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941 CMR 2.00: ADMINISTRATIVE REGULATIONS

Section

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2.01: Date of Board Meeting

Unless otherwise approved by the Board, the State Board of Retirement shall meet on the last Thursday of each month.

The November meeting may be held on Wednesday, the day before Thanksgiving, or on such other date as approved by the Board. If Christmas or Christmas eve falls on the last Thursday of December, the December meeting may be held on the preceding Tuesday, or on such other date as approved by the Board.

2.02: Administration

(1) The chief administrative officer of the Retirement Board and department shall hold the title of Executive Director of the Department and Secretary to the Retirement Board.

(2) There shall be a position of Deputy Director who shall assist the Director in his duties. The Deputy Director, in the absence of the Director, shall perform the Director's duties.

2.03: Membership and Creditable Service

(1) Membership.

(a) An employee who is permanently employed, and works at least on a half-time basis or more in a regular workweek shall become a member of the retirement system.

(b) All eligible employees shall be enrolled in the system at the inception of their employment.

(c) Employees who are employed in a temporary, seasonal, provisional or intermittent capacity and work full-time on a weekly basis for six consecutive months shall be eligible for membership in the retirement system.

(2) Creditable Service.

(a) Part-time employees eligible for membership in the State Retirement System shall receive credit for service based on the number of hours worked in proportion to the regular hours of work of full-time employees (*i.e.* not less than 37.5 hours per workweek).

(b) Any part-time employees eligible for membership in the State Retirement System who become full-time shall receive credit for their part-time service based on the number of hours worked in proportion to the regular hours of work of full-time employees (*i.e.* not less than 37.5 hours per workweek).

(c) Any full-time employee eligible for membership in the State Retirement System who becomes part-time shall receive credit for their part-time service based on the number of hours worked in proportion to the regular hours of work of full-time employees (*i.e.* not less than 37.5 hours per workweek).

(d) Educational Collaboratives/Regional Vocational and Technical High Schools.

1. A full-time employee of a Massachusetts educational collaborative or of a regional vocational or regional vocational technical school who is a member of the State Employees' Retirement System may be credited with 12 months of creditable services for purposes of M.G.L. c. 32, if said employee is required to work and does work a full school year of ten months in accordance with the collaborative's or school's schedule, otherwise September to June, for service rendered on or after January 1, 1985.

2.03: continued

2. An employee of an educational collaborative or of a regional vocational or regional vocational technical school, who is a member of the State Employees' Retirement System, and who earns a salary on a 12 month basis, such as a director, program manager, may be credited with 12 months of creditable services for purposes of M.G.L. c. 32 for service rendered on or after January 1, 1985, if said employee is required to work 11 months during a 12 month period.

3. If an eligible collaborative employee's retirement becomes effective at the end of such a ten or 11 month period or prior to the start of the subsequent school year, the employee's creditable service for the final school year shall be based in proportion to the amount of employment provided up to such effective date of retirement.

4. The State Retirement Board shall assess educational collaboratives an administrative charge for the employer normal costs related to collaborative employees who are members of the State Employees' Retirement System.

(e) Sabbaticals.

1. Persons who completed a full school year sabbatical leave prior to July 29, 1991, and received 50% of their regular compensation during said sabbatical, will receive one full year of creditable service for retirement purposes.

2. Persons who received approval for a sabbatical leave prior to July 29, 1991 and received 50% of their regular compensation during said sabbatical, regardless of whether the sabbatical leave was completed prior to July 29, 1991, will receive one full year of creditable service for retirement purposes.

3. Persons who applied for, and began a sabbatical leave on or after July 29, 1991 will receive creditable service for retirement purposes at a rate equal to the *pro rata* percentage of regular compensation received during the sabbatical period.

(f) M.G.L. c. 32, § 26(3)(a).

1. Unless otherwise determined by the Board, for purposes of eligibility under M.G.L. c. 32, § 26(3)(a) the 20 years of creditable service described therein shall consist exclusively of said service performed in the department of state police.

2. For purposes of computing benefits within M.G.L. c. 32, § 26(3), creditable service over 20 years may include other creditable service allowed under the provisions of M.G.L. c. 32.

