

STATE UNIVERSITIES RETIREMENT SYSTEM

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Universities Retirement
- 2) Code Citation: 80 Ill. Adm. Code 1600
- 3)

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| <u>Section Numbers:</u> | <u>Adopted Actions:</u> |
| 1600.202 | Amendment |
| 1600.203 | Amendment |
| 1600.270 | Amendment |
| 1600.275 | New Section |
| 1600.510 | New Section |
- 4) Statutory Authority: 40 ILCS 5/15-177
- 5) Effective Date of Rules: June 3, 2016
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) The adopted rules including all material incorporated by reference, are on file at the SURS office and is available for public inspection. Yes
- 9) Notices of Proposed published in the *Illinois Register*: 40 Ill. Reg. 187; January 4, 2016
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between Proposal and Final Version: Various grammatical changes have been made since these rules was published on first notice. SURS added a 90 day deadline for employers to pay the final 6% bill before delinquent amount is certified to the Comptroller.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rule currently in effect? No
- 14) Are there any rulemakings pending on this Part? No

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- 15) Summary and Purpose of Rulemaking: Section 1600.275 of the Amendment seeks to implement the addition of Section 15-139.5 of the Illinois Pension Code [40 ILCS 5/15-139.5], initially enacted under PA 97-968, effective August 16, 2012, and subsequently amended under PA 98-596, effective November 19, 2013, and PA 98-1144, effective June 1, 2015. After the enactment of PA 97-968, SURS held various working groups with employers to create efficient reporting and monitoring mechanisms for employed annuitants, an unprecedented endeavor in the retirement system's history. During these efforts, SURS was advised of the likelihood of legislation that would substantially change the substance of Section 15-139.5. Therefore, to avoid waste of system resources, SURS decided to delay rulemaking pending these changes. After the enactment of PA 98-596, SURS continued to work with employers to build online database systems that efficiently collected and disseminated annuitant status reporting for purposes of Section 15-139.5. PA 98-1144 amended Section 15-139.5 further to exclude annuitants receiving \$10,000 or less annually from the scope of "affected annuitant" status. Soon after the enactment of PA 98-1144, the SURS Board tentatively approved the substance of the Amendments in June 2015, and finally approved their filing for First Notice in September 2015. In the absence of rulemaking, SURS has enforced Section 15-139.5 through the terms of that provision along with the general authorizations under the Illinois Pension Code regarding employer reporting [40 ILCS 5/15-168] and the carrying of reasonable activities which are deemed necessary to accomplish the purposes of the System [40 ILCS 5/15-177]. No employer appeals concerning Section 15-139.5 have been permitted in the absence of rulemaking. Sections 1600.202 and 1600.203 of the Amendment make conforming amendments necessary to implement Section 1600.275 while rearranging some provisions for easier reading.

Section 1600.510 of the Amendment provides a procedure for employer appeals of SURS staff decisions. Several provisions of the Illinois Pension Code require SURS to make decisions that affect employers in the administration of the system, including, but not limited to, informational reporting, determinations of pensionable earnings, determinations of service credit (contract dates, leaves of absence, part-time status, etc.), and employer contributions from trust, federal, or other funds. Under the 6% Rule [40 ILCS 5/15-156(g)], an employer may request a recalculation of the 6% bill while claiming certain exceptions. There is no statutory requirement that employers be provided a hearing to contest SURS staff decisions. Because staff decisions on employer matters are currently not appealable to the Executive Committee, the only recourse of an employer would be to seek Administrative Review in circuit court.

To reduce the expense and delay of seeking resolution of employer matters in court, SURS proposes to permit internal reviews of employer matters. Because employers, as

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governmental bodies, are not subject to Due Process protections, SURS proposed a document review process, rather than a live-hearing process in order to conserve system resources and minimize administrative delays. Section 15-188 of the Illinois Pension Code [40 ILCS 5/15-188] provides that all final administrative decisions (including employer-related decisions) of the SURS Board are subject to appeal under the Administrative Review Law. Section 1600.270 of the Amendment makes a conforming amendment implementing Section 1600.510 in the 6% Rule process.

