

## Notice

The Board of Trustees of the Employees' Retirement System of Georgia acting on behalf of the Georgia Defined Contribution Plan hereby gives notice that it intends to adopt new Rules 513-17-1-.01 and 513-17-1-.02, all of which are attached, pursuant to O.C.G.A. § 47-2-20 at its regular bimonthly meeting to be held on April 20, 2023, at 10:00 A.M. at the address below and via teleconference (link will be provided at a later date before meeting).

In compliance with O.C.G.A. § 47-1-10, this notice is being emailed to all members who have requested to be notified regarding proposed rules, all employers, member organizations, and each member of the Standing Senate and House Retirement Committees.

This law provides that employers shall post this notice on bulletin boards for their respective employees and shall otherwise take reasonable steps to assure that members of the system are made aware of the notice.

The law further provides that data, views, or arguments relative to the proposed rule may be submitted for consideration to the Board of Trustees. The submissions should be made to the following address no later than April 1, 2023:

Employees' Retirement System Board of Trustees  
c/o James A. Potvin  
Director, Employees' Retirement System of Georgia  
Two Northside 75  
Suite 300  
Atlanta, Georgia 30318

This the 1<sup>st</sup> day of February 2023.



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James A. Potvin, Director

## Proposed Rule #1

### Rule

#### Rule 513-17-1-.01 Organization

- (1) The mailing address of the Georgia Defined Contribution Plan is Two Northside 75, Atlanta, Georgia 30318.
- (2) All correspondence respecting rules and regulations consistent with the requirements of Code Section 47-1-10 is to be directed to the Director of the Board of Trustees of the Georgia Defined Contribution Plan.

### Statutory Citation(s)

- **O.C.G.A. § 47-1-10** (*See Appendix*)

### Explanation of Rule Creation

This rule is an administrative one which simply states the mailing address of GDCP and the guidelines of where to submit public comment in regards to proposed Rules and Regulations by the Board.

## Proposed Rule #2

### Rule

#### Rule 513-17-1-.02 Membership Eligibility – Retirees of ERS, TRS, GJRS, and LRS

(1) Retirees of the Employees' Retirement System of Georgia (ERS), Teachers Retirement System of Georgia (TRS), Georgia Judicial Retirement System (GJRS), Legislative Retirement System (LRS), and Georgia Defined Contribution Plan (GDCP) are exempt from mandatory membership while employed in a GDCP eligible position.

### Statutory Citation(s)

- O.C.G.A. § 47-22-4(a)

*(a) The general administration and responsibility for the proper operation of the plan and for putting this chapter into effect are vested in the board.*

### Explanation of Rule Creation

Pursuant to Georgia Code, members of any public retirement or pension system are exempt from mandatory membership for any position that is GDCP eligible; however, due to legal differences in the terms “member” and “beneficiary” (the term used for retirees), retirees for systems such as the Employees' Retirement System of Georgia (ERS) and Teachers Retirement System of Georgia (TRS) do not have this exemption under State law.

Ultimately, federal rules state that a “rehired annuitant,” a retiree who is hired by his or her former employer, or by another employer that participates in the same retirement system as the former employer, are not required to participate in Social Security or to be enrolled in a social security replacement plan.

Following federal regulations, an administrative policy was put in place stating that retirees of social security replacement plans, such as ERS and TRS, are exempt from mandatory participation in GDCP. This exemption also includes retirees of other social security replacement plans administered by ERSGA – the Georgia Judicial Retirement System (GJRS), the Legislative Retirement System (LRS), and GDCP.

## Appendix

### **O.C.G.A. § 47-1-10.**

**(a)** As used in this Code section, the term:

**(1)** "Board of trustees" means the board of trustees or other administrative body or agency charged with the duty of administering any public retirement or pension system created by this title, except the Board of Trustees of the Georgia Municipal Employees Benefit System provided for by Chapter 5 of this title.

**(2)** "Employer" means a state department, official, or agency of the state or a local board of education, local elected official, or a local political subdivision which employs members.

**(3)** "Member" means a member of a public retirement or pension system created by this title.

**(4)** "Member organization" means any association of public employees or officials whose membership consists primarily of members of a public retirement or pension system created by this title.

**(5)** "Rule" means any rule or regulation adopted by a board of trustees for the administration or to aid in the administration of a public retirement or pension system created by this title, except rules or regulations governing or relating to the investment of the funds or assets of any such retirement or pension system by any such board of trustees.

