

court orders, as well as to comply with them. In sum, the proposed amendment of subsection (d) is necessary to clarify that the court order requires that the member designate beneficiaries and option selections.

At N.J.A.C. 17:1-1.12, Domestic relations orders, subsection (d) is proposed for amendment to delete the language that an irrevocable designation remains the prerogative of the member. It is the Division's administrative practice to honor and implement court orders for child support, alimony, or equitable distribution. If the existing court order is released or a new court order is received by the Division and it authorizes payment to another payee for the designation of death benefits or selection of retirement option the existing court order becomes null and void.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendment to N.J.A.C. 17:1-1.12 will clarify the Division's administrative practice regarding the treatment of court orders for child support, alimony, or equitable distribution. The Division makes every effort to honor these court orders and the member's file is annotated that there is an existing court order before any monies are dispersed to the member and the alternate payee.

The social benefits of this proposed amendment outweigh any negative effect that this amendment may impose on members or employers. Providing the proper distribution of pension funds to the members and alternate payees saves Division resources and avoids legal ramifications. The taxpaying public may be affected by the proposed amendment, since public monies are used to fund the benefits and they too, benefit from the proper and efficient administration of the retirement system which the amendment requires.

Economic Impact

The proposed amendment will have a positive economic impact on the various retirement systems. It will ensure that the Division will continue to honor and properly disperse the pension monies designated by court orders for child support, alimony, or equitable distribution to the named payees. This will avoid additional legal fees to the member, alternate payees, and the pension funds. The Division will continue to monitor the impact of the proposed amendment.

Federal Standards Statement

The proposed amendment is necessary, so as to be compliant with court orders for child support, alimony, and equitable distribution. A Federal standards analysis is not required because N.J.S.A. 52:14-15.1a (P.L. 1996, c. 8) and 52:18A-96 et seq. govern the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Jobs Impact

The operation of the proposed amendment will not result in the generation or loss of jobs. The Division invites any interested parties to submit any data or studies concerning the jobs impact of this proposed amendment along with their written comments.

Agriculture Industry Impact

The proposed amendment will not have any impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendment affects all members of the State-administered retirement systems. It does not impose any reporting, recordkeeping, or other compliance requirements upon small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

The proposed amendment will not have an impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rule would evoke a change in the average costs associated with housing since the rule only applies to the execution of court orders for child support, alimony, or equitable distribution.

Smart Growth Development Impact Analysis

The proposed amendment will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed rule only applies to the execution of court orders for child support, alimony, or equitable distribution.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. ADMINISTRATIVE PRACTICES

17:1-1.12 Domestic relations orders

(a)-(c) (No change.)

(d) The Division cannot guarantee the implementation of any irrevocable designation of death benefits or selection of retirement option. [Such designation or selection remains the prerogative of the member.] **It is the responsibility of the member to inform the Division of the existence of any court order or domestic relations order, as well as, to comply with the contents of same.**

(a)

DIVISION OF PENSIONS AND BENEFITS

General Administration

Peacetime Military Service; Service Credit

Proposed Amendment: N.J.A.C. 17:1-3.10

Authorized By: Florence J. Sheppard, Acting Director, Division of Pensions and Benefits.

Authority: N.J.S.A. 52:14-15.1a (P.L. 1996, c. 8) and 52:18A-96 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-069.

Submit comments by July 6, 2012 to:

Susanne Culliton
Administrative Practice Officer
Division of Pensions and Benefits
PO Box 295
Trenton, NJ 08625-0295

The agency proposal follows:

Summary

The Division of Pensions and Benefits (Division) seeks to propose an amendment to clarify an existing requirement in the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). There has been no change in the administrative practice of the Division, the proposed amendment clarifies that in order for an employee to receive the USERRA-eligible service in the actual calculation of retirement benefits, the employee is required to remit the pension contributions for the period of time in the uniformed service. The employee shall receive the pension credit for the USERRA-eligible service by making the pension contributions that would have been required had the employee not left employment to serve in the uniformed services. In addition, the USERRA-eligible service can be used to attain the employer-paid health benefits coverage based on 25 years of service if the employer normally provides this benefit, as long as the employee purchases the USERRA-eligible service.

The purpose of this amendment is to clarify an already existing requirement and to ensure that no one is misled regarding the provisions of 38 U.S.C. §§ 4301 et seq. and the Division's administrative practice regarding USERRA-service for retirement and health benefits. Employees that pay the pension contributions associated with the USERRA-service shall have the time included in the calculation of their retirement benefits and health benefits if applicable.

It is the employer's responsibility to notify employees of the benefit protection provided by USERRA. The request for USERRA-eligible service credit should be made by the employer to the Division within 30

days of return to employment. When notified of an employee's USERRA-eligible service, the Division will notify the employee of the amount of contributions required in order that the period of military service can be used in the calculation of retirement benefits. The employee must authorize payroll deductions to the retirement systems for USERRA-eligible service to receive the pension service credit. The USERRA purchase may be paid in a lump sum or may be taken through tax-deferred payroll deductions.

