

ILLINOIS REGISTER

STATE UNIVERSITIES RETIREMENT SYSTEM

NOTICE OF PROPOSED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES

SUBTITLE D: RETIREMENT SYSTEMS

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AUTHORITY: Implementing and authorized by Section 15-177 of the Illinois Pension Code [40 ILCS 5/15-177].

SOURCE: Amended September 2, 1977; amended at 2 Ill. Reg. 31, p.53, effective July 30, 1978; amended at 7 Ill. Reg. 8139, effective June 29, 1983; codified at 8 Ill. Reg. 19683; amended at 11 Ill. Reg. 15656, effective September 9, 1987; amended at 13 Ill. Reg. 18939, effective November 21, 1989; amended at 14 Ill. Reg. 6789, effective April 20, 1990; emergency amendment at 21 Ill. Reg. 4864, effective March 26, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 6095, effective May 2, 1997; amended at 21 Ill. Reg. 11962, effective August 13, 1997; amended at 21 Ill. Reg. 12653, effective August 28, 1997; amended at 22 Ill. Reg. 4116, effective February 9, 1998; amended at 23 Ill. Reg. 13667, effective November 1, 1999; amended at 25 Ill. Reg. 10206, effective July 30, 2001; amended at 28 Ill. Reg. 2292, effective January 23, 2004; expedited correction at 28 Ill. Reg. 7575, effective January 23, 2004; amended at 29 Ill. Reg. 2729, effective March 1, 2005; amended at 29 Ill. Reg. 11819, effective July 12, 2005; amended at 29 Ill. Reg. 14060, effective September 1, 2005; amended at 29 Ill. Reg. 14351, effective September 6, 2005; amended at 30 Ill. Reg. 6170, effective March 21, 2006; amended at 30 Ill. Reg. 7778, effective April 5, 2006; amended at 30 Ill. Reg. 9911, effective May 9, 2006; amended at 30 Ill. Reg. 17509, effective October 19, 2006; amended at 31 Ill. Reg. 4267, effective February 22, 2007; amended at 31 Ill. Reg. 4927, effective March 12, 2007; recodified at 31 Ill. Reg. 10194; amended at 32 Ill. Reg. 16515, effective September 25, 2008;

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emergency amendment at 33 Ill. Reg. 6525, effective April 27, 2009, for a maximum of 150 days; emergency expired September 23, 2009; amended at 33 Ill. Reg. 10757, effective July 1, 2009; amended at 33 Ill. Reg. 16755, effective November 23, 2009; amended at 34 Ill. Reg. 9523, effective June 25, 2010; amended at 35 Ill. Reg. 10952, effective June 22, 2011; amended at 36 Ill. Reg. 3938, effective February 22, 2012; amended at 37 Ill. Reg. 1309, effective January 15, 2013; amended at 37 Ill. Reg. 3866, effective March 15, 2013; amended at 37 Ill. Reg. 10698, effective June 26, 2013; amended at 37 Ill. Reg. 15517, effective September 12, 2013; amended at 38 Ill. Reg. 5659, effective February 11, 2014; emergency amendment at 38 Ill. Reg. 11376, effective May 9, 2014, for a maximum of 150 days; amended at 38 Ill. Reg. 16375, effective July 17, 2014; amended at 38 Ill. Reg. 17457, effective July 30, 2014; amended at 39 Ill. Reg. 8317, effective June 1, 2015; amended at 40 Ill. Reg. 8437, effective June 3, 2016; amended at 41 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 1600.140 Compliance with the Internal Revenue Code

