**Section 1650.392 2.2 Upgrade of Optional Service Not Credited at Initial Upgrade**

a) This Section shall apply only to a member who has elected to upgrade the graduated rate applicable to all of the member's years of service earned and credited before July 1, 1998, pursuant to Section 16-129.1 of the Pension Code [40 ILCS 5/16-129.1] and 80 Ill. Adm. Code 1650.391 and who has less than 20 years of service earned and credited before July 1, 1998.

1) A member participating in a pre-July 1, 1998 service upgrade may upgrade any optional service credit added within the 5-year period provided in Section 16-129.1(b)(ii) at the same salary rate as that of the original upgrade, provided that the added optional service upgrades are paid off within the 5-year period.

2) The effective period of the election shall begin as of the date on which the election is received by the System and shall end upon the expiration of a 60-month period commencing on the August 15 following the date of election or payment in full, whichever is first. The 60-month period will be extended due to suspension of a payroll deduction agreement as provided in Section 1650.1202(d).

b) A member subject to this Section shall be required to pay an upgrade charge for any optional service credited to the member's service on or after July 1, 1998, if the time of employment or other qualifying event upon which the service is based is prior to July 1, 1998, unless the charge is reduced or eliminated by the contribution reduction provided in Section 16-129.1(b) of the Pension Code [40 ILCS 5/16-129.1(b)].

1) The "member's highest salary rate in the 4 consecutive school years immediately prior to but not including the school year in which the election occurs" shall be based upon the 4 most recent employer's annual reports, as amended, required to be filed in accordance with Section 16-155 of the Pension Code [40 ILCS 5/16-155].

2) When determining the contribution necessary for the upgrade, that part of a member's salary with the same employer that exceeds the annual full-time salary rate for the preceding year by more than 20% shall be excluded.

3) If a member has less than one year of creditable service in any of the 4 consecutive school years immediately prior to but not including the school year in which the election occurs and was a part-time non-contractual teacher or a substitute teacher in such year, the annualized salary rate for the school year shall be determined by dividing the creditable service fraction into the salary paid to the member during that school year.

4) The service credit given to a member at retirement pursuant to Section 16-127(b)(6) of the Pension Code [40 ILCS 5/16-127(b)(6)] shall be disregarded for the purpose of the calculation of the contribution necessary for the upgrade feature.

c) Failing to make contribution.

1) A member has failed to make the full contribution in a timely fashion:

A) if the full contribution is not paid within the effective period; or

B) upon termination of employment as a teacher for any cause other than death or retirement, if the member requests in writing that the election be terminated at least 4 months after ceasing to teach.

2) If the member has failed to make the full contribution in a timely fashion, the election shall be terminated and shall be no longer in effect.

3) If the member fails to make the full contribution within the appropriate time period described in subsection (c)(1), and:

A) if the payment is for the repayment of a refund, the amount contributed for both the refund and upgrade shall be refunded to the member, without interest; or

B) if the payment is for optional service other than a refund, and:

i) if the member has made the full upgrade contribution for the years of service earned and credited prior to July 1, 1998, pursuant to 80 Ill. Adm. Code 1650.391, the portion of the upgraded optional service credit determined by the System to have been paid shall be credited to the member's account; or

ii) if the member fails to make the full contribution for the years of service earned and credited prior to July 1, 1998, pursuant to 80 Ill. Adm. Code 1650.391, the payments made for the upgrade shall be refunded to the member, without interest.

4) However, if the reason for the failure is the death of the member:

A) if the member has made the full upgrade contribution for the years of service earned and credited prior to July 1, 1998, pursuant to 80 Ill. Adm. Code 1650.391, the portion of the upgraded optional service credit determined by the System to have been paid shall be credited to the member's account; or

B) if the member fails to make the full contribution for the years of service earned and credited prior to July 1, 1998, pursuant to 80 Ill. Adm. Code 1650.391 or if the payment is for a refund, the payments made for the upgrade, together with regular interest thereon, *shall be refunded to the member's designated beneficiary for benefits under Section 16-138* of the Pension Code [40 ILCS 5/16-129.1].

5) The date of election for the purpose of determining the amount of optional service credit paid shall be deemed to be:

A) if pursuant to subsection (c)(3)(B)(i), the date upon which the failure to contribute in a timely fashion occurred; or

B) if pursuant to subsection (c)(4)(A): the date of the election that terminated upon the member's death, if the member had elected the upgrade prior to his or her death; or the date of death if the member had not previously elected the upgrade.

d) Interest on upgrade refunds shall be calculated from the first day of the month following the date of any payment to the date of refund as provided in 40 ILCS 5/16-129.1(b) based upon the earliest to the latest payments.

e) In the event an actuarial calculation provides a member a greater benefit than an upgraded final average salary calculation, the System shall refund the upgrade cost plus interest to the member.

(Source: Amended at 32 Ill. Reg. 13534, effective August 6, 2008)