ARTICLE 1.2. PUBLIC EMPLOYEES' RETIREMENT FUND

Rule 1. General Provisions

35 IAC 1.2-1-1 Administration
Authority: IC 5-10.3-3-8
Affected: IC 5-10.1; IC 5-10.2; IC 5-10.3-2-1

Sec. 1. The public employees' retirement fund of Indiana, created under IC 5-10.3-2-1 (hereinafter referred to as the fund or PERF) shall be administered by its board of trustees (hereinafter referred to as the board), which includes the implementation of IC 5-10.1, IC 5-10.2, and IC 5-10.3. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-1-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1078; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-1-2 Delegation of authority; powers and duties of executive director
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3-2-1

Sec. 2. (a) The executive director is the executive officer of the fund's affairs and operations, makes eligibility and other determinations on applications made to the board, makes periodic reports to the board, and performs all other duties assigned by the board. The executive director shall cause all applicants and other necessary persons to be notified promptly of any determinations made concerning such applications.

(b) The executive director shall have the authority to enter into agreements and sign contracts on behalf of the fund pursuant to and in accordance with procurement policies established by the board. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-1-2; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1078; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Jun 11, 2010: 20100728-IR-035100467ONA)*

35 IAC 1.2-1-3 General powers
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 3. The board may employ investment managers, custodians, and investment consultants to carry out the powers and duties of the fund. The executive director may employ all necessary employees, auditors, technical experts, legal counsel, and other service providers to carry out the powers and duties of the fund. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-1-3; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1078; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1265; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

Rule 2. Definitions

35 IAC 1.2-2-1 Definitions
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3-2-1; IC 5-10.3-7

Sec. 1. As used in this title, unless the context otherwise clearly requires:

"After the member's retirement", for purposes of IC 5-10.2-4-8(b), means when a member separates from employment.

"Annuity savings account (ASA)" consists of the member's contributions whether paid by the member or picked up by the employer, additional annuity contributions, and interest credits on these contributions.

"Board" means the board of trustees of the public employees' retirement fund of Indiana.

"Ceases service", for purposes of IC 5-10.2-4-3(e) only, means when a member stops earning creditable service.

"De minimus *[sic]* account" or "de minimus *[sic]* amount" means an inactive, retired, retired for disability, suspended, or deceased member's ASA account whereby no regular and continuing contributions are being received and the account has a balance of which the value is less than the actual cost of making a distribution of the balance to the member or the member's beneficiary.

"Full-time employee" means an employee occupying a position covered by the fund as set out in IC 5-10.3-7.

"Employer" means the state for employees of the state and a participating political subdivision for its employees.

"Employer contributions" means contributions made by the state and political subdivisions to the retirement allowance account.

"ERM" means the employer reporting and maintenance system, a web-enabled software application that manages employer and member data and collects members' wages and contributions.

"Fund" means the public employees' retirement fund of Indiana.

"Gender and number" for the purpose of this title, the masculine gender shall include the feminine, and the singular the plural as the context may require.

"Governing body" means the county council, city council, trustees of a town, the township board, board of school commissioners, library board, or any board which by law is authorized to fix a rate of taxation on property of a political subdivision, or any other board which is empowered to administer the affairs of any department of a political subdivision, which department receives revenue independently of, or in addition to, funds obtained from taxation.

"Member" means persons qualifying for membership under IC 5-10.3-7-1.

"Member's contribution" means contribution which each member shall, as a condition of employment, contribute to the fund, which is three percent (3%) of the member's compensation (basic salary as defined in 35 IAC 1.2-5-5), and which includes contributions paid by the employer for the member pursuant to IC 5-10.2-3-2 and IC 5-10.3-7-9, and additional annuity contributions.

"PERF" is the public employees' retirement fund.

"Political subdivision", as used in this article, means a county, city, town, township, political body corporate, public school corporation, public library, public utility of a county, city, town, township, and any department of, or associated with, a county, city, town or township, which department receives revenue independently of, or in addition to, funds obtained from taxation.

"Retirement allowance account" consists of employer contributions for pensions and separate accounts shall be maintained for contributions by the state and by each political subdivision.

"Vested status" means the status of having ten (10) years of creditable service. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-2-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1078; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Feb 19, 2010: 20100310-IR-035100124ONA; adopted Jun 11, 2010: 20100728-IR-035100467ONA)*

Rule 3. Creditable Service

35 IAC 1.2-3-1 Creditable service

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2-3; IC 5-10.3

Sec. 1. All creditable service is determined by IC 5-10.2-3 and these rules *[this article]*. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-3-2 Reemployment after termination of employment; suspension of membership; withdrawal of contributions

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2-3-5; IC 5-10.2-3-6; IC 5-10.3

Sec. 2. (a) To cancel previous suspension, after termination of employment and withdrawal of contributions or by operation of IC 5-10.2-3-5, and qualify prior service as creditable service, the individual must be reemployed in a PERF or TRF-covered position for a period of not less than six (6) consecutive months; however, if the employee shows to the satisfaction of the fund that there was bona fide intent to return to employment and comply with this rule and the employee was capable of performing such employment, but was prevented from working the full six (6) month period due to illness, injury, or death which occurred subsequent to the date of the reemployment, then such six (6) month requirement shall be waived.

(b) Whenever a member is suspended pursuant to IC 5-10.2-3-5(c), the fund shall conduct an investigation to locate the member.

(c) Reasonable costs of locating the member may be charged against the member's ASA.

(d) Pursuant to IC 5-10.2-3-6(d), whenever a valid address can be determined for the member, the fund shall automatically make a lump sum distribution to the member from the member's ASA not to exceed one thousand dollars ($1,000).

(e) Prior to the distribution, the Fund shall serve the member with any required notices, as well as notice to the member explaining the reason for the distribution.

