I. SCOPE AND PURPOSE.

The information contained in this document is intended to answer questions frequently asked by Career Service, Selected Exempt Service (SES), and Senior Management Service (SMS) employees. This information is applicable only to these three services as related to the Deferred Retirement Option Program (DROP).

II. DEFINITIONS.

For purposes of this guideline, the following definitions apply:

Deferred Retirement Option Program - As defined in Rule 60S-11.001(1), F.A.C., means a program, hereinafter referred to as the DROP, available to certain employees who are eligible for normal (unreduced) service retirement under the Florida Retirement System (FRS) Pension Plan. Under DROP, employees effectively retire and have their retirement benefits accumulate, tax deferred, in the FRS Trust Fund while they continue covered employment for a limited time.

Fair Labor Standards Act (FLSA) – Establishes minimum wage, overtime pay, record keeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments.

Retiree – As defined in Rule 60S-6.001(52), F.A.C., means a former member of one of the retirement systems established by Chapters 121, 122, 123, 238, and 321, F.S., who has terminated employment and is receiving benefits from the system in which he or she was a member. This term also includes a person who retired and is receiving benefits under section 112.05, F.S., and a DROP participant as provided in Chapter 60S-11, F.A.C. A DROP participant who has not terminated his employment is treated as a retiree under these retirement systems but retirement is not final until termination occurs.
SES/SMS Anniversary Date - The annual recurrence of the SES/SMS Leave Accrual Month/Day.

SES/SMS Leave Accrual Month/Day - The actual calendar month and day on which the employee was first appointed to either an SES or SMS position and was first credited 176 hours of annual leave, pursuant to Rule 60L-34.0041(1), F.A.C. Provided, however, that the employee has remained in either the SES or SMS pay plan continuously since then.

III. APPLICABLE STATUTORY AND RULE PROVISIONS.

Rule 60L-34.004, F.A.C., General Requirements for Leave Earning, Approval, and Use.

(11) DROP participants shall accrue leave in the same manner and at the same rate as prior to entering the DROP.

Rule 60L-34.0041, F.A.C., Annual Leave.

(4)(a) At the close of business on December 31 of each calendar year, a career service employee’s annual leave balance in excess of 240 hours shall be transferred to sick leave on an hour-for-hour basis. In accordance with an agency-wide plan, the employee may carry-over up to 360 hours of annual leave credits past December 31. For senior management service and selected exempt service employees, at the close of business on the day before the member’s anniversary date, all annual leave credits in excess of 480 hours shall be converted to sick leave on an hour-for-hour basis.

(6)(a) A career service employee who separates from state government with twelve continuous months of service shall be paid for unused annual leave, up to a lifetime maximum of 240 hours. With respect to leave payments received at the time of separation, agencies shall only include payments for separations occurring after December 31, 2001 in the calculation of the lifetime maximum. In case of death of an employee, the 240-hour limit shall not apply and all unused annual leave at the time of death shall be paid to the employee’s beneficiary, estate, or as provided by law.

(b) A senior management service or selected exempt service employee who separates from state government shall be paid for unused annual leave up to a maximum of 480 hours, with the current year’s accrual prorated. In case of death of an employee, the 480-hour limit shall not apply and all unused annual leave at the time of death shall be paid to the employee’s beneficiary, estate, or as provided by law.

(d) An employee electing to participate in DROP may request payment for accrued annual leave at the time of entry into DROP; alternatively, the employee may elect to defer payment until separation from service. If an employee elects immediate payment, then upon separation from service the employee shall be eligible for accrued annual leave payment only to the extent the employee has earned additional annual leave, which combined with the original payment does not exceed the applicable maximum amount specified in paragraph (a) or (b) of this subsection 60L-34.0041(6), F.A.C.

Rule 60L-34.0044, F.A.C., Special Compensatory Leave.

(5) At the time of entry into the DROP, an employee electing to participate in the program may request payment of unused special compensatory leave that was earned within eleven months before entry into the DROP, unless otherwise provided in an applicable collective bargaining agreement.
Section 110.122, F.S., Terminal payment for accumulated sick leave.

