Regulatory and Fiscal Impact Analysis: Proposal of Change to Administrative Rules 20 NCAC 02B .0401 and 20 NCAC 02C .0403

Agency:	Teachers' and State Employees' Retirement System Board of Trustees; Local Governmental Employees’ Retirement System Board of Trustees
Rule Citation(s):	20 NCAC 02B .0401; 20 NCAC 02C .0403 (See Appendix A for proposed Rule text)
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Rulemaking Authority:	G.S. 128-22; G.S. 128-28(g); G.S. 128-30(d); G.S. 135-2; G.S. 135-6(f); G.S. 135-8(f)
Impact Summary:	State Government: Uncertain (probably yes) Local Government: Uncertain (probably yes) Private Entities: No Substantial Impact: No

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I. Introduction

The Local Governmental Employees’ Retirement System ("LGERS") is administered by a Board of Trustees ("LGERS Board") pursuant to G.S. 128-22. The Teachers' and State Employees' Retirement System ("TSERS") is administered by a Board of Trustees ("TSERS Board") pursuant to G.S. 135-2. Staffing for the Boards is provided by the Department of State Treasurer (Chapter 143A of the General Statutes), through its Retirement Systems Division ("RSD"). The North Carolina Administrative Code contains Rules related to the administration of TSERS and LGERS under Title 20 (State Treasurer), Chapter 02 (Retirement Systems), Subchapters 02A (Divisional Rules), 02B (TSERS), and 02C (LGERS).

TSERS and LGERS are governmental pension plans under Section 414(d) of the Internal Revenue Code. G.S. 128-21(11) defines the employing units who are potentially eligible to participate in LGERS. G.S. 135-1(11) defines the employing units participating in TSERS. Participating employing units make contributions to their Retirement System each month associated with regular payroll, and also may be required to make contributions to their Retirement System from time to time for other reasons such as those described in this analysis.

This proposal contains recommended amendments to administrative rules clarifying that if LGERS or TSERS must repay or reimburse an employer for any reason, the refund will occur in the form of a credit to be applied against the employer's future contribution requirements.

II. Description and Impact Analysis

Purpose	Clarify that if TSERS or LGERS must repay or reimburse an employer for any reason, the refund will occur in the form of a credit to be applied against the employer's future contribution requirements. This will ensure clarity and consistency in what this analysis refers to as the "Miscellaneous Refund Scenarios," and prevent questions that may arise in the future as to the form of the refund.
Rule Section	Section (d) of each Rule.
Addition/Modification	Modification by adding Section (d) to each Rule.
Background/Baseline	LGERS and TSERS are funds held in trust, under a requirement that "neither the trust corpus nor income from this trust can be used for purposes other than the exclusive benefit of members or their beneficiaries, except that employer contributions made to the trust under a good faith mistake of fact may be returned to an employer, where the refund can occur within less than one year after the mistaken contribution was made, consistent with the rule adopted by the Board of Trustees." G.S. 128-22 for LGERS; G.S. 135-2 for TSERS. In this analysis, this is called the "Trust Requirement." Employers make reports each month to the Retirement Systems on their employees' service and compensation and are required to pay a percentage of their employees' compensation into the Retirement System each month. Therefore, employers participating in the Retirement Systems incur new employer costs and are required to pay those costs each month. Each Rule already provides that the following amounts are refunded to employers in the form of credits toward future required contributions: • Certain payroll-based contributions, namely, amounts "paid into the pension accumulation fund by the employer in the amount equal to a percentage of the actual compensation of each member in cases of erroneous employer deductions," where the errors are "corrected by the employing unit on a subsequent payroll within the calendar year in which the errors occur," or where the errors "occur[red] in December" and the employer submits "a revised payroll report for the correct amount before January 31 of the following year." • Additional contributions paid by employers pursuant to the contribution-based benefit cap (or anti-pension-spiking) provisions where "the Retirement System receives information which alters the calculation of the retirement benefit used to determine the contribution." The types of contributions that employers make to TSERS and LGERS are more than just the two listed above. They also include other scenarios described in this analysis as "Miscellaneous Refund Scenarios." If employers overpay these contributions, whether accidentally or due to subsequent facts that are learned, the employers may be entitled to be reimbursed. For example, Miscellaneous Refund Scenarios include:

	• Retroactive changes to required contribution rates, for instance due to a retroactively effective State budget, Board of Trustees decision, or administrative correction. • Overpayment of penalties for late submission of regular employment and payroll information. • Over-reimbursement of benefits paid from the Qualified Excess Benefit Arrangement ("QEBA") pursuant to G.S. 128-38.10(d1) for LGERS or G.S. 135-151(d1) for TSERS. • Overpayment of contributions identified based on individual account reviews performed by RSD. Baseline condition: The two Rules currently provide for refunds of employer contributions to occur in the form of credits against future required contributions, when the underlying information is corrected within a calendar year, or by January 31 of the following year if the erroneous report occurs in December. They also currently provide for such credits when additional contributions paid under the contribution-based benefit cap provisions are subsequently corrected. With respect to Miscellaneous Refund Scenarios, the refunds are administered in the form of credits that employers may apply to their future required contributions. This ensures that the Trust Requirement is followed by retaining contributed funds within the Retirement System but allowing credits to be applied against future contributions.
Proposed Change	The proposal would add part (d) to each proposed Rule to provide that if TSERS or LGERS need to repay or reimburse an employer for any reason, the refund is issued in the form of a credit against the employer's future required contributions.
Alternatives	Alternative #1 would be to leave the Rules as-is. This would result in there being no Rule provision covering the situation where an employer is entitled to a refund due to a Miscellaneous Refund Scenario. The proposal is preferable to this alternative because it clarifies that the employer in this situation receives a credit that aligns the net amount collected with the statutory requirement for the amount due to the Retirement System. Alternative #2 would be to amend the Rules but allow refunds to be issued in one or more forms other than a credit against the employer's future contribution requirements. The proposal is preferable to this alternative because, by providing the refund in the form of a credit, it permits employers to manage the timing of applying the credit. In addition, the proposal is consistent with existing rule provisions that specify refunds for other scenarios are in the form of a credit.
Benefit	The proposal clarifies that all refunds for any reason are issued to employers in the form of credits against their future contributions in a manner that recognizes the multiple related statutory requirements. These include the Trust Requirement, the statutory definitions of amounts that employers are required to pay the Retirement Systems, and the requirement that