(f) Pursuant to IC 5-10.2-3-6(b), if the member is not located or does not claim his monies, or both, within five (5) years after suspension, the monies shall be credited to the fund and the fund shall retain the monies until the member or the member's beneficiary claims them with no further interest credits or earnings after the monies are credited to the fund. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-2; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Nov 21, 2008: 20090107-IR-035080955ONA; adopted Feb 19, 2010: 20100310-IR-035100124ONA)*

35 IAC 1.2-3-3 School employees

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 3. A member who is employed in a PERF covered position by a school corporation, state school, university, school city or town, or school corporation shall receive one (1) year of service credit if employed during the full regular school term or contract period for that member's position. Nothing less than full compliance with this rule will give such year of creditable service. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-3; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-3-4 Full service credit

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 4. (a) General rule – Except as otherwise specifically required by law, for all service credit calculations performed on or after January 1, 2007, service credit shall be granted in quarterly increments, with a member entitled to one (1) quarter of creditable service for each calendar quarter in which the member is employed at least one (1) full day in a full-time, PERF-covered position, and for which employer contributions have been made. Notwithstanding any provision to the contrary, service credit shall not be granted for any period of employment if such grant of service credit would result in a member receiving more than one (1) month of service credit for the same calendar month.

(b) First and last quarter of PERF-covered employment – Notwithstanding the general rule under subsection (a) immediately above, for those quarters in which a member commenced or completed employment in a PERF-covered position, service shall be granted in monthly increments, with a member entitled to one (1) month of creditable service for each month in which he was employed at least one (1) full day in a full-time, PERF-covered position, and for which employer contributions have been made.

(c) Employer contributions required to fund a member's covered service must be received by PERF prior to full service credit being granted for that member.

(d) This rule applies only to members earning service credit through their employment in PERF-covered positions, and does not apply to members of the other retirement funds administered by PERF. Such funds shall continue to perform service credit calculations in the manner such calculations were performed as of December 1, 2006, unless subsequently amended by law. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-4; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Oct 20, 2006: 20061101-IR-035060500ONA; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-3-5 Leave of absence

Authority: IC 5-10.3-3-8; IC 5-10.3-7-8
Affected: IC 5-10.2; IC 5-10.3-7-6

Sec. 5. (a) As used in this section, "FMLA" refers to the Family and Medical Leave Act (29 U.S.C. 2601 et seq.) and all applicable regulations and amendments.

(b) A member shall receive service credit for the period of time during which the member is granted a leave of absence under IC 5-10.3-7-6 and for which applicable employer contributions have been made as follows:

(1) Except as otherwise required by the FMLA, the credit shall be allowed if a copy of the grant of the leave of absence is filed

with PERF within ninety (90) days from the date the leave was authorized by the employer. No leave granted retroactively by the employer will be considered as creditable service. Furthermore, except as otherwise required by the FMLA or other federal or state laws that specifically require the granting of service credit for authorized unpaid leaves of absence, service credit shall not be granted for any unpaid leaves of absence taken on or after January 1, 2007, if employer contributions are not made for such periods of leave.

(2) A leave of absence will be treated as creditable service only if the member returns to employment for a period of not less than six (6) consecutive months; however, if the member shows to the satisfaction of the fund that there was a bona fide intent to return to employment and comply with this rule and the member was capable of performing such employment, but was prevented from working the full six (6) month period due to illness, injury, or death which occurred subsequent to the date of return to employment, then this six (6) month requirement shall be waived.

(c) This section and IC 5-10.3-7-6 shall be administered in a manner consistent with the FMLA.

(d) If the member is compensated while on an FMLA-covered leave, the statutory contributions must be maintained. A member may make contributions as provided in IC 5-10.3-7-6(b) during an unpaid FMLA leave, although such contributions shall not result in service credit for benefit purposes unless employer contributions are made for such period of leave. The member's employer is not required to make contributions with respect to an unpaid FMLA leave; however, if employer contributions are not made, the member shall be entitled only to the eligibility service required by the FMLA.

(e) In calculating credit for vesting and eligibility purposes, time spent on an FMLA protected leave shall be counted, including any time spent receiving disability benefits while on such leave.

(f) A member seeking credit for an FMLA leave must provide documentary evidence demonstrating that the statutory requirements have been satisfied.*(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-5; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1079; filed May 7, 1998, 4:15 p.m.: 21 IR 3326; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Oct 20, 2006: 20061101-IR-035060500ONA; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-3-6 Reinstatement

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 6. A member whose service is involuntarily terminated and who is later reinstated as a result of a court determination and order or administrative final determination and order may be eligible for PERF credit if proper supporting documents are filed with PERF and approved by the board or the executive director and employer contributions are made. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-6; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-3-7 Service credit for injured employees

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 7. Creditable service shall be earned by a member injured during the scope of his employment and paid benefits under the Workmen's Compensation Act or the State Personnel Act; however, no service credit will be given for a period of time during which PERF disability benefits were paid. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-7; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-3-8 Unused sick leave

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 8. No creditable service shall be given after a member's last physical day at work for unused sick leave time that may or may not be paid to the member, the member's beneficiary, or estate. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-8; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; filed Mar 1, 2000, 7:48 a.m.: 23 IR 1606; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-3-9 Optional service
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 9. Employees of participating school corporations who occupy PERF covered positions normally requiring performance of service of less than one thousand (1,000), but more than six hundred (600) hours a year and who opt to become members of the fund, shall be credited only for service from the date such option was made. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-9; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-3-10 Military service
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3-7-5

Sec. 10. In addition to the creditable service allowed by IC 5-10.3-7-5 for military service, a member is also entitled to creditable service as set forth at 38 U.S.C. 4301, et seq., the Uniformed Services Employment and Reemployment Rights Act of 1994. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-10; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1265; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-3-11 Comprehensive Employment Training Act (CETA)
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 11. Employees involved in the administration of Comprehensive Employment Training Act (CETA) programs may be covered by PERF. Regular CETA employment is not such employment that may be covered by PERF. CETA employees who leave CETA employment and subsequently enter employment in a PERF-covered position shall not receive service credit for prior CETA employment, even if the position is essentially the same. The participating employer is solely responsible for classifying the member's service, and such classification is binding on the affected employee and the fund. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-11; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-3-12 Purchase of prior bureau of motor vehicles commission service
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2-3-1; IC 5-10.3-7

Sec. 12. (a) Under IC 5-10.2-3-1 and IC 5-10.3-7-2, employees of the bureau of motor vehicles commission (BMVC) are not entitled to automatic coverage or service credit prior to July 1, 1999, for service with the BMVC, because of their coverage in a retirement plan established by the BMVC. However, under IC 5-10.3-7-8, the board believes it would be reasonable to allow employees to purchase any BMVC service from the later of:

(1) January 1, 1987, the date the BMVC established its retirement plan; or

(2) the date the individual became an employee of the BMVC;

through June 30, 1999, the date the BMVC terminated its retirement plan. For purposes of this section, BMVC service does not include service in any license branch prior to becoming a BMVC employee, or service at a license branch prior to the conversion of that license branch to the BMVC. Service in a license branch that is not BMVC service shall not be eligible for service purchase under this rule nor shall it be credited to any employee without purchase.

