

DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM
DELAWARE BOARD OF PENSION TRUSTEES
2000 Employee Benefits

2005 County and Municipal Employees' Pension Plan
Rules and Regulations As Adopted by the State Board of Pension Trustees
(Proposed June 1, 2021)

1.0 Plan Year

The Plan Year for the Pension Fund is the twelve (12) month period beginning July 1.

2.0 Pension Administrator

The Executive Secretary appointed by The Board of Pension Trustees pursuant to 29 **Del.C.** §8308(2) shall be the Pension Administrator.

3.0 Credited Service

3.1 *Definitions:*

3.1.1 **"Accredited private school or college"**. The term "accredited private school or college" as used in 29 **Del.C.** §5551(4)d. means a private school or college which, during the time the pension applicant was employed there, was accredited by its Regional States Association of Colleges and Secondary Schools or whose students were routinely able to transfer to a school or college accredited by one of the aforesaid Regional Associations without loss of academic credit.

3.1.2 **"Application for benefits"**. The term "date on which the application for such benefit is filed" as used 29 **Del.C.** §5581 means the date on which the written documentation is received by the Office of Pensions or by the individual's employer.

3.1.3 **"Approved medical leave"** as used in 29 **Del.C.** §5551(4)e, shall refer to that period of time during which an individual: Is on a properly granted medical leave of absence from an employing State agency or school, and as further set forth in Section 6.0 of these regulations.

3.1.4 **"Full-time or annual basis"**. The term "employed on a full-time or annual basis" as used in 29 **Del.C.** §5551(5)a. means employment in a permanent position which requires at least one-hundred thirty (130) hours per month for at least nine (9) months during a period of twelve (12) consecutive months.

3.1.5 **"Regular part-time basis"**. The term "regular part-time basis" as used in 29 **Del.C.** §5551(5)a. means:

3.1.5.1 Is employed in a position which requires at least fifty (50) hours per month for at least 9 months during a period of twelve (12) consecutive months; or

3.1.5.2 Is employed in a position where the part time rate for the position is at least \$200 per month for at least nine (9) months during a period of twelve (12) consecutive months.

3.1.6 **"The Plan"** means the County Municipal Employees' Pension Plan, as set forth in 29 **Del.C.** Ch 55A.

3.1.7 **"The Plan Trust"** means the Delaware Public Employees' Pension System Trust, created pursuant to 29 **Del.C.** Ch. 83.

3.2 *Credit for vacation and accrued sick leave.* An employee or employee's survivor may elect to use accrued periods of vacation and accrued sick leave as credited service under 29 **Del.C.** §5551(4), provided that an employee or employee's survivor may not receive a pension for any month during the periods of vacation or sick leave so used. Service so credited may be used to establish eligibility for a service, disability, survivor or vested pension.

3.3 *Employee work conditions for credited service.* To be deemed an employee for credited service, an employee of the State must:

3.3.1 Report for and work in an official work place of the State or must report for and attend a school or course of instruction in the manner required by the school or other institution pursuant to the direction or authorization of the employer, and be directly accountable to the employer who supervises the employee's work or course of instruction; or

3.3.2 Become eligible for Worker's Compensation in the course of employment as defined in subsection 3.4.1 of this regulation, in which event the employee's accrual of credited service shall continue only so long as the

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employee shall remain eligible for and be receiving Worker's Compensation and remains an employee as defined under 29 **Del.C.** §5551(5).

