

minimal, and there is an extreme unlikelihood that it would evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

It is anticipated that the proposed amendments will have only an insignificant impact, if any, on any new construction. Moreover, because the proposed amendments apply only to the procedures for adjustment of autobus fares, they do not apply to housing units at all. Thus, the scope of the proposed amendments is minimal and there is an extreme unlikelihood that the proposed amendments will evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

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

SUBCHAPTER 1. GENERAL PROVISIONS

16:53D-1.1 General provisions

(a) Any regular route autobus carrier operating within the State, which carrier seeks to revise its rates, fares, or charges in effect as of the time of the promulgation of this rule, shall not be required to conform with N.J.A.C. 16:51-3.10, Tariff filings that do not propose increases in charges to customers, or 3.11, Tariff petitions that propose increases in charges to customers, provided the increase or decrease in the rate, fare, or charge, or the aggregate of increases and decreases in any single rate, fare, or charge is not more than the maximum percentage increase (10 percent for [2017] **2018**) or decrease (10 percent for [2017] **2018**), upgraded to the nearest \$.05.

1. For illustrative purposes, the following chart sets forth the [2017] **2018** percentage maximum for increases to particular rates, fares, or charges and the resultant amount as upgraded to the nearest \$.05:

<u>Present Fare</u>	<u>Percent of Increase</u>	<u>Increase Upgraded To Nearest \$.05</u>
\$2.00 or less	10.0%	\$.20
\$2.05-\$2.50	10.0%	\$.25
\$2.55 upward	10.0%	\$.30+

2. For illustrative purposes, the following chart sets forth the [2017] **2018** percentage maximum for decreases to particular rates, fares, or charges and the resultant amount as upgraded to the nearest \$.05:

<u>Present Fare</u>	<u>Percent of Decrease</u>	<u>Decrease Upgraded To Nearest \$.05</u>
\$.50 or less	10%	\$.05
\$.55 to \$1.00	10%	\$.10
\$1.05 upward	10%	\$.15+

3. (No change.)

TREASURY—GENERAL

(a)

**DIVISION OF PENSIONS AND BENEFITS
TEACHERS’ PENSION AND ANNUITY FUND
Teachers’ Pension and Annuity Fund
Proposed Amendments: N.J.A.C. 17:3-3.8 and 3.13**

Authorized By: Teachers’ Pension and Annuity Fund Board of Trustees, Angelina Scales, Secretary.
Authority: N.J.S.A. 18A:66-56.

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

Proposal Number: PRN 2018-013.

Submit comments by April 6, 2018, to:

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The agency proposal follows:

Summary

The Board of Trustees of the Teachers’ Pension and Annuity Fund (TPAF) is responsible for periodically reviewing the administrative rules within N.J.A.C. 17:3. When the Board becomes aware of an administrative rule change that is necessary due to a court decision, change in the law, or a needed procedural correction, steps are taken to propose revisions to those rules so that compliance is achieved. Accordingly, the Board of Trustees of the TPAF (Board) proposes to amend N.J.A.C. 17:3-3.8, Withdrawal and return, contributory insurance and conversion, so that it provides the correct statutory citation for conversion of group life insurance as N.J.S.A. 18A:66-179. The current cross-reference is to the incorrect regulation, which is proposed to be deleted. In addition, the following sentence will be added: “The converted individual policy will not take effect until the expiration of the group life insurance policy at the conclusion of the 31-day grace period,” where “grace period” means the 31-day period following the member’s date of termination from employment. This addition will clarify that a converted individual policy will only take effect after the group life insurance policy expires, which occurs 31 days after a member leaves public employment.

In addition, N.J.A.C. 17:3-3.13(b) is proposed for deletion, as it is subject to misinterpretation that contradicts the intent of current statutes legislating the administration of beneficiary benefits in cases where a member dies with a retirement application pending. Existing case law supports that when a member dies with a retirement application pending, the member’s beneficiary (or beneficiaries) is entitled to receive active group life insurance benefits or retired pension benefits, but not both. For example, in the case, *New Jersey Education Association v. Board of Trustees, Public Employees’ Retirement System*, 327 N.J. Super. 405 (App. Div.), *certif. denied*, 165 N.J. 135 (2000), the Appellate Division of the Superior Court of New Jersey ruled that based on pertinent legislative history, the legislative intent of the existing statute was “to continue the practice of allowing certain beneficiaries to choose either an active member insurance death benefit *or* a retirement allowance.” (emphasis added) Otherwise, “a limited class of beneficiaries [would receive benefits that] *exceed* the benefits that a retiring member could receive...” (emphasis added) Further, when a member leaves public employment, there is a 31-day grace period where the member is still covered under the group life insurance policy. If the separating member applies to the carrier to convert the expiring group life insurance policy into an individual policy, the individual policy will not take effect until the expiration of the group life insurance policy at the conclusion of the 31-day grace period. As a result of this deletion, subsection (a) will be recodified with no alphanumeric designation, since only one subsection will remain.

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

Social Impact

The proposed amendments to N.J.A.C. 17:3-3.8 will direct members and beneficiaries to the proper statutes for group life insurance conversion in cases where a member terminates employment for any reason, not just in cases where a member dies with a retirement application pending. This amendment will make the procedures for group life insurance conversions more efficient and unambiguous for all parties involved when a member terminates employment for any reason.