(b) The cost to purchase such service shall be the total actuarial cost of the service. The fund shall provide the employees with information with respect to the cost of such service.

(c) The employees may purchase such service subject to the following:

(1) Any such purchase may be made via a direct cash payment, a direct rollover under IC 5-10.3-7-9.5, or a combination of both.

(2) Any direct rollover may not exceed the actual cost of such service as established by the fund.

(3) Any direct cash payment may be made in a lump sum or in installments for a period not to exceed five (5) years. Any installment shall bear interest at the actuarial interest rate effective on the date of the first installment. Any payments are subject to applicable Internal Revenue Service limits, and the fund may limit any payments in a manner necessary to comply with these limits.

(d) This section also applies to former employees of the BMVC with BMVC service who are employed in a PERF-covered position at the time they purchase such service.

(e) In no event shall any BMVC service prior to July 1, 1999, be credited under IC 5-10.3-7-7.5 because of the exclusion under IC 5-10.3-7-2(4) unless purchased in accordance with this section.

(f) The restriction contained in IC 5-10.3-7-4.5(d) does not apply to a purchase made under this section. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-12; filed Dec 11, 2000, 2:12 p.m.: 24 IR 946; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-3-13 Purchase of service

Authority: IC 5-10.3-3-8
Affected: IC 5-10.3-7

Sec. 13. (a) Eligible PERF members may purchase service under IC 5-10.3-7-4.5, IC 5-10.3-7-4.6, IC 5-10.3-7-4.8, and IC 5-10.3-7-5.

(b) The cost to purchase such service shall be the total actuarial cost of the service. The fund shall provide the eligible fund member with information with respect to the cost of such service.

(c) The eligible fund member may purchase such service subject to the following:

(1) Service may be purchased in one (1) month increments. The minimum service purchase is one (1) year for a member who elects to purchase service through a finance agreement.

(2) Installment payments are subject to the terms of the finance agreement.

(3) Any such purchase may be made via a direct cash payment, a direct rollover as allowed by statute, or a combination of both.

(4) Any direct rollover may not exceed the actual cost of such service as established by the fund.

(5) Payment may be made in a lump sum or in annual installments for a period not to exceed five (5) years. Any installment may bear interest at the actuarial interest rate (defined within this section) effective on the date of the first installment. Any payments are subject to applicable Internal Revenue Service limits, and the fund may limit any payments in a manner necessary to comply with these limits.

(d) In the event of a payment default under the terms of the finance agreement, a partial service credit amount will be determined by PERF. The partial service credit amount will be based on the payments made as of the date of payment default and the actuarial cost of the service. The minimum amount of partial service credit will be one (1) month. Partial service will be credited in monthly increments. The fund member is not eligible to make service purchase payments after the date of the payment default.

(e) A partial service credit will be determined by PERF if the service purchase is not completed. The minimum amount of partial service credit will be one (1) month. Service will be credited in monthly increments based on the total payments and the actuarial cost of the service. Payments for a service purchase may not be made after the date of a payment default or the date of separation of employment.

(f) Any interest rate used will be the actuarial rate of return as set forth in PERF's annual report. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-3-13; adopted Feb 19, 2010: 20100310-IR-035100124ONA)*

Rule 4. Members of the Fund

35 IAC 1.2-4-1 Members of the fund

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3-7

Sec. 1. Members of the fund are determined by IC 5-10.3-7-1 through IC 5-10.3-7-3, inclusive, and these rules *[this article]*. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-4-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-4-2 Comprehensive Employment Training Act (CETA) administrators (Repealed)

Sec. 2. *(Repealed by Board of Trustees of the Public Employees' Retirement Fund; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-4-3 School bus drivers
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 3. An employee who is a school bus driver is eligible at his option to participate in PERF if:
(1) the school bus is wholly owned by the school corporation;
(2) the school board by its resolution covers the position of school bus driver; and
(3) the position normally requires the performance of service of more than six hundred (600) hours during the school term; however, if subdivisions (1) through (2) are met and the position normally requires performance of services of one thousand (1,000) hours or more, such employee shall be in PERF. For the member who makes such option, creditable service shall be granted only from the date such option was made and contributions received from the employer.
(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-4-3; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1080; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)

35 IAC 1.2-4-4 Students excluded
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 4. Full-time students in a post secondary or higher educational institution are not eligible for PERF if employed under a:
(1) work study program;
(2) co-op program;
(3) tuition assistance program; or
(4) general student assistance program.
(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-4-4; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1081; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)

35 IAC 1.2-4-5 Prosecuting attorneys and deputy prosecuting attorneys
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 5. (a) All prosecuting attorneys and deputy prosecuting attorneys whose compensation was paid from state or county funds prior to July 1, 1987, are entitled to service credit and deemed to be members of the fund as set forth in these rules (35 IAC 1.2) *[this article]* unless and until the auditor of Indiana and the designated county officials certify to PERF that such position normally required:
(1) less than one thousand (1,000) hours of service annually on or after July 1, 1982;
(2) between six hundred (600) hours and one thousand (1,000) hours prior to July 1, 1982, and the employee did not exercise the option to become a member of the fund; or
(3) less than six hundred (600) hours and the employee was hired before July 1, 1982.
(b) Effective July 1, 1987, prosecuting attorneys and deputies who are paid wholly or in part by state funds shall be members of PERF. All deputy prosecuting attorneys paid solely by other than state funds are eligible to be members of PERF if their positions are covered by the resolution of the governing body of the political subdivision and the other requirements for eligibility are met as set forth in these rules (35 IAC 1.2) *[this article]* and the statutes. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-4-5; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1081; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-4-6 Members of the general assembly (Expired)

Sec. 6. *(Expired under IC 4-22-2.5, effective January 1, 2002.)*

Rule 5. Retirement and Disability Benefits

35 IAC 1.2-5-1 Retirement options
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2-4; IC 5-10.3; IC 33-38-8-14

Sec. 1. (a) A member who retires or becomes eligible for a disability retirement cannot change the retirement option, nor may a member who chooses a lump sum payment under IC 5-10.2-4-2(a) change this choice, nor may the beneficiary designation on the application for benefits be changed under joint and survivorship options 30, 40, or 50, after the first day of the month that benefit payments are scheduled to begin. It is immaterial whether or not a check has been sent, received, or negotiated. (See also section 13 of this rule.) A member of the fund after June 30, 2008, may change a beneficiary designation pursuant to IC 5-10.2-4-7 or IC 5-10.2-4-7.2.

