Trustee Lyons and carried with all trustees present voting in favor.

Respectfully submitted,



Mr. Martin Noven
Secretary, SURS Board of Trustees

MMN: kc



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MEMORANDUM

TO: Board of Trustees

FROM: Mr. Martin Noven
Executive Director

RE: Board Training Requirements and Travel Approval

DATE: January 7, 2020

In order to assist Trustees in obtaining the 8 hours of annual training required by Public Act 96-0006, staff has developed the attached list of upcoming training opportunities. This list will be updated and provided to the Trustees with the regular meeting materials.

Public Act 96-0006 also requires that all Board travel be approved by a majority of Trustees in order to qualify for reimbursement of expenses in accordance with the Board's Travel Approval and Expense Reimbursement Policy. Each Trustee is eligible to be reimbursed for two out-of-state trips, each fiscal year, for educational purposes. SURS is a voting member of the Council of Institutional Investors ("CII"). In March of 2013, the SURS travel policy was amended, to provide that attendance at the semi-annual meetings of CII not be included in the two-per-year limit for board member attendance at educational conferences, since such conferences are not educational meetings, rather, are working meetings of an organization of which SURS is a member.

Staff Recommends that the following motions be approved at this time:

- **That the Board of Trustees travel to attend conferences or trainings listed on the January 2020 list of Upcoming Training Opportunities be approved and that all resulting allowable expenses consistent with SURS travel policy be reimbursed.**

State Universities Retirement System
Schedule of
Upcoming Training Opportunities
As of January 2020

AMENDED

SURS Board/Committee Meetings for 2020

SURS Board and Committee Meetings	January 30-31, 2020
SURS Board and Committee Meetings	March 12-13, 2020
SURS Board and Committee Meetings	April 16, 2020
SURS Board and Committee Meetings	June 4-5, 2020

Council of Institutional Investors

Title:	2020 Spring Conference
Subject Matter:	Corporate Governance Issues
Sponsor:	Council of Institutional Investors
Date:	March 9-11, 2020
Location:	Washington, DC
Registration Fee:	Complimentary for members

✱

Title:	2020 Fall Conference
Subject Matter:	Corporate Governance Issues
Sponsor:	Council of Institutional Investors
Date:	September 21-23, 2020
Location:	San Francisco, CA
Registration Fee:	Complimentary for members

✱ **Training Opportunities**
New Opportunity

Title:	7 th Annual Central States Institutional Forum
Subject Matter:	Various Investment Topics
Sponsor:	Markets Group
Date:	February 25, 2020
Location:	St. Louis, MO
Registration Fee:	TBD

Title:	2020 Annual PRISM Conference
Subject Matter:	Various Information Systems Topics
Sponsor:	PRISM
Date:	April 19-20, 2020
Location:	Atlanta, GA
Registration Fee:	TBD

Title:	DC Investment Lineup
Subject Matter:	Various Investment Topics
Sponsor:	Pensions & Investments
Date:	April 28, 2020
Location:	Chicago, IL
Registration Fee:	TBD

✱	<p>Title: 2020 Public Funds Roundtable Subject Matter: Various Investment Topics Sponsor: Institutional Investor Date: April 28 – May 1, 2020 Location: The Beverly Hilton, Los Angeles, CA Registration Fee: TBD</p>
✱	<p>Title: Trustee Educational Seminar Subject Matter: Pension Overview Sponsor: NCPERS Date: May 9-10, 2020 Location: Caesars Palace – Las Vegas, NV Registration Fee: TBD</p>
✱	<p>Title: 6th Annual Redefining Fixed Income Forum Subject Matter: Various Investment Topics Sponsor: Institutional Investors Date: May 12-13, 2020 Location: Chicago, IL Registration Fee: TBD</p>
	<p>Title: ESG Investing Subject Matter: Various Investment Topics Sponsor: Pensions & Investments Date: May 14, 2020 Location: Chicago, IL Registration Fee: TBD</p>
✱	<p>Title: 7th Annual Midwest Institutional Forum Subject Matter: Various Investment Topics Sponsor: Markets Group Date: June 3, 2020 Location: Chicago, IL Registration Fee: TBD</p>
✱	<p>Title: 31st Annual Pension and Financial Services Conference Subject Matter: Various Pension Topics Sponsor: NASP Date: June 15-17, 2020 Location: Chicago, IL Registration Fee: TBD</p>
	<p>Title: Private Markets Breakfast Briefing Subject Matter: Various Investment Topics Sponsor: Pensions & Investments Date: June 16, 2020 Location: Chicago, IL Registration Fee: TBD</p>

✱	<p>Title: Private Equity Exclusive Subject Matter: Various Investment Topics Sponsor: Pension Bridge Date: July 27-28, 2020 Location: Chicago, IL Registration Fee: TBD</p>
✱	<p>Title: Public Pension Funding Forum Subject Matter: Pension Overview Sponsor: NCPERS Date: August 23-25, 2020 Location: Chicago, IL Registration Fee: TBD</p>
✱	<p>Title: Global Markets Subject Matter: Various Investment Topics Sponsor: Pensions & Investments Date: September 29, 2020 Location: Chicago, IL Registration Fee: TBD</p>
✱	<p>Title: 2020 NAGDCA Annual Conference Subject Matter: Defined Contribution Retirement Plans Sponsor: National Association of Government Defined Contribution Administrators Date: October 4-7, 2020 Location: Seattle, WA Registration Fee: TBD</p>
✱	<p>Title: NCPERS Accredited Fiduciary Program Subject Matter: Pension Overview Sponsor: NCPERS Date: October 24-25, 2020 Location: Nashville, TN Registration Fee: TBD</p>
✱	<p>Title: Illinois Digital Government Summit 2020 Subject Matter: Various Technology Topics Sponsor: Government Technology Date: October 29, 2020 Location: Springfield, IL Registration Fee: TBD</p>
	<p>Title: Asset Allocation Subject Matter: Various Investment Topics Sponsor: Pensions & Investments Date: November 17, 2020 Location: Chicago, IL Registration Fee: TBD</p>

Title:	Asset Allocation
Subject Matter:	Various Investment Topics
Sponsor:	Pensions & Investments
Date:	November 17, 2020
Location:	Chicago, IL
Registration Fee:	TBD



MEMORANDUM

To: SURS Board of Trustees

From: Albert J. Lee, Associate General Counsel

Date: January 17, 2020

Re: January 2020 Proposed Rulemakings

Staff proposes making the enclosed changes to the SURS regulations, some of which appear in the January 2020 Regulatory Agenda. The rulemaking process, beginning with submission to the Joint Committee on Administrative Rule (JCAR) and the Secretary of State to final adoption, takes about four months. The rule changes that are being proposed are as follows:

1. Section 1600.275 – Employer Contributions for Employing Affected Annuitants.

Section 15-139.5 of the Illinois Pension Code requires employers to pay contributions to SURS if they employ a SURS retiree who is receiving an annualized retirement annuity of at least \$10,000 and pay in excess of 40% of the retiree's pre-retirement highest annual earnings (these retirees are called "affected annuitants"). This amendment updates the rule implementing Section 15-139.5 to conform to changes made by Public Act 100-556, effective December 8, 2017. Public Act 100-556 makes "affected annuitant" status cease if a retiree receives an annualized retirement annuity that is less than \$10,000. This change was intended to close a gap in the original \$10,000 exemption, which had become effective on June 1, 2015 – about three years after August 16, 2012 when Section 15-139.5 became law. The delayed and non-retroactive passage of the exemption resulted in a class of retirees who received less than \$10,000 per year, but who could still become affected annuitants despite the exemption.

2. Section 1600.300 – Effective Beneficiary Designations

The current rule only allows beneficiary designations to be made on paper forms bearing the member or authorized agent's original signature. The proposed change will permit a member or his or her authorized agent to submit beneficiary designations and sign them electronically. To be valid, the electronic signature process must be one that is approved by SURS and cannot be used if a notarized signature is required under any provision of the Illinois Pension Code (*e.g.*, spousal consents for beneficiary changes under the Portable Plan).

3. Section 1600.305 – Full-Time Student Survivors Insurance Beneficiaries

Under the Traditional Plan, unmarried, full-time students can qualify for survivors insurance benefits until age 22. The current rule assesses full-time student status on an institution-by-institution basis. The proposed change will permit a student who attends two or more accredited educational institutions to be treated as a full-time student if the combined

Memo to Legal & Legislative Committee
January 2020 Proposed Rulemakings
January 17, 2020
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course load meets the full-time workload definition at either institution. This change permits these students to qualify for Traditional Plan survivor benefits until age 22.

4. Sections 1600.460 and 1600.461 – Vested Inactive Buyout and AAI Buyout Rules

Public Act 101-10, effective June 5, 2019, extended the ending date of the Vested Inactive Buyout and the Tier 1 Automatic Annual Increase (“AAI”) Buyout implementation period from June 30, 2021 to June 30, 2024. The conforming rule changes will extend the application deadlines to June 30, 2024. The buyouts have been offered by SURS as of July 1, 2019.

5. Miscellaneous Grammatical and Typographical Corrections

Grammatical and typographical corrections are proposed for Sections 1600.205, 1600.510, and 1600.715.

Staff Recommendation: That the SURS Board of Trustees approve the proposed rulemakings for First Notice publication by JCAR and the Secretary of State.

PROPOSED RULEMAKING
January 2020

Section 1600.205 Earnings Subject to Withholding and Crediting

- a) Purpose. This Section provides guidance on which payments for compensation constitute "earnings" under Sections 15-111 and 15-111.5 of the Code. Section 15-157 of the Code requires every participating employee to make contributions of 8% of his or her pay to fund the benefits payable under SURS. This contribution is deducted from the participating employee's pay on a pre-tax basis and remitted to SURS via payroll deduction. The contributions are made as a percentage of the participating employee's "earnings".
- b) Definition. "Earnings", defined under Section 15-111 of the Code, *is an amount paid for personal services equal to the sum of the basic compensation plus extra compensation for summer teaching, overtime and other extra service*, subject to the following:
- 1) *For periods for which an employee receives service credit under Section 15-113.1(c) or 15-113.2 of the Code, earnings are equal to the basic compensation on which contributions are paid by the employee during such periods.*
 - 2) Earnings shall include the basic compensation on which employee contributions required under Section 15-157 of the Code are paid by the employee for periods of furlough as provided under Section 15-113.11 of the Code.
 - 3) Earnings shall include the amount of a voluntary pay reduction taken in lieu of furlough on which employee contributions required under Section 15-157 of the Code are paid by the employee as provided under Section 15-113.12 of the Code.
 - 4) *Compensation for employment which is irregular, intermittent and temporary shall not be considered earnings, unless the participant is also receiving earnings from the employer as an employee under Section 15-107 of the Code. [40 ILCS 5/15-111(a)]*
- c) Tier 2 Member Earnings Limitation
- 1) *For a Tier 2 member, the annual earnings shall not exceed \$106,800; however, that amount shall annually thereafter be increased by the lesser of:*
 - A) *3% of that amount, including all previous adjustments; or*

- B) *one-half the annual unadjusted percentage increase (but not less than zero) in the Consumer Price Index-U (CPI-U) for the 12 months ending with the September preceding each November 1, including all previous adjustments.*
- 2) *For the purposes of this Section, CPI-U means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the boards of the retirement systems and pension funds by November 1 of each year. [40 ILCS 5/15-111(b)]*
- d) Determination of the Purpose of the Payment
- 1) If the payment is for services rendered, then the payment is earnings.
 - 2) If the payment is for a reason other than services rendered, it is not earnings.
 - 3) Other Payments
The following list does not limit SURS' authority to determine whether any payment of compensation constitutes earnings on a case-by-case basis.
 - A) Bonuses; Awards
 - i) Bonuses received by an employee that are related to services rendered for a specific period of time, not to exceed one academic year, shall be included in earnings subject to SURS withholding.
 - ii) Awards, such as longevity of service awards or outstanding employee awards, that are not associated with a particular time period are not subject to SURS withholding.
 - iii) Earnings and basic compensation for an employee who first becomes a participant on or after January 1, 2017 shall not include bonuses.
 - B) Severance Payments, Salary/Contract Continuation Payments, Retirement Payments or Incentives. Payments made to facilitate termination of employment or to induce someone to retire, or not to retire, are not for services rendered, but are made in conjunction with an employee's termination of employment or retirement and

are not earnings. These payments are also not includable in the final rate of earnings under Section 15-112.

