



PERAC HITS THE ROAD

2025 BOARD ADMINISTRATOR TRAINING

# Member Counseling

## *Topics to Cover With Soon-To-Be Retirees*



**Kenneth Hill**  
**Deputy Executive Director, PERAC**

Norwood  
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# Introduction

- Soon-to-be retirees likely will have many questions about various issues related to their retirement.
- This presentation is intended to help address some of the questions they may have and to put them on notice of some retirement issues that they may not be aware of (and may be shocked to discover!).



# How Retirement Allowances are Paid Out

- A retirement allowance consists of two parts, the annuity portion and the pension portion. The annuity portion is basically a repayment to the member of the contributions they've made throughout their working career (Annuity Savings Fund balance). The ASF gets drawn down each month based only on the monthly annuity portion of the benefit.



# Retirement Options

- Option A
- Option B
- Option C
- These options are available to superannuation, termination, ordinary disability and accidental disability retirees.





# Option A

- Gets the largest possible retirement allowance, known as “Life Annuity.”
- Upon the member’s death, the retirement benefit stops.
- **Exception:** Member’s estate will receive a pro-rated payment for the final month.
  - For example, if the member dies on the 16th of September, his estate will be due 16 days of retirement allowance.



## Option B

- May be selected by a retiree.
- It is also the “default” option to which those who fail to select an option are assigned.
- Option B provides a lifetime allowance that is generally 1% to 5% less per month than Option A.
- The member’s annuity account is gradually depleted by an amount equal to the annuity portion of his retirement allowance.



## Option B (Cont'd)

- Generally, the annuity account will be depleted sometime between 10-12 years after retirement.
- Member still gets full allowance after depletion.
- Upon member's death, beneficiary gets whatever amount is remaining in the annuity account, if any, in a one-time lump sum.



# Who May Be Designated as an Option B Beneficiary?

- Any person or entity.
- More than one person or entity may be designated.
  - For example: “50% to Patrick Charles and 50% to the Greater Boston Foodbank.”
- The Option B beneficiary may be changed by the member at any point prior to death (so even after retirement).





## Option C

- A/k/a “the joint and last survivor allowance.”
- Amount of benefit depends on the life expectancies of member **and** beneficiary.
- Allowance will generally be 7 - 15% less than that which a person would receive under Option A.
- Upon the retiree’s death the beneficiary will be paid a monthly allowance of 2/3 of the member’s Option C allowance for life.
- See PERAC Memo #37/2004 for more information.



# Who Can Be Designated as Option C Beneficiary?

- A member may only designate **ONE** Option C beneficiary.
- The beneficiary may be the spouse, parent, former spouse who has not remarried, sibling or child of the member.
- Eligibility of the beneficiary is determined at the time the option is selected at retirement.



# What If the Option C Beneficiary Dies Before the Retiree?

- No new beneficiary is selected.
- Retiree's allowance "pops up" to Option A.
- Retiree paid as if receiving an Option A from date of death of the beneficiary to the day he dies.



## Option C vs. Option D

- Sometimes, a survivor benefit under Option C is actually lower than a survivor benefit under Option D.
- In those situations, it would be better for the member to remain in service, rather than retire.
  - Scenarios may come into play if a member is significantly or terminally ill.
  - Recommend that, if you are aware or become aware that a soon-to-be retiree is significantly or terminally ill, you calculate the estimated benefit under both scenarios so you can best advise the member.



# How Long Will It Take For a Retiree To Receive His First Payment?

- Retirement allowances are paid on the **last** business day of each month.
- When a retiree receives his first payment depends greatly on the size of the retirement system and when he applied for the allowance.
- Retiree should prepare to cover the time between his last paycheck and his first retirement allowance at the end of the month.