**(6)** "Small retirement system" means any public retirement or pension system created by this title which has less than 200 members.

**(b)** Prior to the adoption, amendment, or repeal of any rule, a board of trustees shall:

**(1)** Give at least 30 days' notice of the intended action. The notice shall include an exact copy of the proposed rule, the date on which the board of trustees will consider the adoption of the rule, and the time and place where the board of trustees shall meet for such purpose. The notice shall also contain a citation of the authority pursuant to which the rule is proposed for adoption and, if the proposal is an amendment to or repeal of an existing rule, the existing rule shall be clearly identified. The notice shall be mailed to all members of the respective retirement or pension system who have requested in writing to the board of trustees to be placed on a mailing list for proposed rules, provided that such mailing list shall not exceed 200 such members. If more than 200 members request to be placed on such mailing list, the board of trustees shall confine the list to the first 200 members making written request to the board of trustees to be placed on the mailing list. The board of trustees of any small retirement system may, at its discretion, mail the notice to all members. The notice shall also be mailed to employers and to member organizations of the respective public retirement or pension systems. Employers shall post such notices on bulletin boards for their respective employees and shall otherwise take reasonable steps to assure that members of the respective retirement or pension systems are made aware of the notice; and

**(2)** Afford members of the retirement or pension system affected by the proposed rule a reasonable opportunity to submit to the board of trustees, in writing, data, views, or arguments relative to the proposed rule. Any such submissions received by the board of trustees prior to the adoption of the proposed rule shall be considered by the board of trustees.

**(c)** At the time of the distribution of the notices required by paragraph (1) of subsection (b) of this Code section, the respective boards of trustees shall transmit a copy of such notices to each member of the House and Senate standing committees on retirement for review by such committees. If, prior to the adoption of the rule by the respective board of trustees, the chairman of either such committee notifies such board of trustees that the committee objects to the adoption of the rule or has questions concerning

the purpose, nature, or necessity of the rule, it shall be the duty of such board of trustees to consult with the committee prior to the adoption of the rule.

**(d)** If a board of trustees finds that the immediate adoption of a rule is necessary to secure or protect the interests of the members of its respective public retirement or pension system, such rule may be adopted on an emergency basis without following the procedures required by this Code section. In that event, the board of trustees shall adopt a resolution declaring the existence of an emergency and explaining the basis for such declaration as a condition necessary to adopt a rule on an emergency basis. Any rule adopted pursuant to the authority of this subsection shall expire in not more than 120 days immediately following its adoption, but the adoption of an identical rule pursuant to the requirements of this Code section is not precluded.

**(e)**

**(1)** By not later than January 1, 1986, each board of trustees shall file with the Secretary of State a certified copy of all rules which were adopted by such board of trustees during the period beginning on January 1, 1979, and ending on July 1, 1985. Any rule adopted by a board of trustees during such period which is not filed with the Secretary of State by January 1, 1986, shall be void and of no force and effect after January 1, 1986. It shall not be necessary for rules adopted by boards of trustees prior to January 1, 1979, to be filed with the Secretary of State and such rules shall continue in force and effect until repealed by the respective boards of trustees, but if any such rule is amended on or after July 1, 1985, the original rule as amended shall be filed with the Secretary of State.

**(2)** Except pursuant to the authority of subsection (d) of this Code section, each rule adopted by a board of trustees on or after July 1, 1985, shall not become effective until the expiration of at least 20 days after an original and two copies of the rule are filed in the office of the Secretary of State.

**(3)** Rules which are required to be filed with the Secretary of State by paragraphs (1) and (2) of this subsection shall contain a citation of the authority pursuant to which the rules were adopted and, when existing rules are amended, the filings required by this subsection shall clearly identify the existing rules. The Secretary of State shall endorse on each filing required by this subsection the time and date of the filing and shall maintain a file of the rules for public inspection. The provisions of this subsection relative to rules adopted on or after July 1, 1985, shall not be construed to require a rule to go into effect 20 days after filing with the Secretary of State if the rule, by its own terms, provides for a later effective date. Rules filed with the Secretary of State pursuant to this subsection shall be published by the Secretary of State as a part of the rules of state agencies published by the Secretary of State pursuant to Code Section 50-13-7.

**(f)** Each board of trustees shall be authorized to adopt rules and regulations which are appropriate or necessary to maintain the qualified status of its respective public retirement and pension system under Sections 401(a) and 414(d) of the federal Internal Revenue Code and such other applicable sections of the federal Internal Revenue Code.