(3) Employer. For purposes of the Massachusetts State Employees' Retirement System an "employer" is an entity as defined in M.G.L. c. 32, provided, however, that an "employer" is limited to entities which are the State, a political subdivision of the State, or an agency or instrumentality of the State. No employer which is not permitted to participate in a qualified governmental pension plan as defined in Code Sections 401(a) and 414(d) shall be permitted to participate in the Massachusetts State Employees' Retirement System.

2.04: Service Purchases

Prior Non-membership Service. A buy-back of prior non-membership service of less than six consecutive months which was part-time, provisional, temporary, temporary provisional, seasonal or intermittent that occurred after January 28, 1993 and was not immediately followed by membership service, will not be allowed.

2.05: Proof of Age in *Lieu* of a Birth Certificate

(1) The following documents are examples of those that may be valid for proof of age.

(a) Naturalization papers
(b) Passport
(c) Certified religious records
(d) Certified education records

(2) If none of 941 CMR 2.05(1)(a) through (d) are available, affidavits from three relatives or friends attesting to the age of the member will be valid proof of age.

(3) The state Retirement Board in conjunction with its staff shall make any final determination establishing birth dates or proof of age for purposes of administering retirement benefits under M.G.L. c. 32.

2.06: Proceedings Conducted in Accordance with 801 CMR 1.01

Proceedings before the State Board of Retirement including those arising under M.G.L. c. 32, §§ 16(1) and proceedings arising under M.G.L. c. 32, § 15 shall be conducted in accordance with the formal administrative rules of adjudicatory procedure set forth in 801 CMR 1.01.

2.07: Proceedings for Massachusetts Public Safety Employees Line of Duty Death

Benefits Pursuant to M.G.L. c. 32, § 100A. Proceedings for Massachusetts Public Safety Employees Line of Duty Death Benefits may be initiated by filing an application with the Retirement Board. The application shall consist of forms prescribed by the Board, and shall be considered filed as of the date upon which the applicant completes and submits all the required forms to the Board.

(1) Required Forms. The eligible survivor(s) in the family of a firefighter, police officer or corrections officer who is killed or sustains injuries in the line of duty which are the direct and proximate cause of his death under circumstances described in M.G.L c. 32, § 100A may file an application for a one-time award in the amount of $100,000 by completing and filing with the Board a form entitled Line of Duty Death Benefit Chapter 32 §100A Beneficiary Claim Statement.

(2) Other Required Documentation. Each such applicant must also file the following documentation with the Board:

(a) Copies of any official reports and records describing circumstances and cause of death.
(b) Copy of the Death Certificate.
(c) Copies of a medical records relating to the injury and death.
(d) Copy of the decedent's autopsy report, if an autopsy was performed.
(e) If the deceased was previously retired for under the provisions of M.G.L. c. 32, or if any survivor has received or applied for death benefits under said chapter, the applicant must provide the complete records of the applicable proceedings before the retirement board of the retirement system in which the deceased was a member.
(f) If the applicant is the spouse of the decedent, a copy of the applicant's birth certificate and a copy of the applicant's marriage certificate.
(g) If the applicant(s) are the child(ren) of the decedent, copies of the birth certificates, and guardianship papers for minor children.
(h) If the applicant(s) is/are the parent(s) of the deceased, a copy of the decedent's birth certificate; copies of the parents' birth certificates; and such documentation as the Board may require as proof to show that said parent(s) was/were at least 50% financially dependent upon the deceased in the year prior to the death.

(3) Investigation, Hearing and Notice.

(a) Investigation. In order to reach a decision, the Board may conduct such investigation and require such other documentation as may be necessary to determine the facts. The Board may engage a medical expert of its choice to render an opinion to the Board as to medical aspects of any application, and shall provide a copy of such opinion to the applicant.
(b) Hearing. The Retirement Board may hold a hearing on the application. If a hearing is held, the Board shall give all parties 30 days notice of the time and place for the hearing.

(4) Decision. The decision of the Retirement Board shall be based on the record of the hearing or, if there is no hearing, on the record of the proceedings. A written decision shall be made and copies of the decision shall be sent to all parties.

(5) Payment of Award: Payments Subject to Appropriation by Legislature. The award of the death benefit shall be in the form of a lump sum payment of $100,000 payable to the prevailing applicant. Such payment of award is subject, however, to appropriation by the Legislature.

2.08: Withdrawal of Superannuation Retirement Application

A member who has filed a voluntary application for superannuation retirement with the Board may withdraw the application without prejudice by submitting a written request specifying such withdrawal that must be received by the Board prior to the date on which such retirement is scheduled to become effective.