(b) Under IC 5-10.2-4-7, in the event that the increased retirement benefit under the integration with Social Security option prior to Social Security eligibility is calculated to be greater than an amount which is the actuarial equivalent of the retirement benefit under the normal guaranteed retirement benefit payable as a life annuity which ceases on the date of the member's death or, if later, the member's Social Security age of eligibility, then the increased retirement benefit shall be limited to such actuarial equivalent and there will be no retirement benefit payable after the age of Social Security eligibility. (In no event shall fewer than sixty (60) payments be made.)

(c) None of the retirement benefit payment options may be made in connection with any other retirement benefit payment option.

(d) Under IC 33-38-8-14, a judges' retirement benefit is calculated upon the date the member applies to receive a retirement benefit. As used in IC 33-38-8-14, "applies to receive a retirement benefit" is defined as the date upon which PERF receives and accepts a member retirement application. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1081; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Nov 21, 2008: 20090107-IR-035080955ONA; adopted Feb 19, 2010: 20100310-IR-035100124ONA)*

35 IAC 1.2-5-2 Disability benefits; eligibility
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 2. (a) The member must be receiving salary on the date the Social Security Administration determines the member becomes disabled.

(b) A member may continue to receive PERF disability benefits so long as the member is entitled to receive Social Security benefits, including periods of trial employment or rehabilitation under Social Security guidelines. However, during any such period, no service credit under PERF shall be granted. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-2; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; filed May 7, 1998, 4:15 p.m.: 21 IR 3326; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-3 Disability without Social Security eligibility (Repealed)

Sec. 3. *(Repealed by Board of Trustees of the Public Employees' Retirement Fund; filed May 7, 1998, 4:15 p.m.: 21 IR 3333)*

35 IAC 1.2-5-4 Disability alternatives
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 4. (a) A member who is eligible for early retirement and who has on file with the fund a copy of application to Social

Security for Social Security disability benefits may file for early retirement and retain his right to disability benefits. Under such circumstances, when the member notifies the fund that he qualifies for Social Security disability benefits, early retirement benefits shall cease and disability benefits shall begin.

(b) A member who has five (5) years of creditable service and who is not eligible for early retirement and has on file with the fund a copy of a request to Social Security for a disability determination may request a lump sum withdrawal of his annuity account without prejudice to his right to disability benefits under PERF should the Social Security Administration approve the request for disability within three (3) years from the date of the member's termination from employment. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-4; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-5 Basic salary defined

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 5. For the purpose of computing benefits, basic salary includes regular wages and overtime pay only. The salary shall not be reduced by any salary reduction amounts contributed to Internal Revenue Code Section 125, 457, or 403(b) plans. Subsequent to July 1, 1987, prosecuting attorneys and deputy prosecuting attorneys paid with state funds shall have only those funds paid by the state considered for computing benefits. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-5; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1265; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-6 Reemployment (Repealed)

Sec. 6. *(Repealed by Board of Trustees of the Public Employees' Retirement Fund; adopted Nov 21, 2008: 20090107-IR-035080955ONA)*

35 IAC 1.2-5-7 Service for disability and survivor benefits

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 7. "In service" means that the member was in an employer-employee relationship as determined by the employer within established rules of the employer. Benefits for disability shall be paid beginning with the later of:

(1) that point in time when such employer-employee relationship no longer exists as determined by the employer; or

(2) the onset of disability as determined by the Social Security Administration.

In determining whether a member has achieved eligibility for disability benefits, periods of leave under the Family and Medical Leave Act (as defined in 35 IAC 1.2-3-5) shall be included. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-7; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; filed May 7, 1998, 4:15 p.m.: 21 IR 3327; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-8 Combined service in teachers' and public employees' retirement funds

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 8. Creditable service in the Indiana state teachers retirement fund and PERF may be combined to meet the five (5) year eligibility requirements for disability benefits. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-8; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1082; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-9 Survivor benefits

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3; IC 5-10.2-3-7.5

Sec. 9. (a) If the total amount of survivor benefits paid to a surviving spouse or surviving dependent does not exceed the member's total contributions plus accumulated interest, the difference shall be paid to the surviving dependent or his estate or, in the case of a surviving spouse, the surviving spouse's estate.

(b) If an active member with more than fourteen (14), but less than fifteen (15), years of creditable service dies, the surviving spouse or dependent is entitled for a benefit if:

(1) the member dies after December 31, 2006;

(2) the member was at least sixty-five (65) years of age at the time of death;

(3) the member died in service in a PERF-covered position; and

(4) the surviving spouse or dependent qualifies for a benefit.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-9; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Feb 19, 2010: 20100310-IR-035100124ONA)

35 IAC 1.2-5-9.1 Death in service; compliance with the Heroes Earning Assistance and Relief Tax Act of 2008 (HEART)

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 9.1. (a) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in the retirement system are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(b) Effective with respect to deaths or disabilities occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code), to the extent permitted by Section 414(u)(8) of the Internal Revenue Code, for benefit accrual purposes, the member will be treated as having returned to employment on the day before the death or disability and then terminated on the date of death or disability. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in Chapter 43 of Title 38, United State *[sic]* Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-9.1; adopted Nov 20, 2009: 20091209-IR-035090927ONA)*

35 IAC 1.2-5-10 Designated dependent beneficiary

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 10. If member was married for less than three (3) years at the time of his death, the surviving spouse may qualify for monthly benefits as a "designated dependent beneficiary" if the spouse can prove dependency under Social Security guidelines and was so designated for at least six (6) months. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-10; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-11 Benefits payable upon death