- 3.4 *Leave of absence without pay.* Any employee on an agency approved leave of absence shall not incur a break in service under 29 **Del.C.** §5551(4)c.1., provided that the leave of absence without pay is approved in writing by the employing agency or school board, and a copy thereof is filed with the Office of Pensions. The leave of absence without pay may not exceed a period of twelve (12) consecutive calendar months, unless approved by the Pension Administrator.
- 3.5 *One year limitation:* In no case shall more than one (1) year of credited service be granted for any employment services during any twelve (12) month period.
- 3.6 *Ordinary service purchase.* The actuarial rate to purchase credit under 29 **Del.C.** §5551(4)d. shall be adopted by resolution of the Board of Pension Trustees.
- 3.7 Rights of former employees returning to active service as an employee.
- 3.7.1 *Repayment of withdrawal benefits.*
- 3.7.2 If a former employee, who withdrew the employee's pensioner accumulated contributions upon termination of service *before* January 1, 1986 again becomes an employee, the employee's service credits to the date of termination shall be restored in accordance with the provisions of 29 **Del.C.** §5551(4)c. if the employee repays the total amount withdrawn within ninety (90) days after written notification of such repayment option from the Office of Pensions.
- 3.7.3 If a former employee, who withdrew the employee's accumulated contributions upon termination of service on or *after* January 1, 1986 again becomes an employee, the employee's service credits to the date of termination shall be restored in accordance with the provisions of 29 **Del.C.** §5501(4)(c) if the employee repays the total amount withdrawn, plus an interest rate charge as adopted by the Board, compounded annually, within ninety 90 days after notification from the Office of Pensions.
- 3.7.4 If the repayment occurs after the ninety (90) days following written notification of such repayment option from the Office of Pensions, the repayment shall be equal to the amount in subsections 3.7.2 and 3.7.3 of this regulation, plus, for each full month or fraction thereof following the last day of the ninety (90) day period, interest rate charge as adopted by the Board.
- 3.7.5 Any interest rate charges collected under subsections 3.7.2 and 3.7.3 of this regulation shall not be considered part of accumulated contributions and shall not be refunded if the former employee takes a refund of accumulated contributions subsequent to a repayment.
- 3.8 *Rights of non-disability pensioners who return to active service as a full-time or regular part-time employee.*
- 3.8.1 A pensioner, other than a disability pensioner, who again becomes an employee under 29 **Del.C.** §5551(4)(c), shall be eligible for an additional pension for each month of credited service during the pensioner's period of re-employment, with such additional pension computed as follows:
- 3.8.1.1 Employees who return for subsequent terms of employment which equal or exceed five (5) years and who waive the pension benefits accepted upon initial retirement and repay all benefit monies received from the prior retirement shall be eligible for a pension computed in accordance with all provisions of 29 **Del.C.** Ch. 55A.
- 3.8.1.2 Employees who return for subsequent terms of employment which total less than 5 years or employees who elect not to re-retire under subsection 3.8.2.1.1 above shall be eligible for an additional pension for each month of credited service during the pensioner's period of re-employment, with such additional pension computed in accordance with all provisions of 29 **Del.C.** Ch. 55A, provided, however, that the original pension payable before the pensioner again became an employee shall not be recomputed and shall be payable in the same amount on the date of the pensioner subsequent retirement plus any post retirement increases the pensioner would have been eligible to receive during the pensioner's period of active employment.

4.0 Distribution of benefits

- 4.1 *Effective date of pensions*
- 4.1.1 *Pension beneficiary:* All pensions shall become effective on the first day of the month. Under 29 **Del.C.** §5581, a monthly benefit shall not be payable for any period earlier than the first day of the second month preceding the date on which application for such benefit is filed.
- 4.1.2 *Deceased pensioner monthly benefit and survivor's pension:* The full pension benefit shall be payable for the month in which a pensioner's death occurs and shall be payable to the pensioner or the pensioner's

estate. Survivor's monthly pension benefit, if any, shall become effective the first day of the next month following the month in which a pensioner's death occurs.

- 4.2 *Erroneous payments.* Any overpayment of benefits to a pensioner shall be recovered by the State Pension Administrator who, after written notice to the pensioner, shall withhold the amount due from the pensioner's monthly pension benefit within a twelve (12) month period, provided that the amount of monthly withholding may not exceed fifteen percent (15%) of the monthly pension benefit. If repayment of any overpayment amount will require more than twelve (12) months, the withholding shall be made at the rate not to exceed fifteen percent (15%) of the monthly pension benefit until the overpayment has been recovered in full.
- 4.3 *Withdrawal benefits.* Employees terminating employment who are not eligible for a service or disability pension shall be paid their accumulated contributions with interest pursuant to 29 **Del.C.** §5580. Such payments shall not be made until the Office of Pensions has verified the employee's total pension contributions. The interest rate to be paid on such payments shall be adopted by resolution of the Board.
- 4.4 *Survivor benefits*
- 4.4.1 *Child with permanent disability.* In order to establish eligibility for a survivor's pension for a child who "has a permanent disability as the result of disability which began before the child attained age 18" as set forth in 29 **Del.C.** §5578(c)(2) and (d)(3), the following documentation, in the form prescribed by the Board, shall be provided:
- 4.4.1.1 That the child is unmarried and the child is dependent upon the parents or the child is unable to do any substantial, gainful work; and
- 4.4.1.2 An opinion from a qualified physician which finds that the child has a medically determined physical or mental impairment that renders the child permanently disabled, and unable to do any substantial and gainful work and that such permanent disability began before the age of 18 years, or a determination that the child is disabled for the purposes of Social Security SSI.
- 4.4.2 *Reduction factors for survivor's pensions.* The Reduction Factors for Survivor's Pensions payable under 29 **Del.C.** §5578(d) shall be adopted by Resolution of the Board. Such benefits will not be subject to employer discretion.