(3) The payments authorized by this section shall be determined by using the rate of pay received by the employee at the time of retirement, termination or death, applied to the sick leave time for which the employee is qualified to receive terminal “incentive” pay under the rules adopted by the department pursuant to the provisions of this section. Rules and policies adopted pursuant to this section shall permit terminal pay for sick leave equal to one-eighth of all unused sick leave credit accumulated prior to October 1, 1973, plus one-fourth of all unused sick leave accumulated on or after October 1, 1973. However terminal pay allowable for unused sick leave accumulated on or after October 1, 1973, shall not exceed a maximum of 480 hours of actual payment. Employees shall be required to use all sick leave accumulated prior to October 1, 1973, before using sick leave accumulated on or after October 1, 1973.

Section 121.091(13), F.S., Deferred Retirement Option Program

(c)2. Each employee who elects to participate in DROP may elect to receive a lump-sum payment for accrued annual leave earned in accordance with agency policy upon beginning participation in DROP. The accumulated leave payment certified to the division upon commencement of DROP shall be included in the calculation of the member’s average final compensation. The employee electing the lump-sum payment is not eligible to receive a second lump-sum payment upon termination, except to the extent the employee has earned additional annual leave which, combined with the original payment, does not exceed the maximum lump-sum payment allowed by the employing agency’s policy or rules. An early lump-sum payment shall be based on the hourly wage of the employee at the time he or she begins participation in DROP. If the member elects to wait and receive a lump-sum payment upon termination of DROP and termination of employment with the employer, any accumulated leave payment made at that time may not be included in the member’s retirement benefit, which was determined and fixed by law when the employee elected to participate in DROP.

General Appropriations Act (annual proviso language):

All state branches, departments, and agencies which have established or approved personnel policies for employees relating to the payment of accumulated and unused annual leave shall not provide payment which exceeds a maximum of 480 hours of actual payment to each employee for accumulated and unused annual leave.

Upon termination of employees in the Senior Management Service, Selected Exempt Service, or positions with comparable benefits, payment for unused annual leave credits accrued on the member’s last anniversary date shall be prorated at the rate of one-twelfth (1/12) of the last annual amount credited for each month, or portion thereof, worked subsequent to the member’s last anniversary date.
IV. Questions and Answers

**DROP Participation**

**Question 1:** For employees participating in DROP, what is the difference between the terms "retirement" and "separation"?

**Answer:** When employees enter DROP they are considered "retired" for benefit accrual purposes under the FRS. When such employees later resign or otherwise cease their employment with state government, they are considered to have "separated from service", at which time the agency will process the separation using the action reason "Retirement." The date on which separation from service occurs is also the date on which DROP participation will terminate and finalize retirement.

**Question 2:** What is the effective date of DROP entry?

**Answer:** As with any retirement under the FRS, the effective date of DROP entry will always be the first day of a calendar month. Furthermore, the calculation of the retirement benefit will include all salary earned through the last day of the preceding month. All employees should understand that they are "retiring," not resigning or separating from service on this technical date. The separation date is by definition a deferred date.

**Question 3:** When may employees start participating in DROP?

**Answer:** Employees may have options as to a DROP entry date depending on a number of factors. Employees should be advised to contact the Division of Retirement toll free at (844) 377-1888 or (850) 907-6500 in the Tallahassee local calling area and speak to a retirement counselor regarding their options and deadlines for making an election. DROP participation always begins on the first of a calendar month.

**Question 4:** How long may employees participate in DROP?

**Answer:** The employee may elect to participate for the maximum period of 60 months (up to five years) or any shorter period. Participation in DROP will continue for the duration of such specified period, unless the employee resigns or is terminated on an earlier date (pursuant to section 121.091(13), Florida Statutes, participation in DROP does not guarantee employment for the employee's specified period of DROP participation).

Section 121.091(13), Florida Statutes, requires that the employer acknowledge the date on which the employee has elected to resign from employment (i.e., terminate from DROP). If an employee elects a shorter period than the maximum period and subsequently desires to extend participation (up to the maximum period allowed), the employer and the employee must both complete and submit to the Division of Retirement a signed statement acknowledging mutual agreement to the later termination date.

