

Policy No.

**Disability Retiree Earning Capacity  
Determinations**

Date Approved

7003

3.19.2018

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**A. Policy**

Disability retirement benefits will be reviewed annually and adjusted to an amount reasonably calculated to result in no overearnings. A disability retiree's earning capacity will be determined using the most recently submitted income verification documents (*e.g.*, federal tax return, pay statements, or certification of no income). In addition, the disability retiree will be required to repay the overearnings by recoupment or a lump-sum payment.

**B. Purpose**

1. Administrative Efficiencies. This policy eliminates the cyclical pattern of recoupment that occurs when disability retirement benefits are fully restored after recoupment despite a disability retiree's earning capacity remaining unchanged.
2. Fiduciary Duty. As a fiduciary, NERS must act in the best interests of the trust fund and its members. After NERS has successfully recouped overearnings from a disability retiree, NERS has a duty to mitigate the risk of future overearnings by using its knowledge of the disability retiree's earning capacity to calculate an appropriate disability retirement benefit.
3. Avoid Unfunded Liabilities. NERS should avoid incurring unfunded and unnecessary liabilities related to excessive disability retirement benefit payments. Where NERS possesses proof of a disability retiree's earning capacity and there is no evidence of any material change of circumstances, the policy allows NERS to rely on such evidence.

**C. Procedure**

1. Request Income Verification Documents. On or before September 1<sup>st</sup> annually, NERS will request income verification documents from each disability retirement retiree who has not attained the normal service retirement age.
2. Earning Capacity Determination. Using the disability retiree's income verification documents and pay rates provided by Human Resources, NERS will determine the disability retiree's earning capacity and calculate the reduced disability retirement benefit.
3. Calculate Overearnings. After calculating the reduced disability retirement benefit, NERS will calculate the amount of the overpayment.
4. Recoupment Notice. If overearnings exist, NERS will notify the disability retiree in writing of the retirement benefit overpayments and reduce the disability retiree's disability retirement benefit until the overpayments have been recovered.
5. Adjustments to Disability Retirement Benefit. Once recoupment is complete, NERS will apply the reduced disability retirement benefit that was calculated previously.
6. Material Change of Circumstances. Disability retirees are encouraged to submit documentation whenever their earning capacity materially changes. Upon receiving such documents, NERS will determine the disability retiree's earning capacity and proceed accordingly.

**D. Discussion**

A disability retiree must submit income verification documents to NERS annually, unless the disability retiree has attained the normal service retirement age. NERS must apply retroactive reductions to disability retirement benefits if the disability retiree's earnings exceeded the

maximum pay rate for the position the disability retiree occupied at retirement. The retroactive reductions will result in retirement benefit overpayments known as “overearnings.”

In addition to retroactively adjusting the disability retiree’s disability retirement benefit, NERS must recover the overpayments. In general, NERS recovers overpayments by recoupment, which is repayment through reduced retirement benefit payments. Alternatively, NERS will accept lump-sum payments.

Once recoupment is complete, the disability retiree will receive the reduced disability retirement benefit amount that was calculated previously using the disability retiree’s income verification documents. If a disability retiree’s earning capacity materially changes, the disability retiree may submit updated income verification documents to NERS at any time or wait for the annual review.

#### **E. References**

1. Should the Board of Trustees determine that a disability beneficiary...is engaged in a gainful employment, or [...] is able to engage in a gainful employment...the board of trustees may reduce his retirement allowance, including any supplements, to an amount which, together with the amount earnable by him, shall equal the amount established on January first of the year being considered. The reduction will be made in the year following the year in which the earnings excess occurs. Norfolk City Code § 37-67(b).
2. The [disability retirement benefit] reduction will be made in the year following the year in which the earnings excess occurs. Should the retiree's earning capacity later change, the amount of his benefit may be increased or decreased in accordance with the provisions of this chapter. Norfolk City Code § 37-67(b).