- C) **Group Fringe Benefits.** Group fringe benefits provided by the employer are not earnings. However, employer paid premiums on employer-provided group term life insurance in excess of \$50,000 are earnings.
- D) **Housing Allowance.** A housing allowance, whether in the form of a direct salary payment or as a residence in which the employee resides, is earnings. Earnings and basic compensation for an employee who first becomes a participant on or after January 1, 2017 shall not include housing allowances.
- E) **Automobile Allowance.** An automobile allowance in the form of a direct salary payment is earnings. However, neither business use nor personal use of an employer-provided automobile is earnings. Earnings and basic compensation for an employee who first becomes a participant on or after January 1, 2017 shall not include vehicle allowances.
- F) **Non-Qualified Moving Expenses.** Non-qualified moving expenses (see 26 USC 217) are not earnings as they are not furnished in lieu of salary.
- G) **Unused Sick Leave Paid at Termination of Employment.** These payments are not earnings, except for collectively bargained payments made in accordance with Section 15-112 of the Code.
- H) **Overtime.** Overtime is earnings.
- I) **Miscellaneous Other Benefits.** Fringe benefits that are provided in lieu of salary are earnings. Items that are not provided in lieu of salary (such as reimbursement for out-of-pocket travel expenses, relocation expenses, etc.) are not earnings. Items such as country club dues, tuition waivers, tickets to athletic and performing arts events for family members of employees, and other items that are reported as taxable income on the employee's Form W-2 are not earnings, unless those items are a negotiated fringe benefit in lieu of salary. Earnings and basic compensation for an employee who first becomes a participant on or after January 1, 2017 shall not include social club dues or athletic club dues.
- J) **Military Differential Wage Payments and Salary Continuation Benefits.** For payments made on or after January 1, 2009, differential wage payments, as defined under section 414(u)(12) of

the IRC (26 USC 414(u)(12)), and payments to an individual who does not currently perform services for an employer by reason of qualified military service, as defined under section 414(u)(1) of the IRC (26 USC 414(u)(1)), to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service, shall be earnings and shall be compensation paid or made available during the limitation year for purposes of applying the limitations under section 415 of the IRC.

- K) Retroactive Pay Settlements, Court Settlements or Judgments, or Grievance Arbitration Settlements or Awards. The cash amount for back pay or retroactive pay under a settlement agreement, award or order issued by a court or arbitral body for a disputed termination of employment, suspension or demotion shall be earnings if the agreement, award or order:
- i) Excludes from back pay any non-wage or non-salary items, such as health insurance reimbursements, payments for medical costs, interest awards, attorneys' fees, or damage awards;
 - ii) Specifies the months to which the back pay is allocated and the amount is based on the basic compensation (or a portion thereof) the employee would have otherwise received during those months; and
 - iii) The back pay amounts are paid to the employee within one year after the issuance of the agreement, award or order.
- L) Payment for Unused Vacation Days. Pursuant to Section 15-112(h)(4)(iii) of the Code, payments for unused vacation of up to 56 work days paid upon termination of employment are earnings. Payments for unused vacation days that are paid during employment are not earnings.
- M) Payments made under the Public Employee Disability Act [5 ILCS 345] are not earnings.

ee)

Earning History. Certain earnings may be excludable from the "final rate of earnings" determined under Section 15-112 of the Code. Earnings are always attributable to the period when earned, not when paid. SURS reserves the right to reallocate reported earnings to the period when earned, when this is necessary to accurately reflect the employee's earning history.

(Source: Amended at 42 Ill. Reg. 19078, effective October 5, 2018)

Section 1600.275 Employer Contributions for Employing Affected Annuitants

- a) Purpose and Applicability
 - 1) This Section implements Section 15-139.5 of the Code concerning employer reporting and contribution requirements for employing or reemploying annuitants and affected annuitants, effective for academic years beginning on or after August 1, 2013.
 - 2) Effective November 19, 2013, this Section *shall not apply to an annuitant if the employer of that annuitant provides documentation to the System that:*
 - A) *the annuitant is employed in a status appointment position, as that term is defined in 80 Ill. Adm. Code 250.80; and*
 - B) *due to obligations contained under the State Universities Civil Service Act [110 ILCS 70], the employer does not have the ability to limit the earnings or duration of employment for the annuitant while employed in the status appointment position. [40 ILCS 5/15-139.5(j)]*
- b) Definitions. For purposes of Section 15-139.5 of the Code and this Section, the following terms shall have the meanings ascribed in this subsection (b).
 - 1) "Academic Year" means *the 12-month period beginning on September 1.* [40 ILCS 5/15-139.5(a)]
 - 2) "Affected Annuitant"
 - A) Means an annuitant *on the first day of the academic year following the academic year in which the annuitant first met the following conditions:*
 - i) *While receiving a retirement annuity under Article 15 of the Code, the annuitant was employed on or after August 1, 2013 by one or more employers under that Article and received or became entitled to receive during an academic year compensation for that employment in excess of 40% of his or her highest annual earnings prior to retirement; except that compensation paid from federal, corporate, foundation, or trust funds or grants of State funds that identify the principal investigator by name is excluded.*

- ii) For the academic year containing June 1, 2015 and academic years thereafter, *the annuitant received an annualized retirement annuity under Article 15 of at least \$10,000.* [40 ILCS 5/15-139.5(b)] The annualized retirement annuity of at least \$10,000 shall be a gross monthly retirement annuity of at least \$833.33 per month.
- B) *A person who becomes an affected annuitant remains an affected annuitant, except for (i) any period during which the person returns to active service and does not receive a retirement annuity from the System or (ii) any period on or after December 8, 2017 during which an annuitant received an annualized retirement annuity under this Article that is less than \$10,000.* [40 ILCS 5/15-139.5(b)]
- 3) "Annuitant" means a person who is receiving a retirement annuity or, if the retirement annuity payment or payments have not yet been paid due to SURS processing, a person whose retirement annuity payment period has commenced. A person is not an annuitant if he or she:
- A) has received a lump-sum retirement benefit under the Portable Benefit Package; or
- B) is receiving or has received retirement benefits under the Self-Managed Plan.
- 4) "Catastrophic Incident" means an occurrence of widespread or severe damage or loss of property resulting from any manmade or natural cause, including, but not limited to, fire (including arson), flood, earthquake, wind, storm, explosion or extended periods of severe inclement weather.
- 5) "Compensation" means any remuneration paid by an employer that is reportable to the Internal Revenue Service by the employer as "wages, tips, or other compensation" on IRS Form W-2.
- 6) "Critical Operations" means *teaching services, medical services, student welfare services, and any other services that are critical to the mission of the employer.* [40 ILCS 5/15-139.5(i)]
- 7) "Disaster" means an event that results in the Governor declaring that a disaster exists pursuant to Section 7 of the Illinois Emergency Management Agency Act [20 ILCS 3305/7] or an event that results in a municipality to declare that a state of emergency exists pursuant to 65 ILCS 5/11-1-6.

- 8) "Employed or Reemployed" means the employer and annuitant have entered into an employer-employee relationship under common law and the annuitant is not an independent contractor. *For the purposes of this Section, an annuitant whose employment by an employer extends over more than one academic year shall be deemed to be reemployed by that employer in each of those academic years.*[40 ILCS 5/15-139.5(a)]
 - 9) "Highest Annual Earnings" shall have the meaning ascribed in Section 1600.202(d).
 - 10) "Retirement Annuity" means an annuity payable under Section 15-136, 15-136.1, 15-136.3 or 15-136.4 of the Code, excluding any survivor annuitant portion of a joint and survivor annuity.
- c) Initial Notification for Employed Annuitants. Within 60 days after the date of employing or reemploying an annuitant, the employer shall submit notification to the System of the following items:
- 1) *A summary of the contract of employment or specify the rate of compensation and the anticipated length of employment of that annuitant* [40 ILCS 5/15-139.5(a)]. If an employer enters into a new contract with an annuitant during the same academic year of employment or reemployment, the employer shall submit a new summary or rate of compensation and anticipated length of employment within 60 days after the effective date of the contract. The employer shall provide a copy of the contract upon SURS' request.
 - 2) *A certification of whether the annuitant will be compensated from federal, corporate, foundation, or trust funds or grants of State funds that identify the principal investigator by name* [40 ILCS 5/15-139.5(a)].
 - 3) Critical Operations
 - A) A certification of whether the annuitant has become an affected annuitant and:
 - i) if the annuitant is an affected annuitant, whether the annuitant was employed *in order to continue critical operations in the event of either an employee's unforeseen illness, accident, or death or a catastrophic incident or disaster; or* [40 ILCS 5/15-139.5(i)]
 - ii) if the annuitant is an affected annuitant, whether the employer has certified the annuitant as a participating employee under Section 15-139(c) of the Code.

