



## MEMORANDUM

TO: Teachers' and State Employees' Retirement System (TSERS) and Local Governmental Employees' Retirement System (LGERS) Boards of Trustees

FROM: Patrick Kinlaw, Director of Policy, Planning, and Compliance

DATE: April 23, 2020

SUBJECT: Statutory "Date Set by Board of Trustees" for Interception of Delinquent Contribution-Based Benefit Cap (CBBC) Contributions

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### **Background**

Pursuant to G.S. 128-30(g) for LGERS and G.S. 135-8(f) for TSERS, contributions owed by employers to the Retirement Systems are due by a "date set by the Board of Trustees." If the contribution is not received by the "date set by the Board of Trustees," then penalties may be assessed. If the payment is not submitted within 90 days of the "date set by the Board of Trustees," then the Board must request an interception of State appropriations to the participating employer, to satisfy the delinquent contributions.

Both the TSERS and LGERS Boards of Trustees have adopted policies with regard to the interception authority, including establishing the "date set by the Board of Trustees." The date depends on whether the delinquent employer contribution is related to a contribution-based benefit cap (CBBC) liability or another type of contribution. As adopted October 2016 and amended January 2019, the dates are set as follows. (The policies are identical except that they differ with respect to the referenced dates of May 1, 2019 for LGERS, and December 1, 2019 for TSERS.)

### **LGERS Policy:**

- (1) Effective January 31, 2019, the Board establishes the "date set by the Board of Trustees" to intercept delinquent CBBC contributions to be the later of May 1, 2019, or twelve months after the member's effective date of retirement.
- (2) Effective January 1, 2017, the Board establishes the "date set by the Board of Trustees" to intercept other delinquent contributions or payments to be 90 days after final notice that other contributions or payments are due to the Retirement Systems Division.

### **TSERS Policy:**

- (1) Effective January 31, 2019, the Board establishes the "date set by the Board of Trustees" to intercept delinquent CBBC contributions to be the later of December 1, 2019, or twelve months after the member's effective date of retirement.
- (2) Effective January 1, 2017, the Board establishes the "date set by the Board of Trustees" to intercept other delinquent contributions or payments to be 90 days after final notice that other contributions or payments are due to the Retirement Systems Division.



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*Dale R. Folwell, CPA*  
STATE TREASURER OF NORTH CAROLINA  
DALE R. FOLWELL, CPA

### **Proposed Amendments to Policies**

Staff proposes that the Boards amend these policies with respect to part (1) of each policy, the part dealing with delinquent CBBC liabilities, as follows:

- First, the dates of May 1, 2019 (for LGERS) and December 1, 2019 (for TSERS) are now obsolete and may be removed. With them removed, the policies will be identical in wording.
- Second, the “date set by the Board of Trustees” may be extended in the rare situation where a CBBC invoice is generated only after a recalculation of a member’s retirement benefit well after the retirement effective date.

As an example, suppose a member retired effective July 1, 2019, and based on all the initial retirement calculations, the employer did not have a CBBC liability. Suppose the employer submitted information to the Retirement System several months after the individual’s retirement, and based on this new information, the individual’s benefit was recalculated in May 2020 such that the employer now owes a CBBC liability. Under the existing policy, the “date set by the Board of Trustees” would be July 1, 2020, which is twelve months after the member’s effective retirement date. Staff believes it would be reasonable to allow the employer additional time to pay the invoice before requesting an interception of State appropriations, since the invoice was only issued in May 2020.

Accordingly, staff proposes amending the policy so that the “date set by the Board of Trustees” will be the later of twelve months after the effective retirement date (the current policy), or the first day of the month coincident with or next following six months after the date of the invoice.

### **Proposed Amendments as “Markups”**

Accordingly, staff proposes the following changes, with cross-throughs representing deletions and underscores marking additions:

#### **Part (1) of LGERS policy**

(1) Effective ~~January 31, 2019~~ April 30, 2020, the Board establishes the “date set by the Board of Trustees” to intercept delinquent CBBC contributions to be the later of ~~May 1, 2019~~, or twelve months after the member’s effective date of retirement, or the first day of the month coincident with or next following six months after the date of the invoice.

#### **Part (1) of TSERS policy**

(1) Effective ~~January 31, 2019~~ April 30, 2020, the Board establishes the “date set by the Board of Trustees” to intercept delinquent CBBC contributions to be the later of ~~December 1, 2019~~, or twelve months after the member’s effective date of retirement, or the first day of the month coincident with or next following six months after the date of the invoice.