	employers certify to the accuracy of their monthly reports to the Retirement Systems. Providing the refund in the form of a credit permits employers to manage the timing of applying the credit.
Impact	This proposal would be the same as longstanding practice, and therefore represents no change compared to longstanding practice. Compared to the Baseline condition as stated in current Rules, the proposal is unlikely to have an impact other than through incremental improvement of clarity and transparency. This clarity and transparency will provide more certainty to employers about how they will receive refunds. It is possible that the proposal would save both employers and RSD some amount of staff time in addressing questions about how employers would receive their refunds. It is also possible that some small number of employers would prefer to receive refunds by check. However, RSD is not aware of any meaningful volume of questions from employers asking if the refunds addressed by these proposed additions to existing rules could be issued in any form other than a credit. This would further support the conclusion that that proposal is unlikely to have an impact other than through incremental improvement of clarity and transparency.

III. Summary

The proposal contains recommendations with the following administrative benefits.

Section of Analysis	**Purpose**	**Administrative Benefit**
II	Clarify that if TSERS or LGERS must repay or reimburse an employer for any reason, the refund will occur in the form of a credit to be applied against the employer's future contribution requirements.	Clarifies that all refunds for any reason are issued to employers in the form of credits against their future contributions in a manner that recognizes the multiple related statutory requirements.

The fiscal benefits or costs are estimated as follows.

Annual Benefits (Unquantified)

- Private Entities.
  - None.
- Local Governments.
  - Improved clarity and transparency of administrative practice, providing more certainty about the form in which a refund will be issued.
  - Possible reduction in employer staff time that would have been spent addressing questions about the form of a refund. Not quantified because the time is estimated to be negligible.
- State Government.

- Improved clarity and transparency of administrative practice, providing more certainty about the form in which a refund will be issued.
- Possible reduction in employer and RSD staff time that would have been spent addressing questions about the form of a refund. Not quantified because the time is estimated to be negligible.

<u>Annual Costs (Unquantified)</u>

- Private Entities.
  - None.
- Local Governments.
  - None.
- State Government.
  - None.

Appendix A: Proposed Text of Administrative Rules

TSERS

20 NCAC 02B .0401 is proposed for amendment as follows:

20 NCAC 02B .0401 REFUNDS

(a) The Retirement System will make no refunds of employer contributions paid into the pension accumulation fund by the employer in the amount equal to a percentage of the actual compensation of each member in cases of erroneous employee deductions except those which are corrected by the employing unit on a subsequent payroll within the calendar year in which the errors occur.

(b) Notwithstanding Paragraph (a) of this Rule, an error occurring in December may be corrected, and the associated employer contribution be refunded in the form of a credit toward future required employer contributions, by the employer's submission of a revised payroll report for the correct amount before January 31 of the following year.

(c) If an employer makes an additional contribution to the pension accumulation fund as a result of the contribution-based benefit cap and the Retirement System receives information which alters the calculation of the retirement benefit used to determine the contribution under the provisions of G.S. 135-8(f)(2)f., any contribution not required based on the new information will be refunded to the employer in the form of a credit toward future required employer contributions.

(d) If an Employer makes a contribution to the pension accumulation fund that was not required or the Retirement Systems Division must repay or reimburse an employer for any reason, then the funds shall be refunded or paid in the form of a credit to be used toward future required employer contributions.

History Note: Authority G.S. 135-2; 135-6(f); 135-8(f);
Eff. February 1, 1976;
Readopted Eff. MONTH DD, YYYY; March 1, 2023; September 21, 1977.

LGERS

20 NCAC 02C .0403 is proposed for amendment as follows:

20 NCAC 02C .0403 REFUNDS

(a) The Retirement System will make no refunds of employer contributions, paid into the Pension Accumulation Fund by the employer in the amount equal to a percentage of the actual compensation of each member, in cases of erroneous employee deductions except those which are corrected by the employing unit on a subsequent payroll within the calendar year in which the errors occur.

(b) Notwithstanding Paragraph (a) of this Rule, an error occurring in December may be corrected, and the associated employer contribution be refunded in the form of a credit toward future required employer contributions, by the employer's submission of a revised payroll report for the correct amount before January 31 of the following year.

(c) If an employer makes an additional contribution to the pension accumulation fund as a result of the contribution-based benefit cap and the Retirement System receives information which alters the calculation of the retirement benefit used to determine the contribution under the provisions of G.S.

128-30(g)(2)b., any contribution not required based on the new information will be refunded to the employer in the form of a credit toward future required employer contributions.
<u>(d) If an Employer makes a contribution to the pension accumulation fund that was not required or the Retirement Systems Division must repay or reimburse an employer for any reason, then the funds shall be refunded or paid in the form of a credit to be used toward future required employer contributions.</u>

History Note: Authority G.S. 128-22; 128-28(g); 128-30(g);
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