- a) Purpose. This Section is intended to implement qualification requirements under IRC section 401(a) as applicable to governmental plans within the meaning of IRC section 414(d). The System is intended to be a qualified governmental plan under the meaning of those IRC provisions.
- b) Exclusive Benefit Rule and Nonreversion of Trust Assets. Prior to the satisfaction of all liabilities to participants or their beneficiaries, no part of the corpus or income of the System shall be used for, or diverted to, purposes other than for the exclusive benefit of the System's participants or their beneficiaries. No part of the System's assets may revert to the State of Illinois or any employer except in the case of a good faith mistake of fact as permitted by [IRS](#) Revenue Ruling 91-4, 1991-1 C.B. 57.
- c) Nonforfeitability. Upon termination of the System or upon complete discontinuance of contributions to the System, the rights of each participant to benefits accrued to the date of the termination or discontinuance are nonforfeitable.
- d) USERRA. The provisions of Code Section 1-118 (concerning veterans' rights) shall be effective with respect to the System beginning December 12, 1994.
- e) Required Minimum Distributions. The provisions of Code Section 1-116.1 (concerning minimum required distributions) shall be effective with respect to the

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System beginning January 1, 1987. The System shall pay all benefits in accordance with a reasonable good faith interpretation of the requirements of IRC section 401(a)(9).

- f) Federal Contribution and Benefit Limitations. Pursuant to Code Section 1-116, the System shall comply with the applicable contribution and benefit limitations imposed by IRC section 415 for limitation years beginning on or after January 1, 1976.
- g) Mortality Tables and Interest Rates. The mortality tables and interest rates adopted by the Board of Trustees of the System from time to time in accordance with Code Sections 15-124 and 15-125 shall apply to the System as though those provisions were fully set forth in Article 15 of the Code. This subsection (g) applies beginning July 1, 1963.
- h) Direct Transfer of Eligible Rollover Distributions. For distributions made on or after January 1, 1993, the System shall implement Code Section 1-106(b) (concerning direct rollovers) in accordance with IRC section 401(a)(31), as follows:
 - 1) If a distributee becomes entitled to an eligible rollover distribution, the distributee may elect to have the distribution, or any portion of the distribution, paid directly to an eligible retirement plan specified by the distributee.
 - 2) The election made pursuant to this Section shall be in accordance with the terms and conditions established by the Board.
 - 3) Upon exercise of the election by a distributee pursuant to this subsection (h), the distribution from the System of the amount designated by the distributee shall be made in the form of a direct transfer to the specified eligible retirement plan.
 - 4) For purpose of this subsection (h), "distributee" means a member, a surviving spouse, or a former spouse under a domestic relations order that is treated as a qualified domestic relations order to the extent provided in IRC section 414(p)(11). For plan years beginning on or after January 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by IRC section 401(a)(9)(E). However, a nonspouse beneficiary may only make a direct rollover to an individual

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retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

- 5) Eligible Rollover Distribution
- A) For purposes of this subsection (h), "eligible rollover distribution" means a distribution from the retirement fund that constitutes an eligible rollover distribution within the meaning of IRC section 401(a)(31)(D), i.e., any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
- i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made:
 - for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary; or
 - for a specified period of 10 years or more;
 - ii) any distribution to the extent the distribution is required under IRC section 401(a)(9);
 - iii) the portion of any distribution that is not includible in gross income; or
 - iv) any distribution that is reasonably expected to total less than \$200 during the year.
- B) Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible distribution merely because a portion consists of after-tax contributions that are not includible in gross income. However, that portion may be transferred only:
- i) to an individual retirement account or annuity described in IRC section 408(a) or (b) or to a qualified defined contribution plan described in IRC section 401(a) that

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agrees to separately account for amounts so transferred (and earnings on those amounts), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

- ii) on or after January 1, 2007, to a qualified defined benefit plan described in IRC section 401(a) or to an annuity contract described in IRC section 403(b) that agrees to separately account for amounts transferred (and earnings on those amounts), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not includible; or
- iii) on or after January 1, 2008, to a Roth IRA described in IRC section 408A.