# Reinstatement

- Section 105 provides the blueprint for a retiree to be reinstated.
- Rather onerous process.
  - The retiree must pay to the retirement system an amount equal to the total amount of any retirement allowance he received, with buyback interest.
  - If the retiree works less than **five years** after reinstatement, he shall receive a refund of the payments made, and shall not be entitled to any creditable service.
  - Memo #19 of 2024 discusses changes to reinstatement form



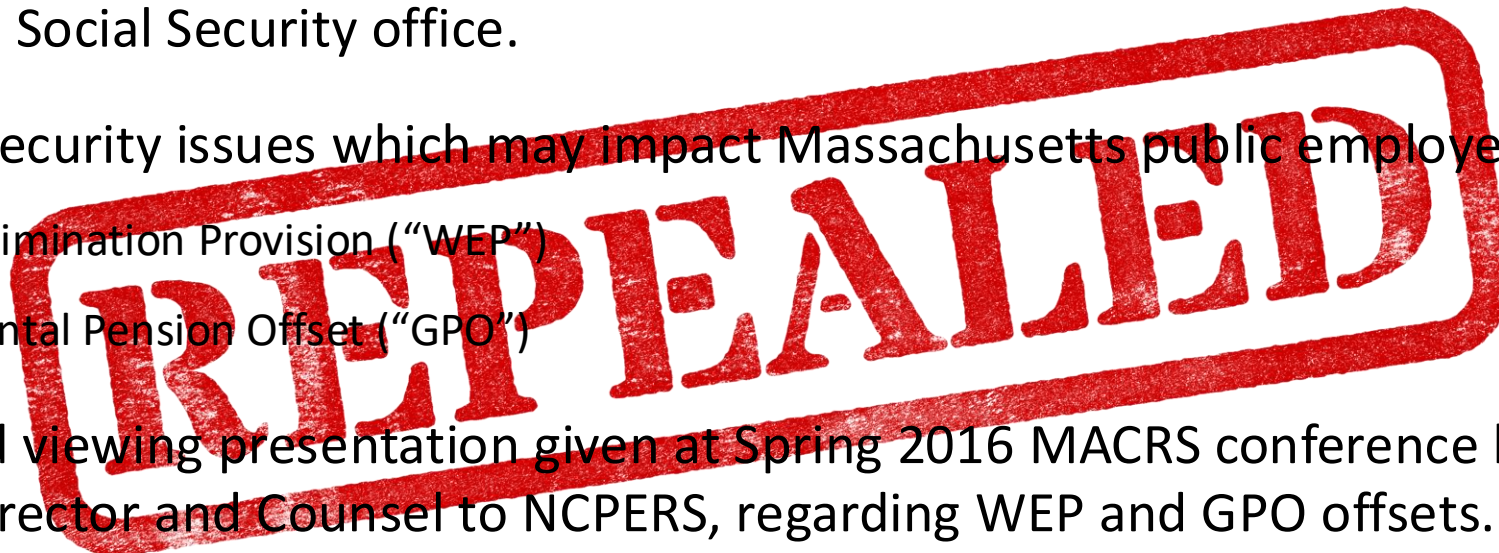
# Taxes

- A superannuation retirement allowance will be subject to Federal Income Tax **but** will not be taxed by Massachusetts.
- The pension portion of an accidental disability retirement allowance will not be subject to either Federal or Massachusetts Income tax, but the annuity portion of the allowance will be subject to Federal Income Tax.
- Notwithstanding the above, a soon-to-be retiree may want to consult his tax preparer to determine and confirm his tax status.



# Social Security Questions

- These are outside of PERAC's area of expertise and questions about this should be directed to your local Social Security office.
- Two Social Security issues which may impact Massachusetts public employees:
  - Windfall Elimination Provision ("WEP")
  - Governmental Pension Offset ("GPO")
- Recommend viewing presentation given at Spring 2016 MACRS conference by Hank Kim, the Executive Director and Counsel to NCPERS, regarding WEP and GPO offsets.

