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to external and internal labor mobility:  
The Philippine experience*

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# **Portability of benefit rights**

## **Portability of benefit rights in response to external and internal labor mobility: The Philippine experience**

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### **Introduction**

Confronted with the opportunities and threats posed by globalization, rapid advances in information and communication technology, subsequent shift in economic paradigms, changing demographic structures and stiff market competition, governments around the world are expected to continually seek and develop new and efficient approaches in carrying out their mandates. This is particularly so with respect to the delivery of government programmes and services to the country's labor force, which is directly affected by these emerging trends.

As opportunities open up, the incidence of job change increases, whether external or migration from local to overseas employment and vice versa, internal or shift from public to private sector employment and vice versa, or both. With the mobility of workers, however, arises the need for government to ensure the preservation and promotion of workers' overall welfare in the pursuit of social justice. Fundamental to this is the provision of social security, particularly in providing a mechanism to ensure full entitlement to meaningful protection against contingencies, as a matter of state policy.

In the Philippines, there has been a continuing effort by the State to fulfill its role by implementing portability arrangements through social security agreements with other countries and through a national legislation covering the programmes of social security institutions within the country to satisfy conditions of external and internal mobility of workers, respectively.

Broadly defined, portability is the state or quality of being easily carried or conveniently transported. In the context of contributory, defined benefit social security schemes, it has been traditionally considered as the ability of workers to preserve, maintain and transfer acquired social security rights towards the accumulation of the value of pension benefits when changing jobs, without bias to nationality, country of residence or sectoral affiliation.

This paper, therefore, discusses the Philippine experience on the actual application of the concept of "Portability of Benefit Rights". Portability arrangements are rare in Asia and the Pacific, more so if these are implemented as a result of formal treaties concluded with another country or are provided for by law set along the guiding principles of international

conventions on social security. The paper begins with a brief description of the Philippine Social Security System and then proceeds with a discussion on the rationale for portability: prevailing conditions, options for labor mobility, understanding the typical life cycle of gainful employment and considerations on eligibility requirements for social security benefits. Its main focus is on the salient features and procedural highlights, including computations and statistics on different cases of avilment of existing portability arrangements in the country.

## **The Philippine Social Security System**

The social security system of the Philippines is described by some experts as comprehensive but rather fragmented because of the lack of formal linkages among implementing agencies, often resulting in policy conflicts, programme disparities and administrative redundancies.

Two major government institutions implement the Philippine social insurance programme for the employed sector: the Social Security System (SSS) for the private sector and the Government Service Insurance System (GSIS) for the public sector. Both institutions administer a mandatory, publicly managed, defined benefit system, with primary funding from workers and employers in the form of contributions which are pooled together in the principle of intra- and inter-generational subsidies. The current rate of SSS contributions is at 9.4 per cent (6.3 per cent for employers and 3.1 per cent for employees) of a member's monthly salary credit (or MSC), subject to the prevailing maximum ceiling of PHP 15,000<sup>1</sup>; while the GSIS contribution rate is presently at 21 per cent (12 per cent for employers and 9 per cent for employees), applied to a member's total salary.

While short-term benefits in the form of daily cash allowances are provided for sickness and maternity (only for the SSS), monthly pensions are granted in the event of old age, death (or survivorship) or disability (or invalidity).

Benefits under both systems are related to earnings (amount of contributions and the average salary credit in the most recent period) and length of credited service (number of years of contribution payment), with minimum amounts guaranteed for those who qualify for pensions. For retirement, a member needs ten years or 120 monthly contributions to be eligible for pension under the SSS, and 15 years of service for the GSIS. Those who do not qualify will receive a lump-sum amount equal to the total contributions paid on their behalf plus interest.

## **Rationale for portability**

Why is portability important?

## **Prevailing conditions and options for labor mobility**

In the Philippines, there is a relatively high incidence of migration, from local to overseas employment and vice versa, and job change, from public to private sector and vice versa, because of the workers' constant search for the proverbial greener pasture.

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<sup>1</sup> PHP = Philippine Peso. Exchange rate on 31 December 2003 was USD 1.00 = PHP 55.30.