5.0 Distribution requirements to comply with IRS Code §401(a)(9) [Compliance with Code §401(a)(9)(RMDs); IRS-approved language]

- 5.1 Distributions from the Pension Trust may be made only upon the death of a Plan participant, termination of service by voluntary resignation, attainment of normal retirement age under the terms of the Plan, qualification for a disability pension under the terms of the Plan, and attainment of the age of 70¹/₂ years (if the Plan participant was born before July 1, 1949) or after age 72 (if the Plan participant was born after June 30, 1949) except for an employee in active status.
- 5.2 The Pension Fund will pay all benefits in accordance with a good faith interpretation of §401(a)(9) of the Internal Revenue Code of 1986 and the regulations under that Section, as applicable to a governmental plan within the meaning of §414(d) of the Internal Revenue Code.
- 5.3 Notwithstanding any other provision of these rules and regulations, the Pension Fund is subject to the following provisions:
- 5.3.1 Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the Plan participant reaches 70¹/₂ years of age (if the Plan participant was born before July 1, 1949) or after age 72 (if the Plan participant was born after June 30, 1949) or April 1 of the calendar year following the calendar year in which the Plan participant terminates employment. If a Plan participant fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which the plan participant reaches 70¹/₂ years of age (if the Plan participant was born before July 1, 1949) or after age 72 (if the Plan participant was born after June 30, 1949) or April 1 of the calendar year following the calendar year in which the Plan participant terminates employment, whichever is later, the Board will begin distributing the benefit as required by this Section.
- 5.3.2 The Plan participant's entire interest must be distributed over the Plan participant's life or the lives of the Plan participant and a designated survivor under state law, or over a period not extending beyond the life expectancy of the Plan participant or of the Plan participant and a designated survivor under state law. Death benefits must be distributed in accordance with §401(a)(9) of the Internal Revenue Code of 1986,

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including the incidental death benefit requirement in §401(a)(9)(G) of the Internal Revenue Code of 1986, and the regulations implementing that Section.

- 5.3.3 The life expectancy of a Plan participant, the Plan participant's spouse or the Plan participant's survivor under state law may not be recalculated after the initial determination for purposes of determining benefits.
- 5.3.4 If a Plan participant dies after the required distribution of benefits has begun, the remaining portion of the Plan participant's interest must be distributed at least as rapidly as under the method of distribution before the Plan participant's death and no longer than the remaining period over which distributions commenced.
- 5.3.5 If a Plan participant dies before required distribution of the Plan participant's benefits has begun, the Plan participant's entire interest be distributed as follows:
- 5.3.5.1 If the participant's surviving spouse is the sole designated beneficiary, the participant's remaining interest in the Plan is distributed or begins to be distributed by December 31 of the calendar year immediately following the calendar year in which the member died or by December 31 of the calendar year in which the member would have attained age 70½ (if the deceased member was born before July 1, 1949) or after age 72 (if the deceased member was born after June 30, 1949), if later, and if the surviving spouse dies before the distribution to the surviving spouse begins, subsection 10.3.5.1 of this regulation shall be applied as if the surviving spouse were the Plan participant; or
- 5.3.5.2 If the participant's surviving spouse is not the sole designated beneficiary, the benefit must be distributed (in accordance with federal regulations under §401(a)(9) of the Internal Revenue Code of 1986) over the life or life expectancy of the designated survivor under state law, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year of the Plan participant's death; or
- 5.3.5.3 Distributed by December 31 of the calendar year containing the fifth anniversary of the Plan participant's death.
- 5.3.6 The amount of an annuity paid to a Plan participant's Beneficiary may not exceed the maximum determined under the incidental death benefit requirement of §401(a)(9)(G) of the Internal Revenue Code of 1986.
- 5.3.7 The death and disability benefits provided by Pension Fund are limited by the incidental benefit rule set forth in Treasury Regulation §1.401-1(b)(1)(ii) or any successor regulation thereto.

