PFRSNJ
Police & Firemen's Retirement System of New Jersey

JAMES A. KOMPANY
Chairman

GREGORY PETZOLD
Executive Director

September 8, 2026

SENT VIA EMAIL: [redacted]

Sent via email
September 17, 2026
SB

Stuart J. Alterman, Esquire
Alterman & Associates, LLC
[redacted]

Re: Thomas Wilkins v. Board of Trustees, Police and Firemen's Retirement System of New Jersey
OAL Docket No. TYP 17049-18
[redacted]

**FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. Alterman,

At its meeting on July 13, 2026, the Board of Trustees (Board) of the Police and Firemen's Retirement System of New Jersey (PFRSNJ or Fund) considered the Initial Decision (ID) dated June 12, 2026; the record and all exhibits and the transcript; the exceptions filed by Kimberly Forino, Esquire, litigating outside counsel for the Board, dated June 18, 2022 (Exceptions), and the reply to exceptions that you filed on behalf of the Petitioner, Thomas Wilkins on July 2, 2026 (Reply to Exceptions). After careful consideration, the Board voted to reject the ID that reversed the Board's decision to deny Wilkins' request to cancel a pension loan and to require that he repay his outstanding loan balance with accrued interest.

The ID found that the evidence in the record was insufficient to establish that Wilkins received a pension loan in the principal amount of [redacted] in 2004. However, for the reasons set forth below, the Board rejected the ID and directed its Secretary to prepare Findings of Fact and Conclusions of Law as outlined below, and as approved by the Board at its public meeting on September 8, 2026.

**FINAL ADMINISTRATIVE DETERMINATION (FAD)**

Under the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., an agency head "may reject or modify findings of fact and conclusions of law . . . in the decision, but shall state clearly the reasons for doing so." N.J.S.A. 52:14B-10(c). Here, the Board modifies the findings of fact, after satisfying the standard. The Board accepts the credibility determination regarding lay witness testimony stated in the findings of fact as set forth in the ID. The Board rejects the ID's Conclusions of Law. With those changes, the Board denies Wilkins' request to cancel his pension loan with the principal amount of [redacted] which is due and payable with interest, but reflecting an offset due to a calculation error of Wilkins' pensionable salary. The Board modifies the findings of fact based on documents and makes amended Conclusions of Law, as set forth below.

## I. WILKINS HAS THE BURDEN OF PROOF

The Board starts with a correction of law that is central to all findings and determinations herein: The ID incorrectly placed the burden of proof on the Board. (ID at p.13). (ID at pp. 2, 13, and 16). This is error.

In general, the party asserting a claim or seeking relief or action has the burden of proof in a judicial or administrative tribunal. WCI-Westinghouse, Inc. v. Edison Tp., 7 N.J. Tax 610, 630 (Tax Ct. 1985), aff'd, 9 N.J. Tax 86 (App. Div. 1986). See also, N.J.A.C. 1:1-2.1 at "Petitioner." However, in cases where the administrative agency is seeking to revoke a benefit otherwise earned or assess a penalty or violation, the burden of proof shifts to the administrative agency. See, e.g., Stevens v. Bd. of Trs., PERS, 309 N.J. Super. 300, 304-305 (App. Div. 1998) (citations omitted).

Here, the ID first framed the issue to be resolved as "Petitioner Thomas Wilkins appeals the denial of his request that the Board of the [PFRSNJ] (PFRS or Board) cancel a pension loan that the Board asserts [was] outstanding at the time of his retirement. (ID at p.1-2). Yet, the ID placed the burden of proof on the Board, finding that "the Board failed to meet its burden of proof that Petitioner applied for the loan or that the Division of Pensions and Benefits sent a pension loan [] check to him." (Id. at p. 2).