If the employee does not purchase the USERRA-eligible service, then the employee's time in the uniformed services will not be used for the purposes of vesting and/or determining eligibility for retirement and health benefits.

At N.J.A.C. 17:1-3.10, Peacetime military service; service credit, subsection (a) remains unchanged. Subsection (b) is proposed for amendment to clarify that USERRA-eligible service can be used for purposes of vesting and to determine eligibility for benefits, provided the employee authorizes the purchase of the USERRA-eligible service. The employee shall receive the pension credit for the period of USERRA-eligible service by making the pension contributions that would have been required had the employee not left employment to serve in the uniformed services. Payment to the retirement system of any contributions for USERRA-eligible service is optional and voluntary on the part of the employee. Subsection (c) remains unchanged.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendment to N.J.A.C. 17:1-3.10(b) is intended to clarify the Division's administrative practice regarding USERRA-eligible service and the purchase of this service for the purposes of the retirement benefit calculation and health benefits, if the employer normally provides this benefit. The amended regulation will have a positive impact on the employees since upon return to employment, the employee will have an opportunity to purchase the USERRA-eligible service and have the service time credited to the employee's retirement account. The additional service credit will be calculated for the retirement benefit, which can provide the employee with an increased monthly retirement benefit. The Division and the State-administered retirement systems also benefit from the collection of the purchase payments.

The social benefits of this proposed amendment outweigh any negative effect that this amendment may impose on members or employers. Providing proper interpretation of the Federal law (38 U.S.C. §§ 4301 et seq.) will provide members and employers with a better understanding of the Division's administrative practice regarding USERRA. The taxpaying public may be affected by this amendment, since public monies are used to fund the benefits and they too, benefit from the proper and efficient administration of the retirement system which the rules require.

Economic Impact

The proposed amendment will have a positive economic impact on the various retirement systems. USERRA requires that employee contributions or lump sum payments to the retirement systems for the purchase of the eligible uniformed service credit must be deferred from Federal tax. Therefore, the payment for the purchase must be taken through payroll deductions. This ensures that payment for the additional service credit is obtained from the employer and submitted to the Division. The Division will continue to monitor the impact of the proposed amendment.

Federal Standards Statement

The proposed amendment is necessary as to be in compliance with Federal statutes. Specifically, the provisions of 38 U.S.C. §§ 4301 et seq., which provide benefit protection to employees who leave public employment to serve in the uniformed services. The rule was adopted to comply with USERRA and apply these Federal requirements to all the defined benefit and defined contribution retirement systems administered by the Division.

Jobs Impact

The operation of the proposed amendment will not result in the generation or loss of jobs. The Division invites any interested parties to

submit any data or studies concerning the jobs impact of this proposed amendment along with their written comments.

Agriculture Industry Impact

The proposed amendment will not have any impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendment affects all members of the State-administered retirement systems. It does not impose any reporting, recordkeeping, or other compliance requirements upon small businesses as defined under the Regulatory Flexibility Act at N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

The proposed amendment will not have an impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rule would evoke a change in the average costs associated with housing because the rule only applies to the provisions of USERRA that apply to employees of the State-administered retirement systems.

Smart Growth Development Impact Analysis

The proposed amendment will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed rule only applies to members that purchase USERRA-eligible service.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 3. ENROLLMENT, MEMBERSHIP, TRANSFERS, AND WITHDRAWALS

17:1-3.10 Peacetime military service; service credit

(a) (No change.)

(b) A member reemployed under this section shall be treated as not having incurred a break in service with the employer by reason of the member's period of service in the uniformed services [only for the purposes of vesting or determining eligibility for retirement and health benefits]. **A member that authorizes payroll deductions or makes a lump sum payment for the USERRA-eligible service will receive the pension service credit with the State-administered retirement system. The actual calculation of retirement benefits will include the time of uniformed service. Payment to the retirement system of any contributions for USERRA-eligible service is optional and voluntary on the part of the member.**

(c) (No change.)

OTHER AGENCIES

(a)

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Procedures for Procurement of Design Build Contracts for School Facilities Projects for the Schools Construction Program

Proposed Readoption with Amendments: N.J.A.C. 19:36

Proposed Repeals and New Rules: N.J.A.C. 19:36-1.3 and 8.3

Proposed New Rules: N.J.A.C. 19:36-1.5 and 9

Authorized By: New Jersey Schools Development Authority, Marc Larkins, Chief Executive Officer.

Authority: P.L. 2007, c. 137, specifically, § 4k (N.J.S.A. 52:18A-238k); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); and P.L. 2007, c. 137, (N.J.S.A. 52:18A-235 et seq.).