## **External mobility**

As early as the 1930s, the country started sending Filipino workers abroad, predominantly composed of unskilled workers and manual laborers going to developed economies like the United States, Canada and Australia. By the 1970s, migration statistics showed the influx of skilled personnel and technicians, employed on contractual terms, mainly to Middle East countries, and this pattern peaked in the 1980s. In the decades that followed, the workers' option to leave their families behind and be deployed for employment in foreign lands became more and more lucrative, especially in light of the appreciation of the US Dollar, which is the basis of remuneration under most overseas employment contracts, against the Philippine peso over the period. Proficiency in the English language, coupled with their well-known aptitude, resilience and diligence, afforded Filipino workers comparative advantage in filling up a wide range of labor demands in over 200 destinations around the globe. This has brought the cumulative number of overseas Filipino workers to around 8 million, or approximately 10 per cent of the total population at present, giving the country the distinction of being one of the leading exporters of labor in the world.

## **Internal mobility**

Similarly, when employment in the public or government sector became less attractive and rewarding than employment in the private sector in the 1970s, public sector workers began to entertain job prospects in private companies or embark on their own-account businesses or enterprises. The problem may be seen as associated with increased bureaucracy, excessive centralization, constraints due to compliance with charter limits, both operational and administrative, greater public gaze for which the sector is likely to be admonished for minor errors than praised for major accomplishments, rigidities in civil service rules, and lack of budget for skills training leading to inability in coping with industrialization. Thus, the presumed superiority of private sector management remained. By the 1990s, however, in an attempt to entice competent and skilled technocrats, technicians and employees from its private counterpart, government offices began to offer competitive and comparatively high rates of salaries and benefits. This is especially true for public institutions that were successfully granted exemption from the Salary Standardization Law for government employees. As ethics and standards in public life turned into an important political issue, codes of conduct have been constantly developed and governments around the world are urged to adhere to them. The gradual introduction of new systems embracing these concepts on good governance also ushered in a rethinking of public sector employment in the Philippines.

## **The typical life cycle of gainful employment and eligibility conditions for social security benefits**

The average productive years of a typical worker ranges from 15 to 20 years; and this is probably the reason why policies governing the redistribution of income in old age as featured in contributory, defined benefit social security schemes are so pegged accordingly. Under this scenario and in the absence of portability arrangements, circumstances of labor mobility will undoubtedly waste a considerable number of years of employment service accumulated during a worker's migration or transfer and, in all probability, also effectively forfeit whatever contributions to the social security institution on account of his membership, together with other benefits that are anchored on these contributions.

A sample illustration of this situation is a Filipino citizen, aged 65, who worked for less than ten years in the private sector and later on served in the government for less than 15 years. This particular employee may have worked for a total of more than 20 years, yet he/she will not qualify for retirement pension in view of the minimum requirement of length of service or payment of contributions under the social security system: 10 years for the SSS and 15 years for the GSIS. This is also true for other branches of social security such as sickness, disability or death, where there is a requisite minimum number of contributions for a worker to be eligible thereto.

Recognizing the dynamism of employment, representatives from various labor groups in the Philippines and overseas found injustice in this kind of system and thus lobbied for change. The Philippine Constitution provides that, “the State shall promote social justice in all phases of national development” and the essence of social justice is “to provide meaningful protection and security to our retiring workers and their families”. To correct the injustice in the application of social justice, therefore, the Philippine Government found it obligatory and necessary to guarantee the full enjoyment by workers of their rights and privileges under existing social security programmes through portability arrangements, purposely entering into social security agreements with other countries and subsequently enacting a milestone legislation which took effect on 1 May 1994 – Republic Act No. 7699: An Act Instituting Limited Portability Scheme in the Social Security Insurance System by Totalizing the Workers’ Creditable Services or Contributions in each of the Systems.

## **External portability through bilateral agreements**

Since the early 1980s, the SSS in a joint effort with the Department of Foreign Affairs, has endeavored to conclude social security agreements with countries that host a substantial number of Filipino migrant workers, for the purpose of promoting mutual cooperation in the field of social security. Among the countries that signed the Convention on Social Security with the Philippines are: Austria (1982), United Kingdom and Northern Ireland (1989), Spain (1989), France (1989), Canada (1997) and Quebec (1998), Switzerland (2001), and Belgium (2001).

