SOS APA Form 001

Mississippi Secretary of State

## ADMINISTRATIVE PROCEDURES NOTICE FILING

| AGENCY NAME<br>Public Employees' Retirement System | | CONTACT PERSON<br>Davetta Lee | TELEPHONE NUMBER<br>601-359-9516 | |
|---|---|---|---|---|
| ADDRESS<br>429 Mississippi Street | | CITY<br>Jackson | STATE<br>MS | ZIP<br>39201 |
| EMAIL<br>dlee@pers.ms.gov | SUBMIT DATE<br>07-10-20 | Name or number of rule(s): Regulation 34 | | |

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: The proposed rule amendment reverses earlier amendments regarding the treatment of the state legislator position specific to the Public Employees' Retirement System and the Supplemental Legislative Retirement Plan retirees. The amendment also reduces the age for in-service distributions for county and municipal elected officials in accordance with recent changes to federal law.

Specific legal authority authorizing the promulgation of rule: Miss. Code Ann. §§ 25-11-15(6), 25-11-17, 25-11-127

List all rules repealed, amended, or suspended by the proposed rule: Regulation 34

### ORAL PROCEEDING:

☐ An oral proceeding is scheduled for this rule on Date: _____ Time: _____ Place: _____

☒ Presently, an oral proceeding is not scheduled on this rule.

If an oral proceeding is not scheduled, an oral proceeding must be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) or more persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address, email address, and telephone number of the person(s) making the request; and, if you are an agent or attorney, the name, address, email address, and telephone number of the party or parties you represent. At any time within the twenty-five (25) day public comment period, written submissions including arguments, data, and views on the proposed rule/amendment/repeal may be submitted to the filing agency.

### ECONOMIC IMPACT STATEMENT:

☐ Economic impact statement not required for this rule. ☒ Concise summary of economic impact statement attached.

| TEMPORARY RULES | PROPOSED ACTION ON RULES | FINAL ACTION ON RULES |
|---|---|---|
| _____ Original filing<br>_____ Renewal of effectiveness<br>To be in effect in _____ days<br>Effective date:<br>_____ Immediately upon filing<br>_____ Other (specify): _____ | **Action proposed:**<br>_____ New rule(s)<br>__X__ Amendment to existing rule(s)<br>_____ Repeal of existing rule(s)<br>_____ Adoption by reference<br>**Proposed final effective date:**<br>_____ 30 days after filing<br>__X__ Other (specify): 10/01/20 | **Date Proposed Rule Filed:** _____<br>**Action taken:**<br>_____ Adopted with no changes in text<br>_____ Adopted with changes<br>_____ Adopted by reference<br>_____ Withdrawn<br>_____ Repeal adopted as proposed<br>**Effective date:**<br>_____ 30 days after filing<br>_____ Other (specify): _____ |

Printed name and Title of person authorized to file rules: Davetta Lee, *Counsel & Policy Advisor*

Signature of person authorized to file rules: Davetta Lee

**DO NOT WRITE BELOW THIS LINE**

| OFFICIAL FILING STAMP | OFFICIAL FILING STAMP | OFFICIAL FILING STAMP |
|---|---|---|
| | FILED<br>JUL 10 2020<br>MISSISSIPPI<br>SECRETARY OF STATE | |
| **Accepted for filing by** | **Accepted for filing by**<br>#24984 | **Accepted for filing by** |

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

**Michael Watson**
SECRETARY OF STATE

# CONCISE SUMMARY OF ECONOMIC IMPACT STATEMENT

**An Economic Impact Statement is required for this proposed rule by Section 25-43-3.105 of the Administrative Procedures Act. This is a Concise Summary of the Economic Impact Statement which must be filed with the Secretary of State's Office.**

| AGENCY NAME | CONTACT PERSON | | TELEPHONE NUMBER |
|---|---|---|---|
| Public Employees' Retirement System | Davetta Lee | | 601-359-9516 |
| ADDRESS | CITY | STATE | ZIP |
| 429 Mississippi Street | Jackson | MS | 39201 |
| EMAIL | DESCRIPTIVE TITLE OF PROPOSED RULE | | |
| dlee@pers.ms.gov | Reemployment after Retirement | | |

| Specific Legal Authority Authorizing the promulgation of Rule: | Reference to Rules repealed, amended or suspended by the Proposed Rule: |
|---|---|
| Mississippi Code §§ 25-11-15(6), 25-11-17, 25-11-127 | PERS Regulation 34 |

A. Estimated Costs and Benefits

1. Briefly summarize the benefits that may result from this regulation and who will benefit:
   The proposed rule amendment benefits PERS members and retirees by protecting the qualified status of the retirement plan.

