

Dear Senators PATRICK, Souza, Ward-Engelking, and
Representatives HOLTZCLAW, Syme, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
PERSI (Public Employee Retirement System of Idaho):

IDAPA 59.01.01 - Rules for the Public Employee Retirement System of Idaho (PERSI) - Proposed
Rule (Docket No. 59-0101-2201).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/14/2022. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/11/2022.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Commerce & Human Resources Committee

FROM: Senior Legislative Drafting Attorney - Matt Drake

DATE: September 27, 2022

SUBJECT: PERSI (Public Employee Retirement System of Idaho)

IDAPA 59.01.01 - Rules for the Public Employee Retirement System of Idaho (PERSI) - Proposed Rule (Docket No. 59-0101-2201)

Summary and Stated Reasons for the Rule

The proposed rule revises certain definitions. The proposed rule removes language from the definition of "employer." PERSI states that this definition is being amended pursuant to section 59-1302(15), Idaho Code, which requires compliance with Internal Revenue Regulations pertaining to governmental retirement plans. The proposed rule also adds school employees to the "general member" definition. PERSI states that this addition is being made pursuant to section 59-1302(31A).

The proposed rule also removes four definitions deemed unnecessary: normal retirement age, permissive service credits, police officer, and teacher. Finally, the rule removes certain language relating to membership eligibility.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted. PERSI states that doing so in this instance would be inconsistent with the PERSI Board's exclusive fiduciary responsibility for plan operation. PERSI states that there is no fiscal impact.

Statutory Authority

The rulemaking appears to be authorized pursuant to section 59-1314, Idaho Code.

cc: PERSI (Public Employee Retirement System of Idaho)
Don Drum

*** PLEASE NOTE ***

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Glenn Harris, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 59 – PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.01 – RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

DOCKET NO. 59-0101-2201

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections, 59-1301, 59-1314, 59-1372, 59-1383 and 59-1392.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2022.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Section 59-1302(15) defines employer and directs compliance with the Internal Revenue Regulations. The regulations that PERSI followed were not finalized and are no longer valid, thus requiring the removal of paragraphs a., b. and c from IDAPA 59.01.01.004.13. The addition of school employees as a separate rate class under section 59-1322, Idaho Code, and the addition of the definition of school employee under section 59-1302(31A) requires a change to the definition of general member in IDAPA 59.01.01.004.17. The definitions of Normal Retirement Age, Permissive Service Credits, Police Officer and Teacher at 59.01.01.004.19, 022,.23 and.30 respectively do not need to be defined in IDAPA.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: The change in this rule will not have any fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because negotiated rulemaking is not feasible because it would be inconsistent with the PERSI Board's exclusive fiduciary responsibility for plan operation.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule(s), contact Cheryl George, (208) 287-9231.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this 6th day of July, 2022.

Don Drum
Executive Director
Public Employees Retirement System of Idaho
P.O. Box 83720, Boise, ID 83720-0078
Phone: (208) 287-9230
Fax: (208) 334-3804

THE FOLLOWING ARE THE PROPOSED CHANGES FOR DOCKET NO. 59-0101-2201
(Only Those Sections With Amendments Are Shown.)

004. DEFINITIONS.

The definitions in Section 59-1302, Idaho Code, and the following apply to this chapter: (3-31-22)

01. Active Member. A member participates in the active member allocation only if they are active and have at least twelve (12) months of accrued membership service on the last day of the fiscal year. For purposes of allocating extraordinary gains, active members also include: (3-31-22)

a. Seasonal employees who have a pattern of employment that includes at least six (6) months of membership service in each of the preceding three (3) consecutive years; and (3-31-22)

b. Employees who are on leave of absence on the last day of the fiscal year and either: (3-31-22)

i. Return to active service for at least thirty (30) days before December 31 immediately following the end of the fiscal year; or (3-31-22)

ii. Are entitled to benefits under the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA). (3-31-22)

02. Actuary. This is the actuary retained by the Board. (3-31-22)

03. Administrator. The Board. (3-31-22)

04. Applicant. “Applicant” means an applicant for disability retirement under Section 59-1352, Idaho Code, or an individual requesting resumption of a disability retirement allowance under Section 59-1354A, Idaho Code. (3-31-22)

05. Base Plan or Account. This is the PERSI defined benefit plan not including gain sharing allocations or interest thereon, or the individual accounts therein. (3-31-22)

06. Board. “Board” means the governing authority of the Public Employee Retirement System of Idaho as provided by Section 59-1304, Idaho Code, of the Firefighters’ Retirement Fund created by Chapter 14, Title 72, Idaho Code, and the Policeman’s Retirement Fund created by Chapter 15, Title 50, Idaho Code. (3-31-22)

07. Choice Plan or Account. This includes two (2) elements: (3-31-22)

a. The defined contribution component of the PERSI plan consisting of gain sharing allocations together with earnings thereon or the individual accounts therein; and (3-31-22)

b. The plan designated to receive voluntary and employer contributions as provided in Section 59-1308, Idaho Code, or the individual accounts therein. (3-31-22)