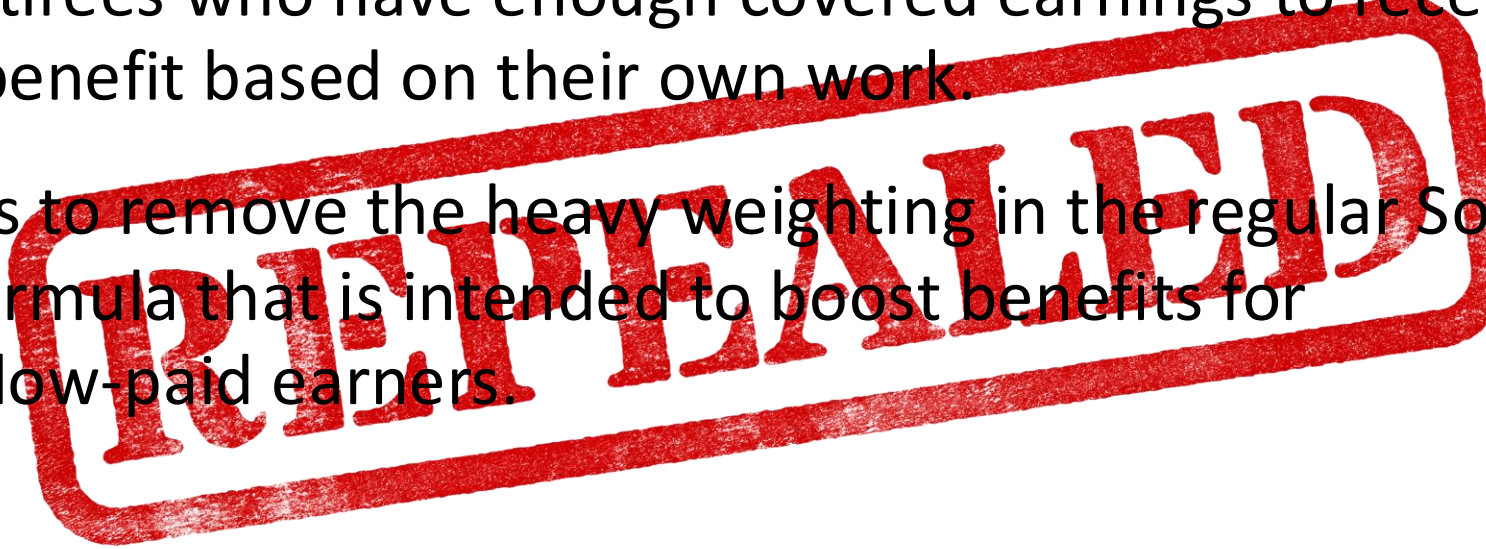






# WEP

- Affects retirees who have enough covered earnings to receive a Social Security benefit based on their own work.
- Purpose is to remove the heavy weighting in the regular Social Security benefit formula that is intended to boost benefits for life-long, low-paid earners.





# GPO

- Affects government retirees who receive two benefits:
  1. A government pension not covered by Social Security, **AND**
  2. A Social Security dependent spousal benefit.
- GPO requires that the Social Security dependent spousal benefits be offset by 2/3 of the non-covered Government pension.







# Health Insurance

- Retirement boards do not handle health insurance matters.
- Recommend that soon-to-be retirees get their coverage options and premium information from the insurer prior to retirement in order to plan accordingly.
- Caution that, if a retiree's benefit is terminated for any reason (non-compliance with Sections 8, 91, 91A, forfeiture, etc...), the retiree may lose health insurance and may not be re-admitted to the health insurance plan, even upon reinstatement to the retirement plan.



# Disability Retirement

- Ordinary Disability Retirement (Section 6)
  - Must be permanently unable to perform the essential duties of one's job
- Accidental Disability Retirement (Section 7)
  - Must be permanently unable to perform the essential duties of one's job, because of a personal injury sustained or hazard undergone as a result of, and while in the performance of, one's duties



# Post-Retirement Disability Evaluations (1)

- Section 8 – Disability retirees must be evaluated once per year during first 2 years, and once every 3 years thereafter
  - Evaluated to determine whether able to return to work and perform essential duties of the job\*  
(see next slide)
  - Must provide PERAC with updated medical records
  - Eventually, need to be found able to return to work by a three-member medical panel
  - Entitled to creditable service for the period of time they were a disability retiree
  - Failure to comply may result in **termination** of benefit