2.09: Contract Service as Creditable Service

The purpose of 941 CMR 2.09 is to clarify the provisions of M.G.L. c. 32, § 4(1)(s). Specifically, 941 CMR 2.09 shall define the eligibility requirements for the purchase of contract service as creditable service, the standards for calculating contract service as creditable service and the actual purchase of contract service as creditable service.

(1) State Board of Retirement's Authority. The State Board of Retirement may review any request related to a service purchase pursuant to M.G.L. c.32, § 4(1)(s) and 941 CMR 2.09.

(2) Definitions. The following definitions apply to 941 CMR 2.09:

Member means any employee included in the Massachusetts State Employees' Retirement System (MSERS).

Member-in-service means any member of the MSERS who at the time of a contract service purchase request is regularly employed in the performance of his or her duties as detailed in M.G.L. c. 32, § 3(1)(i).

Membership Service means service as an employee of the Commonwealth rendered since becoming a member of the MSERS.

(3) Eligibility Requirements. Members of the Massachusetts State Employees' Retirement System (MSERS) who retired prior to October 17, 2006 are not eligible to purchase contract service pursuant to M.G.L. c. 32, § 4(1)(s). Otherwise eligible members of the MSERS purchasing creditable service for service provided to the Commonwealth as a "contract employee", must meet all of the following requirements:

(a) Membership Service Requirement. The individual seeking to purchase contract service must currently be a member in service of the MSERS with at least ten years of creditable service arising exclusively from employment with the Commonwealth as a member of the MSERS. This ten year service requirement shall not include:

1. any other creditable service, including service purchased as a member of the MSERS, or transferred from any other retirement system arising out of employment with other public entities, such as, but not limited to, cities, towns or counties of the Commonwealth; or
2. any other purchased service not arising from employment with the Commonwealth as a member of the MSERS, such as, but not limited to purchased military service.

(b) Contract Service Must Have Been Provided to the Commonwealth. The contract service being purchased must have been service to the Commonwealth, not service to a city, town, county or other governmental entity.

(c) Service Through a Vendor or Contractor. The contract service being purchased must have been service as a "contract employee" of the Commonwealth. Except only as otherwise set forth in 941 CMR 2.09(3)(c) members who were employees of a vendor or contractor, which was selected and contracted to provide services to the Commonwealth, are specifically excluded from purchasing contract service as creditable service. The Board may consider as eligible contract service such service provided through a vendor established and operated by, or that functions as an instrumentality of, the Commonwealth or a Commonwealth agency. The Board may consider as eligible contract service:

1. such service, as verified by the Board, provided through a vendor established and operated by, or that functions as an instrumentality of, the Commonwe alth or a Commonwealth agency; or
2. such service, as verified by the Board, provided through a vendor by an individual:
   a. who was under the supervision and control of a Commonwealth agency or its employees; and
   b. which service was performed in the standard and ongoing course of an agency's regular business function, but not including, any such service provided as part of any specific or defined projects of that agency for which a vendor was selected.

No credit shall be allowed for any such service provided through a vendor for which the member shall be or is entitled to receive a retirement benefit, allowance, annuity, or pension from any other source.

2.09: continued

(d) Contract Service Position Must Be Substantially Similar. As determined by the Board, the job description of the contract service position must have been substantially similar to the job description the member held upon becoming an employee of the Commonwealth and a member of the MSERS.

(e) Timing. The contract employee service being purchased must have immediately preceded membership or re-entry into the MSERS. For purposes of 941 CMR 2.09 "immediately preceded" shall mean within 180 calendar days. Additionally:

1. An employee may purchase two consecutive periods of contract service that satisfy all other requirements of the statute and these regulations, provided that the period between the two periods of contract service does not exceed 180 calendar days.
2. A member who refunds his or her retirement contributions terminates membership in the MSERS. If the individual later returns to service for the Commonwealth, he or she is considered a new member for the purposes of M.G.L. c. 32. Thus, a member of the MSERS may not purchase contract service if such contract service preceded a period of membership service for which the member took a refund.

(f) Buy Back Form and Documentation. Prior to purchasing any eligible contract service, a member must have the State Board of Retirement's Contract Service Buy Back Form completed by the State agency where the contract service was provided and submit the required documentation to the State Retirement Board for review and approval. No creditable service shall be allowed unless the member provides documentation of the contract service satisfactory to the State Retirement Board.