- B) If the employment is for critical operations, the notice in this subsection (c) shall be submitted within 5 business days after employing or reemploying the annuitant.
- d) Annual Certification of Employed Annuitants. For each employed annuitant, an employer shall submit to the System the following information no later than 30 days following the conclusion of the academic year:
- 1) *The amount of compensation paid to the annuitant for employment in the academic year; and*
 - 2) *The amount of compensation that comes from federal, corporate, foundation, or trust funds or grants of State funds that identify the principal investigator by name that has been paid to the annuitant in the academic year. [40 ILCS 5/15-139.5(a)]*
- e) Affected Annuitants
- 1) *It is the obligation of the employer to determine whether an annuitant is an affected annuitant before employing the annuitant. For that purpose, the employer may require the annuitant to disclose and document his or her relevant prior employment and earnings history. Failure of the employer to make this determination correctly and in a timely manner or to include this determination with the notification required under subsection (d) does not excuse the employer from making the contribution required under subsection (g).*
 - 2) *The System may assist the employer in determining whether a person is an affected annuitant. The System shall inform the employer if it discovers that the employer's determination is inconsistent with the employment and earnings information in the System's records. [40 ILCS 5/15-139.5(c)]*
- f) Annuitant and Employer Information Requests. Upon written request, the System will provide an annuitant or employer with the following information concerning the annuitant:
- 1) The annuitant's status as an annuitant or participating employee;
 - 2) Whether an employer has determined and reported to the System that the annuitant is an affected annuitant;
 - 3) The annuitant's highest annual earnings;
 - 4) The compensation paid for the annuitant's post-retirement employment in each academic year as reported by employers;

- 5) Whether any of the annuitant's post-retirement *employment or compensation has been certified to the System as being paid from federal, corporate, foundation, or trust funds or grants of State funds that identify the principal investigator by name.* [40 ILCS 5/15-139.5(d)]

g) Payment of Employer Contributions

- 1) Certification of Contribution. If an employer employs or reemploys an affected annuitant in an academic year, and no exception applies, the System shall notify the employer and certify the amount of the contribution, which shall be *equal to 12 times the amount of the gross monthly retirement annuity payable to the annuitant for the month in which the first paid day of employment in that academic year occurs, after any reduction in that annuity that may be imposed under Section 15-139(b) of the Code.*
- 2) Multiple Employers. *If an affected annuitant is employed by more than one employer in an academic year, the employer contribution required under this Section shall be divided among those employers in proportion to their respective portions of the total compensation paid to the affected annuitant for that employment during that academic year.*
- 3) Double Contribution Penalty
- A) *If the System determines that an employer, without reasonable justification, has failed to make the determination of affected annuitant status correctly and in a timely manner, or has failed to notify the System or to correctly document or certify to the System any of the information required by this Section, and that failure results in a delayed determination by the System that a contribution is payable under this Section, then the amount of that employer's contribution otherwise determined under this Section shall be doubled.*
- B) *The System shall deem a failure to correctly determine the annuitant's status to be justified if the employer establishes to the System's satisfaction that the employer, after due diligence, made an erroneous determination that the annuitant was not an affected annuitant due to reasonable reliance on false or misleading information provided by the annuitant or another employer, or an error in the annuitant's official employment or earnings records.* [40 ILCS 5/15-139.5(e)]
- 4) Payment Deadline and Interest. *The employer may pay the required contribution without interest at any time within one year after receipt of*

the certification. If the employer fails to pay within that year, then interest shall be charged at a rate equal to the System's prescribed rate of interest, compounded annually from the 366th day after receipt of the certification from the System. Payment must be concluded within 2 years after receipt of the certification by the employer. If the employer fails to make complete payment, including applicable interest, within 2 years, then the System may, after giving notice to the employer, certify the delinquent amount to the State Comptroller, and the Comptroller shall thereupon deduct the certified delinquent amount from State funds payable to the employer and pay them instead to the System. [40 ILCS 5/15-139.5(f)] The delinquent amount shall be certified to the Comptroller if the employer does not pay the delinquent amount within 90 days after the date on which SURS sent the notice of the delinquency to the employer.

- 5) *Reparticipating Annuitants. If an employer is required to make a contribution to the System as a result of employing an affected annuitant and the annuitant later elects to forgo his or her annuity in that same academic year pursuant to Section 15-139(c) of the Code, then the required contribution by the employer shall be waived, and if the contribution has already been paid, it shall be refunded to the employer without interest. [40 ILCS 5/15-139.5(g)]*
- 6) *Employment for Critical Operations. Notwithstanding any other provision of this Section to the contrary, if an employer employs an affected annuitant in order to continue critical operations in the event of either an employee's unforeseen illness, accident, or death or a catastrophic incident or disaster, then, for one and only one academic year, the employer is not required to pay the contribution set forth in Section 15-139.5 of the Code for that annuitant. [40 ILCS 5/15-139.5(i)]*
- 7) *Appeals. The employer may appeal a certification of the contribution amount pursuant to Section 1600.510.*

(Source: Added at 40 Ill. Reg. 8437, effective June 3, 2016)

Section 1600.300 Effective Beneficiary Designations

Purpose. Under Section 15-120 of the Code, "beneficiary" is defined as a person or persons designated by the participant or annuitant in the last written designation on file with the Board or, if no person so designated survives or if no designation is on file, the estate of the participant or annuitant.

- a) Definitions
 - 1) "Last written designation", for the purposes of Section 15-120 of the Code and this Section, shall mean the last valid beneficiary designation on file

with SURS up to and including the date of death of the participant or annuitant.

- 2) "On file", for the purposes of Section 15-120 of the Code and this Section, shall mean a beneficiary designation that has been received and date stamped by SURS.
 - 3) "Member", for the purposes of this Section, shall mean a participant or annuitant.
 - 4) "Agent", for the purposes of this Section, shall mean a participant's or annuitant's agent expressly authorized to change beneficiaries pursuant to an effective power of attorney or guardianship.
- b) **Original Signature and Supporting Documentation.** A beneficiary designation shall be deemed valid only if the beneficiary designation received contains an valid original or electronic signature of the member or an agent. ~~Beneficiary designations containing a copy of the member's or agent's signature, whether electronic or photographic, shall be invalid.~~ An electronic signature is valid under this Section only if executed through an electronic signing process approved by the System. No electronic signature is valid if a notarized signature is required under the Code or this Part. A copy of the power of attorney or a certified copy of the guardianship order expressly authorizing the change of beneficiaries must accompany a beneficiary designation executed by an agent. No beneficiary designation that designates the attorney-in-fact or a guardian as the beneficiary shall be deemed valid unless the terms of the power of attorney or guardianship order, respectively, authorizes the attorney-in-fact or guardian to make gifts of the member's property to himself or herself.
- c) **Disputed Designations.** If a dispute arises in the interpretation of the last written designation or, in the opinion of SURS, the designation is ambiguous, then the contesting beneficiaries shall seek a court determination as to the designation's interpretation. If no beneficiary brings a court action within a reasonable time, depending on factors including, but not limited to, delays in obtaining paperwork and the extent to which the parties have attempted to resolve the dispute, SURS may seek a court determination.

(Source: Amended at 38 Ill. Reg. 16375, effective July 17, 2014)

Section 1600.305 Full-Time Student Survivors Insurance Beneficiaries

- a) For purposes of 40 ILCS 5/15-145(c), a full-time student shall be one who is enrolled in a course of study in an accredited educational institution (other than a program of study by correspondence), and who is carrying a full-time workload as determined by the educational institution during the regular school year for the course of study the student is pursuing. A student who is concurrently enrolled at

more than one accredited educational institution during the same timeframe shall be deemed to be carrying a "full-time workload" if the combined course load equals a full-time workload as defined by either of the accredited educational institutions attended.

- b) Accredited educational institutions include schools, colleges, universities and post-secondary vocational institutions whose courses of study are approved by appropriate state or federal educational accreditation authorities.
- c) A regular school year is the 8 to 9 months that includes two semester terms or three quarter terms (or their equivalent), excluding the summer term. Terms that begin after April 15 and end before September 16 are considered summer terms.
- d) Survivors benefits shall be payable during the period between regular school years, such as winter breaks or summer terms, if the benefit recipient carried a full-time workload in the preceding semester and is enrolled for a full-time workload in the following semester.
- e) To verify that an eligible child is a full-time student, SURS must receive a certification signed by an official of the educational institution confirming that the student is a full-time student as provided in subsection (a).

(Source: Added at 32 Ill. Reg. 16515, effective September 25, 2008)

Section 1600.460 Accelerated Pension Benefit Payment In Lieu of Any Pension Benefit

- a) Purpose. This Section implements Section 15-185.5 of the Code providing for an accelerated pension benefit payment in lieu of any pension benefit, to be referred to in this Section as the "Vested Inactive Buyout" or "VIB".
- b) Definitions. For purposes of Section 15-185.5(a), the following terms shall have the meanings specified in this subsection (b).
 - 1) Eligible Person. An eligible "person" shall mean a person who satisfies the following conditions.
 - A) The *person has terminated all service*, meaning the person has terminated employee status under Section 15-107 of the code as of the date SURS receives the VIB application and has continuously remained in non-employee status as of the date SURS receives the election to accept the VIB offer.
 - B) The *person has accrued sufficient service credit to be eligible to receive a retirement annuity under Article 15*, meaning the person must meet the applicable retirement eligibility requirements under Section 15-135 of the Code solely with respect to service credit as

of the date SURS receives the VIB application. For this purpose, service credit shall include only service credited under Article 15. No service credited at a reciprocal retirement system or pension fund shall count under this subsection (b)(1)(B).

- C) The *person has not received any retirement annuity under Article 15*, meaning the person must not have received any retirement annuity or Preliminary Estimated Payments as of the date SURS receives the VIB application.
 - D) The *person has not made the election under Section 15-185.6*.
 - E) The *person is not a participant in the Self-Managed Plan under Section 15-158.2*.
- 2) Implementation Date. *"Implementation date" means the earliest date upon which the Board authorizes eligible persons to begin irrevocably electing the accelerated pension benefit payment option under Section 15-185.5. The Board shall endeavor to make such participation available as soon as possible after June 4, 2018 and shall establish an implementation date by Board resolution.* [40 ILCS 5/15-185.5(a)]
- 3) Pension Benefit. The "pension benefit" upon which the VIB shall be calculated shall consist of one or more of the following benefits, as applicable:
- A) Traditional Benefit Package
 - i) Tier 1 Members. Retirement benefits under the applicable provisions of Section 15-136 of the Code and, if a permanent survivor (as defined under subsection (b)(4)) exists, survivors insurance benefits under Section 15-145 of the Code, subject to the minimum total survivors annuity payable under Section 15-146(b) of the Code.
 - ii) Tier 2 Members. Retirement benefits under the applicable provisions of Section 15-136 and, if a permanent survivor (as defined under subsection (b)(4)) exists, survivors insurance benefits under Section 15-145.1 of the Code.
 - B) Portable Benefit Package
 - i) Tier 1 Members. Retirement benefits based on the actuarial equivalent of a single-life annuity described under Section 15-136.4(b) of the Code with automatic annual increases under Section 15-136.4(1).