However, the employer is not obligated to extend the DROP participation period and may choose to terminate the employee as of the original termination date requested by the employee and acknowledged by the employer. For this reason, employees may wish to elect the maximum period allowed upon entry into DROP, since the decision to resign beforehand is not subject to the employer's approval. In any event, it is important to note that failure to separate from service and terminate employment at the end of the specified participation period shall void the employee's retirement and DROP participation. Also, the employer will be liable for reestablishing the employee's membership in the appropriate retirement plan by paying all owed contributions, as applicable.
Question 5: What happens when a Career Service employee who is a DROP participant is laid off after entering the DROP program?

Answer:

1. (a) If the laid off employee is moving directly to another position or agency, DROP enrollment is not impacted. However, if moving to another agency, the agency must process a Personnel Action Request (PAR) for the separation action/reason of “Voluntary Separation” and “Move Within State of Florida Government” in order for benefits to transfer correctly.

(b) If the laid off employee has not secured other state employment at the time of the layoff and will miss a reporting cycle to the Division of Retirement (i.e., a full calendar month), due to no covered employment with an FRS agency, this will finalize retirement and end DROP participation. As a result, the employee must start receiving retirement benefits and the DROP payout. Consequently, the agency must process a PAR with the separation action/reason of “Voluntary Separation” and “Retirement” (not Layoff) to ensure proper handling of insurance benefits based on retiree status. Additionally, the employee has 60 days to contact the Division of Retirement with instructions on how the DROP account should be distributed. If the Division of Retirement is not notified within the 60 days, the DROP account will be distributed in lump sum and taxes will be withheld. After DROP participation ends and the employee’s retirement is finalized, DROP participation cannot be “restarted” if the retiree becomes employed in the future. (Note: If a separated employee finds other state employment after being separated (retired) but before DROP enrollment is impacted, the new hiring agency should collaborate with the separating agency and the People First Service Center to nullify the retirement action and correct the employee’s action history. The new hiring agency and the employee must both complete and submit to the Division of Retirement a signed statement acknowledging the employee’s enrollment in the DROP and the deferred resignation date.) In either case, the PAR form should be notated that the employee was actually “laid off” from the agency, but that another separation type was used to correctly transition benefits.

2. After an employee participating in DROP has been laid off and DROP participation ends, the employee may not be employed by any FRS participating employer for six calendar months after separation. If employed in any capacity with an FRS agency during this period, the employee voids retirement and DROP participation. All retirement benefits received must then be repaid and the employee must re-apply to establish a new retirement date. After the six-month termination period is over, any subsequent employment with an FRS participating employer during the six calendar months immediately following the six-month termination period will be as a reemployed retiree and the employee will be subject to all the applicable reemployment restrictions of the FRS law limiting the ability of retirees to receive a retirement benefit in any month employed during this period.

3. A laid off employee who participated in DROP and activated retirement status may still elect to hold leave in abeyance for 12 months just like any other laid off Career Service employee, and claim such leave upon returning to work within 12 months following layoff. However, because an employee who participated in DROP who returns to employment with the State Personnel System within six months of layoff voids retirement (due to the special reemployment restrictions applicable to all FRS retirees), the period of time that such laid off employees have for restoring leave balances held in abeyance is between the 7th and 12th calendar month following layoff.

Question 6: Is a DROP retiree precluded from performing volunteer services during their six month termination period?

Answer: As with any other FRS retiree, whether or not volunteering during this period is permitted under the law may depend on the nature of the work, as well as other factors the agency may not have
considered. Therefore, in all cases of volunteer work by an FRS retiree, it is highly recommended that the agency obtain guidance from the Division of Retirement prior to engaging the retiree.

For additional information regarding the reemployment of Florida Retirement System (FRS) retirees, please reference the program guidelines entitled “Reemployment of Florida Retirement System Retirees in the State Personnel System”, dated July 27, 2010, and found on the Division of Human Resource Management (HRM) website at the following link:

**Leave Provisions Applicable to DROP Participation**

**Question 1:** What is the maximum number of annual leave hours an employee may be paid upon entering DROP?

**Answer:** The maximum number of annual leave hours that are payable upon entering DROP is based on the employee’s pay plan. Pursuant to section 121.091(13)(c)2, F.S., SPS employees who want their annual leave payment used to calculate their average final compensation (AFC) must elect payment at the time they enter DROP. The law governing DROP also provides that, upon conclusion of DROP, an SPS employee who previously received a lump-sum payment for less than the maximum number of hours allowable under their respective pay plan will be eligible to receive a second payment for additional leave credits earned while in DROP, as long as the total of the two payments does not exceed the maximum allowable under the current pay plan of the employee at the time of separation from service.