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 11. In any instance where retirement or disability benefits cease upon the death of the payee, if the payee was alive on the first day of the month a benefit will be paid for such month. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-11; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007:*

20071205-IR-035070818ONA)

35 IAC 1.2-5-12 Minimum disability retirement benefit
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2-4; IC 5-10.3

Sec. 12. (a) The minimum monthly disability retirement benefit specified in IC 5-10.2-4-6(b) is one hundred dollars ($100) only if the member chooses an annuity under IC 5-10.2-4-2(a) and the retirement benefit guarantee determined under IC 5-10.2-4-7(b), subject to the provisions of IC 5-10.2-4-2(b). After December 31, 2008, under IC 5-10.2-43 *[sic]*, the minimum benefit provided by employer contributions to a retired member with at least ten (10) years creditable service not earned only as an elected official may not be less than one hundred eighty dollars ($180).

(b) Should the member choose a lump sum distribution of the amount in his annuity savings account under IC 5-10.2-4-2 and/or a retirement benefit payment option, under IC 5-10.2-4-7, other than the five (5) year guaranteed retirement benefit, the minimum disability retirement benefit shall be the actuarial equivalent of the one hundred eighty dollars ($180) under subsection (a) as determined by the rules of the board. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-12; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Nov 21, 2008: 20090107-IR-035080955ONA)*

35 IAC 1.2-5-12.1 De minimis accounts
Authority: IC 5-10.2-2-1
Affected: IC 5-10.2-3-6

Sec. 12.1. (a) If, after suspension, retirement, retirement for disability, death withdrawal, or other withdrawal, an inactive member's ASA account balance is below the de minimus *[sic]* amount as such amount is determined by PERF, PERF may close the member's account and credit the residual amount to the fund without further notice.

(b) A member or the member's beneficiary may claim the amount credited to the fund, and the account may be adjusted for gains, losses, or interest earnings unless otherwise limited by statute by petitioning PERF in writing.

(c) If the credited amount is from a suspended member's account, no gains or earnings shall be credited to the member's account in accordance with IC 5-10.2-3-6. *(Board of Trustees of the Indiana Public Employees' Retirement Fund; 35 IAC 1.2-5-12.1; adopted Jun 11, 2010: 20100728-IR-035100467ONA)*

35 IAC 1.2-5-13 Beneficiary designation
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 13. (a) Active members may designate a primary beneficiary or beneficiaries and a contingent beneficiary or beneficiaries to receive the member's annuity savings account equally or designated by whole percentage increments upon the death of the member. Such designations must be on the appropriate form. Forms must be filed and accepted by the fund before they are effective. Contingent beneficiaries shall receive the member's annuity savings account if no primary beneficiaries survive the member. If no primary and no contingent beneficiaries survive the member, the beneficiary shall be the member's estate. In lieu of a named individual, a member may designate a trust, estate, or other legal entity.

(b) Members electing a joint survivor option at retirement shall designate only one (1) person as beneficiary for their joint survivor benefits. The beneficiary must be a named individual.

(c) Retired members who choose a retirement option other than a joint and survivor option and who do not elect to withdraw the total balance of their annuity savings account may designate a primary beneficiary or beneficiaries and a contingent beneficiary or beneficiaries to receive the unpaid balance, if any, of the member's annuity savings account upon the death of the member. Members may designate that the assets held in the account shall be divided equally or allocated by whole percentage increments to primary and contingent beneficiaries. Such designations must be on the appropriate form. Forms must be filed and accepted by the fund before they are effective. Contingent beneficiaries shall receive the member's annuity savings account if no primary beneficiaries survive the member. If no primary and no contingent beneficiaries survive the member, the beneficiary shall be the member's estate. In lieu of a named individual, a member may designate a trust, estate, or other legal entity.

(d) If a member has designated more than one (1) primary beneficiary, and one (1) or more of the primary beneficiaries predecease the member and the member does not complete a new beneficiary designation form, the remaining primary beneficiaries will receive an apportioned pro rata share based on the remaining primary beneficiaries' allocated percentages of the deceased primary beneficiary(ies) portion. For example, member X designates three (3) primary beneficiaries as follows: Ann 60%, Bob 30%, and Carl 10%. Ann predeceases member X, and member X does not submit a new beneficiary designation form. Member X had $10,000 in her annuity savings account (ASA) at the time of her death. Ann's 60% share will be divided between Bob and Carl as follows: Bob $4,500 and Carl $1,500. Therefore, the total amount that Bob will receive from member X's ASA is $7,500, and the total amount that Carl will receive from member X's ASA is $2,500. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-13; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1083; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1266; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Jun 11, 2010: 20100728-IR-035100467ONA)*

35 IAC 1.2-5-14 Five year guaranteed benefits
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 14. If member elects five (5) year guaranteed benefits and does not live to exhaust them and his beneficiary does not live out the remainder of the five (5) years, then such remaining benefits accrue to the estate of the beneficiary and not to the estate of the member. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-14; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-15 No guarantee option
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 15. Under the no guarantee option, if the member dies prior to the first day of the month that benefits are scheduled to begin, the account reverts to an active status and the beneficiary receives the account as though the member had died in active service. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-15; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-16 Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF)
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 16. Former PERF members who have transferred to the teachers insurance and annuity association-college retirement equities fund are not eligible for PERF disability benefits which are limited to PERF members in active service. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-16; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-17 Birth date; proof required
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 17. No member shall receive a retirement benefit from the fund until one (1) of the following proofs of birth is submitted. (This rule also covers other instances where birth dates are necessary to determinations made for other benefits.):

(1) An original or certified copy of the birth certificate issued by the state in which the birth occurred.
(2) Official baptismal or church record.
(3) Certified immigration or naturalization record.

If proof in accordance with 1-3 above *[subdivisions (1) through (3)]* cannot be provided, then a photocopy of at least two (2) of the documents listed below must be submitted to PERF:

(4) Passport.
(5) Notification of registration of birth in a public registry of vital statistics.