- 16) Information and questions regarding these adopted rules shall be directed to:

Albert Lee, Associate General Counsel
State Universities Retirement System
1901 Fox Drive
Champaign IL 61820

217/378-8861 or 217/378-8813

The full text of the Adopted Amendments begins on the next page:

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TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE D: RETIREMENT SYSTEMS
CHAPTER II: STATE UNIVERSITIES RETIREMENT SYSTEMPART 1600
UNIVERSITIES RETIREMENT

SUBPART A: GENERAL

Section

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| 1600.100 | Definitions |
| 1600.110 | Freedom of Information Act |
| 1600.120 | Open Meetings Act |
| 1600.130 | Procurement |
| 1600.140 | Compliance with the Internal Revenue Code |
| 1600.145 | Compliance with Final 415 Treasury Regulations |
| 1600.150 | Group Trust Provisions |

SUBPART B: CONTRIBUTIONS AND SERVICE CREDIT

Section

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| 1600.202 | Return to Employment |
| 1600.203 | Independent Contractors |
| 1600.205 | Earnings Subject to Withholding and Crediting |
| 1600.210 | Crediting Interest on Participant Contributions and Other Reserves |
| 1600.220 | Election to Make Contributions Covering Leave of Absence at Less Than 50% Pay |
| 1600.230 | Election to Pay Contributions Based upon Employment that Preceded Certification as a Participant |
| 1600.240 | Election to Make Contributions Covering Periods of Military Leave Protected under USERRA |
| 1600.241 | Survivor Benefits for Members Who Die While on Military Leave Protected under USERRA |
| 1600.250 | Sick Leave Accrual Schedule |
| 1600.260 | Part-time/Concurrent Service Adjustment |
| 1600.270 | Employer Contributions for Benefit Increases Resulting from Earnings Increases Exceeding 6% |
| 1600.275 | Employer Contributions for Employing Affected Annuitants |

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SUBPART C: SURVIVORS AND BENEFICIARIES

Section

- 1600.300 Effective Beneficiary Designations
- 1600.305 Full-Time Student Survivors Insurance Beneficiaries
- 1600.310 Dependency of Beneficiaries
- | 1600.320 Disability Claims ~~Procedure~~[Procedures](#) (Renumbered)

SUBPART D: BENEFIT CALCULATION AND PAYMENT

Section

- 1600.400 Determination of Final Rate of Earnings Period
- 1600.410 Twenty Percent Limitation on Final Rate of Earnings Increases
- 1600.420 Making Preliminary Estimated Payments
- 1600.430 Excess Benefit Arrangement
- 1600.431 Indirect Payments to Minors and Legally Disabled Persons
- 1600.432 Indirect Payments to Child Survivors Through the Surviving Spouse
- 1600.440 Voluntary Deductions from Annuity Payments
- 1600.450 Overpayment Recovery

SUBPART E: DISABILITY CLAIMS AND ADMINISTRATIVE REVIEW

Section

- 1600.500 Administrative Staff Determinations and Rules for Appeal – Nature and Requirements of Formal Hearings
- | [1600.510 Employer-Related Determinations and Rules for Appeal](#)
- 1600.550 Disability Claims Procedure

SUBPART F: QUALIFIED ILLINOIS DOMESTIC RELATIONS ORDERS

Section

- 1600.600 Definitions
- 1600.605 Requirements for a Valid Qualified Illinois Domestic Relations Order
- 1600.610 Invalid Orders
- 1600.615 Filing a QILDRO with the System
- 1600.620 Modified QILDROs
- 1600.625 Benefits Affected by a QILDRO
- 1600.630 Effect of a Valid QILDRO
- 1600.635 QILDROs Against Persons Who Became Members Prior to July 1, 1999