- ii) Tier 2 Members. Retirement benefits based on the actuarial equivalent of a single-life annuity described under Section 15-136.4(b) with automatic annual increases under Section 15-136(d-5).
 - C) Refund of Survivors Contributions. If the eligible person has no permanent survivor as of the VIB application date, then the refund that would have been payable as of the assumed retirement date under Section 15-154(c) of the Code.
 - D) Refund of Additional Contributions. The refund that would be payable as of the assumed retirement date under Section 15-154(d), if applicable.
 - E) Refund of Excess Service Credit. The refund that would be payable as of the assumed retirement date under Section 15-154(e) for excess or waived service credit.
 - F) Refund of Police and Firefighter Contributions. The refund that would be payable as of the assumed retirement date under Section 15-154(f), if the eligible person elects to waive the application of Rule 4 of Section 15-136 of the Code.
- 4) Permanent Survivor. For purposes of this Section, the term "permanent survivor" shall mean a person who:
- A) is living as of the earlier of the assumed retirement date or the date on which the VIB offer is issued; and
 - B) is the youngest (i.e., has the longest actuarially assumed life expectancy) from among the following:
 - i) a "surviving spouse" under Section 15-127 of the Code (without regard to any one-year minimum marriage requirement) or an "eligible spouse" under Section 15-136.4(a) (without regard to any one-year minimum marriage requirement); or
 - ii) a "child" under Section 15-129 of the Code who is unmarried and dependent upon the person by reason of a physical or mental disability that began prior to the date the child attained age 18.
 - If the child is age 18 or older as of the application date, the child will be deemed to be

disabled on the basis of a written certificate from one or more licensed and practicing physicians stating that the child is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. The physician's determination of disability shall be determined in accordance with 20 CFR 416.905 through 416.911.

- If the child is under age 18 as of the application date, the child will be deemed to be disabled on the basis of a written certificate from one or more licensed and practicing physicians stating that the child has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months. The physician's determination of disability shall be determined in accordance with 20 CFR 416.905 through 416.911.

c) VIB Application. Beginning on the implementation date, an eligible person may apply for a VIB calculation in writing in the form prescribed by SURS, subject to the following conditions:

- 1) Application Deadline. SURS must receive the application by ~~June 30, 2024~~ June 30, 2024. However, in no event shall SURS accept an application less than 12 months prior to the date on which the eligible person must begin receiving Required Minimum Distributions under Section 1-116.1 of the Code and IRC section 401(a)(9).
- 2) Termination of Application
 - A) A pending application shall terminate prior to SURS' receipt of the election to receive the VIB on the earliest of the eligible person's:
 - i) revocation of the application;
 - ii) re-employment;
 - iii) death;

- iv) required beginning date for Required Minimum Distributions under Section 1-116.1; or
 - v) election to receive an Automatic Annual Increase Buyout (AAI Buyout) under Section 15-185.6 and Section 1600.461 of this Part.
- B) No election to accept a VIB offer shall be effective upon or after the termination of a pending application.
 - C) The eligible person may not withdraw or revoke a pending application as of the date SURS receives the completed VIB election form.
- 3) Other Benefits. The eligible person may not apply for a refund, disability benefit, or disability retirement annuity while a VIB application is pending.
- d) VIB Offer Amount. After receipt of a VIB application, SURS shall calculate the VIB offer amount as soon as practicable. The VIB offer amount shall be 60% of the present value of the applicable pension benefit payable as of the assumed retirement date. The calculation shall be subject to the following conditions:
- 1) Actuarial Assumptions
 - A) All actuarial tables used to calculate the VIB offer amount shall use actuarial assumptions most recently adopted by the Board as of the time of the calculation.
 - B) The present value date shall be the first of the month on or immediately following the date that SURS receives the VIB application.
 - C) The discount rate used to calculate the present value of any benefit shall be the prescribed rate of interest.
 - D) The effective rate of interest for fiscal years prior to the fiscal year containing the date of the calculation shall be the historical rates set by the Board or the State Comptroller, as applicable. The effective rate of interest for fiscal years inclusive of and after the fiscal year containing the date of the calculation shall be the last known effective rate of interest set by the Board or the State Comptroller, as applicable.
 - 2) Service Credit

- A) All service credit purchases must have been completed by the date SURS receives the VIB application.
 - B) Service credit for unused, unpaid sick leave under Section 15-113.4 of the Code shall apply only if the eligible person was an employee within 60 days immediately preceding the assumed retirement date.
- 3) Assumed Retirement Date. The assumed retirement date shall be the retirement annuity commencement date determined as follows.
- A) If the eligible person has attained the earliest applicable retirement age under Section 15-135 of the Code as of the date SURS receives the VIB application, the VIB offer amount shall be based on a retirement annuity that commences on the first of the month on or immediately following the date that SURS receives the VIB application (subject to any applicable early age reductions under Section 15-136).
 - B) If the eligible person has not attained the earliest applicable retirement age under Section 15-135 as of the date SURS receives the VIB application, the VIB offer amount shall be based on a retirement annuity that commences on the first of the month following the birthday on which the person will have attained the earliest applicable retirement age under Section 15-135 (subject to any applicable early age reductions under Section 15-136).
- 4) Survivor Benefits. The assumed dates of death of the eligible person and eligible permanent survivor with respect to any assumed survivor benefit shall be based on the most recent mortality assumptions adopted by the Board as of the date of the calculation.
- 5) Frequency. No more than one VIB offer amount shall be calculated in a State fiscal year.
- 6) Appeals. An eligible person may seek an appeal of the calculation of the VIB offer amount within 35 days after the issuance of the offer, in accordance with Section 1600.500.
- e) VIB Election. The election to accept the VIB offer shall be made in the manner and form prescribed by SURS. SURS may require additional documentation or proof to verify any fact or record necessary for the administration of the election.
- 1) Election Deadline. The eligible person shall elect to accept the VIB offer within 120 days after the date the VIB offer was issued. If no election is

submitted by the deadline, the eligible person shall be deemed to have rejected the VIB offer.

- 2) **Election Date.** The date of the election to accept the VIB offer shall be the date SURS receives the completed VIB election form.
- 3) **Survivor Consent.** The election shall be accompanied by written and notarized consent of any permanent survivor. If a permanent survivor who was identified in the VIB application no longer qualifies as a permanent survivor, then the election shall be, instead, accompanied by documentation proving the disqualifying condition as follows:
 - A) **Death.** Death shall be proven by a certified copy of the death certificate.
 - B) **Divorce.** A dissolution of marriage shall be proven by a certified copy of the judgment of dissolution of marriage or civil union.
 - C) **Child's Non-Disability.** A child's non-disability shall be proven by a written certificate from one or more licensed and practicing physicians stating that the child is no longer disabled under subsection (b)(4)(B)(ii).
- 4) **Effect of Acceptance.** Upon SURS' receipt of the election to accept the VIB offer amount, the eligible person shall be subject to the following conditions:
 - A) The election to accept the VIB offer shall be irrevocable unless:
 - i) the State Comptroller fails to remit the full VIB amount to SURS within a year after SURS has submitted a voucher under Section 15-185.5(f); or
 - ii) SURS has knowledge of specific and articulable facts, taken together with rational inferences from those facts, that would lead a reasonable person to believe that the election to accept the VIB was made under fraud, duress, undue influence, illegality or incapacity.
 - B) The eligible person may not elect to proceed under the Retirement Systems Reciprocal Act [40 ILCS 5/Art. 20] with respect to any service to which the VIB pertains.
 - C) The eligible person may not purchase service credit under Article 15 of the Code with respect to any service credit attributable to the

VIB or any accelerated pension benefit payment under Section 14-147.5, 14-147.6, 16-190.5 or 16-190.6 of the Code.

- D) The eligible person shall no longer be a participant of SURS and forfeits all accrued rights and credits in SURS and no other benefit shall be paid under Article 15 based on those forfeited rights and credits, including any retirement, survivor or other benefit; except, to the extent that participation, benefits or premiums under the State Employees Group Insurance Act of 1971 are based on the amount of service credit.
 - E) The VIB may not be repaid to SURS, and the forfeited rights and credits may not under any circumstances be reinstated.
 - F) If the eligible person returns to participation under Article 15, any benefits under SURS earned as a result of that return to participation shall be based solely on the person's credits and creditable service arising from the return to participation. Upon return to participation, the person shall be considered a new employee subject to all the qualifying conditions for participation and eligibility for benefits applicable to new employees, except the person shall retain the same Tier status and program elections previously made under Section 15-134.5 of the Code.
 - G) An election to accept the VIB offer shall be deemed to be a waiver of any appeal rights under Section 1600.500 with respect to the VIB.
- f) VIB Voucher and Payment
- 1) As soon as administratively practicable after SURS' receipt of the election to accept the VIB offer, SURS shall submit one or more vouchers to the State Comptroller for the payment of the VIB. SURS shall pay the VIB as soon as administratively practicable after SURS' receipt of the VIB amount from the State Comptroller. In no event shall SURS pay the VIB without having received the amounts sufficient to pay the VIB in full from the State Comptroller.
 - 2) The VIB shall be paid in the form of a direct rollover to an "eligible retirement plan" as defined under Section 1600.140(h)(6) (including any supplemental defined contribution plan administered by SURS) to the extent permissible under IRC section 401(a)(31), except for any amounts attributable to Required Minimum Distributions under Section 1-116.1 of the Code or amounts paid under the Excess Benefit Arrangement under Section 1600.430 of this Part. The eligible person may not elect to receive any portion of the direct rollover as cash.

- 3) If the eligible person dies after having elected to accept the VIB offer amount, but prior to payment of the VIB, the VIB shall be payable to the eligible person's estate.

(Source: Added at 43 Ill. Reg. 8562, effective July 26, 2019)

Section 1600.461 Accelerated Pension Benefit Payment for a Reduction and Delay in AAI

- a) Purpose. This Section implements Section 15-185.6 of the Code providing for an accelerated pension benefit payment for a reduction and delay in an automatic annual increase (AAI) to a retirement annuity and an annuity benefit payable as a result of death, to be referred to in this Section as the "AAI Buyout".
- b) Definitions. For purposes of Section 15-185.6(a), the following terms shall have the meanings specified in this subsection (b).
 - 1) Eligible Person. An "eligible person" shall mean a person who satisfies the following conditions:
 - A) *The person is a Tier 1 member.*
 - B) *The person has submitted an application for a retirement annuity under Article 15.*
 - C) *The person has met the age and service requirement for receiving a retirement annuity under Article 15, meaning the person must meet the applicable retirement eligibility requirements under Section 15-135 of the Code with respect to age and service credit accrued under Article 15 and, if the person elects to retire under the Retirement Systems Reciprocal Act, any service credit of a participating reciprocal system.*
 - D) *The person has not received any retirement annuity under Article 15, meaning the retirement date specified in the retirement application cannot be prior to the date SURS receives the application for a retirement annuity.*
 - E) *The person has not made the election under Section 15-185.5 of the Code.*
 - F) *The person is not a participant in the Self-Managed Plan under Section 15-158.2 of the Code.*
 - 2) Implementation Date. *"Implementation date" means the earliest date upon which the Board authorizes eligible persons to begin irrevocably*

electing the accelerated pension benefit payment option under Section 185.6. The Board shall endeavor to make such participation available as soon as possible after June 4, 2018 and shall establish an implementation date by Board resolution. [40 ILCS 5/15-185.6(a)]

- 3) Assumed Annuities. The AAI Buyout shall be based on one or more of the following assumed annuities, as applicable:
 - A) Traditional Benefit Package. Retirement benefits under the applicable provisions of Section 15-136 of the Code and, if a permanent survivor (as defined under subsection (b)(4)) exists, survivors insurance benefits under Section 15-145 of the Code, subject to the minimum total survivors annuity payable under Section 15-146(b) of the Code.
 - B) Portable Benefit Package. Retirement benefits based on the actuarial equivalent of a single-life annuity described under Section 15-136.4(b).