6) For purposes of this subsection (h), "eligible retirement plan" means a plan that constitutes an eligible retirement plan within the meaning of IRC section 401(a)(31)(E), the terms of which permit the acceptance of rollover distribution and is limited to the following:

- A) an individual retirement account described in IRC section 408(a);
- B) an individual retirement annuity described in IRC section 408(b);
- C) an annuity plan described in IRC section 403(a);
- D) a qualified trust described in IRC section 401(a);
- E) effective January 1, 2002, an annuity contract described in IRC section 403(b);
- F) effective January 1, 2002, an eligible deferred compensation plan described in IRC section 457(b) that is maintained by an eligible employer described in IRC section 457(e)(1)(A) that agrees to separately account for amounts transferred into that plan from the System; ~~or~~

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G) effective January 1, 2008, a Roth IRA described in IRC section 408A; ~~and-~~

H) effective December 19, 2015, a SIMPLE IRA described in IRC section 408(p)(1), provided that the rollover contribution is made after the 2-year period described in IRC section 72(t)(6).

- i) Qualified Illinois Domestic Relations Orders. If benefits are payable pursuant to a QILDRO that satisfies the requirements of "domestic relations order" as defined in IRC section 414(p), then the applicable requirements of IRC section 414(p) shall be followed by the System.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART E: DISABILITY CLAIMS AND ADMINISTRATIVE REVIEW

Section 1600.550 Disability Claims Procedure

- a) Pursuant to Code Section 15-150 ~~of the Code~~, a participant may be granted a disability benefit if, while a participating employee, he or she becomes physically or mentally incapacitated and unable to perform the duties of his or her assigned position for any period exceeding 60 consecutive calendar days and the employee had completed 2 years of service at the time of disability, unless the disability is a result of an accident. An employee shall be considered disabled only during the period for which the Board determines, based upon the evidence listed in this Section, that the employee is unable to reasonably perform the duties of his or her assigned position as a result of a physical or mental disability. This determination shall be based upon:
- 1) a written certificate from one or more licensed and practicing physicians appointed by or acceptable to the Board, stating that the employee is disabled and unable to reasonably perform the duties of his or her assigned position;
 - 2) a written certificate from the employer stating that the employee is unable to perform the duties of his or her assigned position; and
 - 3) any other medical examinations, hospital records, laboratory results, or other information necessary for determining the employment capacity and condition of the employee.

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- b) Application Filing Requirements
 - 1) An application for disability benefits must include the certifications described in subsections (a)(1) and (a)(2), and supporting documentation described in subsection (a)(3), all as explained in more detail in this Section, for each disabling condition as well as for the entire period of disability.
 - 2) The application must be filed within one calendar year after the date on which the disability occurred. This limitation may be waived upon a showing of good cause, including, but not limited to, circumstances in which the applicant was under some physical, mental or medical infirmity or legal status that prevented the applicant from filing within the time period.
- c) Certification By Physicians. For purposes of subsection (a)(1), the following shall apply:
 - 1) Physicians acceptable to the Board are attending physicians, physicians designated by the participant and physicians to whom the participant was referred by the attending or designated physician. Physicians appointed by SURS staff to examine the participant are deemed to be physicians appointed by the Board. The physician must be licensed to practice and be currently practicing in the field of expertise related to the underlying physical or mental condition for which disability benefits are sought.
 - 2) The certification must be signed by a physician described in subsection (c)(1) or an authorized representative of the physician and must state the following:
 - A) the medical diagnosis of the physical or mental condition;
 - B) the prognosis of the physical or mental condition;
 - C) the physical or mental limitations to which the participant should adhere; and

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- D) that the participant is disabled and is unable to reasonably perform the duties of his or her assigned position as a result of the physical or mental disability.
- 3) The certification must be accompanied by a report containing the following:
- A) the date of examination;
 - B) the medical history of the participant;
 - C) the results of any diagnostic tests used;
 - D) the diagnosis of the physical or mental condition;
 - E) the plan of treatment for the physical or mental condition and prognosis in response to the treatment plan;
 - F) an evaluation of the physical or mental condition as it bears upon the participant's ability to reasonably perform the duties of his or her assigned position; and
 - G) any existing documentation of objective medically demonstrable anatomical, physiological or psychological abnormalities manifested as test results or laboratory findings apart from self-reported symptoms.
- d) Certification by Employers. For purposes of subsection (a)(2), the certification must be signed by an officer authorized by the employer and must state the following:
- 1) the physical or mental performance requirements for the reasonable performance of the participant's assigned position;
 - 2) whether the participant is able to satisfy each physical or mental performance requirement for the reasonable performance of his or her assigned position to the best of the employer's knowledge or belief and the reason for that knowledge or belief; and