08. Code. The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the IRS Code are to such sections as they may from time to time be amended or renumbered. (3-31-22)

09. Compensation. “Compensation” as used in Section 59-1342(6), Idaho Code, means “salary” as defined by Section 59-1302(31), Idaho Code. (3-31-22)

10. Court Security. “Court Security” as used in Section 59-1303(3)(g), Idaho Code, means the employee’s primary responsibilities are designated by court order to quell disturbances in the courthouse, to prevent the escape of prisoners, to exclude weapons from the courthouse, and to perform other related courthouse security

matters. (3-31-22)

11. Date of Retirement. “Date of retirement” means the effective date on which a retirement allowance becomes payable. (3-31-22)

12. Designated Beneficiary. The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under section 401(a)(9) of the IRS Code and section 1.401(a)(9)-4, Q&A-4, of the Treasury regulations. (3-31-22)

13. Employer. ~~For purposes of compliance with federal tax law, an Employer, as defined in Section 59-1302(15), Idaho Code must also meet each of the requirements of Paragraphs a. through e. of this definition, taking into account all of the facts and circumstances.~~ Entities that may qualify as political subdivisions include, among others, general purpose governmental entities, such as cities and counties (whether or not incorporated as municipal corporations), and special purpose governmental entities, such as special assessment districts that provide for roads, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvements, and other governmental purposes for a State or local governmental unit. (3-31-22)

~~**a. Sovereign powers.** Pursuant to a state or local law of general application, the entity has a delegated right to exercise a substantial amount of at least one (1) of the following recognized sovereign powers of a state or local governmental unit: The power of taxation, the power of eminent domain, and police power. (3-31-22)~~

~~**b. Governmental purpose.** The entity serves a governmental purpose. The determination of whether an entity serves a governmental purpose is based on, among other things, whether the entity carries out the public purposes that are set forth in the entity’s enabling legislation and whether the entity operates in a manner that provides a significant public benefit with no more than incidental private benefit. (3-31-22)~~

~~**c. Governmental control.** A state or local governmental unit exercises control over the entity. For this purpose, control is defined in Subparagraph 005.08.c.i. of this rule and a state or local governmental unit exercises such control only if the control is vested in persons described in Subparagraph 005.08.c.ii. of this rule. (3-31-22)~~

~~**i. Definition of control.** “Control” means an ongoing right or power to direct significant actions of the entity. Rights or powers may establish control either individually or in the aggregate. Among rights or powers that may establish control, an ongoing ability to exercise one or more of the following significant rights or powers, on a discretionary and non-ministerial basis, constitutes control: the right or power both to approve and to remove a majority of the governing body of the entity; the right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; or the right or power to approve or direct the significant uses of funds or assets of the entity in advance of that use. Procedures designed to ensure the integrity of the entity but not to direct significant actions of the entity are insufficient to constitute control of an entity. Examples of such procedures include requirements for submission of audited financial statements of the entity to a higher level state or local governmental unit, open meeting requirements, and conflicts of interest limitations. (3-31-22)~~

~~**ii. Control vested in a state or local governmental unit or an electorate.** Control is vested in persons described as a state or local governmental unit possessing a substantial amount of each of the sovereign powers and acting through its governing body or through its duly authorized elected or appointed officials in their official capacities or an electorate established under applicable state or local law of general application, provided the electorate is not a private faction. (3-31-22)~~

~~**iii. Definition of “private faction.”** A private faction is any electorate if the outcome of the exercise of control described in Subparagraph 005.08.c.i. of this rule is determined solely by the votes of an unreasonably small number of private persons. The determination of whether a number of such private persons is unreasonably small depends on all of the facts and circumstances, including, without limitation, the entity’s governmental purpose, the number of members in the electorate, the relationships of the members of the electorate to one another, the manner of apportionment of votes within the electorate, and the extent to which the members of the electorate adequately represent the interests of persons reasonably affected by the entity’s actions. For purposes of this definition, an electorate is a private faction if any three (3) private persons that are members of the electorate possess, in the aggregate, a majority of the votes necessary to determine the outcome of the relevant exercise of control. Provided however, an electorate is not a private faction if the smallest number of private persons who can combine votes to~~

~~establish a majority of the votes necessary to determine the outcome of the relevant exercise of control is greater than ten (10) persons. For example, if an electorate consists of twenty (20) private persons with equal, five percent (5%) shares of the total votes, that electorate is not a private faction because a minimum of eleven (11) members of that electorate is necessary to have a majority of the votes. By contrast, for example, if an electorate consists of twenty (20) private persons with unequal voting shares in which some combination of ten (10) or fewer members has a majority of the votes, then that electorate does not qualify for the safe harbor from treatment as a private faction under this subparagraph. The following rules apply for purposes of determining numbers of voters and voting control in Subparagraph 005.08.c.iii. of this rule, related parties (as defined in 26 CFR Section 1.150-1(b)) are treated as a single person; and in computing the number of votes necessary to determine the outcome of the relevant exercise of control, all voters entitled to vote in an election are assumed to cast all votes to which they are entitled. (3-31-22)~~