Main provisions of these treaties are deemed to be compliant with the standards set by Convention No. 157, adopted by the General Conference of the International Labour Organization (ILO) in 1982, aimed at establishing a universal system for the Maintenance of Social Security Rights with respect to persons working or residing outside their own countries. In fact, the Philippines eventually subscribed and ratified said ILO Convention in 1994, alongside Sweden and Spain.

A pre-requisite to bilateral agreements is the compatibility of the two parties’ social security schemes. Most agreements apply to all branches of social security and categories of persons or workers covered by the relevant laws of both countries. Salient features of these agreements are as follows:

### **Equality of treatment**

A covered Filipino, including his/her dependents and survivors, shall be eligible to social security benefits under the same conditions as nationals in the host country, for example, Spain. In the spirit of reciprocity, Spanish nationals shall be entitled to benefits under the same conditions as Filipinos in the Philippines.

## **Export of benefits**

A person shall continue to receive social security benefits wherever he/she decides to reside (in the Philippines, in the host country, or even in a third country). Such benefits shall also be subject to the adjustments approved for benefits payable in the Philippines.

## **Totalization of periods of coverage**

Contributions paid or membership periods completed successively or alternately under the respective social security schemes of the Philippines and the host country shall be accumulated to determine both the qualification for benefits and the proportionate allocation in the payment of said benefits. This shall exclude overlapping periods in creditable service to avoid undue plurality of coverage.

## **Mutual administrative assistance**

Covered members and their families may file their claims with the designated liaison agencies of the Philippines and the host country, which shall accordingly extend assistance to facilitate processing and disbursement of benefits, and handle matters pertaining to the efficient implementation of the agreement.

These provisions are deemed to be compliant with the standards set by Convention No. 157 adopted by the General Conference of the International Labour Organization (ILO) in 1982, aimed at establishing a universal system for the Maintenance of Social Security Rights with respect to persons working or residing outside their own country. Underlying Convention No. 157 are two basic concepts or principles. The concept of Maintenance of Acquired Rights and the concept of Maintenance of Rights in the Course of Acquisition.

The first concept refers to the guarantee by a Member-State to pay the social security benefits provided by its national legislation, irrespective of the nationality and place of residence of the beneficiaries.

The second concept refers to the recognition of the periods of social security coverage completed successively or alternately under the legislation of two or more Member-States for the purpose of acquiring, maintaining and calculating the benefits under those legislations.

In adherence to these concepts or principles, the Philippines eventually subscribed and ratified the said ILO Convention in April 26, 1994, alongside Sweden and Spain.

## **Data on availment**

As of June 2003, a total of 3,247 member-workers availed of long-term benefits (retirement, death and disability) and other related services under the auspices of these international social security arrangements, to wit: Philippines-Austria (341), Philippines-United Kingdom (150), Philippines-Spain (149), Philippines-France (20), Philippines-Canada (2,508) and Philippines-Quebec (79).

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## **Portability law for private and public sector employment in the Philippines**

It took almost two years of Congressional deliberations and public hearings before Republic Act No. 7699 or the Limited Portability Law (see Appendices A and B) was enacted on 1 May 1994, Labor Day to deal with the reality of internal mobility of workers.

### **Intent of the law**

There were at least three major reasons given to explain the passage of the law:

- there are employees whose services were engaged in the private sector and the public sector; majority of these employees could not qualify either with the GSIS or SSS due to the fact that they do not meet the minimum number of creditable service in either government or private employment;
- these employees are in reality prejudiced by the separate retirement systems for public and private sector employees; and
- there is a need to remedy this inequitable situation for a great number of these employees who have rendered service and contributed to the social and political development of the country.

### **Terms and conditions**

Salient features of the landmark legislation were patterned after the social security bilateral agreements as discussed in the previous section.

- Limited applicability. Totalization of benefits shall cover only old age, disability and death benefits, and only to members who do not qualify for pension benefit under the laws of at least one of the Systems.
- Maintenance of membership records. Membership contributions that a worker has paid to the SSS while working in the private sector and to the GSIS, in case he/she transfers employment to the government sector, or vice versa, shall remain in the records of both Systems.
- No overlapping. Overlapping periods of membership shall be credited only once.
- Totalization and pro-rata sharing of benefits. For purposes of computing the retirement and other benefits due a member, the number of years of service in the public and private sectors shall be totalized, as if there was no interruption of his/her membership to either system, SSS or GSIS. The amount of benefit to be paid by each system shall be on a pro-rata basis, which means that it shall be in proportion to the contributions that the worker has paid to either System.