(4) Calculating Contract Service as Creditable Service for Purposes of Retirement.

(a) Amount of Contract Service Credited Based on a 12-month Calendar Year. Eligible contract service purchased as creditable service shall, in all circumstances, be calculated based on a 12-month calendar year. For purposes of calculating this contract service as creditable service there shall be no distinction between types of employment (*i.e.*, seasonal, academic year, *etc.*). A member purchasing contract service as creditable service shall not be entitled to the benefits of membership service for that period of contract service.

(b) Part-time Contract Service. Eligible part-time contract service shall be credited proportionally based on a 12-month calendar year.

(c) Concurrent Service. Otherwise eligible contract service provided concurrently with creditable employment service to the Commonwealth may be purchased. In such instances, a member shall not be credited with anymore creditable service than would otherwise be allowed under M.G.L. c. 32.

(d) Any creditable service purchased pursuant to M.G.L. c. 32, § 4(1)(s) and 941 CMR 2.09 shall be classified in Group 1 for purposes of M.G.L. c. 32.

(5) Purchasing Contract Service as Creditable Service, if the Member is Found Eligible.

(a) Maximum Service Allowed to be Purchased. The maximum amount of contract service eligible to be purchased is four years.

(b) Time to Purchase Service. Once a member is notified by the Board that he/she is eligible to purchase contract service, he or she must within 180 days after the notice either:

1. purchase the service via a lump sum payment; or
2. enter into an installment payment agreement.

If the 180-day period expires without action by a member, the contract service shall no longer be eligible for purchase.

If a member enters into an installment payment agreement and such payments terminate before completion of the service purchase, the Board reserves the right to further review the request, including any request to resume installment payments, on a case by case basis.

(c) Cost to Purchase Service. The cost to purchase contract service is the amount equal to that which would have been withheld as regular retirement deductions for the contract service as if the service had been rendered as a state employee, and the individual had been a member of the MSERS, plus buyback interest on that amount.

(d) Salary Information Used to Determine Cost to Purchase Service. Board staff may utilize salary information when an individual became a member of the MSERS for purposes of determining a contract service buy back if no satisfactory salary information becomes available.

2.09: continued

Salary earned during any period of qualifying contract service that is purchased pursuant to M.G.L. c. 32, § 4(1)(s) may not be utilized, or considered "regular compensation" in calculating a member's retirement allowance.

2.10: Procedures Related to M.G.L. c. 32, § 15, Dereliction of Duty by Members

(1) Introduction.

(a) Purpose. The purpose of 941 CMR 2.10 is to clarify the procedures used to implement the provisions of M.G.L. c. 32, § 15. Specifically, 941 CMR 2.10 defines the standards and procedures under which the State Board of Retirement will act on issues that arise under the provisions of M.G.L. c. 32, § 15, as they apply to the retirement rights and benefits of members of the Massachusetts State Employees' Retirement System (MSERS), including members of the former Massachusetts Turnpike Employees' Retirement System, members of the retirement system established for the judiciary under M.G.L. c. 32, §§ 65A through 65J, and any other public employees whose retirement benefits fall under the administration of the MSERS.

(b) Authority of the State Board of Retirement. The State Board of Retirement (SBR) is established by M.G.L. c. 10, § 18 to administer the state employees' contributory retirement system established by M.G.L. c. 32, § 1. Individually and collectively, these statutes impose a fiduciary duty on the State Board of Retirement, and on each member of the Board, to serve the public interest by ensuring that the contributory retirement system is prudently managed to protect and preserve its integrity and its viability for the long term, and that it is fairly and equitably administered to provide benefits to the members and the beneficiaries of the MSERS consistent with the provisions of M.G.L. c. 32. M.G.L. c. 32, § 15 grants public contributory retirement systems the authority and imposes on them the responsibility to determine whether the rights and benefits of a member or beneficiary within that system may be affected by actions of the member, and, pursuant to M.G.L. c. 32, § 15(2), to initiate proceedings under 941 CMR 2.10(1)(b). The SBR may consider the application of the law and these regulations to the retirement rights and benefits of any member of the MSERS or beneficiary of such a member, and take appropriate action on those rights and benefits, including determining that the member's actions require forfeiture of all retirement benefits. Nothing in 941 CMR 2.10 shall be construed to limit or negate the authority otherwise provided by law to the SBR to administer the MSERS.