2. Briefly describe the need for the proposed rule:
   The proposed rule amendment reverses earlier amendments regarding the treatment of the state legislator position specific to the Public Employees' Retirement System (PERS) and the Supplemental Legislative Retirement Plan (SLRP) retirees. In addition to amending the regulation, PERS sought a Private Letter Ruling from the Internal Revenue Service (IRS) to protect the qualified status of PERS and to determine whether the rule change created an impermissible cash or deferred arrangement (CODA). The IRS declined to issue a ruling on the matter, and after seeking counsel from outside tax counsel and representatives from the Attorney General's Office, the PERS Board reversed the earlier amendments to the regulation. The amendment also reduces the age for in-service distributions for county and municipal elected officials in accordance with recent changes to federal law.

3. Briefly describe the effect the proposed action will have on the public health, safety, and welfare:
   None.

4. Estimated Cost of implementing proposed action:
   a. To the agency
      ☐ Nothing ☒ Minimal ☐ Moderate ☐ Substantial ☐ Excessive
   b. To other state or local government entities
      ☒ Nothing ☐ Minimal ☐ Moderate ☐ Substantial ☐ Excessive

5. Estimated Cost and/or economic benefit to all persons directly affected by the proposed rule:
   a. Cost:
      ☐ Nothing ☒ Minimal ☐ Moderate ☐ Substantial ☐ Excessive
   b. Economic Benefit:
      ☐ Nothing ☐ Minimal ☐ Moderate ☒ Substantial ☐ Excessive

6. Estimated impact on small businesses:
   ☒ Nothing ☐ Minimal ☐ Moderate ☐ Substantial ☐ Excessive

   a. Estimate of the number of small businesses subject to the proposed regulation:
   b. Projected costs for small businesses to comply:
   c. Statement of probable effect on impacted small businesses:

7. The cost of adopting the rule compared to not adopting the rule or significantly amending the existing rule (check option):
   ☒ substantially less than ☐ moderately less than ☐ minimally less than
   ☐ the same as ☐ minimally more than ☐ moderately more than
   ☐ substantially more than ☐ excessively more than

8. The benefit of adopting the rule compared to not adopting the rule or significantly amending the existing rule (check option):
   ☐ substantially less than ☐ moderately less than ☐ minimally less than
   ☐ the same as ☐ minimally more than ☐ moderately more than
   ☒ substantially more than ☐ excessively more than

B. Reasonable Alternative Methods

1. Other than adopting this rule, are there less costly or less intrusive methods for achieving the purpose of the proposed rule?
   ☐ yes ☒ no

2. If yes, please briefly describe available, reasonable alternative(s) and the reasons for rejecting those alternatives in favor of the proposed rule. (Please see §25-43-4.104 for factors you must consider.)

C. Data and Methodology

1. Please briefly describe the data and methodology you used in making the estimates required by this form.
   The current PERS and SLRP actuarial assumptions are based on the Regulation 34 language found prior to the January 2020 amendments; therefore, there should be no additional actuarial costs to the plans in reversing those amendments. According to outside tax counsel, the current amendments protect the qualified status of the retirement plans.

D. Public Notice

1. Where, when, and how may someone present their views on the proposed rule and request an oral proceeding on the proposed rule if one is not already scheduled?
   Submit written comments by August 4, 2020, and written request for an oral proceeding by July 30, 2020 to:
   Davetta Lee
   429 Mississippi St
   Jackson, MS 30201

| SIGNATURE Davetta C. Lee | TITLE Counsel & Policy Advisor |
|---|---|
| DATE 7/10/2020 | PROPOSED EFFECTIVE DATE OF RULE 10/1/2020 |