SSS	GSIS
The highest of: a) $\text{PhP } 300 + (\text{PhP } 6,000 \times 2\% \times 10)$ = $\text{PhP } 300 + \text{PhP } 1,200$ = $\text{PhP } 1,500$  b) $40\% \times \text{PhP } 6,000$ = $\text{PhP } 2,400$  c) Minimum pension of $\text{PhP } 1,000$	The highest of: a) $37.5\% \times \text{PhP } 3,140$ = $\text{PhP } 1,177.50$  b) Minimum pension of $\text{PhP } 1,000$
Theoretical Pension = $\text{PhP } 2,400$	Theoretical Pension = $\text{PhP } 1,177.50$

Pro-rated Pension = Theoretical Pension x (Number of Contributions/Contribution Requirement)

SSS	GSIS
$\text{PhP } 2,400 \times (72/120)$ = $\text{PhP } 1,440$	$\text{PhP } 1,177.50 \times (108/180)$ = $\text{PhP } 706.50$
<b>Total Pension = PhP 2,146.50</b>	

## Procedural highlights

Below is the general flow or guidelines pertaining to the implementation of the law:

- Member or claimant shall submit to SSS accomplished application form with supporting documents.
- SSS shall screen forms and documents, verify member's contribution payments, and generate computer printout. If with less than the required contribution payments, it shall prepare request for GSIS member's record of creditable services or contributions, and furnish GSIS with printout of member's contribution payments to SSS.
- GSIS shall verify member's record of creditable services or contributions under GSIS. If with less than the required GSIS contribution payments, it shall totalize contribution payments under both Systems. If qualified, it shall calculate the amount of pension benefit and pay member or claimant.

## Data on availment

As of 31 December 2003, there were member-workers who benefited from the implementation of the Limited Portability Law. Through this existing portability arrangement between the SSS and GSIS, the member beneficiaries covered by this legislation were able to qualify to receive retirement pensions, were granted disability pensions or availed of survivor pensions or death benefits.

## Conclusion

Employment structures have indeed evolved over the years, and without a doubt, would continue. In a world of changing priorities, therefore, it is imperative that governments around the world take up the challenge and espouse policies or programmes attuned to these conditions, still with the end-view of achieving desirable societal outcomes.

Some of the trends expected to take shape or escalate in the future, which may impinge on the provision of social security and the application of portability of benefit rights in cases of external and internal labour mobility, are in relation to:

- regional socio-economic integration, as in the manner of establishment of the European Union;
- privatization or sub-contracting of the administration or operation of public services; and
- shift from single, lifetime employment to short-term, cyclical career geared towards skill and learning diversity.

This paper shows the Philippine Government's effort to adopt to a borderless, globalized environment, tailor-fitting legislation and practices to suit particular needs of Filipino workers, both overseas and local, in both private and public sectors. It is not only our intent but, more importantly, our duty as social security administrators to initiate reforms in response to emerging employment trends, with the passage of relevant laws or treaties if need be. It is an accepted rule that social justice, as in the Philippine Constitution, is the embodiment of the principle that those who have less in life shall have more in law. It commands a legal bias in favor of those who are underprivileged, either economically or politically.

## Appendix A

### Republic Act No. 7699

#### AN ACT INSTITUTING LIMITED PORTABILITY SCHEME IN THE SOCIAL SECURITY INSURANCE SYSTEMS BY TOTALIZING THE WORKERS' CREDITABLE SERVICES OR CONTRIBUTIONS IN EACH OF THE SYSTEMS.

**SECTION 1.** It is hereby declared the policy of the State to promote the welfare of our workers by recognizing their efforts in productive endeavors and to further improve their conditions by providing benefits for their long years of contribution to the national economy. Towards this end, the State shall institute a scheme for totalization and portability of social security benefits with the view of establishing within a reasonable period a unitary social security system.