**Question 2:** May employees request payment for less than the full amount of available annual leave upon entry into DROP in order to have some portion of their leave balance carry over into DROP?

**Answer:** Yes. Under such circumstances the agency will pay the amount of leave for the hours requested and, upon the employee’s separation from service, will pay the difference between the amount originally paid and the maximum payable number of hours of the employee’s current pay plan provided the employee has the accumulated leave at separation.

**Question 3:** Upon entering DROP, may employees receive payment for unused special compensatory leave?

**Answer:** Yes, in certain cases. Although the statutes do not specifically address this issue, a provision is contained in Rule 60L-34.0044, F.A.C., to allow employees to be paid for accumulated and unused special compensatory leave credits as permitted by applicable collective bargaining agreements. However, all such credits paid under this provision must have been earned during the last 11 months prior to entry into DROP, consistent with FRS rules that permit inclusion of such payment in the calculation of the AFC.

**Question 4:** Upon entering DROP, may employees receive payment for unused FLSA compensatory leave?

**Answer:** No. In accordance with Rule 60L-34.0031, F.A.C., FLSA compensatory leave is paid on either a biannual or annual basis. The rule does not provide for the payment of FLSA compensatory leave upon entry into DROP. However, to the extent that such payments were made within 11 months of the time that the credits were earned, they will already be part of the employee’s includible compensation for FRS purposes, including calculation of the AFC.
Question 5: Upon entering DROP, what happens to credit hours in excess of the amount paid for accrued annual and special compensatory leave, as well as the employee’s sick leave and regular compensatory leave balances?

Answer: After an employee enters DROP, leave credit balances will be handled as follows:

- Any unpaid annual leave hours are carried forward;
- All regular compensatory hours are carried forward;
- Any unpaid special compensatory hours are carried forward;
- All FLSA compensatory hours are carried forward; and
- All sick leave hours are carried forward.

In addition:

- Annual leave for all three services is subject to "use it or lose it" after entering DROP, if the employee has already been paid for the maximum number of hours allowable under his/her pay plan.
- Unused sick leave for all three services is paid at the time of separation, as provided by rule.
- Unpaid special compensatory leave credits will be paid, as provided by rule and applicable collective bargaining agreements.

Question 6: If an SES or SMS employee has an anniversary date of, for example, June 15 and plans to enter DROP on July 1, how will unused annual leave credits accrued on the last anniversary date be credited for payment purposes?

Answer: Such payments shall be prorated pursuant to the same provisions in place for terminating employees. SMS and SES employees may be paid a maximum of 480 hours from a combination of the prior SES/SMS anniversary date balance and the prorated amount of annual leave.

Question 7: How do Career Service, SES and SMS employees accrue annual and sick leave after entering DROP?

Answer: Annual and sick leave accrual rates are not affected by DROP participation. Employees of all three services will accrue leave in the same manner and at the same rate as prior to entry into DROP.

Question 8: How is eligibility for a second (terminal) annual leave payment affected if a Career Service employee enters SES or SMS, or vice versa, while in DROP?

Answer: The primary purpose of the DROP law that permits payment of “terminal” annual leave hours upon entry into DROP is to allow employees to benefit from having such payments used in the calculation of their average final compensation, which is an integral part of the formula that determines their monthly pension benefit. However, it was also the intent of this DROP law to allow such payments without creating a windfall (extra payments) that non-DROP retirees would not have. Therefore, second payouts upon separation from service are only allowable in certain circumstances.

Nonetheless, the DROP law did not contemplate that some DROP participants might subsequently move to another pay plan with different payout rules. This has necessitated that the State Personnel System balance two separate events (DROP participation and movement between pay plans) in a manner that conforms to the DROP law's intent, but does not unduly harm the employee. Consequently, the following is the policy of the State Personnel System.
Regardless of which pay plan employees are members of at the time of entry into DROP, the maximum amount of annual leave hours for which they may be paid upon exiting DROP will be the difference between the cap of their current pay plan (i.e., the pay plan to which they belong at the time of separation from service) and the amount they were paid when they entered DROP. Consequently, Career Service employees who received the maximum lifetime payment of 240 hours upon entering DROP and are now in the SMS or SES, would be eligible for up to 240 hours of additional payment, since they are now in a pay plan with a higher cap and the combination of both payouts does not put them at an advantage over other SES or SMS employees who separate or retire. (As with any separation from SES or SMS, this second payment is subject to proration of the hours accrued on the most recent anniversary date.)