14. Employment. “Employment” as used in Section 59-1302(14)(B)(b), Idaho Code, shall mean the period of time from a member’s date of hire to the member’s succeeding date of separation from that state agency, political subdivision or government entity. Placing a member on leave of absence with or without pay shall not be considered as a separation from the employer. (3-31-22)

15. Firefighters' Retirement Fund. “Firefighters’ Retirement Fund” or “FRF” is the retirement fund provided by Chapter 14, Title 72, Idaho Code. (3-31-22)

16. Gain Sharing. This refers to the process of allocating extraordinary gains from the base plan into the defined contribution component of the PERSI plan as permitted in Section 414(k) of the Internal Revenue Code and as provided by Section 59-1309, Idaho Code, and these rules. (3-31-22)

17. General Member. “General member” is a PERSI member not classified as a police officer, firefighter, ~~or~~ paid firefighter, or school employee. (3-31-22)()

18. Likely. For the purpose of Section 59-1302(12)(b), Idaho Code, “likely” means with reasonable medical certainty. (3-31-22)

~~**19. Normal Retirement Age.** The age (or combination of age and years of service) at which a Member is entitled to an actuarially unreduced retirement benefit under the Plan. A Member will be fully vested upon attainment of Normal Retirement Age. (3-31-22)~~

~~**20. Occupational Hazard.** “Occupational Hazard” means an injury or ailment solely resulting from the work an applicant does or from the environment in which an applicant works. (3-31-22)~~

~~**21. Pension Protection Act Definitions.** Solely for purposes of the implementation by PERSI of section 402(l) of the Internal Revenue Code, the following definitions apply: (3-31-22)~~

~~**a.** Chaplain. Any individual serving as an officially recognized or designated member of a legally organized volunteer fire department or legally organized police department, or an officially recognized or designated public employee of a legally organized fire or police department who was responding to a fire, rescue, or police emergency. (3-31-22)~~

~~**b.** Eligible Retired Public Safety Officer. An individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the state agency, political subdivision or government entity who maintains the eligible retirement plan from which distributions are made. (3-31-22)~~

~~**c.** Normal Retirement Age. The member’s age at the time that the member is eligible to retire with an unreduced benefit. (3-31-22)~~

~~**d.** Public Safety Officer. An individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew. (3-31-22)~~

~~**22. Permissive Service Credits.** This includes all credits obtained through voluntary purchase but does not include service obtained through repayment of a separation benefit under Section 59-1363, Idaho Code.~~

~~(3-31-22)~~

~~23. **Police Officer.** “Police officer” means an employee who is serving in a position as defined in Section 59-1303, Idaho Code.~~ (3-31-22)

2421. Primary Employer. The primary employer is the state agency, political subdivision or government entity from whom the employee receives the highest aggregate salary per month. (3-31-22)

2522. Public Employee Retirement System of Idaho. “Public Employee Retirement System of Idaho” or “PERSI” is the retirement system created by Chapter 13, Title 59, Idaho Code. (3-31-22)

2623. Required Beginning Date. The date specified in Section 508.02 of these rules. (3-31-22)

2724. Retiree. Retiree includes any member, contingent annuitant, or surviving spouse, receiving regular monthly allowances at the close of the fiscal year. It also includes members receiving a monthly disability retirement allowance, surviving spouses who elected an annuity option under Section 59-1361(5), Idaho Code, and members who were inactive at the close of the fiscal year but retire on or before the first day of January following the end of the fiscal year, retroactive to the first day of June of the fiscal year or earlier. (3-31-22)

2825. Service. For the purposes of Sections 536 and 539, “service” includes only service for which the member is normally in the administrative offices of the state agency, political subdivision or government entity or normally required to be present at any particular work station for the state agency, political subdivision or government entity. (3-31-22)

2926. Surviving Spouse. “Surviving spouse” is a person as defined in Section 15-2-802, Idaho Code. (3-31-22)

~~30. **Teacher.** “Teacher” is defined as a school employee who is required to be certified.~~ (3-31-22)

3127. Transportation Of Prisoners. “Transportation of prisoners” as used in Section 59-1303(3)(g), Idaho Code, means the employee’s primary responsibility is designated by court order to move prisoners from one (1) place to another. (3-31-22)

(BREAK IN CONTINUITY OF SECTIONS)

101. MULTIPLE EMPLOYERS -- MEMBERSHIP ELIGIBILITY.

An employee establishes separate PERSI membership eligibility with each state agency, political subdivision or government entity with which the employee meets the statutory definition of an “employee” as found in Section 59-1302(14), Idaho Code. (3-31-22)

01. Does Not Meet the Statutory Definition. Because membership eligibility is established independently with each state agency, political subdivision or government entity, neither employer nor employee contributions are required on salary paid by employers to employees who do not meet the statutory definition of an “employee” as found in Section 59-1302(14), Idaho Code. (3-31-22)

02. State Agencies. ~~The agencies of the state of Idaho shall be considered a single employer; a~~ **An** employee working for more than one (1) state agency establishes eligibility based on the total hours of employment worked with all state agencies. ~~(3-31-22)()~~