**SECTION 2. *Definition of Terms.***- As used in this Act, unless the context indicates otherwise, the following term shall mean:

- a) "**Contributions**" shall refer to the contributions paid by the employee or worker to either the Government Service Insurance System (GSIS) or the Social Security System (SSS) on account of worker's membership;
- b) "**Portability**" shall refer to the transfer of funds for the account and benefit of a worker who transfers from one system to the other;
- c) "**Sector**" shall refer to employment either in the public or private sector;
- d) "**System**" shall refer to either the SSS as Created under Republic Act No. 1161, as amended or the GSIS as created under Presidential Decree No. 1146, as amended; and
- e) "**Totalization**" shall refer to the process of adding up the periods of creditable services or contributions under each of the Systems, for purposes of eligibility and computation of benefits.

**SECTION 3.** Provisions of any general or special law or rules and regulations to the contrary notwithstanding, a covered worker who transfers employment from one sector to another or is employed in both sectors shall have his creditable services or contributions in both System credited to his service or contribution record in each of the Systems and shall be totalized for purposes of old age, disability, survivorship and other benefits in case the covered member does not qualify for such benefits in either or both Systems: *Provided, however,* That overlapping periods of membership shall be credited only once for purposes of totalization.

**SECTION 4.** All contributions paid by such members personally, and those that were paid by his employers to both Systems shall be considered in the processing of benefits which he can claim from either or both Systems: *Provided, however,* That the amount of benefits to be paid by one System shall be in proportion to the number of contributions actually remitted to that System.

**SECTION 5.** Nothing in this Act shall be construed to diminish or reduced the benefits being enjoyed by a covered worker arising from existing laws, issuances, and company policies or practices or agreements between the employer and the employees.

**SECTION 6.** The Department of Labor and Employment for the private sector and the Civil Service Commission for the government sector, together with the SSS and the GSIS shall, within ninety (90) days from the effectivity of this Act, promulgate the rules and regulations necessary to implement the provisions hereof: *Provided*, That any conflict in the interpretation of the law and the implementing rules and regulations shall be resolved in favor of the workers.

**SECTION 7.** All laws, decrees, orders, rules and regulations, or parts thereof, which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

**SECTION 8.** This Act shall take effect fifteen (15) days after its complete publication in the *Official Gazette* or in at least two (2) national newspapers of general circulation, whichever comes earlier.

Approved: May 1, 1994    \*( Effectivity of this Act is May 20, 1994)

## Appendix B

### RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT No. 7699

Pursuant to Section 6 of Republic Act No. 7699 entitled “ An Act Instituting Limited Portability Scheme in the Security Insurance Systems by Totalizing the Workers Creditable Services or Contributions in Each of the Systems”, the following Rules and Regulations are hereby promulgated to effectively implement the provision of the Act.

#### RULE I. COVERAGE

**SECTION 1.** These rules and regulations shall apply to all worker-members of the Government Service Insurance System (GSIS) and/or Social Security System (SSS) who transfer from one sector to another, or who wish to retain their membership in both Systems.

#### RULE II. INTERPRETATION

**SECTION 1.** These rules shall be interpreted in the light of the Declaration of Policy found in Section 1 of the Act:

“It is hereby declared the policy of the State to promote the welfare of our workers by recognizing their efforts in productive endeavors and to further improve their conditions by providing benefits for their long years of contribution to the national economy”

Towards this end, nothing in the Act shall be construed to diminished or reduced the benefits being enjoyed by a covered worker arising from existing laws, issuances, and company policies or practices or agreements between the employer and the employees, and any conflict in the interpretation of the law and the implementing rules and regulations shall be resolved in favor of the workers.

#### RULE III. DEFINITION OF TERMS

**SECTION 1.** As used in these Rules, the following terms shall mean:

- a. **“Contributions”** shall refer to the contributions paid by the employer or worker to either the Government Service Insurance System (GSIS) or the Social Security System (SSS) on account of the worker’s membership.
- b. **“Portability”** shall refer to the transfer of funds for the account and benefit of a worker who transfer from one system to the other.
- c. **“Sector”** shall refer to employment either in the public or private sector.
- d. **“System”** shall refer to either the GSIS as created under Commonwealth Act No. 186 as amended by Presidential Decree No. 1146 or the SSS as created under Republic Act No. 1161, as amended.
- e. **“totalization”** shall refer to the process of adding up the periods of creditable services or contributions under each of the Systems, for purposes of eligibility and computation of benefits.