(6) Social Security Administration record verifying date of birth.
(7) United States Census Bureau certification or record of age.
(8) Military record.
(9) Family Bible record.
(10) Certified school record.
(11) Certified vaccination record.
(12) A life insurance policy that states the age or date of birth.
(13) Marriage license or certificate that states the age or date of birth.
(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-17; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)

35 IAC 1.2-5-18 Minors and other incompetent persons
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3; IC 29-3

Sec. 18. Minors and other incompetent beneficiaries are governed by Indiana guardianship law set forth in IC 29-3, Indiana Probate Code. However, payments may be made to minor beneficiaries pursuant to the Uniform Transfers to Minors Act. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-18; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1266; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-19 Proration of retirement costs
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 19. (a) A member with service credit from more than one (1) employer shall have his retirement reserve cost prorated based on months of service among all his or her employers.
(b) Any employer may object to this basis of proration by written objection made within fifteen (15) days from receipt by the employer of notification of each such proration.
(c) The fund may, if evidence of substantial inequity is presented by such objecting employer, use the following basis for reaching a result.
(d) The annual compensation for each calendar year or part thereof shall be divided by the annual average consumer price index figure (1967 = $100) of the U.S. Bureau of Labor Statistics for each such year to determine a weighted salary for each year or part thereof.
(e) The fund shall prorate retirement reserve costs to participating employers on the basis of the weighted salary each has paid, or such other method that, in the judgment of the fund, equitably allocates the retirement reserve cost between the member's employers. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-19; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1084; readopted filed Dec 2, 2001, 12:35 p.m.: 25 IR 1266; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-20 Early retirement reduction of benefits
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 20. When computing the age for determining the reduction percentage for early retirement, any fractions of a month shall not count. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-20; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-5-21 ASA valuation
Authority: IC 5-10.2-2-1; IC 5-10.2-2-3
Affected: IC 5-10.2-2-3

Sec. 21. After August 2, 2010, a member may direct an allocation in the amount credited to the member among the guaranteed

program and any available alternative accounts subject to the following conditions:

(1) PERF shall allow a member to make a change or selection at least once a day.

(2) PERF shall implement the member's selection the same day the selection is received by PERF, unless such selection is received after 4:00 p.m. EST on a business day, or anytime on a weekend or holiday, or any other date the New York Stock Exchange is closed, then PERF shall implement the member's selection beginning the next business day after the selection is received. This date is the effective date of the member's selection.

(3) A member may select any combination of the guaranteed program or any of the available alternative accounts in one percent (1%) increments.

(4) A member's selection remains in effect until a new selection is made.

(5) On the effective date of a member's selection, PERF shall reallocate the member's existing balance or balances in accordance with the member's direction, based on:

(A) for an alternative investment program balance, the market value on the effective date; and

(B) for any guaranteed program balance, the account balance on the effective date.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-21; adopted Feb 19, 2010: 20100310-IR-035100124ONA)

35 IAC 1.2-5-22 Unclaimed ASA assets within dormant accounts

Authority IC 5-10.2-2-1
Affected: IC 5-10.2-2-3; IC 5-10.2-2-4

Sec. 22. (a) Whenever a vested member's account has received no contributions for a period of twenty (20) years and it has been determined by PERF that the member is otherwise age and service eligible to receive a benefit, the fund may conduct an investigation to locate the member.

(b) Reasonable costs of locating the member or the member's beneficiary may be charged against the member's ASA.

(c) If the member or the member's beneficiary is not located after an investigation to locate the member, the monies in the member's ASA shall be credited to the fund and the fund shall retain the monies until the member or the member's beneficiary claims the monies with no further interest credits or earnings after the monies are credited to the fund. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-5-22; adopted Feb 19, 2010: 20100310-IR-035100124ONA)*

Rule 6. Miscellaneous

35 IAC 1.2-6-1 Employer payments

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3-7-12.5

Sec. 1. (a) In accordance with and pursuant to IC 5-10.3-7-12.5, a quarterly report and payment of employee contributions and employer contributions shall be due in the PERF office no later than the fifteenth day following the end of each calendar quarter. Specifically, January 15, April 15, July 15, and October 15 each year (the "due dates"). If the fifteenth day following the end of the quarter falls on a Saturday, Sunday, or a legal holiday, the due date becomes the next working day. It shall be the responsibility of the local official to employ such method of delivery to insure that the report and payment will reach the PERF office, 143 West Market Street, Indianapolis, Indiana 46204, on or before the due date.

(b) Notwithstanding subsection (a), as allowed in IC 5-10.3-7-12.5, once PERF gives reasonable notice to covered employers and after installation of the ERM system, the PERF board of trustees herein sets the due date for contributions as seven (7) days after a covered employer's payroll unless otherwise approved by the board.

(c) Any employer who fails to submit required contributions and reports within thirty (30) days of the due date will be subject to a penalty as set forth in IC 5-10.3-7-12.5. If the thirtieth day following the due date falls on a Saturday, Sunday, or legal holiday, the due date becomes the next working day. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA; adopted Feb 19, 2010: 20100310-IR-035100124ONA; adopted Jun 11, 2010: 20100728-IR-035100467ONA)*

35 IAC 1.2-6-2 Admission to the fund
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3-2-1; IC 5-10.3-6-1

Sec. 2. (a) Admission to the fund by a political subdivision shall be governed by IC 5-10.3-6-1.

(b) In addition, any political subdivision whose existence is subject to termination or whose funding is dependent upon sources external to it must demonstrate to the board's satisfaction that any problems which might arise are fully addressed and resolved or it will not be admitted. The board's consideration and determination will be guided in part by the political subdivision's demonstrated ability to meet all obligations to the fund, both current and ongoing.

(c) A township trustee will not be considered as the governing body of a township for purposes of the fund and the board will not approve any ordinance or resolution coming solely from such township trustees. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-2; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-6-3 Enlargement of PERF coverage (Repealed)

Sec. 3. *(Repealed by Board of Trustees of the Public Employees' Retirement Fund; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-6-4 Deductions for health insurance and taxes; minimum amount
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 4. An eligible member may request deductions for health insurance or taxes if the deductions do not reduce the check amount below ten dollars ($10) a month. Tax withholdings may be made in any whole dollar increment greater than five dollars ($5). *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-4; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-6-5 Interest on employer's accounts
Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 5. All political subdivisions having a negative year-end account balance may be charged an appropriate interest rate as determined by the fund. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-5; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1085; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-6-5.5 Overpayments and underpayments
Authority: IC 5-10.2-2-1.5
Affected: IC 5-10.2-3-2; IC 5-10.2-2-11; IC 5-10.3; IC 6-8.1-10-1

Sec. 5.5. (a) When there has been an overpayment of picked up member contributions or after-tax member contributions, the principal amount of the overpayment will be credited to the employer. The principal amount of the overpayment may be adjusted for earnings/interest at the interest rate defined in subsection (e).