To place the burden of proof on the Board, the ID relied on the unappealed final agency decision of another pension fund. Costello v. Bd. of Trs., TPAF, 2022 N.J. AGEN LEXIS 531 * (Final Agency Decision August 22, 2022). Costello, another loan challenge case, relies on In re Verderese, 1995 N.J. Agen LEXIS 525, 96 N.J.A.R. 2d (TYP) 11 (ID and FAD), to hold, "[w]here an agency engages in enforcement activity, the burden falls on the agency to establish the claimed violations by a preponderance of the evidence" finding that the Board had the burden of proof. In re Costello, supra at *8. In re Verderese is a dishonorable service case and, therefore, is distinguishable from a pension loan cancellation case. Affirming the forfeiture of pension credit for a Public Employees' Retirement System member, as in the Verderese case, is dissimilar to this matter regarding burden of proof.

This contested case is not an enforcement action either, nor an action whereby the Board would seek to reduce a member's otherwise earned pension benefits, such as an instance where the Board reviews whether a member engaged in dishonorable service and, therefore, pension credit is forfeited. This case, rather, is one where Wilkins sought cancellation of his indebtedness. (ID at p. 1; see also J-8 at p.1).

Based on the issue to be resolved here, Costello is neither instructive nor persuasive on this point of law. Rather, the Board finds Locane v. Bd. of Trs. PFRS, 2022 N.J. Agen. LEXIS 628 *9 (Initial Decision July 11, 2022), to be both instructive and

[redacted]

## II. WILKINS FAILED TO MEET HIS BURDEN OF PROOF BY A PREPONDERANCE OF THE CREDIBLE EVIDENCE.

Applying the proper burden of proof, the ID is rejected because it is premised on the finding that while "neither party proved conclusively that their position was correct, as none had access to documentation that would squarely support their claims," Wilkins "bolstered" his testimony by "producing proof" that he and his wife instead obtained a home equity loan. (ID at p.11). The Board rejects documents regarding Wilkins' home equity mortgage supports this finding.

Furthermore, the ID is silent as to the "produc[ed] proof" of the mortgage loan and leaves this Board to guess as to the reasonableness of such a finding. If the ID relied on P-16 as the "proof," the Board rejects such finding. Admittedly, a mortgage loan executed by Thomas Wilkins was recorded in November 2004. (P-16 at p.3). However, the probative value ends there because the other two pages of the exhibit – an excerpt of a loan application (obscured and cut off at the very section where other debts were listed) and an excerpt of a mortgage loan document – are incomplete. These documentary deficiencies are unassessed in the ID.

The Board finds that these incomplete documents cannot be said to have the probative value to have carry Wilkins' burden of proof that he did not obtain the pension loan. Similarly, these incomplete documents do not undermine the assertion that Wilkins had a pension loan that is due and owing.

In a similar vein, <u>none</u> of the third-party generated documents support Wilkins' claims. The ID properly finds that some of Wilkins' documents are irrelevant in proving whether he received a pension loan in the summer of 2004 because "the documents that did not refer to the loan could not have referenced the loan because they were issued before the check." (ID at p.9, referring to P-10, P-11, P-13). Similarly, the ID finds that some documents "would not refer to the loan regardless of when the date they were issued." (<u>Ibid.</u>, referring to P-15, P-16[2], P-17, P-18, P-19, P-23, P-24).

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[redacted]

[2] The Board differs on this assessment of P-16 because, as mentioned <u>supra</u>, there is an incomplete section on the first page of that exhibit for listing other debt and therefore, the document's relevance could be impacted by the date of the document, which is unknown.

Then, the ID erroneously points to the Certification of Service and Final Salary dated April 21, 2005 (Exhibit P-18) as the only Petitioner- or employer-produced document that possibly should have shown evidence of the pension loan at issue here but did not, apparently a basis to find that Wilkins did not receive a pension loan just as he was retiring. (Ibid., referring to P-18). Specifically, the ID finds,

> However, on April 21, 2005, well after the pension loan was purportedly issued, the police department completed a form to reconcile retroactive payment due to Wilkins. Although the form included a space for loan repayments, it did not reference a pension loan.
>
> [(Ibid.)].