- 4) Permanent Survivor. For purposes of this Section, the term "permanent survivor" shall mean a person who:
 - A) is living as of the earlier of the assumed retirement date or the date on which the AAI Buyout offer is issued; and
 - B) is the youngest (i.e., has the longest actuarially assumed life expectancy) from among the following:
 - i) a "surviving spouse" under Section 15-127 of the Code (without regard to any one-year minimum marriage requirement); or
 - ii) a "child" under Section 15-129 of the Code who is unmarried and dependent upon the person by reason of a physical or mental disability which began prior to the date the child attained age 18.
 - If the child is age 18 or older as of the application date, the child will be deemed to be disabled on the basis of a written certificate from one or more licensed and practicing physicians stating that the child is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a

continuous period of not less than 12 months. The physician's determination of disability shall be determined in accordance with 20 CFR 416.905 through 416.911.

- If the child is under age 18 as of the application date, the child will be deemed to be disabled on the basis of a written certificate from one or more licensed and practicing physicians stating that the child has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months. The physician's determination of disability shall be determined in accordance with 20 CFR 416.905 through 416.911.

c) AAI Buyout Application. Beginning on the implementation date, an eligible person may apply for an AAI Buyout calculation in writing in the form prescribed by SURS, subject to the following conditions:

- 1) Application Deadline. SURS must receive the AAI Buyout application by the retirement date specified on the completed retirement application, which can be no later than ~~June 30, 2024~~ June 30, 2024.
- 2) Termination of Application
 - A) A pending application shall terminate on the earliest of the eligible person's:
 - i) revocation of the application;
 - ii) cancellation or suspension of the retirement annuity under Section 15-139 of the Code;
 - iii) death; or
 - iv) an election to receive a Vested Inactive Buyout under Section 15-185.5 of the Code and Section 1600.460 of this Part.
 - B) No election to accept an AAI Buyout offer shall be effective upon or after the termination of a pending application.

- C) The eligible person may not withdraw or revoke a pending application as of the date SURS receives the completed AAI Buyout election form.
- d) AAI Buyout Offer Amount
- 1) After receipt of an AAI Buyout application, SURS shall calculate the AAI Buyout offer amount as soon as practicable.
 - 2) The AAI Buyout offer amount shall be 70% of the difference of:
 - A) the present value of the automatic annual increases to the assumed annuities under Sections 15-136(d), 15-136.4(l), and 15-145(j) of the Code, as applicable; and
 - B) the present value of the automatic annual increases to the assumed annuities, using the formula provided under Section 15-185.6(b-5) of the Code.
 - 3) The calculation shall be subject to the following conditions:
 - A) Actuarial Assumptions
 - i) All actuarial tables used to calculate the AAI Buyout offer amount shall use actuarial assumptions most recently adopted by the Board as of the time of the calculation.
 - ii) The present value date shall be the retirement date.
 - iii) The discount rate used to calculate the present value shall be the prescribed rate of interest.
 - B) Survivor Benefits. The assumed dates of death of the eligible person and eligible permanent survivor or contingent annuitant, as applicable, with respect to any assumed survivors insurance benefit or survivor portion of a joint and survivor annuity, as applicable, shall be based on the most recent mortality assumptions adopted by the Board as of the date of the calculation. The AAI to a survivors insurance annuity or the survivor portion of a joint and survivor annuity, as applicable, calculated under Section 15-185.6(b-5) of the Code, shall commence on the January 1 occurring on or after the first anniversary of the commencement of the survivors insurance annuity or survivor portion of a joint and survivor annuity.

- C) Frequency. No more than one AAI Buyout offer amount shall be calculated in a State fiscal year.
 - D) Appeals. An eligible person may seek an appeal of the calculation of the AAI Buyout offer amount within 35 days after the issuance of the offer in accordance with Section 1600.500.
- e) AAI Buyout Election. The election to accept the AAI Buyout offer shall be made in the manner and form prescribed by SURS. SURS may require additional documentation or proof to verify any fact or record necessary for administration of the election.
- 1) Election Deadline. The eligible person shall elect to accept the AAI Buyout offer within 120 days after the date the AAI Buyout offer was issued. If no election is submitted by the deadline, the eligible person shall be deemed to have rejected the AAI Buyout offer.
 - 2) Election Date. The date of the election to accept the AAI Buyout offer shall be the date SURS receives the completed AAI Buyout election form.
 - 3) Termination from Employment. The eligible person must not return to work as an employee under Section 15-107 of the Code until after the date SURS receives the completed AAI Buyout election form.
 - 4) Survivor Consent. The election shall be accompanied by written and notarized consent of any permanent survivor or contingent annuitant, as applicable. If a permanent survivor who was identified in the AAI Buyout application no longer qualifies as a permanent survivor, the election shall be, instead, accompanied by documentation proving the disqualifying condition as follows:
 - A) Death. Death shall be proven by a certified copy of the death certificate.
 - B) Divorce. A dissolution of marriage shall be proven by a certified copy of the judgment of dissolution of marriage or civil union.
 - C) Child's Non-Disability. A child's non-disability shall be proven by a written certificate from one or more licensed and practicing physicians stating that the child is no longer disabled under subsection (b)(4)(B)(ii).
 - 5) Effect of Acceptance. Upon SURS' receipt of the election to accept the AAI Buyout offer amount, the eligible person shall be subject to the following conditions:

- A) The election to accept the AAI Buyout offer shall be irrevocable unless:
- i) the State Comptroller fails to remit the full AAI Buyout amount to SURS within a year after SURS has submitted a voucher under Section 15-185.6(d-5); or
 - ii) SURS has knowledge of specific and articulable facts, taken together with rational inferences from those facts, that would lead a reasonable person to believe that the election to accept the AAI Buyout was made under fraud, duress, undue influence, illegality or incapacity.
- B) An eligible person who participates in the Traditional Benefit Package and who elects to accept the AAI Buyout offer may not elect to receive a survivors contribution refund under Section 15-154(c) of the Code if a survivors insurance beneficiary exists as of the retirement date. If no survivors insurance beneficiary exists as of the retirement date, the survivors contribution refund shall be payable to the eligible person.
- C) An eligible person who elects to accept the AAI Buyout offer shall be deemed to have waived the right to any supplemental payments under Section 15-136.3 and Section 15-146(d) of the Code.
- D) An election to accept the AAI Buyout offer shall be deemed to be a waiver of any appeal rights under Section 1600.500 with respect to the AAI Buyout and all underlying calculations.
- 6) Effect of Rejection. Upon SURS' receipt of a rejection of the AAI Buyout offer amount or upon the failure to make an election within the deadline specified under subsection (e)(1), SURS shall pay automatic annual increases as provided under Sections 15-136(d), 15-136.4(l), and 15-145(j) of the Code, as applicable.
- f) AAI Buyout Voucher and Payment
- 1) As soon as administratively practicable after the SURS' receipt of the election to accept the AAI Buyout offer amount, SURS shall submit one or more vouchers to the State Comptroller for the payment of the AAI Buyout. SURS shall pay the AAI Buyout as soon as administratively practicable after the SURS' receipt of the AAI Buyout amount from the State Comptroller. In no event shall SURS pay the AAI Buyout without having received the amounts sufficient to pay the AAI Buyout in full from the State Comptroller.

- 2) The AAI Buyout shall be paid in the form of a direct rollover to an "eligible retirement plan" as defined under Section 1600.140(h)(6) (including any supplemental defined contribution plan administered by SURS) to the extent permissible under IRC section 401(a)(31), except for any amounts attributable to Required Minimum Distributions under Section 1-116.1 of the Code or amounts paid under the Excess Benefit Arrangement under Section 1600.430. The eligible person may not elect to receive any portion of the direct rollover as cash.
- 3) The AAI Buyout may not be repaid to SURS. However, if the retirement annuity is cancelled under Section 15-139(a) of the Code after the eligible person is paid the AAI Buyout offer amount, the eligible person shall repay to SURS that amount, plus any applicable interest under Section 1600.450.
- 4) If the eligible person who has received the AAI Buyout returns to participation under Article 15, the calculation of any future automatic annual increase in all retirement and survivor annuities under Section 15-139(c) shall be calculated in accordance with Section 15-185.6(b-5).
- 5) If the eligible person dies after having elected to accept the AAI Buyout offer, but prior to payment of the AAI Buyout, the AAI Buyout shall be payable to the eligible person's estate.

(Source: Added at 43 Ill. Reg. 8562, effective July 26, 2019)

Section 1600.500 Administrative Staff Determinations and Rules for Appeal – Nature and Requirements of Formal Hearings

a) Administrative Determination

The Board of Trustees hereby delegates to the SURS administrative staff the responsibility for the daily claims-processing function of SURS, including making initial determinations as to all applications for annuities and benefits, service credit, or any other claims against or relating to SURS, consistent with the provisions of the Illinois Pension Code.

b) Review by Director of Member Services

Any participant, annuitant or beneficiary adversely affected by the disposition of a claim by the administrative staff may file a written request for review by the SURS Director of Member Services or such other person as may be designated by the Executive Director. The designee shall have all the powers and duties of the Director of Member Services, as set forth in this subsection (b). A request for review by the Director of Member Services must be received within 35 days from the date of the decision from which review is sought. The Director of Member

Services' review will be based upon all materials contained in the file, as well as any additional materials the claimant attaches to the written request for review filed with the Director of Member Services pertaining to the claim. All filings or submissions, whether optional or required under this Section, shall be considered timely if date stamped by SURS within the time prescribed. The Director of Member Services' decision shall be served on the participant, annuitant or beneficiary by delivery to a third-party commercial carrier or by registered or certified mail, return receipt requested.

c) Review by the Claims Panel

- 1) A Claims Panel shall hear all administrative contested matters. The Panel shall meet periodically as determined by the Executive Director.
- 2) Request for Review. Any participant, annuitant or beneficiary (hereinafter "claimant") adversely affected by the disposition of a claim by the Director of Member Services may request, in writing, a review by the Claims Panel and, at the same time, a copy of all relevant documents from the claimant's file. A request for review must be received by the General Counsel of SURS, or his or her designee, within 35 days from the date of the decision from which review is sought.
- 3) Notice of Hearing. Upon receipt of a claimant's Request for Review, the Director of Member Services, or his or her designee, shall assign the claim a docket number; schedule the claim for the first available meeting of the Claims Panel; and notify the claimant, by a Notice of Hearing, that he or she is required to file a single Statement of Claim. The Notice of Hearing may be accompanied by any relevant documentation from the claimant's file.
- 4) Statement of Claim. The Statement of Claim must be received by the SURS General Counsel, or his or her designee, no later than 35 days from the date of the mailing of the Notice of Hearing. The Statement of Claim shall include: a formal Appearance, containing the claimant's name, SURS identification number and address; the name and address of the claimant's authorized representative, if any; a statement of the facts forming the basis for the appeal; any documents or other materials the claimant wishes to be considered in conjunction with the appeal, in addition to those already contained in the claimant's file; whether the claimant desires a hearing or whether the claimant desires to waive a hearing and allow the Claims Panel to reach a decision based upon the Statement of Claim and the relevant documents in the claimant's file; a list of witnesses, if any, the claimant intends to present at a hearing; and an explanation of the relief sought. The Statement of Claim shall not exceed 15 pages in length, unless an exception is granted by the Claims Panel Hearing Officer. The Hearing Officer may grant a motion to Strike/Dismiss all or part of the Statement of Claim.