(b) When there has been an underpayment of picked up member contributions or after-tax member contributions, the principal amount of the underpayment will be billed to the employer. The principal amount of the underpayment may be adjusted for earnings/interest at the interest rate defined in subsection (e).

(c) When there has been an overpayment of employer contributions, the principal amount of the overpayment will be credited to the employer. The principal amount of the overpayment may be adjusted for earnings/interest at the interest rate defined in subsection (e).

(d) When there has been an underpayment of the employer contribution, the principal amount of the underpayment will be billed to the employer. The principal amount may be adjusted for earnings/interest at the interest rate defined in subsection (e).

(e) For purposes of this section, the interest rate shall be determined by the executive director and shall not exceed the rate of interest set each year within IC 6-8.1-10-1(c). *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-5.5; adopted Feb 19, 2010: 20100310-IR-035100124ONA; adopted Sep 16, 2010: 20100929-IR-035100611ONA)*

35 IAC 1.2-6-6 Refund of contributions

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 6. A member who is on an approved leave of absence is not eligible for a refund of contributions and accumulated interest unless the reason for the leave is a layoff. In order for a member to receive a refund of his PERF contributions and accumulated interest, the member must have terminated his employment and be certified by his employer as being off the payroll and the date of termination. Refunds will be made on or after the fifteenth day of the month next following the month of termination, if such termination is on or prior to the fifteenth day of the month and the application for refund is received prior to the end of the month of termination. If the member becomes reemployed in a PERF-covered position within thirty (30) days from the date of such termination then the effective date of the suspension of membership shall be automatically deferred and the member shall not be eligible for such refund. The member shall notify PERF immediately if the member becomes reemployed within such thirty (30) day period. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-6; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1086; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-6-7 Legislators' defined contribution plan loans

Authority: IC 2-3.5-5-11; IC 5-10.3-3-8
Affected: IC 2-3.5-5-11

Sec. 7. (a) Any participant in the legislators' defined contribution plan may apply on the applicable form to the fund for a loan from the legislators' defined contribution plan pursuant to this rule and such other procedures as may be established by the fund. Such loans will be available to all such participants on a uniform and nondiscriminatory basis. All loans are subject to the approval of the fund or its designee.

(b) The maximum amount of such loan, when added to the outstanding balance of all other loans from the fund, shall not exceed the lesser of:

(1) fifty thousand dollars ($50,000), reduced by the excess, if any, of the highest outstanding balance of loans from the fund during the one (1) year period ending on the day before the date on which the loan is made, over the outstanding balance of loans from the fund on the date on which such loan is made; or

(2) one-half (1/2) of the employee's accounts within the defined contribution plan of the participant under the fund.

(c) Subject to subsection (b), the minimum amount of a loan shall be one thousand dollars ($1,000).

(d) The loan program described in this rule shall by administered by the fund or its designee. All loans shall comply with the following terms and conditions:

(1) All loans shall be subject to applicable Internal Revenue Service restrictions.

(2) A participant may apply for a loan by completing the applicable forms.

(3) Each loan shall be amortized on a substantially level basis with monthly payments. Payments shall be made on the first of a month for that month. The period of repayment shall be a minimum of twelve (12) months and shall not exceed five (5) years from the loan origination date. Notwithstanding the preceding sentence, the term of the loan shall not extend beyond the earlier of:

(A) in the case of a distribution which begins after the date of the loan, the date such distribution of the employee's accounts within the defined contribution plan of the participant under the fund begins; or

(B) the date of a default on the loan.

(e) The participant receiving the loan shall make the required repayments in accordance with the loan agreement.

(f) The rate of interest shall be the prime rate per annum, as published in The Wall Street Journal on the first day of the quarter (or the earliest publication day of the quarter in the event of a publication holiday) in which a completed loan application is submitted, plus one percent (1%). A loan will carry the same interest rate throughout its term.

(g) The fund shall declare a default on a loan as of:

(1) the last day of the calendar quarter following the calendar quarter in which the participant fails to make a payment, unless

the participant pays the amount due plus accrued interest prior to such date; or

(2) the date thirty (30) days after the fund in good faith deems the plan insecure with respect to the repayment of the loan and notifies the participant of this deemed insecurity.

(h) On default, the entire amount outstanding on the participant's loan will be due and payable.

(i) On default, the fund shall report to the Internal Revenue Service the outstanding loan balance (principal and interest) as a taxable distribution to the participant, which may also be subject to an additional ten percent (10%) excise tax under the Internal Revenue Code.

(j) Each loan shall be adequately secured. The plan shall have a security interest in the employee's accounts within the defined contribution plan of the participant under the fund.

(k) Any loan to a participant shall be considered to be a separate asset of the legislators' defined contribution plan segregated for the benefit of such participant. The interest paid on the loan shall be credited to the employee's accounts within the defined contribution plan of the participant. Such portion of the employee's accounts within the defined contribution plan on loan to the participant shall not share in the allocation of gains or losses. The principal and interest paid on the loan shall be credited to such employee's accounts within the defined contribution plan as determined by the fund.

(l) A participant may not take more than two (2) loans in any calendar year.

(m) A participant may have any number of loans outstanding as long as all of the requirements of this rule are met.

(n) Any loan processing fee charged by a third party will be paid by the participant from the employee's accounts within the defined contribution plan of the participant.

(o) The loan proceeds will come from the employee's accounts within the defined contribution plan of the participant on a pro rata basis, and from the directed investment options of the participant on a pro rata basis.

