

## TITLE 20 – DEPARTMENT OF STATE TREASURER

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Teachers' and State Employees' Retirement System Board of Trustees intends to adopt the rules cited as 20 NCAC 02B .0215; and 02O .0104-.0106.*

**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 General Assembly recently enacted Session Law 2023-105, which, in pertinent part, creates a deadline for reimbursement of short-term disability benefits to the employer, authorizes the Retirement Systems Division (RSD) to review and approve short-term and extended short-term disability benefits, and amends the deadline to apply for extended short-term disability benefits. The Teachers' and State Employees' Retirement System (TSERS) Board of Trustees has proposed rules 20 NCAC 02O .0104, .0105, & .0106 to implement the provisions of Parts II, III and IV.*

*In addition, 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." Proposed Rule 20 NCAC 02B .0215 seeks 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 for instances of overpayments made under the TSERS 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 02B - TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM

##### SECTION .0200 - ADMINISTRATION

#### 20 NCAC 02B .0215 TEACHERS' AND STATE 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 or the Disability Income Plan of North Carolina, 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 benefits paid by the Retirement System or the Disability Income Plan of North Carolina, or where repayment of such benefits was agreed upon as a condition of approval for benefits from the Retirement System or the Disability Income Plan of North Carolina.
- (2) The beneficiary, the beneficiary's employer, or the beneficiary's authorized agent submitted any 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 placed 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. 135-18.10, G.S. 135-18.10A, G.S. 135-75.1, or G.S. 135-75.1A.

(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 or the Disability Income Plan of North Carolina, 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. 135-9(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. 135-9(c1).

## **SUBCHAPTER 02O – DISABILITY INCOME PLAN OF NORTH CAROLINA**

### **20 NCAC 02O .0104 SHORT-TERM DISABILITY AND EXTENDED SHORT-TERM DISABILITY APPROVALS**

- (a) Only the Medical Board shall have the authority to deny short-term and extended short-term disability benefits.
- (b) The following positions or entities shall have the authority to approve short-term and extended short-term disability benefits on behalf of the Retirement Systems Division:
- (1) Director of the Retirement Systems Division;
  - (2) Director of Operations;
  - (3) Disability Benefits Processing Manager;
  - (4) Disability Benefits Processing Supervisor;
  - (5) Clinical Reviewer; or
  - (6) Medical Board.
- (c) The Director of the Retirement Systems Division may designate additional positions to have the authority to approve, but not deny, short-term and extended short-term disability benefits.
- (d) Only the Medical Board may approve applications for short-term or extended-short-term disability benefits from individuals who have been actively employed at the Department of State Treasurer within the 365 days preceding the date of disability indicated on the individual's application for benefits.

*History Note:* Authority G.S. 135-105(f); 135-105(g).

### **20 NCAC 02O .0105 SHORT-TERM DISABILITY NOTIFICATION DATE**

- (a) "Date of submission" means the date indicated on the Retirement Systems Division's hand-stamped postal mark if the submission is by mail or in person, the timestamp if the submission is by email, or the transmission date if the submission is by facsimile transmission.
- (b) "Notifications made" pursuant to G.S. 135-105(d) means the submission of a written request for reimbursement by an employer.
- (c) "Submission" means the act of presenting a document to the Retirement System Division for processing, consideration, or determination through one of the following methods:
- (1) Mail to the mailing address in Rule 20 NCAC 02B .0101;
  - (2) Electronic mail (email);
  - (3) Facsimile transmission; or
  - (4) In person at the physical address in Rule 20 NCAC 02B .0101.

*History Note:* Authority G.S. 135-105(d).

### **20 NCAC 02O .0106 EXTENDED SHORT-TERM DISABILITY APPLICATION DATE**

- (a) "Date of submission" means the date indicated on the Retirement Systems Division's hand-stamped postal mark if the submission is by mail or in person, the timestamp if the submission is by email, or the transmission date if the submission is by facsimile transmission.
- (b) "Makes an application" pursuant to G.S. 135-105(g) means submission of the following information, in a method prescribed by the Retirement Systems Division:
- (1) Full name;
  - (2) Mailing address;
  - (3) Email address;
  - (4) Telephone number;

- (5) Date of birth;
- (6) Member identification number assigned by the Retirement Systems Division;
- (7) Last four digits of Social Security Number;
- (8) Current or most recent employer;
- (9) Employer contact name; and
- (10) Signed and dated acknowledgement that the member has been receiving short-term benefits from the Disability Income Plan of North Carolina; is applying for extended short-term benefits; certifies that the illness did not result from active participation in a riot or actual or attempted commission of a terrorist act, felony, or intentional self-inflicted injury; authorizes health care providers to release to the Retirement Systems Division any medical records or other information about the disability; understands that a copy of such authorization will be as valid as the original; understands that the medical information is to be furnished at no cost; and understands that the member cannot withdraw contributions from the Retirement System while receiving benefits under the Disability Income Plan of North Carolina.

(c) "Submission" means the action of presenting a document to the Retirement System Division for processing, consideration, or determination through one of the following methods:

- (1) Mail to the mailing address in Rule 20 NCAC 02B .0101;
- (2) Electronic mail (email);
- (3) Facsimile transmission; or
- (4) In person at the physical address in Rule 20 NCAC 02B .0101.

*History Note:* Authority G.S. 135-105(g).