- 5) Response to Statement of Claim. SURS staff may submit a Response to the Statement of Claim, which shall also not exceed 15 pages in length, unless an exception is granted by the Claims Panel Hearing Officer.
 - 6) Notification. The Notice of Hearing shall also provide a claimant *with written notice of: the date, time and place of the hearing; the subject matter of the hearing; and relevant procedural and substantive statutory and regulatory provisions* [5 ILCS 100/10-25]. The Notice shall inform the claimant that he or she will be afforded the opportunity to provide a statement of his or her position, present oral evidence, and conduct examination and cross-examination of witnesses as necessary for full and true disclosure of the facts. Notice shall also be given to the claimant that he or she is required to provide written confirmation, at least 14 days prior to the scheduled date of the hearing, of his or her intent to appear at the hearing, whether in person or by telephone conference call. The claimant is not required to physically appear at the hearing. The claimant may appear at the hearing by telephone conference call. The claimant may also choose to affirmatively waive his or her appearance at the hearing. In the absence of the claimant, the Claims Panel will consider the claimant's Statement of Claim and any documentary evidence, testimony evidence, argument and any other information properly presented to the Claims Panel by SURS staff during the scheduled hearing.
 - 7) Pre-hearing Conference. Upon request of the General Counsel or upon the decision of the Hearing Officer, a pre-hearing conference shall be held for the purpose of simplification or definition of issues or procedures at the hearing.
 - 8) Representation. The claimant and SURS may be represented by counsel or a designated spokesperson at the hearing.
 - 9) Burden of Proof. It shall be the burden of the claimant to establish a right to the benefit claimed, or the right to the continuation of the benefit claimed in cases of revocation of the benefit by SURS, by establishing that right by a preponderance of the evidence.
- d) Discovery. All discovery is at the discretion of the Hearing Officer. Requests to take discovery must be made in writing to the Hearing Officer with notice to the other party. Discovery may be taken with the prior permission of the Hearing Officer only upon good cause shown, that is, if the evidence sought is material and cannot be obtained in any other way. Failure to comply with orders of the Hearing Officer may be sanctioned by the Hearing Officer, by means including, but not limited to, dismissal of a claim.
 - e) Depositions

- 1) The Hearing Officer may order the taking of evidence depositions of a person, specifying the subject matter to be covered, under oral examination or written questions, for use as evidence at the hearing, provided:
 - A) The Hearing Officer has determined upon request that there is a need to preserve a person's testimony. The need to preserve a person's testimony shall be determined using criteria similar to that set forth under Illinois Supreme Court Rule 212(b);
 - B) The request is made on motion by a party who gives notice of the motion to the other party; and
 - C) The Hearing Officer has determined that an evidence deposition containing oral testimony will be necessary to the Claims Panel in determining the merits of the claim.
 - 2) The taking of depositions shall be in accordance with the provisions for taking depositions in civil cases, and the order for the taking of a deposition may provide that any designated books, papers, documents or tangible objects that are not privileged shall be produced at the same time and place.
 - 3) Any party to the hearing shall, during any deposition process, have the right to confront and cross-examine any witness whose deposition testimony is to be presented to the Claims Panel.
 - 4) Depositions shall be taken in the county of residence or employment of the witness, unless the witness waives that right in writing.
 - 5) Depositions shall be taken at the cost of the party requesting the deposition.
- f) Subpoenas
- 1) The Hearing Officer may request the Secretary of the Board to issue a subpoena to compel the attendance of a witness at an evidence deposition or the production of documents when the witness has, or the documents contain, relevant evidence. A party may also request the Hearing Officer to request the Secretary of the Board to issue a subpoena to compel the attendance of a witness at an evidence deposition or the production of documents. The request shall either be in writing or on the record and shall:
 - A) Identify the witness or document sought; and

- B) State the facts that will be proven by each witness or document sought.
- 2) The Hearing Officer shall grant or deny the request, either in writing or on the record. If the request for subpoena is granted, the Hearing Officer shall, if necessary, reschedule the hearing to a specific date. The request for subpoena shall be denied if the Hearing Officer finds that the evidence sought is immaterial, irrelevant or cumulative. If the request for subpoena is denied, the specific reasons for denial of the request shall be made part of the record on appeal.
 - 3) If a witness fails to obey a subpoena, the party seeking enforcement of the subpoena shall prepare an application to the circuit court of the county in which the subpoenaed witness resides requesting enforcement of the subpoena, and shall present the application to the Hearing Officer, at the same time serving a copy of the application upon the other party. If satisfied that the subpoena was properly served and that the application is in proper form, the Hearing Officer shall sign a subpoena to be submitted with the application and the party seeking the subpoena may then file and prosecute the application in the circuit court, in the name of the Board. The petitioner in the application shall be styled as "Name of Petitioner ex rel. Board of Trustees of the State Universities Retirement System of Illinois" unless the petitioner is SURS, in which case the petition shall be brought in the name of the Board. In the event of an application being filed with the circuit court, the matter shall be continued pending the outcome of the application to enforce the subpoena.
 - 4) The fees of witnesses for attendance and travel shall be the same as fees of witnesses before the circuit courts of this State and shall be paid by the party seeking the subpoena.
- g) Conduct of the Hearing
- 1) Hearing Officer. The hearing shall be conducted by the Hearing Officer. Other members of the Claims Panel may, but are not required to, attend the hearing. Members may attend hearings either in-person or by video or teleconference.
 - A) The Hearing Officer shall have full power to conduct the hearing and the presence of any other members of the Claims Panel is not required. The Hearing Officer shall be one of the members of the Claims Panel chosen by the Panel to be the Hearing Officer.
 - B) The Claims Panel shall consist of:
 - i) the Executive Director of SURS;

- ii) an attorney licensed to practice law in the State of Illinois approved by the Board; and
 - iii) one other person, selected by the Chairperson of the Board of Trustees of SURS, who shall be a member of the Board, a participant in SURS or an attorney licensed to practice law in the State of Illinois.
- C) Each member of the Panel shall be reimbursed for travel or other related expenses incurred in connection with his or her duties as a member of the Panel. If he or she is not a member of the Board or currently employed by one of the employers covered by SURS, the member shall receive reasonable compensation, as recommended by the Executive Director and approved by the Board, for time spent in reviewing claims and attending Panel hearings. At a minimum, the members of the Claims Panel shall have a general familiarity with the provisions of the Illinois Pension Code, this Part and the internal operating procedures of SURS.

2) Procedures

- A) The Hearing Officer shall conduct a full and fair hearing, receive testimony of the claimant and admit exhibits into evidence, avoid delay, maintain order and make a sufficient record for a full and true disclosure of the facts and issues.
- B) To accomplish these ends, the Hearing Officer shall make all procedural and evidentiary rulings necessary for the conduct of the hearing.
- C) All testimony shall be taken under oath before an officer authorized to administer oaths by the laws of this State or of the United States or of the place where the testimony is to be given.
- D) As a general matter, *the rules of evidence as applied in civil cases in the circuit courts of the State of Illinois shall be followed; however, evidence inadmissible under those rules may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Any part of the evidence may be received in written form, provided that the interests of the parties will not be prejudiced. Notice may be taken of generally recognized technical*

facts within SURS' specialized knowledge and SURS' experience, technical competence and specialized knowledge may be used in evaluation of the evidence. [5 ILCS 100/10-40]

- E) The Hearing Officer, and any member of the Claims Panel attending the hearing, may ask questions necessary for better understanding of the facts or law.
 - F) The Hearing Officer shall have the authority to impose reasonable time limits for each party to present its case and shall, in general, have the power to manage and control the hearing process.
 - G) The hearing shall be open to the public unless the Hearing Officer, for good cause shown, determines otherwise.
- 3) Record of Proceedings. Two records of proceedings shall be kept that shall be in the form of:
- A) a non-verbatim "bystander's report"; and
 - B) either a stenographic transcription or a tape recording. The claimant may obtain a stenographic transcription or a copy of a tape recording of the hearing by making a timely request within 21 days after the close of the hearing and paying the actual cost entailed.
- 4) Disqualification; Ex Parte Communications
- A) Disqualification
 - i) *A Hearing Officer or other member of the Claims Panel may be disqualified on grounds of bias or conflict of interest. A motion to disqualify a Hearing Officer or other member of the Claims Panel for bias or conflict of interest shall be made to the Hearing Officer by any party to the hearing at least 14 days prior to the commencement of the hearing, with a copy of the motion to be simultaneously submitted to the General Counsel. The motion shall be heard, considered and ruled upon by the Hearing Officer at or prior to the commencement of the hearing. The movant shall have the burden of proof with respect to the motion to disqualify. Either an *adverse ruling* or the fact that a Hearing Officer or other member of the Claims Panel is an employee of SURS or has a contract with SURS, standing alone, shall not constitute bias or conflict of interest. [5 ILCS 100/10-30]*

- ii) The Executive Director may not be called as a witness unless it is demonstrated that the Executive Director has relevant noncumulative personal knowledge of facts bearing upon the claim. The Executive Director may not be disqualified as a member of the Claims Panel on the basis that the Executive Director is responsible for the overall administration of SURS.
- iii) In the event that a Hearing Officer or other member of the Claims Panel is disqualified or is otherwise unable to serve, the Board Chairperson may appoint another person to the Claims Panel and shall appoint another person if the Claims Panel is reduced to fewer than two members, or the Claims Panel shall appoint another Hearing Officer from among its members, as the case may be.

B) Ex Parte Communications Prohibited

- i) *Except in the disposition of matters that SURS is authorized by law to entertain or dispose of on an ex parte basis, the members of the Claims Panel shall not, after receiving notice of a hearing in a contested matter, communicate, directly or indirectly, in connection with any issue of fact, with any party, or in connection with any other issue with any party, or the representative of any party, except upon notice and opportunity for all parties to participate. However, an employee of SURS may communicate with other employees of SURS and an employee of SURS or member of the Claims Panel may have the aid and advice of one or more assistants. An ex parte communication received by any member of the Claims Panel shall be made a part of the record of the pending matter, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received. Communications regarding matters of procedure and practice, such as the format of pleadings, number of copies required, manner of service, and status of proceedings, are not considered ex parte communications. [5 ILCS 100/10-60]*
- ii) Any documentary evidence, testimony evidence, argument and any other information properly presented to the Claims Panel by SURS staff during a scheduled hearing held in the absence of a claimant who waived his or her right to

participate in the hearing will not be deemed to be ex parte communications.