(2) Definitions. In general, the terms used in 941 CMR 2.10 shall have the meanings set forth in M.G.L. c. 32, §§ 1 through 3. For the purposes of 941 CMR 2.10:

Accumulated Total Deductions shall have the meaning set forth in M.G.L. c. 32, § 1, provided that one of the systems to which the deductions have been credited is MSERS.

Board shall mean the members of the Board of the State Board of Retirement established under M.G.L. c. 10, § 18, and, if the context so requires, the staff of the State Board of Retirement.

Final Conviction shall mean the entry of a judgment of a judge or jury that a person is guilty of a crime as charged and the imposition of sentence for that crime.

Member shall have the meaning set forth in M.G.L. c. 32, § 1, provided that the employee or retiree is a member of the MSERS, as defined in M.G.L. c. 32, § 20(1), and including both members in service and members inactive, as defined in 941 CMR 2.10. Unless the context requires otherwise, it shall also mean an employee or retiree who is or has been a member of MSERS and another contributory retirement system established under M.G.L. c. 32, including the retirement system established under M.G.L. c. 32, §§ 65A through 65J.

Member in Service and Member Inactive shall have the same meanings as set forth in M.G.L. c. 32, § 3, but only as applied to members of the MSERS, as defined in M.G.L. c. 32, § 20(1) and 941 CMR 2.10(2)(d).

Membership Service shall mean service as an employee of the Commonwealth rendered since becoming a member of the MSERS or another contributory retirement system organized pursuant to M.G.L. c. 32, including the retirement system established under M.G.L. c. 32, §§ 65A through 65J.

2.10: continued

Retirement Benefits shall mean the "retirement allowance" as defined in M.G.L. c. 32, § 1, together with such other retirement benefits made available by the Commonwealth to members of the MSERS, and to their survivors and beneficiaries.

(3) Application. Administrative action under 941 CMR 2.10 may apply to active, inactive, retired, and deceased members of the MSERS, including members of the former Massachusetts Turnpike Employees' Retirement System, members of the judiciary, and any other public employees whose retirement benefits fall under the administration of the MSERS; and to their representatives, survivors and beneficiaries. It may also apply to former members of MSERS who are members of another contributory retirement system organized under M.G.L. c. 32, and to their representatives, survivors and beneficiaries.

(4) Initiation of Administrative Review.

(a) The Board or its staff may initiate an administrative review at any time, and shall initiate one upon notice that charges which would trigger the provisions of M.G.L. c. 32, § 15 have been brought against a member; upon notice that a member has been suspended from employment pursuant to M.G.L. c. 30, § 59; upon notice of a conviction or other disposition of a criminal matter against a member; or if given reason to believe reported compensation is inaccurate.

(b) The Board or its staff shall make a good faith effort to determine the validity of any report of charges, violations or convictions related to the member, and to ascertain the applicability of the requirements of M.G.L. c. 32, § 15. The Board or its staff shall make reasonable efforts to obtain all additional relevant information, which may include: certified copies of court records, pleadings and documents related to the member; correspondence or documents from the applicable prosecuting agency; employment records; and any other relevant records and documents.

(5) Administrative Action by the State Board of Retirement.

(a) If the Board or its staff determines that it has credible information that a member has been or is being charged with a violation that would trigger the provisions of M.G.L. c. 32, § 15; or upon notice that a member has been suspended from employment pursuant to M.G.L. c. 30, § 59; or that a member has been convicted of such a violation, it will notify the member of this determination. It will advise them that if they file a request to withdraw their accumulated total deductions on account with the MSERS or transfer their accumulated total deductions to another contributory retirement system or elsewhere, the Board may determine that any action on such a request may be stayed pending disposition of the criminal charges filed. It will advise the member that the Board will take appropriate actions to enforce those provisions and protect the assets and resources of the MSERS, including initiating temporary administrative action prior to the final disposition of any precipitating criminal matter or prior to a final conviction.

(b) Upon a determination that it will initiate any action pursuant to 941 CMR 2.10(5)(c) through (f), the Board or its staff will notify the member of its determination, and of the Board meeting at which the recommendation to proceed to take such action will be presented to the Board. Upon a decision of the Board that it should proceed to take any action pursuant to 941 CMR 2.10(5)(c) through (f), it will issue a Notice of Action, as set forth in 941 CMR 2.10(6).