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| 1600.640 | Alternate Payee's Address |
| 1600.645 | Electing Form of Payment |
| 1600.650 | Automatic Annual Increases |
| 1600.655 | Expiration of a QILDRO |
| 1600.660 | Reciprocal Systems QILDRO Policy Statement |
| 1600.665 | Providing Benefit Information for Divorce Purposes |

SUBPART G: BOARD TRUSTEE ELECTION

Section

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| 1600.700 | Nomination of Candidates |
| 1600.705 | Election Date/Election Day – Defined |
| 1600.710 | Petitions |
| 1600.715 | Eligible Voters |
| 1600.720 | Election Materials |
| 1600.725 | Casting Votes |
| 1600.730 | Return of Ballots and Ballot Counting Process |
| 1600.735 | Certification of Ballot Counting |
| 1600.740 | Challenges to Election Results |
| 1600.745 | Candidate Informational Communication |
| 1600.750 | Filling a Vacancy in the Term of an Elected Trustee |

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

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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; 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.

SUBPART B: CONTRIBUTIONS AND SERVICE CREDIT

Section 1600.202 Return to Employment

Purpose. This Section defines terms used in Section 15-139 of the Code [40 ILCS 5/15-139] concerning annuitants who return to employment.

- a) ~~For the purposes of Section 15-139 of the Code:~~ "Annuitant", for purposes of Section 15-139 of the Code, means a person who is receiving a retirement annuity or who has received a lump-sum retirement benefit from SURS, 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. However:
- 1A) a person who has received a lump-sum retirement benefit is not an annuitant for purposes of Section 15-139(b) of the Code; and
- 2B) a person who is receiving or who has received retirement benefits under the Self-Managed Plan is not an annuitant.
- b2) "Compensation", for purposes of Section 15-139(b) of the Code, means any remuneration paid by an employer that is reportable by the employer as "wages, tips, or other compensation" on Internal Revenue Service Form W-2, unless the remuneration is received for serving as a member of the Illinois Educational

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Labor Relations Board. ~~"Retirement annuity payment period" means the annuity payment period beginning on the date specified by the participant submitting a written application, which date shall not be prior to termination of employment or more than one year before the application is received by the Board; however, if the participant is not an employee of an employer participating in this System or in a participating system as defined in Article 20 of the Code on April 1 of the calendar year next following the calendar year in which the participant attains age 70½, the annuity payment period shall begin on that date regardless of whether an application has been filed [40 ILCS 5/15-135(b)].~~

3) ~~"Employee" means an employee as defined by Section 15-107 of the Code.~~

c4) "Employment" ~~for purposes of Section 15-139(a) of the Code,~~ means a relationship with any "employer" ~~(as defined by Section 15-106 of the Code)~~ that would qualify the annuitant as an employee under common law, except for service as a member of the Illinois Educational Labor Relations Board.

d5) "Highest Annual Earnings"

1) for purposes of Section 15-139(b) of the Code, ~~means the greater of the following:~~ "Compensation" means any remuneration paid by an employer that is reportable by the employer as "wages, tips, or other compensation" on Internal Revenue Service Form W-2, unless the remuneration is received for serving as a member of the Illinois Educational Labor Relations Board.

A) The highest aggregate earnings (as defined under Section 15-111 of the Code) paid in any 12 calendar month period, including and immediately preceding the month of termination, or any prior 12 calendar month period ending with the same calendar month. The 12 calendar month period shall begin on the first day of a month and end on the last day of a month, even if earnings were paid for only a portion of the month. For example, if an annuitant's final termination from employment occurred on May 15, 2014, the relevant period would begin on June 1 and end on May 31.