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- 3) whether the participant is able to reasonably perform the duties of his or her assigned position based on the provisions of subsections (d)(1) and (d)(2).
- e) Determination of Disability. If the participant establishes, by a ~~preponderance~~ preponderence of the evidence, that he or she is physically or mentally disabled and unable to perform the duties of his or her assigned position as a result of the disability, the participant shall be determined eligible for disability benefits under Section 15-150 of the Code.
 - 1) SURS staff shall determine whether certifications made under subsections (a)(1) and (a)(2) and supporting documentation described in subsection (a)(3) establish eligibility for disability benefits.
 - 2) At the discretion of SURS staff, the participant may be required to submit to additional examinations by staff appointed physicians or specialists to aid in the determination process.
 - 3) Physical or mental conditions resulting from self-inflicted injuries, substance abuse, or any act for which the participant was convicted of a misdemeanor or felony are not the result of an accident for purposes of Code Section 15-150 ~~of the Code~~.
- f) Subsequent Re-examination of Disabled Participants
 - 1) SURS staff shall secure from one or more physicians, periodically, re-evaluation reports concerning the continued disability of the participant. The date of re-evaluation shall be determined by SURS staff on the basis of the medical reports received previously, the nature of the disability, and other relevant information.
 - 2) In the re-evaluation of disability claims, the examining physician shall be the attending physician or the physician designated by the participant, but, if the nature of the disability or other circumstances justifies the appointment of someone other than the participant's attending physician or designated physician as the examining physician, SURS staff shall make the appointment. All other procedures that may be applicable in processing the initial claim for disability benefits shall be followed in re-evaluation of the claim.

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- g) Release of Medical Information. The participant may be required to authorize the release of all medical or other information related to the disability claim, including but not limited to medical reports, hospital records, Department of Employment Security earnings statements, income tax records, unemployment records, and any record deemed necessary to the administration of the disability claim. The failure of the participant to submit to a re-evaluation examination or a treatment plan, to produce records, or to approve release of information required may result in the suspension of disability benefit payments.
- h) [Vacation Payments and Disability Benefit Commencement. If an employee receives payment for unused vacation leave accrued under the employment from which the employee is disabled, the date of the "termination of payment of salary or sick leave benefits" under Code Section 15-151 shall be delayed by the number of work days attributable to the vacation payment.](#)

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART F: QUALIFIED ILLINOIS DOMESTIC RELATIONS ORDERS

Section 1600.605 Requirements for a Valid Qualified Illinois Domestic Relations Order

SURS will accept a court order as a valid QILDRO or QILDRO Calculation Court Order if it meets all of the following requirements:

- a) The following requirements apply to the QILDRO and the QILDRO Calculation Court Order:
- 1) The order must be accompanied by a \$50 non-refundable processing fee, by check or money order payable to the State Universities Retirement System.
 - 2) The order must be a certified copy of the original.
 - 3) The order must have been issued by an Illinois court of competent jurisdiction in a proceeding for declaration of invalidity of marriage, legal separation or dissolution of marriage that provides for the distribution of property, or any proceeding to amend or enforce the property distribution. A judgment, order or notice of income withholding for support under a support enforcement mechanism under Title IV-D of the Social Security Act (42 USC 666) or any other state law that purports to divide or garnish

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the member's retirement benefit under any proceeding for the declaration of invalidity of marriage, legal separation or dissolution of marriage will not be honored by SURS unless the judgment, order or notice is accompanied by a QILDRO (and if applicable, a QILDRO Calculation Court Order) issued by an Illinois court.