## Post-Retirement Disability Evaluations (2)

- **BRAND NEW Legislative amendment!**
  - Now, a disability retiree may request that, in addition to being evaluated for a return to their former position, they be evaluated:
    - For a specific identified position *other* than the position from which they retired;
    - That may be with a *different employer in a different retirement system*.
- Must provide job description for doctors to review and decide whether able to perform the essential duties of that position





## Post-Retirement Disability Evaluations (3)

- First system must provide creditable service from date of retirement until date the member returns to service in the second system
- Upon superannuation retirement, each system will be apportioned liability pursuant to Section 3(8)(c), in exactly the same manner as currently occurs
- If the member returns to service in a second system, and then retires for a disability based upon the original injury, the first system will be assessed a portion of the disability pension pursuant to Section 7(5)





# Attestation

- At least once every two years, a retiree/beneficiary must confirm their status as a pensioner.
- Formerly, required to file a notarized affidavit
- 840 CMR 15.01 recently amended to permit submission of attestations signed under the “penalty of perjury”
- Given thirty days to respond. Failure to respond will result in the **suspension** of the retirement benefit.
- Alternatively, boards can complete data/death matches every six months through a contracted third-party provider



# Regular Compensation

- A retirement benefit is calculated based on the member's regular compensation
  - Must be compensation received exclusively as wages by an employee for services performed for an employer
- 840 CMR 15.03(3) further defines what is and is not “wages”
- Not all compensation is regular compensation



# Anti-Spiking Provisions

- Chapter 176 of the Acts of 2011.
- Two anti-spiking provisions were added to Chapter 32 by:
  - Section 14 of Chapter 176 – amended § 5(2)(a)
  - Section 18 of Chapter 176 – amended § 5(2)(f)



## Section 14 of Chapter 176 - § 5(2)(a)

- If in the last five years of creditable service, the rate of regular compensation increases by more than 100% (i.e. more than doubles) between two consecutive years, then Section 14 is violated.
- If Section 14 is violated, you **must** use the average of the last 5 years of creditable service.
- No exceptions.



## Section 18 of Chapter 176 - § 5(2)(f)

- In determining the 3-year (or 5-year) average of regular compensation, if regular compensation in any year exceeds the average of the regular compensation of the previous two years by more than 10%, then Section 18 is violated.
- In calculating the benefit, the board cannot include regular compensation in excess of 10% of the average of the previous two years.





# Example of Spiking

■ 2024 - \$120,000	To determine whether the salary in 2024 violated Section 18, must average out the salaries of 2023 and 2022 <b><math>(\\$110,000 + \\$100,000 = \\$210,000 / 2 = \\$105,000)</math></b>
■ 2023 - \$110,000	Then, that figure must be multiplied by 110% <b><math>(\\$105,000 \times 1.10 = \\$115,500)</math></b>
■ 2022 - \$100,000	Because the salary paid in 2024 (\$120,000) is greater than that figure (\$115,500), Section 18 was violated and the salary that must be used in calculating the retirement allowance must be reduced from \$120,000 to \$115,500



## Exceptions to Section 18 - § 5(2)(f)

- If the increase in regular compensation is from one of the following, then Section 18 is not violated:
  - Increase in the number of hours worked.
  - Bona fide change in position.
  - Modification in salary negotiated for bargaining unit members of Chapter 150E.
  - Salary amount is specified by law.
  - Payments for specific tasks limited to teachers only.



## Exceptions to Section 18 - § 5(2)(f) *(Cont'd)*

- **BRAND NEW Legislative amendment!**
- Adds the following exceptions:
  - Bona fide increase in salary related to eliminating wage differentials as required by the Massachusetts Equal Pay Act (“MEPA”); or
  - From an employer’s systemic wage adjustments.



# Payments Made in Lieu of Unused Sick and Vacation Time

- For certain few members, payments made in lieu of taking sick or vacation time **may** be considered regular compensation
- See PERAC Memorandum # 23/2022
- G.L. c. 32, Section 106
- *O'Leary v. CRAB, & Others*, 490 Mass. 480 (Aug. 11, 2022)





# COLAs

- Retirement boards vote a Cost-of-Living Adjustment (COLA) each year effective July 1<sup>st</sup> of that year. A retiree must pass the award of a COLA before he is eligible for this increase.
- For example, if a member retires on September 3, 2023, he will pass the July 1, 2024 COLA then receive his first on July 1, 2025.