As noted, Wilkins did not complete that form; his employer completed it. (Ibid.) Yet, the record is devoid of any testimony or other evidence to demonstrate that at the time the employer was completing that form, the employer's Certifying Officer had actual knowledge that Wilkins still had an outstanding pension loan.

More importantly, the reasoning of the ID is flawed and the form has no probative value to furthering Wilkins' case. The form demonstrates that Wilkins received a retroactive salary increase. (P-18 at Section 10). The salary increase sets forth an adjustment to Wilkins' base pay for the period January 1, 2004 through July 31, 2004. (Ibid.). Similarly, the document reflects adjustments that additional pension payments were taken from that salary increase, to ensure that all pension contributions were made on Wilkins' behalf for that salary increase. (Id. at Section 11). The employer left the subsections in the deductions table blank with respect to deductions taken for "loan repayment." (Ibid.) The ID reads this absence of deductions for the pension loan's repayment as proof that the loan did not issue to Wilkins. Yet, the employer did not take any deductions from Wilkins' pay attributable to January 1, 2004 through July 31, 2004 for the loan because the repayment period began on August 1, 2004, when Wilkins was no longer in the job. Therefore, P-18 does not help establish Wilkins' case but also would be consistent with the Division's business records that a pension loan issued to Wilkins that was repayable as of August 1, 2004.

Significantly, earlier in the paragraph that reviews the P Exhibits, the ID adopts this very finding with respect to R-14 ("This explains why an April 21, 2005 Certification of Service and Final Salary do not include an entry under the 'loan repayment' heading. (R-14). That is, Wikins [sic] was removed from payroll prior to the start of the loan repayment period.") – yet P-18 and R-14 are identical documents. The inferences made on Wilkins' behalf with respect to P-18 are arbitrary, capricious, unreasonable, and on the face of the document, given the timeline of the loan, clearly erroneous. Rather, the Board finds that the ID applied the correct analysis to P-18's identical counterpart, R-14.

## III. THE ID'S ATTEMPT TO REFUTE THE TRUSTWORTHINESS OF THE DIVISION'S BUSINESS RECORDS IS ARBITRARY, CAPRICIOUS, AND UNSUPPORTED BY THE EVIDENTIARY RECORD.

As noted in Exceptions, the ALJ found that the documents proffered by the Respondent were admissible as business records and, unless the opposing party proffers evidence to question the documents' reliability, "there is no reason to believe that a computerized business record is not trustworthy." (ID at p.14). The ID expressly found that Wilkins "has not produced such evidence." (Ibid.).

The ID also found that Willever was credible and that she testified that Division staff processing pension loans from paper applications would key the member's identifying information and loan details into their computerized system to generate the Certification of Payroll Deductions, which required keying in both member number and Social Security Number correctly for the member applying for the loan. (ID at 8, T102:10-13).

Nonetheless, the ID later tries to undermine the trustworthiness of those contemporaneous business records. The ID raises a wholly unsubstantiated speculation that somehow, Division staff could have erred when trying to type in the member number and Social Security Number of some other member of a State-administered pension fund who actually was seeking a [redacted] loan but did not receive it, yet somehow also managed, by complete accident, to correctly type in both unique numbers for Wilkins when he was not seeking the loan. (ID at p.16).

The Certification of Payroll Deductions reflecting loan payments beginning on August 1, 2004, shows his member number in the fund and his Social Security Number correctly entered, along with Wilkins' name, the check date, the check number, and the check amount of [redacted] all forwarded to Wilkins' employer. (J-6 at p. 5; compare to member number and Social Security Number on Exhibits P-1 through P-10, inclusive). There is no evidence in the record to show that such a random error was probable, let alone happened here. The ID is arbitrary, capricious, and not supported by the evidentiary record in this regard.

## IV. THE ID RELIES ON TWO UNPUBLISHED, UNAPPEALED CASES THAT ARE BASED ON LEGAL ERROR WHILE NOT REFERENCING ANOTHER CASE THAT PROPERLY APPLIES THE LAW AND IS FACTUALLY ON POINT.