(c) If a member has submitted an application for retirement benefits, or a request to withdraw their accumulated total deductions on account with the MSERS, or transfer their accumulated total deductions to another contributory retirement system or elsewhere, the Board may stay action on the application or request pending disposition of charges filed, or pending verification of compensation the member has received.

(d) If a member, survivor, or beneficiary is already receiving a retirement benefit, and the Board determines that the benefits paid have exceeded or are, within six months, likely to exceed the amount of their total accumulated deductions, or that the charges are such that, pursuant to M.G.L. c. 32, §§ 15(1), 15(3), or 15(3A), the member will not be entitled to the return of the balance of his accumulated total deductions, the SBR may initiate action to determine whether it should withhold further issuance of the applicable retirement allowance pending the disposition of those charges.

2.10: continued

(e) Upon the final conviction of a member of an offense that would trigger the provisions of M.G.L. c. 32, § 15, the Board may determine that the member's retirement benefits are forfeited, and may initiate action to implement the provisions of M.G.L. c. 32, § 15. If the member has already withdrawn any accumulated retirement deductions from his or her retirement account or is receiving a retirement benefit, the SBR may initiate appropriate action to terminate benefits that the member is receiving, recover the paid contributions, accrued interest, or both from the member, his or her survivors or beneficiaries, and, pursuant to M.G.L c. 32, § 15(6), to recover all benefits received after the date of the offense of which the member was convicted.

(f) If a member, survivor, or beneficiary is already receiving a retirement benefit, and the Board determines that the retirement allowance was calculated based on a salary that was intentionally concealed from or intentionally misreported to the commonwealth, or any political subdivision, district or authority of the commonwealth, it shall, consistent with M.G.L. c. 32, § 15(7), initiate action to reduce the retirement allowance to the level that reflects the regular compensation actually reported to that entity or the amount reported to the SBR, whichever is lower, and may, further, withhold that benefit until any overpayment has been recovered.

(6) Notice.

(a) Upon a determination that the SBR will take or initiate any action pursuant to 941 CMR 2.10(5)(a) through (f), and in accordance with 801 CMR 1.01: *Formal Rules*(6)(a), the SBR will issue a Notice of Action to notify the member, survivor, or beneficiary of the action it is taking or intends to take, the effective date of the action, the reason for the action, the material facts on which the SBR relies, the statutes and regulations which authorize it to act, and how to contact a staff person at the SBR who can provide additional information about the matter. If applicable, it will notify the member that, pending final disposition of any criminal matter, it will not process any application for retirement benefits or request to withdraw accumulated deductions. The Notice of Action will be issued by U.S. Mail, certified and postage prepaid to the last address the member or beneficiary has provided the SBR. A certificate of service shall be filed with the SBR.

(b) Upon a vote of the Board that the SBR should take any action pursuant to 941 CMR 2.10(5)(c) through (f), the SBR will issue a Notice of Hearing, which shall include the date, time, and place of the hearing; identify the rules under which the hearing will be held; and notify the member, survivor or beneficiary of the right to have an authorized representative present. The Notice of Hearing will be issued by U.S. Mail, certified and postage prepaid, and a certificate of service shall be filed with the SBR.

(c) All papers filed thereafter may be served by regular U.S. Mail, postage prepaid, with copies to all parties and to the SBR; or, if allowed by the Hearing Officer, by electronic service to all parties and to the SBR.

(d) A copy of the Notice of Action and of the Notice of Hearing may be provided to the member's employing agency.

(7) Conduct of Hearings. Except as otherwise provided in 941 CMR 2.10, administrative hearings under 941 CMR 2.10 shall be conducted pursuant 801 CMR 1.01: *Formal Rules*.

The Board shall designate a Hearing Officer to conduct hearings arising under 941 CMR 2.10. The Hearing Officer has the authority to enter procedural orders consistent with 801 CMR 1.01: *Formal Rules* and with 941 CMR 2.10, and to limit the issues for consideration.

(8) Representation. An individual may appear on his or her own behalf, or may be represented or advised by their own attorney or another duly authorized representative. Attorneys or individuals acting on behalf of the member must file a written notice of appearance that includes their name, address, telephone number, e-mail address, and, if available, facsimile transmission number. The filing of any pleading, motion, or other paper by an attorney is deemed to constitute the filing of an appearance unless the paper states otherwise.