5) Decisions of the Claims Panel and Executive Committee

A) Claims Panel Decisions

- i) The record of proceedings shall be completed upon conclusion of the hearing by the Hearing Officer, unless the Hearing Officer determines to re-open the proceedings. Upon conclusion of all evidence and arguments, the Claims Panel shall privately deliberate and make a Decision as to the disposition of the claim based on the evidence of record. The Claims Panel Decision shall be served on all parties and their agents, if any, by delivery to a third-party commercial carrier or by registered or certified mail, return receipt requested. If a Statement of Exceptions to the Decision is not filed pursuant to this subsection (g)(5)(A), the Decision is final for all purposes and not subject to administrative or judicial review. However, if a Statement of Exceptions to the Decision is filed or, if the members of the Panel are unable to agree on a Decision, then the claim shall be presented to the Executive Committee for a final administrative decision.
- ii) If a Statement of Exceptions is filed, it must be received by SURS, along with a brief in support, within 21 days after the date of mailing of the Claims Panel Decision. Any responsive brief shall be received within 21 days after the filing of the Statement of Exceptions. Any reply brief shall be received within 14 days after the filing of the responsive brief. The filing of any responsive or reply brief is optional. The Executive Director, or his or her designee, shall provide the Executive Committee with a summary of the decision of the Claims Panel. The Executive Committee will make a final administrative decision based on the Claims Panel Decision, any dissenting opinion, any Statement of Exceptions and briefs properly filed.
- iii) If the claim is presented to the Executive Committee because the members of the Claims Panel are unable to agree on a Decision, the Executive Committee shall make a final administrative decision based on any opinions of the Claims Panel members, the record and any briefs properly filed by the claimant or SURS. The filing of any opening, responsive or reply brief in response to the Claims Panel

decision is optional. Any opening brief shall be received by SURS within 21 days after receiving notification from the Hearing Officer that the Claims Panel was unable to agree on a Decision. Any responsive brief shall be received within 21 days after the filing of any opening brief. Any reply brief shall be received within 14 days after the filing of any responsive brief.

- iv) All filings shall be served upon the opposing party and shall contain a certificate of service. Filing deadlines in this subsection (g)(5)(A) may be continued to a date certain by the Hearing Officer for good cause shown on written application filed with SURS prior to the expiration of the deadline sought to be continued.

B) Executive Committee Decision

- i) When necessary pursuant to subsection (g)(5)(A), the Executive Committee of the Board shall make a decision on the claim. No oral argument shall be permitted before the Executive Committee unless otherwise determined by the Executive Committee.
- ii) The Executive Committee shall render one of the following decisions with respect to the claim: affirmance of the administrative action, reversal of the administrative action, or remand of the case to the administrative staff for further consideration. Remand of the case to the administrative staff shall not be considered a final decision of the Executive Committee. A decision by the Executive Committee either reversing or affirming the decision of the administrative staff shall constitute a final decision for the purpose of review under the Administrative Review Law [735 ILCS 5/Art. III]. *A final decision of the Executive Committee shall be in writing or stated in the record.*
- iii) The Executive Committee may adopt, as its own, the findings of fact and conclusions of law of the Claims Panel. *Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.*
- iv) *All decisions of the Executive Committee shall specify whether they are final and subject to the Administrative Review Law. [5 ILCS 100/10-50]*

- v) Parties and their agents, if any, shall be notified, personally, by delivery to a third-party commercial carrier, or by registered or certified mail, return receipt requested, of any decision of the Executive Committee. The date of mailing of the decision shall constitute the date of service for purposes of the Administrative Review Law or any other applicable law.

(Source: Amended at 41 Ill. Reg. 15353, effective December 5, 2017)

Section 1600.510 Employer-Related Determinations and Rules for Appeal

This Section establishes procedures for employer appeals concerning matters of administration under the Illinois Pension Code.

- a) **Administrative Determination.** The Board of Trustees hereby delegates to the SURS administrative staff the responsibility for making determinations that affect the rights and obligations of employers, consistent with the provisions of the Illinois Pension Code.
- b) **Review by Director of Member Services.** Any employer adversely affected by a determination by System administrative staff may file, with the SURS Director of Member Services or other person designated by the Executive Director, a Statement of Employer Appeal. The designee shall have all the powers and duties of the Director of Member Services set forth in this subsection (b). A Statement of Employer Appeal must be received within 35 days after the date of the decision from which review is sought. If a Statement of Employer Appeal is not timely filed, the determination by administrative staff is final for all purposes and not subject to administrative or judicial review. The review by the Director of Member Services shall be based on all materials contained in the record, as well as any additional materials the employer attaches to the Statement of Employer Appeal. All filings or submissions, whether optional or required under this Section, shall be considered timely if date stamped by SURS within the time prescribed. The decision of the Director of Member Services shall be served on the employer's authorized representative by delivery to a third-party commercial carrier or by registered or certified mail, return receipt requested.
- c) **Review by the Executive Committee**
 - 1) Any employer adversely affected by the disposition of a Statement of Employer Appeal made by the Director of Member Services or the designee may request, in writing, review by the Executive Committee of the Board ~~by filing a Statement of Exceptions to the Executive Committee the Board~~ by filing with the SURS General Counsel, within 35 days after the date of the decision from which review is sought, a Statement of Exceptions to the Executive Committee. The Statement of Exceptions

shall not exceed 15 pages in length, unless agreed to by the SURS General Counsel. No additional filings or submissions, apart from those already contained in the record, may be enclosed with the Statement of Exceptions. If a Statement of Exceptions is not timely filed pursuant to this subsection (c)(1), the decision of the Director of Member Services or designee is final for all purposes and not subject to administrative or judicial review.

- 2) The Executive Committee shall render one of the following decisions with respect to the claim: affirmance of the decision of the Director of Member Services or designee, reversal of that decision, or remand of the case to the administrative staff for further consideration. Remand of the case to the administrative staff shall not be considered a final decision of the Executive Committee. A decision by the Executive Committee either reversing or affirming the decision of the Director of Members Services or designee shall constitute a final decision for the purpose of review under the Administrative Review Law [735 ILCS 5/Art. III].
 - 3) All notices of decisions of the Executive Committee shall indicate that the decision is final and subject to the Administrative Review Law.
 - 4) Parties and their representatives shall be notified, personally, by delivery to a third-party commercial carrier, or by registered or certified mail, return receipt requested, of any decision of the Executive Committee. The date of mailing of the decision shall constitute the date of service for purposes of the Administrative Review Law or any other applicable law.
- d) Effect of Appeal on Due Dates, Interest and Penalties
- 1) Due Dates. If any provision of the Code or SURS regulations requires the employer to make payment by a certain date, the due date shall not be extended during the pendency of the appeal. Any final decision under this Section that partially reduces the payment shall extend the due date of the remaining balance by the time period during which the matter was under appeal.
 - 2) Interest and Penalties on Payments. If any provision of the Code or SURS regulations imposes interest or penalties upon an employer after a certain date for nonpayment, the interest and/or penalties shall continue to accrue during the pendency of the appeal. Any final decision that partially reduces the payment shall also reduce the attributable interest and/or penalties. To avoid the accrual of interest and/or penalties, the employer may make payment under protest. A payment under protest must be submitted, at the latest, with the Statement of Employer Appeal filed pursuant to subsection (b). If made, the payment shall not be considered

an admission of any liability and shall not constitute a waiver of any appeal rights under this Section.

(Source: Added at 40 Ill. Reg. 8437, effective June 3, 2016)

Section 1600.715 Eligible Voters

- a) An individual is eligible to vote for a contributing membership position on the Board of Trustees of the System if he or she was a contributing member, defined as an employee who has been certified as a SURS covered employee by the employee's employer and an employee for whom employee contributions have been received in the previous 31 days, except as provided for in subsection (e), as of March 1 of the year in which the election is held.
- b) An individual is eligible to vote for an open annuitant position on the Board of Trustees of the System if he or she was an annuitant as of March 1 of the year in which the election is held.
- c) A person who is eligible to vote for a contributing membership position pursuant to subsection (a) is not eligible to vote for an open annuitant position.
- d) A person who is eligible to vote for an annuitant position pursuant to subsection (b) is not eligible to vote for an open contributing membership position.
- e) A SURS member receiving a disability pursuant to Section 15-150 of the Illinois Pension Code is not an annuitant but is considered a contributing member for purposes of Board elections.

(Source: Amended at 37 Ill. Reg. 15517, effective September 12, 2013)



Board Training—January 2020

Fiduciary Duties Primer

Tiffany R. Reeves

Shareholder, Reinhart Institutional Investor Services



Fiduciary Duty—Key Concepts

- Loyalty to beneficiaries
- Exercise care, skill and diligence
- Diversify risk exposures
- Keep costs reasonable
- Transparency and accountability
- Compliance with Illinois Pension Code (and other applicable law)

Sources of Guidance

- Illinois Pension Code
- Court decisions and common law of trusts
- ERISA and other pension fund laws
- Model codes
- Restatement of Trusts
- Practices of other similar fiduciaries
- Attorney General Opinions
- Advice of legal counsel

Who is a fiduciary?

- A person is a “fiduciary” with respect to a retirement system under the Pension Code to the extent that person:
 - Exercises any discretionary authority or discretionary control regarding:
 - The management of the retirement system, or
 - The management or disposition of its assets;
 - Renders investment advice or renders advice on the selection of fiduciaries for a fee; or
 - Has discretionary authority or discretionary responsibility in the administration of the retirement system.

40 ILCS 5/101.2

Who is a fiduciary? (continued)

- An entity or an individual may be a fiduciary either by designation or by function
- SURS fiduciaries include:
 - Trustees
 - SURS Executives
 - Certain SURS staff members
 - Investment managers
 - Investment consultants
 - Any service provider who has agreed to be a fiduciary by contract

The Illinois Pension Code requires that a fiduciary discharge his or her duties to the retirement system for the exclusive purposes of providing benefits to participants and their beneficiaries, and defraying reasonable administrative expenses of the retirement system. 40 ILCS 5/1-109(a)

Duty of Loyalty

- The Pension Code requires that a fiduciary discharge his or her duties with respect to the retirement system “*solely in the interests of the participants and beneficiaries*” 40 ILCS 5/1-109
- Loyalty to participants and beneficiaries (as a whole)
 - Identify and manage conflicts of interest
 - Impartiality between beneficiary groups
 - Prohibited Transactions (Internal Revenue Code § 503(b); 40 ILCS 5/1-110)

Core Principles of Loyalty & Impartiality

"Conduct in administering a trust cannot be influenced by a trustee's personal favoritism . . . nor is it permissible for a trustee to ignore the interests of some beneficiaries merely as a result of oversight or neglect." *Restatement of Trusts (Third) §79, (Comment b)*

"The common law of trusts recognizes the need to preserve assets to satisfy future, as well as present, claims and requires a trustee to take impartial account of the interest of all beneficiaries."