The ID relies on Costello, supra, and Graham v. Bd. of Trs., PFRS, 2021 N.J. AGEN LEXIS 553 (March 8, 2021), as justifying the holding here. However, the Board does not find those cases binding nor informative here. First and foremost, "unpublished opinions," such as Costello and Graham, "shall [not] constitute precedent or be binding upon any court." R. 1:36-3. Similarly, "an unpublished agency decision may have no precedential value for a court." In re Adamar of N.J., Inc., 401 N.J. Super. 247,

[redacted]

In the instant matter, Wilkins stated to the Board that he had "no recollection of this loan." (P-25). He further stated that he and Mrs. Wilkins had "searched our financial records and statements and [could not] find anything to show that amount of money being received in July 2004," which was due to his bank not maintaining such records beyond seven years. (ID at p. 10). Wilkins did not proffer any financial records or statements that he personally had maintained.

## V. THE ID FAILS TO ASSESS THE FEDERAL TAX CODE REGULATION OF THE FUND AND THE BOARD'S OBLIGATION TO CORRECT ERRORS, PRECLUDING THE RELIEF IN THE ID.

Because the ID was premised on the improper burden of proof and erroneously ruled against the Board that there was no loan made to Wilkins, the ID improperly contains no analysis of federal statutory requirements on the Fund and the Board's obligations as a fiduciary to the Fund with respect to repayment of a pension loan's principal and interest.

The PFRSNJ is a qualified governmental defined benefits plan and, therefore, subject to the Internal Revenue Code. Internal Revenue Code § 72(p) requires pension loans in funds such as the PFRSNJ and the other State-administered pension funds to be repaid within five years of issuance. 26 U.S.C. § 72(p)(2)(B). If a member fails to repay the pension loan within the five-year period, then the loan becomes a "deemed distribution" taxable as income to the member, subject to additional penalties. 26 U.S.C. § 72(p)(1). The deemed distribution does not cancel the loan obligation, which still must be repaid to the pension plan, with applicable interest. <u>See</u> Rev. Proc. 2016-51, § 6.02(1).

The Board is a fiduciary, with its overarching responsibility to protect the financial integrity of the PFRSNJ, including the fund's tax-qualified status. N.J.S.A.. 43:3C-18(a) and (c) and N.J.S.A. 43:16A-13(1). When, pursuant to an audit, the Division discovered outstanding pension loans such as Wilkins', those borrowers were informed that the outstanding loans (plus interest) must be repaid to their respective pension funds. Failure to comply with the Internal Revenue Code may result in plan disqualification with severe plan effects, including retroactive loss of tax deductions for employers, retroactive requirements to report income for all employees, taxation of earnings on plan assets, and loss of all employees' rights to roll-over distributions from the plan on a tax-free basis. <u>See</u> 26 U.S.C. § 401(a). Therefore, in accordance with the Division's authority and responsibility under N.J.S.A. 43:3C-18(c) to maintain PFRSNJ's tax-qualified status, the Board reasonably denied Wilkins' request to waive the repayment of his outstanding loan balance with interest. The same regulatory obligations exist for other public New Jersey pension funds under the IRS Code. <u>See</u> <u>Zilberberg v. Bd. of Trs., Teachers' Pension & Annuity Fund</u>, 468 N.J. Super. 504, 510-512 (App. Div. 2021).

The Board acts consistently with the Fund's IRS regulatory obligations, specifically addressed in the settlement contained in the IRS agreement. <u>See</u> Board letter to Petitioner's counsel dated November 9, 2018, J-8, pg.3 (Bates no. WILKINS014) (citing to IRS agreement); see also T71:13-:22[3] and T83:25-84:8 (Board witness testimony about audit loan results and IRS regulations) and cf. Closing Agreement on Final Determination Covering Specific Matters dated February 21, 2018 ("IRS agreement") (Exhibit "B" hereto). See also Graham v. Bd. of Trs., PFRS, 2021 N.J. AGEN LEXIS 553, *19 n.5 (March 8, 2021) (IRS agreement in record - R-13) The Board's witness, Robin Willeber, testified that there were approximately 1,043 loans like Wilkins' loan found during the loan audits for all pension funds. T103:18-:24.