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### **Revised Policy if Proposed Amendments are Accepted**

As noted above, with these changes, the TSERS and LGERS policies would be identical, and would state the following with respect to the “date set by the Board of Trustees”:

- (1) Effective April 30, 2020, the Board establishes the “date set by the Board of Trustees” to intercept delinquent CBBC contributions to be the later of twelve months after the member’s effective date of retirement, or the first day of the month coincident with or next following six months after the date of the invoice.**
- (2) Effective January 1, 2017, the Board establishes the “date set by the Board of Trustees” to intercept other delinquent contributions or payments to be 90 days after final notice that other contributions or payments are due to the Retirement Systems Division.**

### **Attachments**

- “Intercept Authority Policy Implementation” from October 27, 2016, meeting of the TSERS and LGERS Boards of Trustees, available online at <https://files.nc.gov/retire/documents/files/Governance/InterceptAuthorityPolicyImplementation.pdf>
- “Statutory ‘Date Set by Board of Trustees’ for Interception of Delinquent Contribution-Based Benefit Cap (CBBC) Contributions” from January 31, 2019, meeting of the TSERS and LGERS Boards of Trustees, available online at <https://files.nc.gov/retire/documents/files/Governance/BoardDocs/1-31-19-CBBC-Liability-Payment-Date.pdf>

## **Interception of State Appropriations**

### ***Teachers' and State Employees' Retirement System (TSERS)***

The Retirement Systems Division (RSD) receives all employer contributions, including the contributions from employers affected by the Contribution-Based Benefit Cap (CBBC). RSD contacts the employers on multiple occasions through written and oral communications in its efforts to collect liabilities owed to the Retirement System.

In the event an employer fails to submit payment of the required contributions or payments to RSD within 90 days after the **date set by the Board of Trustees** (Board), the Board will notify the State Treasurer of its intent to collect the delinquent contributions or payments, notify the Office of State Budget and Management of the employer's default, and instruct the Office of State Budget and Management to intercept the State appropriations due to the participating employer. [N.C.G.S. § 135-8 (f)(3)] Upon such notifications by the Board, the Office of State Budget and Management will withhold from any State appropriations due to that employer an amount equal to the delinquent contributions or payments and transmit that amount to RSD. [N.C.G.S. § 135-8 (f)(3)] Upon such notifications by the Board, the State Board of Education will withhold from any State appropriations due to the local school administrative unit an amount equal to the delinquent contributions or other debts due to RSD and transmit that amount to RSD. [N.C.G.S. § 115C-438]

#### **Interception of Contribution-Based Benefit Cap Liabilities:**

The General Assembly enacted the CBBC legislation in 2014. It requires that the employer contributions from participating employers in the North Carolina Retirement Systems to be augmented to reflect the cost of substantial unforeseen liabilities associated with significant increases of a member's compensation over the course of his or her career. The last employer of a member who retires on or after January 1, 2015, with an average final compensation (AFC) of \$100,000 or higher (adjusted annually for inflation), is required to make an additional employer contribution to fund the increased cost to the Retirement Systems to pay for the member's retirement benefit if it is determined that the benefit is in excess of the CBBC.

The Board must establish the 'date set by the Board of Trustees' for use of its interception authority to collect the delinquent contributions if a participating employer fails to submit payment of the additional contributions required under the CBBC law.

Recommendation – Effective January 1, 2017, the Board establishes the "date set by the Board of Trustees" to intercept delinquent CBBC contributions to be twelve months after the member's effective date of retirement.

#### **Interception of Other Delinquent Contributions or Payments:**

The Board must establish the 'date set by the Board of Trustees' for use of its interception authority to collect other delinquent contributions or payments.

Recommendation – Effective January 1, 2017, the Board establishes the "date set by the Board of Trustees" to intercept other delinquent contributions or payments to be 90 days after final notice that other contributions or payments are due to the Retirement Systems Division.

## **Interception of State Appropriations**

### ***Local Governmental Employees' Retirement System (LGERS)***

The Retirement Systems Division (RSD) receives all employer contributions, including the contributions from employers affected by the Contribution-Based Benefit Cap (CBBC). RSD contacts the employers on multiple occasions through written and oral communications in its efforts to collect liabilities owed to the Retirement System.