Varity v Howe, 516 US 489 (1996) United States Supreme Court (emphasis added)

“A plan administrator’s duty to act in the best interest of all the beneficiaries cannot mean that it must cater to the optimal needs of each individual beneficiary. All beneficiaries’ interests will not always be aligned. The fiduciary must act as though it were a reasonably prudent businessperson with the interest of all the beneficiaries at heart.”

Matthews v. Chicago Transit Authority, App. 1 Dist.2014, 381 Ill.Dec. 44 citing *Ameritech Benefit Plan Committee v. Communications Workers of America* F.3d 814, 825 (7th Cir. 2000) (emphasis added)

Duty of Loyalty (continued)

- The trustee must conform to "fundamental fiduciary duties of loyalty (Restatement of Trusts, Third §170) and *impartiality* (Restatement of Trusts, Third §183)."
 - Balancing the interests of retirees and active participants
 - Balancing interests of different groups of participants
 - Balancing roles with regard to different plans

Duty of Impartiality

- UMPERSA* Commentary: "Differing interests are inevitable in the retirement system setting. Differences can arise between retirees and working members, young members and old, long-and short-term employees, and other groupings of those with interests in the retirement system. The duty of impartiality does not mean that fiduciaries must accommodate such interests according to some notion of absolute equality. The duty of impartiality .. requires that such decisions be made carefully and after weighing the differing interests."
- 9-4-10(K)(4); 9-16-40: ". . .Impartially, taking into account any differing interests of participants and beneficiaries. . ."

*Note the Uniform Management of Public Employee Retirement Systems Act is a model code that has not yet been adopted in Illinois (but is a good source of guidance on this topic and has been adopted in other states—e.g., MD, SC, WY)

Trustees must maintain independence

- A trustee must maintain independence and set aside the interests of the appointing authority or the group the trustee represents.
 - "It is as improper for a fiduciary to take actions for the purpose of benefiting a third person as it is for a fiduciary to act in its own interest. In the retirement system setting, it is important to note that this duty includes the obligation to set aside the interests of the party that appoints a trustee or fiduciary. A trustee, for example, must act solely in the interests of participants and beneficiaries and set aside any interest of a party responsible for the trustee's appointment, such as an employer or union."
 - *UMPERSA Comments on § 7* (emphasis added)

Trustees may only wear "one hat" at a time and must wear only the fiduciary hat when making decision as a Board member.

—*Hughes Aircraft v. Jacobson*, 525 U.S. 432 (1999).

Illinois uses a Prudent Expert Standard

A fiduciary must discharge its duties to the retirement system with the same care, skill, prudence and diligence that a prudent expert would use in a similar enterprise. 40 ILCS 5/1-109(b).

Prudent Expert Standard

- Process oriented, with focus on diligence
- Deference to accepted industry practices
- Decisions evaluated in context of total portfolio
 - Protection from hindsight bias
- Trustees must use any special personal skills
- Encourages reliance on qualified experts
 - Experts should be questioned to ensure reliability
 - Second opinions can give comfort if controversial
- Goal is total net return over the long term

Duty of Prudence

- Exercise care, skill and diligence
 - Prudence benchmark or lemming standard?

Lemming Standard



- It is a common belief that the unexplained fluctuations in the population of this Arctic rodent are caused by mass suicide—perhaps not deliberate so much as the result of communal foolishness.

Prudence may be subjective

- Peer practices are not dispositive; rather, they are a factor to be considered in determining whether or not an action (or inaction) was negligent
- It is important to review and benchmark against peer practices, while taking into account the System's unique environment (e.g., underfunding)
- Decisions should be tailored to the liability and benefit structure of the System and its capabilities
- Herding around similar practices may lead to excessive short-termism or failure to adopt improved practices that are not yet embraced by peers

Duty to Diversify

- Whose risk; over what time periods?



Diversification

- Trustees “shall” discharge duties “[b]y diversifying the investments of the retirement system or pension fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.” (40 ILCS § 5/1-109)
- Asset allocation is a key responsibility
 - Advice from qualified experts required
 - Goal is net return over the long-term

Cost Management

- The duty of loyalty requires that costs and expenses be reasonable and appropriate
- This does not, however, mean that the lowest cost providers and investment strategies must be used



Cost Management

- Expenses must relate to providing participant benefits
- Comparisons made to other similar investors
- Consider net long-term returns after expenses
- Cannot expend trust funds to achieve unrelated social or policy goals
 - Identification, evaluation & management of long-term investment-related risks & opportunities is proper
- Implicit/hidden investment costs must be reasonable
 - Seek best net execution on transactions
- Spending too little can also cause problems

Co-Fiduciary Liability

- All Trustees retain joint responsibility for the Board's duties
 - Fiduciaries cannot avoid responsibility by looking the other way
- A Trustee must:
 - Use reasonable care to prevent a co-trustee from committing a breach of duty (IPC); and
 - Take proper steps to obtain redress if there is a breach of duty (ERISA)

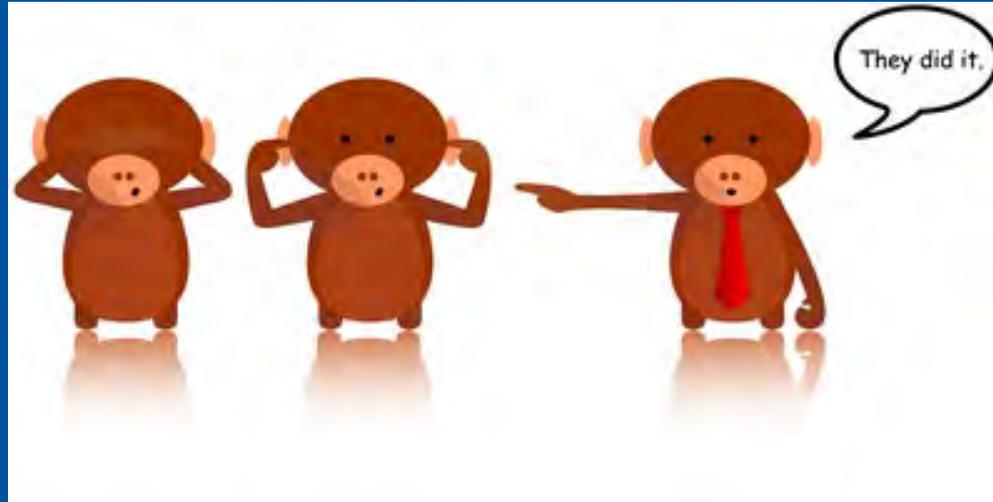
"Where certain members of the Board insist on making an investment which from the outset is clearly not prudent, subsection 1-109.2(b)(1) mandates that the other members 'use reasonable care to prevent' the others from breaching their fiduciary duty."

III. Att'y Gen. Op. No. 059, p. 11.

Settlor Functions vs. Fiduciary Functions

- Based on Department of Labor guidance
- Distinction between plan design and plan administration
- Settlor
 - Plan sponsors who alter the terms of a plan are not fiduciaries—they are analogous to settlors of a trust
 - Legislature sets contribution rates and benefit levels
- Fiduciary
 - Implements settlor decisions
 - Systematic underfunding can raise duty of loyalty and impartiality issues
 - While it may be appropriate to advocate for actuarial-based funding (ADEC), it is likely not appropriate for a pension Board to advocate for a certain level of benefits

Transparency and Accountability



Transparency and Accountability

- Fiduciaries have a duty to inform and consult with fund participants and beneficiaries to foster accountability and earn their confidence
- The duty to inform may involve educating participants, beneficiaries, and/or stakeholders through:
 - Transparency and reporting
 - Appropriate valuation of assets
 - Compliance with the Open Meetings Law
 - Compliance with the Freedom of Information Act / Open Records

Fiduciary Duties Shape Governance

- Opposite sides of the same coin
 - Dynamic (not static) concepts
- Good governance demonstrates prudence
- Governance quality affects risk and return
 - Good governance is positively correlated to investment performance*
- No one size fits all
 - Governance is a journey, not a destination
 - What is best for this System given its current stage of capability development?
- Need authority that matches responsibilities
 - The fundamental challenge for public pension funds

Effective pension governance is...

- Leading practices of successful funds:
 - Skilled trustees
 - Expert staff with market rate compensation
 - Clear mission and investment beliefs
 - Strategic focus
 - Sufficient assets to be cost-effective
 - Insulation from political influence
 - Delineation of separate board and staff roles
 - Board self-improvement culture
 - Effective risk management practices
 - Audit and reassurance

Effective pension board governance is not...

- Management
- Involvement in day-to-day operations
- Tactical decisions
- Staff functions
- “How to do it”
- Detailed directions on policy implementation
- It is important to know the limit on the role of a trustee



Policy, Strategy, Oversight; not Operations

- The Board's principal function is to:
 - Establish the strategic direction of the System
 - Hire the necessary staff and consultants that have the requisite capacity and expertise to carry out the Board's direction
 - Oversee the execution to ensure that the Board's direction is carried out appropriately and effectively

Board Powers Framework

- The goal is to achieve the right balance between oversight and management
- Set
 - Direction and policy
- Approve
 - Key decisions
- Conduct
 - Selected activities
- Oversee
 - Delegated authority
 - Compliance

Set	Approve
Conduct	Oversee

Responsibilities of the Board

- Act solely in the interests of the beneficiaries
 - balance income and capital growth needs of different generations, with varying time horizons
- Set direction
 - Strategic, policy, and operational
- Be prudent
 - Benchmarking against peer practices
- Ensure effective investment operations
- Ensure risks are managed
 - Enterprise risks not just investment risks
- Ensure effective compliance and control
 - Process and reporting
- Obtain reasonable assurance and independent reassurance
 - Compliance, information security, internal and external audit

Prudent Delegation

- Authority should be delegated to experts (including staff)
- Prudent delegation requires robust processes for selection, instruction, reporting, monitoring, questioning and evaluation of their qualifications, goals and results

Trust, but verify...

- Delegation is not a dilution of fiduciary duty
 - Delegating authority, not fiduciary responsibility
- It is not sufficient to simply delegate and trust; a prudent fiduciary must delegate and trust, but verify and continue to verify
- Verification is obtained through independent reassurance that staff assurances and reports are reliable

Board & Trustee Evaluations

- Self-evaluation and/or full board evaluation?
 - External facilitator?
 - 360 degree evaluation with senior staff?
 - Confidentiality?
- Trustee personal capacity to be effective?
- Targeted training and skills development
 - Annual board skills inventory
- Develop continuing education plan and budget for the entire board and for each member, as well as a program for new members linked to the board self-assessment and identified gaps
- Establish effective practices and priorities
- Trustee integrity and discipline policies

Board governance



Board Self-Assessment

- The Board self-assessment process is an opportunity for Board members and senior staff to evaluate the performance of the Board and the organization, and identify opportunities for improvement
- The results of the survey will help to inform the Board's strategy and approach to effective governance
- Establishing effective governance practices is key to meeting the Board's fiduciary obligations

Questions?

Thank You!

This presentation provides information of a general nature. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations or issues. Additional facts and information or future developments may affect the subjects addressed in this presentation. You should consult with a lawyer about your particular circumstances before acting on any of this information because it may not be applicable to you or your situation.