

ILLINOIS REGISTER

STATE UNIVERSITIES RETIREMENT SYSTEM

NOTICE OF PROPOSED AMENDMENTS

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES

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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 E: ADMINISTRATIVE REVIEW

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

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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.

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- 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. ~~such other matters as may be properly brought before it at the 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

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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.

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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 ~~thesueh~~ 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.

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- 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.

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- 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:

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- 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,

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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

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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

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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: affirmation 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.

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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. _____, effective _____)

SUBPART G: BOARD TRUSTEE ELECTION

Section 1600.720 Election Materials

- a) The Board Secretary may procure a qualified election services vendor and determine the voting methods, specific voting instructions and security measures to be used in the election, subject to the approval of the Board.
- b) At least 30 business days prior to the Election Day, the following election materials~~the System~~ shall be emailed~~mail~~ to the eligible voter's latest email address known to the System~~the following election materials~~:
 - 1) Electronic instructions for accessing an electronic~~A preprinted paper~~ ballot listing, in order determined by random, blind lottery conducted by the Board Secretary, either the contributing membership candidates or the annuitant candidates, depending on the basis for the individual's eligible voter status as provided in Section 1600.715, using the entire name of each candidate in the System records on the first day nomination petitions can be accepted;

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- 2) Instructions for accessing candidate~~Candidate~~ provided biographies in the location, format and length specified and approved by the Board Secretary;
 - 3) Instructions for voting methods as specified by the Board Secretary, including instructions for voting online or by phone. These instructions will also include the voting deadline.;
 - 4) ~~A preprinted, return envelope.~~
- c) For voters without a current email address on file with SURS, at least 30 business days prior to the Election Day, the following election materials shall be mailed to the eligible voter's latest mailing address known to the System:
- 1) A preprinted paper ballot listing, in order determined by random, blind lottery conducted by the Board Secretary, either the contributing membership candidates or the annuitant candidates, depending on the basis for the individual's eligible voter status as provided in Section 1600.715, using the entire name of each candidate in the System records on the first day nomination petitions can be accepted;
 - 2) Preprinted paper candidate provided biographies in the format and length specified and approved by the Board Secretary;
 - 3) Instructions for voting methods specified by the Board Secretary, including instructions for voting online, by phone or by regular mail. These instructions shall also include the voting deadline;
 - 4) A preprinted, return envelope.
- de) If an eligible voter is unable to access his or her election materials as~~has not received any or all of the election materials~~ specified in subsection (b) or did not receive the preprinted election materials mailed to him or her as specified in subsection (c), the eligible voter may request that the ~~election vendor~~System send replacement election materials to him or her by providing a current mailing address or a current email address. Preprinted paper ballots, candidate biographies and other election information~~Election materials~~ will not be mailed out within 5 business days prior to the Election Date; however, electronic ballots and instructions for accessing candidate election information~~election materials~~ will be electronically transmitted if ~~available and~~ authorized by the eligible voter

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at least one day prior to the Election Date. If an eligible voter incorrectly marks or spoils his or her paper ballot prior to returning it, the eligible voter may request a new set of election materials from the election vendorSystem at least 5 business days prior to the Election Date. Paper ballots already mailed to the election vendor, System or electronic or phone ballots that have already been cast by the eligible voter, shall not be replaced or revoked. The member's identity as an eligible voter shall be authenticated prior to sending out replacement election materials.

ed) If previously mailed election materials are returned to the election vendorSystem undelivered at least 5 business days prior to the Election Date and a forwarding address has been provided, the election vendorSystem shall mail election materials to the forwarding address via first class U.S. mail.

f) If previously emailed electronic election materials are returned to the election vendor undelivered at least one day prior to the Election Date and an updated email address has been provided, the election vendor shall email election materials to the updated address on file.

g) In addition to the election materials distributed by the election vendor, SURS will post candidate biographies, in the format and length specified and approved by the Board Secretary, on its website at least 30 days prior to the election.

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