Further, the Board has the statutory authority to correct errors in the record which result in members or retirees receiving more or less than they would have been entitled to, had the records been correct. N.J.S.A. 43:16A-18 (requiring Board to correct errors resulting in greater or lesser benefits than warranted and to "adjust the payments in such a manner that the actuarial equivalent of the benefit to which [such member] was correctly entitled shall be paid").

The Board accepts that the Division erred when it failed to transfer Wilkins' outstanding loan balance into his retirement account. This error resulted in Wilkins "receiving from the retirement system more . . . than he would have been entitled to receive had the records been correct" – i.e., the benefit of an interest-free loan from 2004 until this error was discovered in 2017, during loan audits that revealed many loans that were not carried-over into retirement for members of New Jersey pension retirement systems. Ibid. The Board reasonably acted under its statutory authority to correct errors in PFRSNJ's records when it affirmed the Division's recoupment of the outstanding loan and denied Wilkins' request to waive the repayment of his outstanding loan balance with interest.

## VI. THE BOARD'S STATUTORY MANDATE HEREIN MEANS EQUITY DOES NOT REQUIRE THE ADOPTION OF THE ID.

In his Reply to Exceptions, Wilkins asserts that equitable principles weigh in favor of the Board cancelling his pension loan repayment obligation. However, it is well settled that "equity follows the law." See Wolfson v. Bonello, 270 N.J. Super. 274, 286 (App. Div. 1994); see also O'Malley v. Dep't of Energy, 109 N.J. 309, 316 (1987). Moreover, "the Board has the authority to apply equitable principals to provide a remedy when justice so demands, provided the power is used rarely and sparingly, and does no harm to the overall pension scheme." Zilberberg, 468 N.J. Super. at 513 (citation omitted, emphasis in the original). In Zilberberg, where the petitioner also had a loan detected via the audit that found Wilkins', the court rejected her equitable argument to forgive the interest on the loan, finding that she "benefitted from an interest-free loan for thirteen years and the Board must take steps to ensure that her failure to pay interest does not harm the pension scheme." Id. Though Zilberberg had made two payments on that

[3] "T" herein refers to the transcript of recorded proceedings in this case on October 16, 2025.

loan, Wilkins is in a similar position as the petitioner was in Zilberberg regarding application of equitable principals.

To that end, the Board properly denied Wilkins' request to cancel the repayment of his loan balance. See Point V, supra (citing to Board's legal authority and/or regulatory obligation under N.J.S.A. 43:3C-18(c), N.J.S.A. 43:16A-18, and federal tax law to maintain the tax-qualified status of PFRSNJ). Justice does not require equitable relief here because the Board followed the law when it denied Wilkins' request to waive the repayment of his outstanding loan plus interest and the overall pension scheme would be harmed if such relief were granted here.

## CONCLUSION

For the foregoing reasons, the Board rejects the legal conclusions in the ID and affirms its previous decision to not cancel Wilkins' pension loan indebtedness, as he requested. It modifies findings of fact based on documents and adopts the findings of fact based on lay witness credibility from the ID.

Wilkins has the right, if he wishes, to appeal this final administrative determination to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

Sincerely,

Susan Barrett

Susan Barrett, Secretary for the
Board of Trustees,
Police and Firemen's Retirement System
of New Jersey

Exhibits A and B
cc: Thomas Wilkins
Nels Lauritzen, Esq. PFRSNJ Director of Legal Affairs;
Kimberly A. Sked, Esq., PFRSNJ Staff Attorney
Honorable ALJ of the Office of Administrative Law