# Domestic Relations Orders

- Court can direct a portion of a member's (the "Payee's") retirement allowance to be paid to a former spouse ("Alternate Payee").
- Still considered **one** retirement benefit, just with two payees.
  - If the Payee's benefit is suspended or terminated, the Alternate Payee gets no benefit
  - For the purposes of earnings restrictions (to be discussed), the whole benefit is considered, not just the Payee's portion
- Former spouse who has not remarried can be named as the Option C beneficiary.



# Post-Retirement Restrictions (1)

- **BRAND NEW Legislative amendment!**
- **Section 91** – For all retirees working for a *public* entity:
  - **Previously**, post-retirement earnings were limited so that:
    - Earnings, when added to retirement allowance, cannot exceed the salary that is being paid “for the position from which he was retired or in which his employment was terminated...”
  - **Now**, post-retirement earnings are limited so that:
    - Earnings, when added to retirement allowance, cannot exceed the salary that is being paid “for the position from which he was retired or in which his employment was terminated **or the salary upon which the retirement allowance is based, whichever is greater ...**”



## Post-Retirement Restrictions (2)

- Retiree is limited to working 1,200 in any calendar year
- Retiree may earn an additional \$15,000 after being retired for a full calendar year
- Source of funding does not matter: if your regular duties are “in the service of” a Massachusetts governmental unit, you are restricted by hours and earnings
- Includes those who work as independent contractors or consultants





## Post-Retirement Restrictions (3)

- Any such retiree working for a MA governmental unit is required to “***certify to his employer*** and the treasurer or other person responsible for the payment of the compensation for the position in which he is to be employed, the number of days or hours which he has been employed in any such calendar year and the amount of earnings therefrom...” (Emphasis added).
- “... if the number of hours exceeds 1,200, in the aggregate, he shall not be employed, or if the earnings therefrom exceed the amount allowable ... he shall return to the appropriate treasurer or other person responsible for the payment of compensation all such earnings as are in excess of said allowable amount.”



## Post-Retirement Restrictions (4)

- Section 91 provides that an employer can bring an action in contract to recoup any excess earnings, but such actions are permitted administratively through the Contributory Retirement Appeal Board (“CRAB”).
- Employer can recoup excess earnings, but if they do not, the Retirement Board has implicit authority to pursue such excess earnings.
  - *Flanagan v. CRAB, and State Ret. Bd.*, 51 Mass. App. Ct. 862 (2001)



## Earnings Restrictions - Disability Retirees (91A)

- In addition to limits on public employment, disabled retirees are limited on **total earnings** in a calendar year.
- The combined retirement allowance and total earnings in **either public or private sector** employment cannot exceed the regular compensation payable to such member had he or she continued in service in the grade held at retirement PLUS \$15,000.



## Section 91A – Statement of Earned Income

- Every year, disability retirees must submit, on or before April 15, a Statement of Earned Income certifying the **full amount of his or her earnings from earned income** during the preceding year.
- The disabled retiree must include all pertinent W-2 forms, 1099 forms and other requested tax forms.





## Section 91A – Termination of Retirement Allowance

- If a retiree fails to submit the required Statement of Earned Income and pertinent tax forms, that retiree's retirement allowance is **terminated**.
- Upon compliance with the required submission, the retirement board may resume the retirement benefit.
- Such retiree is not entitled to a retroactive payment (because the benefit was terminated, rather than suspended).
- Termination may impact a retiree's health insurance.



# Pension Forfeiture

- A retiree's pension can be forfeited.
- § 15(4) provides: “In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance...”
- Example: *Watertown Retirement Board v. Deignan*, Appeals Court (No. 2017-P-1379)



# Conclusion

- Although there is no way to prepare for every possible question that a soon-to-be retiree may have, hopefully this presentation will provide some guidance.