Conversely, SES or SMS employees who were paid the maximum 480 hours when entering DROP and are now in the Career Service would not be eligible for any further payment, since they have already optimized the amount of annual leave that was used in their average final compensation and such amount is greater than the lifetime cap of their current pay plan.

However, in the event that an SES or SMS employee received payment for less than 240 hours upon entering DROP and is now a Career Service employee exiting DROP, he/she may be paid for the difference between 240 hours and the lesser amount received upon DROP entry. Again, such payout does not put them at an advantage over other Career Service employees who separate or retire.

Rule 60L-34.0041.0041(6)(d), F.A.C., provides for payment of annual leave in accordance with the provisions of section 121.091(13)(c)2., F.S. Pursuant to this rule, an SES/SMS employee who enters DROP and requests payment for their annual leave, then completes DROP, will only be eligible for a second payment if, when combined with the first payment, the amount of hours do not exceed the 480 hour maximum stated in Rule 60L-34.004(6)(b), F.A.C., for SES/SMS. Therefore, employees paid the full 480 hours upon entering DROP are not eligible for any annual leave payment upon leaving DROP.

**Question 9:** If employees are paid for the maximum number of annual leave hours upon entering DROP and subsequently die while in DROP, do their beneficiaries receive payment for all the remaining annual leave?

**Answer:** Yes. In this case, the qualifying event is death (as opposed to termination from DROP) and the eligible beneficiary of such employees may receive all of the employees’ accrued annual leave, pursuant to Rule 60L-34.0041(6)(b), F.A.C. Under these circumstances, the annual leave of SES and SMS employees is not prorated prior to payment.

**Question 10:** Employees enter DROP and are paid for the maximum number of accumulated annual leave hours. They carry a balance forward then subsequently go over the maximum number of hours allowed to be carried over to the next calendar year. When will the excess hours be converted to sick leave?

**Answer:** In accordance with Rule 60L-34.0041(4)(a), F.A.C., the conversion of excess annual leave into sick leave credits is only authorized at the end of each calendar year for active Career Service employees and at the SES/SMS anniversary date for active Selected Exempt Service and Senior Management Service employees. These are the same provisions that apply to all other employees.
Question 11: When an employee terminates from DROP with more than the maximum unused annual leave balance that may be paid, can the excess annual leave credits be converted to sick leave on an hour-for-hour basis (so that it becomes part of the exiting employee’s terminal sick leave payment addressed in section 110.122, Florida Statutes)?

Answer: No. The employee shall be eligible for the payment of their annual leave balance only to the extent the employee has earned additional annual leave which, combined with the original payment they may have received at the time of entry into DROP, does not exceed the maximum payout amount of the employee’s current pay plan.

The conversion of excess annual leave into sick leave credits is only authorized at the end of each calendar year for active Career Service employees and at the leave accrual anniversary date for active Selected Exempt Service and Senior Management Service employees. There are no provisions in statute or rule that authorize this conversion upon termination from service.

Question 12: Can a DROP participant shelter some of the annual leave payment from federal income tax by putting it into deferred compensation?

Answer: Yes. Employees may choose to defer a certain portion of their annual leave payment upon entering DROP, in the same manner as they do when separating from service. The amount deferred will not be subject to federal income tax. Employees who are contemplating entry into DROP and who are not currently participating in the deferred compensation program may wish to enroll for this purpose.

Question 13: How much of their leave payment can a DROP participant put into deferred compensation?

Answer: Employees should contact the State’s Deferred Compensation Plan for guidance concerning deferral of their annual leave payout. They can visit the web site at https://www.myfloridadeferredcomp.com or call toll free 877-299-8002. (In Tallahassee they can call 850-413-3162.)

Question 14: If an employee fails to terminate employment under DROP, is he/she required to repay (or may he/she voluntarily repay) the annual or special compensatory leave payments received at the time of entering DROP?

Answer: No; the employee is not required nor permitted to repay such leave payments.