6.0 Disability

- 6.1 *Disability.* The term "physical or mental disability" as used in 29 **Del.C.** §5574(b) means a condition which causes an employee with a medically documented physical or mental disability which prevents the employee from engaging in any substantial gainful activity for which the employee is reasonably suited by training or experience by reason of any medically determinable physical or mental disability which can be expected to result in death or to last for a period of not less than 12 months.
- 6.2 *Documentation of disability.* An application for disability shall be on the form prescribed by the Pension Office and shall include an evaluation from a qualified physician or psychologist.
- 6.3 *Disability review.* Disability Pension Applications shall be reviewed by a qualified and independent third-party examiner approved by the Board, and who shall provide a report to the Pension Administrator.
- 6.4 *Recovery of disability pensioners.* In the event a disability pension is terminated because of recovery prior to age sixty (60), the disability pensioner shall become eligible for a vested pension if the disability pensioner period of credited service, including the period for which the disability pensioner received disability pension payments, meets the service requirements for a vested pension specified in 29 **Del.C.** §5573 at the time the disability pension commenced. The pensioner's period for which the pensioner received disability pension payments shall be used for eligibility purposes only and not for computation of monetary pension benefit.
- 6.5 *Disability pensioners who return to active employment.* A disability pension constitutes an individual's involuntary retirement; therefore, a disability pensioner who is reinstated as an employee under 29 **Del.C.** 55A, shall be eligible for the disability pensioner's subsequent retirement to be considered as a regular retirement under the provisions of the pension law in effect at the time of the disability pensioner's subsequent retirement.
- 6.6 Return to work following disability with approved medical leave: Upon returning to employment following a period of approved medical leave, a participant may secure restoration of the participant's previously canceled pension credits by submitting medical evidence, in a form set forth by the Pension Office, to the Pension Administrator which establishes that:

- 6.6.1 The participant's disability has terminated; or
- 6.6.2 The participant was authorized to return to employment not more than four (4) months prior to the date of the participant's actual return; or
- 6.6.3 The participant was forced to terminate State employment due to a medical disability.
- 6.7 *Return to work following disability with no approved medical leave:* Upon returning to employment following a period of medical disability for which a leave of absence was not granted, a participant may secure restoration of the participant's previously canceled pension credits by submitting medical evidence, in form set forth by the Pension Office, which establishes:
 - 6.7.1 The nature of the participant's disability;
 - 6.7.2 The date on which it commenced; and
 - 6.7.3 The date on which said disability terminated; or
 - 6.7.4 The date on which the participant was authorized by the participant's physician to return to employment.
- 6.8 *Disability service purchase.* The actuarial rate to purchase credit under 29 **Del.C.** §5551(4)d shall be adopted by resolution of the Board of Pension Trustees. Disabled employees who desire to purchase service credit under subsection 6.9 of this regulation, the disabled employee's actual age will be increased by ten (10) years (but not to more than age 65).

