

## TITLE 20 – DEPARTMENT OF STATE TREASURER

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Local Governmental Employees' Retirement System Board of Trustees intends to adopt the rule cited as 20 NCAC 02C .0212.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://www.nctreasurer.com/about/transparency/commitment-transparency/nc-administrative-code-rules>

**Proposed Effective Date:** July 1, 2024

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Submit a written request for public hearing within 15 days after publication of the Notice of Text to: Dept of State Treasurer, Attn: Rulemaking Coordinator, 3200 Atlantic Avenue, Raleigh, NC 27604 or DST.NCAC@nctreasurer.com*

**Reason for Proposed Action:** *The Retirement System Division (RSD) has a duty to pursue repayment of State funds by all lawful means available under G.S. § 143-64.80(b) and may not forgive repayments of an overpayment of State funds. Part VIII of Session Law 2023-105 sets forth less stringent recovery parameters that still allow RSD to satisfy its duty to pursue repayment if the overpayment occurred "entirely due to administrative error on the part of the Retirement Systems Division." The Local Governmental Employees' Retirement System (LGERS) Board of Trustees is proposing a rule to identify specific causes of overpayments which are not considered entirely due to administrative error and to establish a process for RSD or members to initiate review of an overpayment under the LGERS system.*

**Comments may be submitted to:** Laura Rowe, 3200 Atlantic Avenue, Raleigh, NC 27604; email DST.NCAC@nctreasurer.com

**Comment period ends:** January 30, 2024

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq$  \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

### CHAPTER 02 - RETIREMENT SYSTEMS

#### SUBCHAPTER 02C - LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM

##### SECTION .0200 - ADMINISTRATION

#### 20 NCAC 02C .0212 LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM OVERPAYMENT SAFE HARBOR

(a) The following causes of overpayments are not entirely due to administrative error on the part of the Retirement Systems Division:

- (1) The beneficiary received, but did not repay to the Retirement System, a benefit from the Social Security Administration, the U.S. Department of Veterans Affairs, other federal agency payments, Workers' Compensation, or the State's military disability program under G.S. 127A-108, where such benefits are required by law to be offset from Retirement System benefits, or where repayment of such benefits was agreed upon as a condition of approval for benefits from the Retirement System.
- (2) The beneficiary, the beneficiary's employer, or the beneficiary's authorized agent submitted information on an official form to the Retirement Systems Division, either on paper or electronically, that differed from the information ultimately used to determine the eligibility for, or amount of, benefits due.
- (3) The Retirement Systems Division requested information necessary to initiate or continue the payment of benefits, by sending a letter to the mailing address that the beneficiary, the beneficiary's employer, or the beneficiary's authorized agent on file with the Retirement Systems Division, allowing at least three weeks between the date of the letter and the date for a response to be received, and the Retirement Systems Division did not receive a response by the time requested.

- (4) A State or local government agency reported information to the Retirement Systems Division, including employment status, dates of service, or amounts of compensation, which changed the eligibility for, or amount of, benefits due to the beneficiary.
- (5) The beneficiary experienced a forfeiture of creditable service for having been convicted of a felony under the provisions of G.S. 128-38.4 or G.S. 128-38.4A.

(b) The Retirement Systems Division may initiate a review of the facts and circumstances related to the origin of any overpayment from the Retirement System, with the purpose of determining if the overpayment was entirely due to administrative error on the part of the Retirement Systems Division and therefore eligible for the alternate repayment terms of G.S. 128-31(c1). Additionally, the Director of the Retirement Systems Division shall, upon receipt of a written request by a beneficiary, beneficiary's employer, or the beneficiary's authorized agent, initiate such a review. If the Director determines the overpayment is not entirely due to administrative error on the part of the Retirement Systems Division, the Retirement Systems Division shall issue a letter to the requestor setting forth the reason or reasons for the denial. The Director shall make determinations on such requests pursuant to the authority provided under 20 NCAC 02A .0103.

*History Note: Authority G.S. 128-31(c1).*