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- B) The highest aggregate earnings (as defined under Section 15-111 of the Code) paid in any academic year (as defined under Section 15-126.1 of the Code) prior to retirement.
- 2) In the case of an annuitant receiving reciprocal benefits under Article 20 of the Code, "highest annual earnings" shall include earnings credits accrued with any participating system, as defined by Section 20-108 of the Code. The highest annual earnings shall not include any remuneration that is assumed as earnings for any purpose under Article 15 of the Code.
- eb) "Reemployed", for purposes of Section 15-139(c) of the Code, For purposes of Section 15-139(c) of the Code only, "reemployed" means the annuitant has established a relationship with any employer that would otherwise qualify the annuitant as an employee under Section 15-107 of the Code, not withstanding Section 15-107(a)(2) of the Code under applicable law; except, the employment must be on a permanent and continuous basis or in a position in which the annuitant is expected to serve for at least 9 months.
- fe) It shall be the duty of the employer and employee to notify SURS in a timely manner of any employment that could result in the cancellation or reduction of the retirement annuity under Section 15-139 of the Code.

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

Section 1600.203 Independent Contractors

Any individual claiming to be an independent contractor exempt from participation in SURS as an employee under Section 15-107 of the Code or from the provision governing annuitants who return to employment or receive compensation from any employer as set forth in ~~Sections~~Section 15-139, 15-139.1 and 15-139.5 of the Code must file Form SS-8 (Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding) with the IRS seeking confirmation of independent contractor status. An IRS Form SS-8 independent contractor determination must be filed with SURS before an individual can be considered to be exempt from SURS participation as an employee or reemployed employee. The individual shall file with SURS a copy of the IRS formal determination or information letter received in response to the Form SS-8, which may then be used in further consideration of the individual's independent contractor status.

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

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Section 1600.270 Employer Contributions for Benefit Increases Resulting from Earnings Increases Exceeding 6%

Purpose. This Section implements Section 15-155(g), (h), (i), (j) and (k) of the Code. This Section shall not apply to benefits from other retirement systems or pension funds payable under the Retirement Systems Reciprocal Act (Article 20 of the Code).

- a) Calculation of the Employer Cost. This calculation is made when a monthly benefit is calculated from the participant's final rate of earnings (FRE). The "present value of the increase in benefits" described in Section 15-155(g), called the "Employer Cost", will be calculated as follows:
 - 1) The earnings, as defined in Section 15-111 of the Code, for every academic year in the FRE period, as defined in Section 15-112 of the Code, are adjusted on a full-time equivalent basis.
 - A) 48 Month FREs and Partial Academic Years. When the final rate of earnings for a participant is the average annual earnings during the 48 consecutive calendar month period ending with the last day of final termination of employment, any partial academic year at the beginning of the final rate of earnings period will be disregarded.
 - B) Full-Time Equivalent (FTE) Basis
 - i) SURS will adjust earnings from an employer in a manner consistent with the percent time employed reported by the employer.
 - ii) The FTE earnings of an academic year shall equal the total earnings in the academic year divided by the average percent time of employment.
 - C) Earnings credited during periods of service purchased under Sections 15-113.1 through 15-113.7 of the Code shall be determined on a FTE basis.

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- D) For the purpose of Section 15-155(g), earnings do not include payments made under a collective bargaining agreement for unused sick leave or payments made for unused vacation.
- 2) The FTE earnings of each academic year in the FRE period are limited to 106% of the previous academic year's FTE earnings to yield the "Capped FTE Earnings" of each academic year.
 - 3) The Capped FTE Earnings of each academic year are multiplied by their respective average percent times of employment to yield the "Capped Earnings" for each academic year. The Capped Earnings shall be used to determine the "Capped FRE".
 - 4) The "Benefit Increase" shall equal the difference between the FRE and the Capped FRE, multiplied by the number of years of service, and further multiplied by 2.2%.
 - 5) The Employer Cost equals the actuarial present value of the Benefit Increase. This actuarial present value calculation will be made by using actuarial tables provided by SURS' actuary from time to time. The actuarial table used will correspond with the type of monthly benefit that is provided to the participant. A single-life annuity table will be used when a traditional benefit package participant has no eligible survivor at the time of retirement. If the participant had employment with more than one employer during the final rate of earnings period, the Employer Cost is calculated for each employer using only the earnings with that employer. However, no Employer Cost will be assessed among multiple, concurrent employers if the increase in total earnings for the concurrent academic year in the FRE period does not exceed 6% over the total earnings of the previous academic year.
- b) Employer Billing
- 1) Billing. *Whenever it determines that a payment is or may be required under Section 15-155(g), SURS will calculate the amount of the payment and bill the employer for the amount. The bill will specify the calculations used to determine the amount due.*