(9) Submission Without a Hearing. Any party may elect to waive a hearing and to submit his case upon written submissions, and shall so notify the Hearing Officer and the other party prior to the scheduled time for the hearing. Submission of a case without a hearing does not relieve the parties from the necessity of supplying evidence sufficient to prove the facts supporting their allegations or defenses. Consistent with 801 CMR 1.01: *Formal Rules*, affidavits and stipulations may be employed to supplement other documentary evidence in the record.

2.10: continued

(10) Decision.

(a) After reviewing the evidence, the arguments of the parties, and any post-hearing memoranda and briefs submitted by the parties, the Hearing Officer shall, within a reasonable time after the close of the record, render a recommended decision, which shall include a statement of reasons which determines each issue of fact or law necessary to the decision.

(b) The Parties shall be provided with a copy of the Hearing Officer's recommended decision, and shall have ten days in which to file written objections or responses to it. Parties may file replies to any such objections or responses within ten days of the receipt of a copy of the objections.

(c) The recommended decision of the Hearing Officer shall be reviewed by the Board at the next regularly scheduled meeting after the expiration of the time for filing objections and responses, or at a special Board meeting so convened by the Board.

(d) The member and his or her attorney or representative shall be given notice of the Board meeting at which the recommended decision will be considered. Upon request, a party may present a legal argument, either orally or in writing as the Board may, at its discretion, order, and under such limitations regarding time and scope as may be imposed by the Board.

(e) Consistent with M.G.L. c. 30A, §§ 18 through 25, and unless otherwise requested by the member and approved by the Board, consideration of the Hearing Officer's recommended decision shall be conducted in Executive Session. The Board may affirm and adopt the recommended decision in whole or in part, recommit the recommended decision to the Hearing Officer for further findings as it may direct, or take any other action consistent with law as it may deem necessary for the full and fair consideration of the matter. The same procedural provisions applicable to the initial recommended decision shall apply to any re-filed recommended decision after recommittal. The findings and decision of the Board will be deemed its certificate of decision pursuant to M.G.L. c. 32, § 16.

(f) The member or his or her attorney or representative shall be provided with notice of the Board's decision, and the time and manner of filing an appeal from it.

(11) Right of Appeal. Any party aggrieved by a final decision of the Board may appeal pursuant to the provisions of M.G.L. c. 32, § 16(3).

(12) Severability. The provisions of 941 CMR 2.10 are severable. If any provision or the application of any provision is held to be invalid or unconstitutional, such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 941 CMR 2.10 or the application of such provisions to administrative proceedings related to M.G.L. c. 32, § 15.

REGULATORY AUTHORITY

941 CMR 2.00: M.G.L. c. 32, §§ 3, 4, 5, 12 and 20.

NON-TEXT PAGE

941 CMR 3.00: ROLLOVER DISTRIBUTIONS AND PAYMENT FOR PURCHASE OF CREDITABLE SERVICE

Section

3.01: Purpose
3.02: Definitions
3.03: Rollovers from the Plan
3.04: Payment for Purchase of Creditable Service

3.01: Purpose

The purpose of 941 CMR 3.00 is to enable the State Retirement System and its members to comply with and take advantage of certain changes in the federal Internal Revenue Code of 1986, as amended, as set forth in the Economic Growth and Tax Relief Reconciliation Act of 2001.

3.02: Definitions

The following definitions apply to 941 CMR 3.00:

The Board: the State Board of Retirement.

The Code: the federal Internal Revenue Code of 1986, as amended.

3.03: Rollovers from the Plan

The following definitions apply to 941 CMR 3.03:

Direct Rollover: a payment by the Board to the Eligible Retirement Plan specified by the Distributee in a manner satisfying Code Section 401(a)(31).

Distributee: any employee or former employee, as well as the employee's or former employee's surviving spouse (as defined by federal law), or to a spouse or former spouse who is an alternate payee (as defined by Code Section 414(p)), who is entitled to an Eligible Rollover Distribution from the Board. Effective January 1, 2007, a Distributee also includes a non-spousal beneficiary who is a designated beneficiary under Code Section 401(a)(9)(E) and is entitled to an Eligible Rollover Distribution from the Board, but only with respect to an Eligible Retirement Plan that is an individual retirement account under Code Section 408(a) or an individual retirement annuity under Code Section 408(b) (other than an endowment contract), or a Roth IRA, established for the purpose of receiving the distribution and the account or annuity will be treated as an inherited account or annuity.