The proposed deletion of N.J.A.C. 17:3-3.13(b) upholds the legislative intent of current statutes legislating the administration of beneficiary benefits in cases where a member dies with a retirement application pending, and is supported by existing case law, such as *New Jersey Education Association v. Board of Trustees, Public Employees' Retirement System*, *supra*. The benefits payable to the beneficiary of a TPAF member who dies while in active service with a retirement application pending include either a retirement allowance and the reduced retired life insurance, or the active group life insurance benefit and a return of contributions, not both. N.J.S.A. 18A:66-47 was adopted to allow the beneficiaries of such members to have the choice of receiving either active or retired death benefits; it was not intended to allow a limited class of beneficiaries to receive benefits that exceed the benefits that a retiring member could receive.

The deletion of N.J.A.C. 17:3-3.13(b) is necessary as it is not a correct interpretation of the law, and the deletion will prevent the award of excessive benefits to a beneficiary. The proposed deletion helps to prevent abuse in the area of death benefits and death claims. Members, beneficiaries, participating employers of the Fund, and the taxpaying public rely on rules that allow for the efficient operation of the Fund, while also preventing abuses in the area of death claims and the payment of beneficiary benefits.

Economic Impact

The deletion of N.J.A.C. 17:3-3.13(b) will help to prevent fiscal abuses in the area of death claims, thereby protecting members, beneficiaries, and participating employers of the Fund, as well as the taxpaying public at large. The deletion will also serve to uphold the legislative intent of N.J.S.A. 18A:66-47, whose purpose was to give the beneficiaries of members who have applied for retirement but die in active service the option of receiving either active beneficiary benefits, in the form of active group life insurance, or retired beneficiary benefits, in the form of a monthly retirement allowance, not both. Since N.J.S.A. 18A:66-47 was not intended to allow beneficiaries to collect both active and retired death benefits, N.J.A.C. 17:3-3.13(b) must be deleted.

The deletion does not impose any additional recordkeeping or other requirements, and will serve to preserve and improve the efficient fiscal administration and operation of the Fund. The deletion will also enable the Division to administer beneficiary benefits in a manner that meets both statutory and contractual requirements.

The Division is not aware of any hardship or costs imposed on the members, beneficiaries, or participating employers of the Fund, or on the public in general, that will result from this deletion, except that the beneficiary of any member who dies in active service with a retirement application pending would be precluded from receiving benefits that exceed the benefits that a retiring member could receive based on the legislative intent of the statutes governing death benefits for the beneficiaries of TPAF members. The Division will continue to monitor the social and fiscal impact of the proposed deletion.

Federal Standards Statement

A Federal standards analysis is not required for the proposed amendments because N.J.S.A. 18A:66-56 governs the subject of this rulemaking, and there are no Federal requirements or standards that affect the subject of this rulemaking.

Jobs Impact

The proposed amendments will not result in the generation or loss of jobs. The Division of Pensions and Benefits invites any interested parties to submit any data or studies concerning the jobs impact of the proposed amendments with their written comments.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The rules of the Teachers' Pension and Annuity Fund affect TPAF employees and their beneficiaries, participating public employers, and the taxpaying public, but they do 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 amendments will have no impact on the affordability of housing in New Jersey, nor will they evoke a change in the average costs associated with housing, because the rules pertain to the administration of the TPAF for members, retirees, and dependents of members and retirees.

Smart Growth Development Impact Analysis

The proposed amendments will not have any impact on the achievement of smart growth; nor will they evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules pertain to the administration of the TPAF for members, retirees, and dependents of members and retirees.

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

SUBCHAPTER 3. INSURANCE AND DEATH BENEFITS

17:3-3.8 Withdrawal and return, contributory insurance, and conversion

(a) (No change.)

(b) If a member is covered by group life insurance during employment, the coverage ceases 31 days subsequent to the member's termination date from employment, regardless of the cause of termination. A member can convert the life insurance at the [members'] **member's** expense as set forth in [N.J.A.C. 17:3-3.13(b)] **N.J.S.A. 18A:66-179. The converted individual policy will not take effect until the expiration of the group life insurance policy at the conclusion of the 31-day grace period.**

17:3-3.13 Benefits payable when a member dies with a retirement application pending

[(a)] Pursuant to N.J.S.A. 18A:66-47 and 18A:66-47.3, the person designated as the beneficiary of an optional settlement on the retirement application may request, upon the member's death, that a retirement become effective and that a selection of an optional settlement be made as authorized by the law. If there is no designated beneficiary for an optional settlement, the person designated as the beneficiary to receive the return of contributions or unpaid benefits due to a retiree at the date of death may make this request. If a beneficiary requests that an optional settlement be made, the death benefits payable on behalf of the member shall be the death benefits payable on behalf of a member who dies after retirement as otherwise provided in the TPAF Act, N.J.S.A. 18A:66-1 through 93, as amended and supplemented.

[(b)] Where a beneficiary of a member requests that a retirement take effect and that a selection of an optional settlement be made as authorized under N.J.S.A. 18A:66-47, an additional amount of insurance, not to exceed the amount of insurance that could be converted under the group policies for noncontributory and contributory death benefits, shall be paid as claims under the group policies only if the member files an application for conversion of the insurance upon retirement as provided under N.J.S.A. 18A:66-79 and pays the initial premium for the converted insurance. The premiums paid for the converted insurance shall be retained by the carrier and be applied to the premiums payable by the State and the Fund for benefits provided under the group policies.]