As noted in an analysis provided by the Department of Management Services’ Office of the General Counsel, the DROP law does not address repayment of any leave credits paid to the employee at the time of entering DROP. Instead, when an employee does not terminate employment as required by the DROP law, the DROP law addresses the impact on DROP membership and requires that the employee’s participation in DROP be rendered null and void. This law further requires that the employee’s membership in the appropriate retirement plan be re-established retroactive to the date of commencement in DROP and that the agency pay any retirement contributions that may be due. As such, the DROP law sets forth provisions relating to how voiding DROP impacts retirement benefits, but not leave benefits. Similarly, the attendance and leave rules make no provisions for restoring leave credits that were properly paid at the time of entering DROP.

According to the Bureau of State Payrolls, Department of Financial Services, there is no statutory or rule language to justify treating lump sum payments of leave credits made upon entering DROP as ‘salary overpayments’ in the event that DROP is voided. No payroll error has occurred and, even if such payments were to be considered “errors”, the federal limitations on allowing adjustments to prior
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year taxable income and income tax withholding would make adjustment of payroll records unfeasible in the majority of cases.

Furthermore, there are no provisions in Chapters 110 or 121, F.S., nor Rule 60L-34, F.A.C., to suggest that these payments were meant to be revocable. If, at the time of the request, the employee was eligible for payment per section 121.091(13)(c)2, F.S., and Rules 60L-34.0041(6)(d) and 60L-34.0044(5), F.A.C., then payment is available at the option of the employee.

**Question 15: What is the impact on the employee, if DROP membership is voided, but annual and/or special compensatory leave payments are not?**

**Answer:** The employee will still be subject to the provisions of section 121.091(13)(c)2., F.S., that limit the amount of annual leave credits that may be paid upon separation from service to the difference between the maximum allowed under the employee’s pay plan and the amount paid at the time of entering DROP. However, if the employee subsequently applies for retirement and the previous lump sum payment of annual and/or special compensatory leave still falls into one of the employee’s five highest fiscal years of earnings, then such payments would still enhance the calculation of the employee’s average final compensation.

### Impact of DROP Employment on other Benefits

**Question 1: Are employees who participated in DROP subject to forfeiture of retirement benefits if there is a finding of guilt for a forfeitable offense that occurred before termination to finalize DROP and retirement?**

**Answer:** Yes. If an employee is found guilty or pleads “no contest” to a crime as specified in section 121.091(5) or section 12.3173, F.S., before retirement or termination to finalize DROP, the retirement rights and benefits are forfeited. The forfeited benefits include the DROP account and any monthly retirement benefits received after DROP participation ends and before the finding of guilt.

**Question 2: Are DROP participants eligible for state insurance after entering DROP?**

**Answer:** Yes. All state group insurance, supplemental pretax insurance, and agency sponsored insurance coverage will remain intact and unaffected by DROP participation. DROP participants are eligible for the state contribution toward health and life insurance and, in the case of SMS/SES, disability insurance.

**Question 3: Is a DROP participant eligible for the health insurance subsidy payment while in DROP?**

**Answer:** No. This benefit will commence when the employee separates from service, if eligible.

**Question 4: What happens to disability and death benefits provided under an employee’s retirement plan (pursuant to Chapters 121, 122 or 238, F.S., as applicable) when the employee enters DROP?**

**Answer:** Because the employee is now retired, the regular and in-line-of-duty disability provisions of the Florida Retirement System (or other pre-existing system under which the employee retired) will no longer apply. Survivor benefits will be based on the retirement benefit option the retiree elected on the DROP and retirement application form, regardless of whether the death was natural or accidental, and/or whether the death occurred in-line-of-duty.
Question 5:  What happens to Special Risk members’ other benefits when they enter DROP?

Answer: A certified law enforcement officer, correctional officer, or firefighter is considered retired when he/she enters DROP and no longer a member of the FRS Special Risk membership class. However, if these employees remain in a Special Risk classification after entering DROP, they remain eligible for the death and disability benefits as provided for in Chapter 112, F. S., and under federal law.

Question 6:  What happens to coverage under the Workers’ Compensation law?

Answer: DROP participants remain covered for Workers’ Compensation medical, indemnity and death benefits under the same provisions as before entering DROP.

Visit the DROP sub-page of the “Members” page of the Division of Retirement's website for more information.