- f. **“Creditable Period”** -For the public sector, the following shall be considered creditable services:
- 1.1 All previous services rendered by an official /employee pursuant to an appointment whether permanent, provisional or temporary;
  - 1.2 All previous services rendered by an official /employee pursuant to a duly approved appointment to a position in the Civil Service with compensation or salary;
  - 1.3 The period during which an official /employee was on authorized sick leave of absence without pay not exceeding one year.
  - 1.4 The period during which an official or employee was out of the service as a result of illegal termination of his service as finally decided by the proper authorities; and
  - 1.5 All previous services with compensation or salary rendered by elective officials.
- g. **“Periods of contributions”** – For the private sector, the periods of contributions shall refer to the periods during which a person renders services for an employer with compensation or salary, and during which contributions were paid to the SSS. For the purpose of this Section, a self-employed person shall be considered an employee and employer at the same time.
- h. **“Eligibility”** means the worker has satisfied the requirements for entitlement to the benefits provided for under the Act.
- i. **“Overlapping of periods”** shall refer to the periods during which a worker simultaneously contributes to both system.
- j. “Benefits” shall refer to the following:
1. Old-age benefit,
  2. Disability benefit,
  3. Survivorship benefit,
  4. Sickness benefit,
  5. Medicare benefit, provided that the member shall claim said benefit from the System where he was last a member, and
  6. Such other benefits common to both Systems that may be availed of through totalization.

#### **RULE IV . LIMITED PORTABILITY OF FUNDS**

**SECTION 1.** The process involved in the prompt payment of money benefits to eligible members shall be the joint responsibility of the GSIS and SSS.

**SECTION 2.** THE System or Systems responsible for the payment of money benefits due a covered worker shall release the same within fifteen (15) working days from receipt of the claim, subject to the submission of the required documents and availability of complete employee/employer records in the System.

## **RULE V. TOTALIZATION**

**SECTION 1.** All creditable services or period of contributions made continuously or in aggregate of a worker under either of the sector shall be added up and considered for purposes of eligibility and computation of benefits.

**SECTION 2.** All services rendered or contributions paid by a member personally and those that were paid by the employers to either System shall be considered in the computation of benefits which may be claimed from either or both Systems. However, the amount of benefits to be paid by one system shall be in proportion to the services rendered/periods of contributions made to that System.

**SECTION 3.** Totalization shall apply in the following instances:

- a. If a worker is not qualified for any benefits from both System: or
- b. If a worker in the public sector is not qualified for any benefits from the GSIS; or
- c. If a worker in the private sector is not qualified for any benefit from the SSS.

For the purpose of computation of benefits, totalization shall apply in all cases so that the contributions made by the worker member in both System shall provide maximum benefits which otherwise will not be available. In no case shall the contribution be lost or forfeited.

**SECTION 4.** If after totalization the worker-member still does not qualify for any benefit listed in Rule III, Section 1 (j), the member will then get whatever benefits correspond to his/her contributions in either or both Systems.

**SECTION 5.** If a worker qualifies for benefits in both Systems, totalization shall not apply.

**SECTION 6.** The process of totalization of creditable services or periods of contributions and computation of benefits provided for under the Act shall be the joint responsibility of the GSIS and the SSS.

**SECTION 7.** Overlapping periods of creditable services or contributions in both System shall be credited only once for purposes of totalization.

## **RULE VI. RESPONSIBLE AGENCIES**

**SECTION 1.** The GSIS and SSS shall be responsible for the recording and documentation of the creditable services and/or periods of contributions of members respectively.

**SECTION 2.** For purposes of the Act, accreditation of services or periods of contributions of the Members shall be undertaken by the GSIS for the public sector and by the SSS for the private sector.

**SECTION 3.** Complaints and questions relative to creditable services or periods of contributions as well as computation of benefits shall be brought before the System concerned and shall be resolved in accordance with the policies and procedures duly adopted by the said System.

**RULE VII. APPLICABILITY**

**SECTION 1.** The benefits herein provided shall apply to active or inactive members of either System as of date of effectivity of the Act which is May 20, 1994.

**EFFECTIVITY**

**SECTION 1.** This implementing rules and regulations shall take effect immediately.