- 4) The order must contain the name, residence address and Social Security number of the member.
- 5) The order must contain the name, residence address and Social Security number of the alternate payee.
- 6) The order must identify the State Universities Retirement System as the retirement system to which it is directed.
- 7) The order must identify the court that issued it.
- 8) The order must apply only to benefits that are statutorily subject to QILDROs, as provided in Code Section 1-119(b)(1) ~~of the Pension Code~~.
- 9) The orders and, if applicable, the Consent to Issuance of QILDRO, must be in the form adopted by SURS as of the date the order is received. Any alterations will invalidate the order.
- 10) The effective date of the order must be after July 1, 1999 and before the date of death of the member. If the effective date of the order is on or after the member's date of death, SURS will deem the effective date of the posthumous order as if it had been entered on the day immediately prior to the member's date of death if the order is dated no later than 6 months after the date of death and:
 - A) any applicable consent requirements under subsection (b)(1) were met prior to the member's date of death; or
 - B) the order is accompanied by a certified copy of a decree of dissolution of marriage that is dated before the date of death of the member and incorporates the terms of a written marital settlement agreement that was signed by both parties before the date of death of the member and provides direction for the division of the member's SURS benefits under a QILDRO.

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- b) The following additional requirements apply only to the QILDRO:
- 1) If the QILDRO applies to a person who became a SURS member before July 1, 1999, it must be accompanied by the original Consent to Issuance of QILDRO form signed by the member, or a certified copy of the original. The consent cannot be signed by a judge, sheriff or any person other than the member. A QILDRO issued on or after July 1, 2006 that modifies a QILDRO issued prior to July 1, 2006 must be accompanied by an original Consent to Issuance of QILDRO signed by the member on or after July 1, 2006. If the alternate payee is unable to obtain a signed consent from the member, the required consent can be established if the QILDRO is accompanied by a certified copy of a decree of dissolution of marriage that incorporates the terms of a written marital settlement agreement that was signed by both parties and provides direction for the division of the member's SURS benefits under a QILDRO.
 - 2) The QILDRO must specify each benefit to which it applies, and it must specify only one method by which the benefit shall be paid to the alternate payee.
 - 3) If any benefit is to be paid using the Marital Portion Benefit Calculation, the QILDRO must comply with Code Section 1-119(n)IX ~~of the Pension Code~~ and the QILDRO must contain language in conformance with Section 1-119(n)IX(1) and (2) properly completed. The "other" option must only be checked for the purpose of using a combination of permissive service and regular service. If the "other" option is checked, a supplemental order stating the details of the combination must accompany the QILDRO. The supplemental order must not purport to establish a formula differing from the ones appearing under Code Section 1-119(n) ~~of the Pension Code~~ or purport to create new classes of service credit.
 - 4) If the member is a participant of the Traditional or Portable Benefit Package, the order must designate whether the alternate payee will receive automatic annual increases as provided under Code Section 1-119(n)IV ~~of the Pension Code~~.
 - 5) If the member is a participant of the Self-Managed Plan who has an account balance, then the QILDRO may only provide for the division of the account balance as of a certain date. If the Self-Managed Plan member

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is receiving benefits under an annuity contract, then the QILDRO may only divide the member's retirement benefit or death benefit, if any, or both.

- c) The following additional requirements apply only to the QILDRO Calculation Court Order:
- 1) The QILDRO Calculation Court Order must allocate benefits consistent with the underlying QILDRO. Benefits that will never become payable on or after the date the QILDRO Calculation Court Order is filed need not be allocated under the QILDRO Calculation Court Order
 - 2) Benefits allocated using a calculation method on the QILDRO Calculation Court Order must contain a clear result of the equation. SURS is not obligated to review or verify the equations or assist in the calculations to determine the benefits.

(Source: Amended at 41 Ill. Reg. _____, effective _____)