Eligible Retirement Plan: any of the following programs that accepts the Distributee's Eligible Rollover Distribution:

(a) an individual retirement account under Code Section 408(a);
(b) an individual retirement annuity under Code Section 408(b), other than an endowment contract;
(c) a qualified plan under Code Sections 401(a) or 403(a);
(d) an eligible deferred compensation plan under Code Section 457(b) which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state, so long as the plan agrees to separately account for amounts rolled into the plan;
(e) an annuity contract under Code Section 403(b); and
(f) for distributions on or after January 1, 2008, a Roth IRA.

Eligible Rollover Distribution: Any distribution under M.G.L. c. 32 of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

3.03: continued

(a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more;
(b) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; or
(c) the portion of any distribution that is not includible in gross income. However, effective for distributions on or after January 1, 2002, a portion of a distribution will not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only

1. to a traditional individual retirement account or individual retirement annuity, or to a qualified trust which is a defined contribution plan that will separately account for the taxable and non-taxable portions of the distribution; or
2. effective on or after January 1, 2007, to a qualified trust which is a defined benefit plan or a 403(b) tax-sheltered annuity that will separately account for the taxable and non-taxable portions of the distribution; or
3. effective on or after January 1, 2008, to a Roth IRA.

(2) A Distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

3.04: Payment for Purchase of Creditable Service

On and after January 1, 2002, a member authorized by law to purchase creditable service may make payment for the purchase of such service to the Board in or in a combination of:
(a) a lump sum purchase;
(b) installment payments over a period not exceeding five years; and
(c) a trustee-to-trustee transfer of assets from a Code Section 403(b) annuity or a Code Section 457 plan. Any combination of forms of payment or trustee-to-trustee transfer of assets shall be subject to the limitations of applicable law, and such conditions, proofs, or acceptances as the Board or its designee may from time to time deem appropriate.

REGULATORY AUTHORITY

941 CMR 3.00: M.G.L. c. 32, § 20(5)(b) and c. 30A, § 3.

941 CMR 4.00: QUALIFIED EXCESS BENEFIT ARRANGEMENT

Section

4.01: Establishment of Section 415 Excess Benefit Plan and Trust Fund
4.02: Grantor Trust

4.01: Establishment of Section 415 Excess Benefit Plan and Trust Fund

(1) M.G.L. c. 32, § 104(b) requires the establishment of a qualified governmental plan excess benefit arrangement, as set forth in 26 U.S.C. § 415(m), for the payment of benefits in excess of the limits of § 415(b) of the Internal Revenue Code. The Massachusetts State Board of Retirement ("Board") establishes such an arrangement in the form set forth in a document entitled, *The Massachusetts State Employees' Retirement System Section 415 Excess Benefit Plan and Trust Fund* dated January 1, 2007 ("the Excess Benefit Plan").

(2) The purpose of the Excess Benefit Plan is solely to provide the part of a member's retirement allowance that would otherwise have been payable by the Massachusetts State Employees' Retirement System ("SERS") except for the limitations of Internal Revenue Code § 415(b). It is intended to be a "qualified governmental excess benefit arrangement" within the meaning of Internal Revenue Code Section 415(m)(3).

(3) Pursuant to M.G.L. c. 32, § 104(b), which provides that a qualified governmental plan excess benefit arrangement must be established according to the requirements of 26 U.S.C. § 415(m), the Board will not provide for the transfer of any funds to pay the excess benefits under the Excess Benefit Plan but, rather, the excess benefits will be funded by appropriations in such amount as determined by the Board to be necessary to fund the excess benefits, to be withheld before such appropriations are credited to the SERS.

4.02: Grantor Trust

To implement the terms of § 104(b) and the Excess Benefit Plan, the Board is authorized to create a grantor trust, with themselves as trustees, to receive and hold contributions from employers and to pay benefits in accordance with the Excess Benefit Plan. The grantor trust shall be established pursuant to the terms of Article VI of the Excess Benefit Plan.

REGULATORY AUTHORITY

941 CMR 4.00: M.G.L. c. 10, § 18 and c. 32, §§ 20(5)(b) and 104(b).

NON-TEXT PAGE