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- 2) Request for Recalculation. *If the employer disputes the amount of the bill, it may, within 30 days after receipt of the bill, apply to SURS in writing for a recalculation. The application must specify the grounds of the dispute and, if the employer asserts the calculation is subject to Section 15-155(h) or (i), must include an affidavit setting forth and attesting to all facts within the employer's knowledge that are pertinent to the applicability of Section 15-155(h) or (i). Upon receiving a timely application for recalculation, SURS will review the application and, if appropriate, recalculate the amount due.*
 - 3) Payment. *The employer contributions required under Section 15-155(g) may be paid in the form of a lump sum within 90 days after the receipt of the bill. If the employer contributions are not paid within 90 days after receipt of the bill, then interest will be charged at a rate equal to SURS' prescribed rate of interest compounded annually from the 91st day after the receipt of the bill. Payments must be concluded within 3 years after the employer's receipt of the bill. [40 ILCS 5/15-155(g)]*
 - 4) [Appeals of the Recalculation. The employer may appeal a recalculation pursuant to Section 1600.510.](#)
- c) Exclusions for Earnings Increases Paid on or after June 1, 2005, but before July 1, 2011, under Section 15-155(h)
- 1) Grandfathering. *When assessing payment for any amount due under Section 15-155(g), SURS will exclude earnings increases paid to participants required under contracts or collective bargaining agreements entered into, amended, or renewed before June 1, 2005. [40 ILCS 5/15-155(h)] Such contracts are "grandfathered". For the purposes of Section 15-155(h):*
 - A) A contract or collective bargaining agreement is "entered into, amended or renewed" on the earliest of the following:
 - i) the date the governing body of the employer voted to accept the contract or collective bargaining agreement;
 - ii) the date the contract or collective bargaining agreement was executed in final form by the parties; or

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- iii) the date the parties to the contract or collective bargaining agreement reached a tentative agreement regarding the terms of the contract or collective bargaining agreement, provided that the tentative agreement is subsequently approved by the governing body of the employer on or after June 1, 2005, without any changes to the terms that have the effects described under subsection (c)(1)(B)(i) or (ii).
- B) A contract or collective bargaining agreement will not exclude earnings increases paid under the contract or agreement if the contract or agreement is amended or renegotiated after June 1, 2005 to have the effect of:
- i) increasing the earnings usable for the FRE (except when the increase is the result of a salary reopener provision that was part of the contract or collective bargaining agreement prior to June 1, 2005); or
 - ii) extending the expiration date of the contract (in which case the earnings will be excluded only through the original expiration date of the contract).
- C) Miscellaneous
- i) A contract exception made by an employer for an individual shall disqualify that individual's earnings increases from grandfathering but shall not invalidate the grandfathering for any other persons.
 - ii) A memorandum of understanding between the employer and the collective bargaining unit to increase the credit hours available shall not invalidate the contract, but any earnings increases because of the increased credit hours shall not be excluded from the calculation under subsection (a), unless Section 15-155(h) or (i) applies.
 - iii) When a member has given notice to the employer of intent to retire pursuant to the terms of a grandfathered contract or

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collective bargaining agreement, earnings provided under the contract or collective bargaining agreement shall be excluded so long as the earnings are provided to the member within four years after the expiration date of the contract or collective bargaining agreement.