(p) The participant may prepay, without penalty, the entire (or any part of the) outstanding principal balance of the loan and accrued interest to date of repayment. Prepayments should be made by check or other negotiable instrument (excluding cash) made payable to the fund and delivered to the fund or its designee. No reamortization will apply. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-7; filed Dec 18, 2001, 9:09 a.m.: 25 IR 1488; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-6-8 Annuity savings account contributions received by PERF subsequent to processing of retirement benefit

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2-4-2

Sec. 8. (a) Notwithstanding a member's election to receive an annuity provided by the amounts credited to the member's annuity savings account at retirement, annuity savings account contributions posted to a member's account subsequent to the final date on which the member's benefit is processed may be distributed to the member in a lump-sum payment.

(b) Pursuant to IC 5-10.2-4-2(b)(2), a member electing to annuitize the member's annuity savings account in contemplation of retirement will have the entire amount in the member's annuity savings account moved into a fixed value account, set at the same rate as the guaranteed fund. Once the annuity savings account is moved into a fixed value account in contemplation of retirement, the election cannot be changed. In addition, any annuity savings account contributions posted to a member's account subsequent to the final date on which the member's benefit is processed shall be held in a fixed value account, set at the same rate as the guaranteed fund, until such time as that amount is distributed to the member. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-8; adopted Dec 21, 2007: 20080109-IR-035080003ONA; adopted Feb 19, 2010: 20100310-IR-035100124ONA)*

35 IAC 1.2-6-9 Direct deposit of benefits

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2-4-1.2

Sec. 9. (a) Direct deposit is the preferred way for members and beneficiaries to receive monthly benefits. A member or beneficiary who does not wish to have payments to the person deposited by direct deposit or another method approved by the board may request a waiver of the requirement of direct deposit or another method approved by the board. The member or beneficiary must:

(1) state the reason for requesting the waiver; and

(2) sign a waiver form.

(b) PERF shall grant the member's or beneficiary's request for a waiver, approval of which shall not be unreasonably denied,

if any of the following apply:

(1) The member or beneficiary currently does not have a savings or checking account.

(2) The member or beneficiary is unable to establish a savings or checking account within the geographic area of the home of the member or beneficiary without payment of a service fee. In support of this reason, the member or beneficiary must submit a written statement of the inability to establish the account without the payment of a fee with the waiver request.

(3) The home of the member or beneficiary is too remote to have access to a financial institution where direct deposit or another method approved by the board may be made.

(4) The financial institution of the member or beneficiary is unable to:

(A) accept direct deposit or another method approved by the board; or

(B) process electronic withdrawal.

The member or beneficiary must submit with the waiver a written statement from the financial institution of the member or beneficiary that the financial institution is unable to accept direct deposit or another method approved by the board or process electronic withdrawal.

(5) PERF determines that the facts of the particular case warrant a waiver of the requirement of direct deposit or another method approved by the board. A member or beneficiary who is in pay status as of July 1, 2009, and is receiving monthly benefits in a manner other than direct deposit or another method approved by the board shall not have the monthly benefits stopped for receiving monthly benefits in a manner other than direct deposit or another method approved by the board.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-6-9; adopted Feb 19, 2010: 20100310-IR-035100124ONA)

Rule 7. Administrative Proceedings

35 IAC 1.2-7-1 Administrative orders; proceedings; reviews

Authority: IC 5-10.3-3-8
Affected: IC 4-21.5; IC 5-10.2; IC 5-10.3

Sec. 1. All administrative orders, proceedings, and reviews shall be made pursuant to IC 4-21.5. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-7-1; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1086; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

35 IAC 1.2-7-2 Pre-trial procedures

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2; IC 5-10.3

Sec. 2. After any matter has been assigned to an administrative law judge, a pre-trial type conference shall be held upon the motion of any party following which conference shall follow Indiana Trial Rule 16 to the extent applicable. At this time the administrative law judge shall encourage any informal proceedings to settle the matter to the extent allowed by law. No person shall be required to make settlement under these informal proceedings. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-7-2; filed Dec 20, 1988, 1:00 p.m.: 12 IR 1086; readopted filed Oct 31, 2001, 2:18 p.m.: 25 IR 897; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

Rule 8. Cost-of-Living Adjustment

35 IAC 1.2-8-1 Calculation

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2-5-29; IC 5-10.2-5-30

Sec. 1. A cost-of-living adjustment based on purchasing power replacement shall be calculated using the following elements for determinations made as of July 1:

(1) The Consumer Price Index-W from the prior March 31 shall be used.

(2) For comparative purposes, the appropriate prior years' March 31 Consumer Price Index-W numbers shall be used.

(3) Retirees will be grouped (based on their latest retirement or disability date) by twelve (12) month periods running from

July 2 through the following July 1. A single net adjustment percentage shall be calculated for each such group.

(4) Minimum and maximum amounts in prior postretirement adjustments shall not be taken into account.

(5) So-called "13th checks" shall not be taken into account.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-8-1; filed May 18, 2001, 10:38 a.m.: 24 IR 3014; adopted Nov 9, 2007: 20071205-IR-035070818ONA)

35 IAC 1.2-8-2 Formula

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2-5-29; IC 5-10.2-5-30

Sec. 2. (a) The elements established in section 1 of this rule shall be used in the formula in subsection (b).

(b) Compare the cumulative Consumer Price Index increase for an affected group to the cumulative postretirement cost-of-living adjustments for that group, as determined under section 1 of this rule, and increase that group's pension portion by the percentage (if any) determined by the fund actuary, as necessary to reach the minimum purchasing power established by the Indiana general assembly, for example:

(1) fifty percent (50%) for 1999; and

(2) fifty-seven and four-tenths percent (57.4%) for 2000.

(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-8-2; filed May 18, 2001, 10:38 a.m.: 24 IR 3014; adopted Nov 9, 2007: 20071205-IR-035070818ONA)

35 IAC 1.2-8-3 Increases

Authority: IC 5-10.3-3-8
Affected: IC 5-10.2-5-29; IC 5-10.2-5-30

Sec. 3. The increase shall be applied as of July of any year established by the general assembly, the first such year beginning July 1, 1999. *(Board of Trustees of the Public Employees' Retirement Fund; 35 IAC 1.2-8-3; filed May 18, 2001, 10:38 a.m.: 24 IR 3014; adopted Nov 9, 2007: 20071205-IR-035070818ONA)*

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