In the event an employer fails to submit payment of the required contributions or payments to RSD within 90 days after the **date set by the Board of Trustees** (Board), the Board will notify the State Treasurer of its intent to collect the delinquent contributions or payments, notify the Office of State Budget and Management of the employer's default, and instruct the Office of State Budget and Management to intercept the State appropriations due to the participating employer. [N.C.G.S. § 128-30 (g)(3)] Upon such notifications by the Board, the Office of State Budget and Management will withhold from any State appropriations due to that employer an amount equal to the delinquent contributions or payments and transmit that amount to RSD. [N.C.G.S. § 128-30 (g)(3)]

#### **Interception of Contribution-Based Benefit Cap Liabilities:**

The General Assembly enacted the CBBC legislation in 2014. It requires that the employer contributions from participating employers in the North Carolina Retirement Systems to be augmented to reflect the cost of substantial unforeseen liabilities associated with significant increases of a member's compensation over the course of his or her career. The last employer of a member who retires on or after January 1, 2015, with an average final compensation (AFC) of \$100,000 or higher (adjusted annually for inflation), is required to make an additional employer contribution to fund the increased cost to the Retirement Systems to pay for the member's retirement benefit if it is determined that the benefit is in excess of the CBBC.

The Board must establish the 'date set by the Board of Trustees' for use of its interception authority to collect the delinquent contributions if a participating employer fails to submit payment of the additional contributions required under the CBBC law.

Recommendation – Effective January 1, 2017, the Board establishes the “date set by the Board of Trustees” to intercept delinquent CBBC contributions to be twelve months after the member's effective date of retirement.

#### **Interception of Other Delinquent Contributions or Payments:**

The Board must establish the 'date set by the Board of Trustees' for use of its interception authority to collect other delinquent contributions or payments.

Recommendation – Effective January 1, 2017, the Board establishes the “date set by the Board of Trustees” to intercept other delinquent contributions or payments to be 90 days after final notice that other contributions or payments are due to the Retirement Systems Division.

## **APPENDIX**

### ***Notification Process for Contribution-Based Benefit Cap (CBBC) Employer Contributions***

First Written Notice: If it is determined that the employee's retirement allowance exceeds the CBBC amount, RSD will invoice the member's most recent employer and send a certified letter addressed to the employer's Chief Financial Officer (CFO) or Budget Administrator informing the employer of the additional contribution required to fund the member's benefit in excess of the cap. Payment will be due by the deadline for submitting Contribution Summary Instructions (CSI) for the month following the member's effective retirement date.

Second Written Notice: If the employer fails to submit payment by the deadline, RSD will send the employer a letter addressed to the employer's CFO or Budget Administrator informing the employer that the additional contribution is past due. Payment will be due within 30 days from the date of the letter. The letter will offer discussing an installment payment plan and inform the employer of RSD's right to recoup the additional contribution owed pursuant to the interception authority.

Verbal Communications: If the employer fails to submit payment, RSD will attempt to contact the employer's CFO or Budget Administration on the telephone to discuss the outstanding CBBC liability.

Notice of Delinquency and Pending Interception: If twelve months after the member's effective retirement date, the employer has failed to enroll in a payment plan or submit a lump-sum payment of the outstanding CBBC liability, RSD will send the employer a certified letter of RSD's intent and authority to seek an interception of funds if the employer does not remit payment to RSD within 90 days. RSD will attempt to contact the employer's CFO or superintendent within two weeks of sending this letter to ensure the appropriate individuals have notice of this delinquency and reinforce the seriousness of the pending legal action.

Notice of Delinquency from the Department of Public Instruction (DPI): DPI will send a letter to the local school administrative unit emphasizing the delinquent contributions owed to RSD and DPI's statutory requirement to withhold from any State appropriations due to the unit an amount equal to the sum of all delinquent contributions and transmit that amount to RSD if the unit doesn't submit payment to RSD in a specified number of days.

Final Notice of Delinquency: At least 30 days prior to RSD initiating the intercept process, RSD will send the employer a final notice of the delinquent contributions and RSD's intent to intercept funds if the employer does not submit payment to RSD in a specified number of days.

### ***Interception Implementation***

Determinations: RSD staff will notify the RSD Director of any employer whose CBBC liability remains outstanding twelve months after the member's effective retirement date. RSD staff will provide the RSD Director with a breakdown of the CBBC liability, including an overview of the specific member's retirement, calculation, and application of the CBBC and an overview of all communications from RSD to the employer related to the additional contribution owed and imminent interception action. The RSD Director will evaluate the situation and determine whether interception is appropriate. The RSD Director will notify the State Treasurer of its intent to collect the delinquent contributions due to RSD by requesting an interception of the State appropriation due to the participating employer.