- iv) Notwithstanding the other provisions of this subsection (c)(1), earnings paid under a grandfathered contract on or after July 1, 2011 shall not be excluded from earnings under subsection (a).
- 2) **Earnings 10 Years Prior to Retirement Eligibility.** *When assessing payment for any amount due under Section 15-155(g), SURS will exclude earnings increases paid to a participant at a time when the participant is 10 or more years from retirement eligibility under Section 15-135 of the Code. [40 ILCS 5/15-155(h)] Earnings increases paid in academic years preceding and including the academic year during which the participant was 10 years from attaining earliest retirement eligibility shall be excluded.*
 - 3) **Overloads and Overtime**
 - A) *Earnings increases resulting from overload work, including a contract for summer teaching, or overtime when the employer has certified to SURS, and SURS has approved the certification, that:*
 - i) *in the case of overloads:*
 - *the overload work is for the sole purpose of academic instruction in excess of the standard number of instruction hours for a full-time employee occurring during the academic year that the overload is paid; and*
 - *the earnings increases are equal to or less than the rate of pay for academic instruction computed using the participant's current salary rate and work schedule; and*
 - ii) *in the case of overtime, the overtime was necessary for the educational mission. [40 ILCS 5/15-155(h)]*

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- B) The certification shall be in the form adopted by SURS and be signed by a duly authorized representative of the employer. The certification must be accompanied by supporting documentation as required by the form.
 - C) The standard number of instruction hours for a full-time employee shall be consistent with employer policy in force for the academic year in which the overload earnings were earned.
- 4) Promotions
- A) *When assessing payment for any amount due under Section 15-155(g), SURS will exclude earnings increases resulting from:*
 - i) *a promotion for which the employee moves from one classification to a higher classification under the State Universities Civil Service System;*
 - ii) *a promotion in academic rank for a tenured or tenure-track faculty position; or*
 - iii) *a promotion that the Illinois Community College Board has recommended in accordance with Section 15-155(k).*
 - B) *The earnings increases referenced in subsection (c)(4)(A) shall be excluded only if the promotion is to a position that has existed and been filled by a member for no less than one complete academic year and the earnings increase as a result of the promotion is an increase that results in an amount no greater than the average salary paid for other similar positions. [40 ILCS 5/15-155(h)]*
 - C) The employer shall certify that the promotion is to a position that has existed and been filled by a member for no less than one complete academic year and the earnings increase as a result of the promotion is an increase that results in an amount no greater than the average salary paid for other similar positions. The certification shall be in the form adopted by SURS and be signed by a duly authorized representative of the employer. The

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certification must be accompanied by supporting documentation as required by the form.

- D) The phrase "an amount no greater than the average salary paid for other similar positions" shall mean the midpoint of the salary range for the position or similar positions as most recently approved by the Merit Board of the State Universities Civil Service System or the current average salary paid for tenured or tenure-track faculty positions in the same department, as the case may be.
- d) Exclusions for earnings increases described in Section 15-155(h) paid on or after July 1, 2011, but before July 1, 2014, under a contract or collective bargaining agreement entered into, amended, or renewed on or after June 1, 2005, but before July 1, 2011, under Section 15-155(i). For the purpose of Section 15-155(i), a contract or collective bargaining agreement is "entered into, amended or renewed" on the earliest of the following:
- 1) the date the governing body of the employer voted to accept the contract or collective bargaining agreement;
 - 2) the date the contract or collective bargaining agreement was executed in final form by the parties; or
 - 3) the date the parties to the contract or collective bargaining agreement reached a tentative agreement regarding the terms of the contract or collective bargaining agreement, provided that the tentative agreement is subsequently approved by the governing body of the employer on or after July 1, 2011 without any changes to the terms that have the effect of extending the expiration date.
- e) The exclusions under subsections (c) and (d) shall not apply to earnings increases paid after June 30, 2014.

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

[Section 1600.275 Employer Contributions for Employing Affected Annuitants](#)

- a) [Purpose and Applicability](#)

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- 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,

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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 any period during which the person returns to active service and does not receive a retirement annuity from the System. [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)]

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- 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

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- 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

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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.

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- 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)]

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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)

SUBPART E: DISABILITY CLAIMS AND ADMINISTRATIVE REVIEW

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

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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

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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 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)