Interception Requests: If the participating employer is a local school administrative unit, the RSD Director or designee will notify DPI of the delinquent contributions owed by a participating employer, provide the amount to withhold from any State appropriations due to that employer, and direct DPI to transmit that amount to RSD. If the participating employer is a local governmental unit or a state agency, other than a local school administrative unit, the RSD Director or designee will notify the Office of State Budget and Management (OSBM) of the delinquent contributions owed by a participating employer, provide the amount to withhold from any State appropriations due to that employer, and direct OSBM to transmit that amount to RSD.

Post-Interception Notifications: RSD staff will notify the employer in writing of the amount DPI or OSBM withheld from their State appropriations and transmitted to RSD to satisfy the delinquent contributions.





## RETIREMENT SYSTEMS DIVISION

STEVEN C. TOOLE  
EXECUTIVE DIRECTOR

### MEMORANDUM

TO: Teachers' and State Employees' Retirement System (TSERS) and Local Governmental Employees' Retirement System (LGERS) Boards of Trustees

FROM: Patrick Kinlaw, FSA, Director of Policy, Planning and Compliance

DATE: January 31, 2019

SUBJECT: Statutory "Date Set by Board of Trustees" for Interception of Delinquent Contribution-Based Benefit Cap (CBBC) Contributions

At the October 27, 2016, meeting of the TSERS and LGERS Boards of Trustees, both Boards adopted the following policies with regard to the process of intercepting delinquent employer contributions. (Further background presented to the Boards in October 2016 is attached to this memo and is available online as a document in the public materials for the October 27, 2016, board meetings, entitled "Intercept Authority Policy Implementation.")

- (1) Effective January 1, 2017, the Board establishes the "date set by the Board of Trustees" to intercept delinquent CBBC contributions to be twelve months after the member's effective date of retirement.
- (2) Effective January 1, 2017, the Board establishes the "date set by the Board of Trustees" to intercept other delinquent contributions or payments to be 90 days after final notice that other contributions or payments are due to the Retirement Systems Division.

Some employers have not paid CBBC contributions that were first due before the Boards' administrative rules pertaining to the "cap factor" for TSERS and LGERS were adopted. Recognizing that interception of state appropriations should be reserved for extreme circumstances, staff recommends that the Boards allow additional time for employers to make delinquent CBBC contributions after the adoption of the administrative rules, before the Retirement Systems Division begins the interception process.

### Recommendation for TSERS

Staff recommends that the TSERS Board amend its policy related to the interception of delinquent CBBC contributions as follows (with underlined portions being added and crossed-out portions being deleted):

- (1) ~~Effective January 1, 2017,~~ January 31, 2019, the Board establishes the "date set by the Board of Trustees" to intercept delinquent CBBC contributions to be the later of December 1, 2019, or twelve months after the member's effective date of retirement.

Under this recommendation, the policy related to the interception of other delinquent contributions or payments would not be amended. Therefore, the entire recommended policy is:



- (1) Effective January 31, 2019, the Board establishes the “date set by the Board of Trustees” to intercept delinquent CBBC contributions to be the later of December 1, 2019, or twelve months after the member’s effective date of retirement.
- (2) Effective January 1, 2017, the Board establishes the “date set by the Board of Trustees” to intercept other delinquent contributions or payments to be 90 days after final notice that other contributions or payments are due to the Retirement Systems Division.

### **Recommendation for LGERS**

Staff recommends that the LGERS Board amend its policy related to the interception of delinquent CBBC contributions as follows (with underlined portions being added and crossed-out portions being deleted):

- (1) *Effective ~~January 1, 2017,~~ January 31, 2019, the Board establishes the “date set by the Board of Trustees” to intercept delinquent CBBC contributions to be the later of May 1, 2019, or twelve months after the member’s effective date of retirement.*

Under this recommendation, the policy related to the interception of other delinquent contributions or payments would not be amended. Therefore, the entire recommended policy is:

- (1) Effective January 31, 2019, the Board establishes the “date set by the Board of Trustees” to intercept delinquent CBBC contributions to be the later of May 1, 2019, or twelve months after the member’s effective date of retirement.
- (2) Effective January 1, 2017, the Board establishes the “date set by the Board of Trustees” to intercept other delinquent contributions or payments to be 90 days after final notice that other contributions or payments are due to the Retirement Systems Division.

**Attachment:** “Intercept Authority Policy Implementation” from October 27, 2016, meetings of the TSERS and LGERS Boards of Trustees, available online at:  
[https://www.nctreasurer.com/ret/Board\\_of\\_Trustees/InterceptAuthorityPolicyImplementation.pdf](https://www.nctreasurer.com/ret/Board_of_Trustees/InterceptAuthorityPolicyImplementation.pdf)