7.0 Return to work post-retirement

- 7.1 *Definitions:*
 - 7.1.1 "**Gubernatorial appointment**" as used in 29 **Del.C.** §5552(2), means an official appointed directly by the Governor and confirmed by the Senate.
 - 7.1.2 "**Temporary employee**" in 29 **Del.C.** §5551(3), means an employee who is not employed on a "full time or annual basis" or as a "regular part time" employee.
- 7.2 *Separation from service with the employer:* The IRS requires that any retired employee contemplating reemployment with the employer shall have a separation from service from the employer for a period of at least six (6) months, if the employee is under the age of 65.
- 7.3 *No pre-arranged agreement to reemploy:* Individuals and their employers shall certify, at the time of retirement, that there has been no preexisting Plan between the individual and the employer to return to work with an employer participating in the Plan after such retirement, in a manner as required by the Board.
- 7.4 *Direct employment:* Any individual under the age of 65 who contracts directly with an employer participating in the Plan shall jointly certify, in a manner prescribed by the Board, that there has been at least a six (6) month separation of service.
- 7.5 *Indirect employment:* Any individual under the age of 65 who is employed by or through any private enterprise that has a contract with an employer participating in the Plan shall jointly certify in a manner prescribed by the Board, that such employment is in compliance with 29 **Del.C.** §5552.

8.0 Maximum Income Limits [Compliance with IRS Code §401(a)(17); IRS-approved language]

- 8.1 Effective with respect to plan years beginning on and after January 1, 1996, and before January 1, 2002, the annual compensation of a Plan participant which exceeds \$150,000 (as indexed under §401(a)(17)(B) of the Internal Revenue Code of 1986) shall be disregarded for purposes of determining benefits or employee contributions. Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration, §414(g)(6) of the Internal Revenue Code of 1986 shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.
- 8.2 Effective with respect to plan years beginning on and after January 1, 2002, the annual compensation of a plan participant which exceeds \$200,000, as adjusted for cost-of-living increases in accordance with §401(a)(17)(B) of the Internal Revenue Code of 1986, may not be taken into account in determining benefits or employee contributions for any plan year. Annual compensation means compensation during the plan year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve (12) months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number

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of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan participant's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

- 8.3 The limits referenced in subsections 8.1 and 8.2 above apply only to years beginning after December 31, 1995, and only to individuals who first become plan participants in plan years beginning on and after January 1, 1996. Individuals who become plan participants of before plan years beginning on and after January 1, 1996, are not subject to the limits of §401(a)(17) of the Internal Revenue Code of 1986. Instead, pursuant to §13212(d)(3)(A) of the Omnibus Budget Reconciliation Act of 1993 (OBRA), and the regulations issued under that Section, the annual compensation in effect under §401(a)(17) of the Internal Revenue Code of 1986 does not apply to any such *plan participant in any plan year*.

9.0 Direct Rollover and Trustee to Trustee Transfers [Compliance with IRS Code §401(a)(31); IRS-approved language]

- 9.1 For purposes of compliance with §401(a)(31) of the Internal Revenue Code, this Section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover from the Pension Fund.
- 9.2 Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
- 9.2.1 Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
- 9.2.2 Any distribution to the extent such distribution is required under §401(a)(9) of the Internal Revenue Code of 1986;
- 9.2.3 The portion of any distribution that is not includible in gross income, provided, however, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income, but such portion may be transferred only:
- 9.2.3.1 To an individual retirement account or annuity described in §408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in §401(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;
- 9.2.3.2 On or after January 1, 2007, to a qualified defined benefit plan described in §401(a) of the Internal Revenue Code or to an annuity contract described in §403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or
- 9.2.3.3 On or after January 1, 2008, to a Roth IRA described in §408A of the Internal Revenue Code; and
- 9.2.4 Any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of §415 of the Internal Revenue Code or any distribution that is reasonably expected to total less than \$200 during the year.
- 9.3 Eligible retirement plan: An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:
- 9.3.1 An individual retirement account described in §408(a) of the Internal Revenue Code of 1986;
- 9.3.2 An individual retirement annuity described in §408(b) of the Internal Revenue Code of 1986;
- 9.3.3 An annuity plan described in § 403(a) of the Internal Revenue Code of 1986;
- 9.3.4 A qualified trust described in §401(a) of the Internal Revenue Code of 1986;
- 9.3.5 An annuity contract described in §403(b) of the Internal Revenue Code of 1986;
- 9.3.6 A plan eligible under §457(b) of the Internal Revenue Code of 1986 that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into the plan from the Pension Fund;

- 9.3.7 A Roth IRA described in §408A of the Internal Revenue Code of 1986; or
- 9.3.8 Effective January 1, 2015, a Simple IRA that has been established for at least two years.
- 9.4 The definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in §414(p) of the Internal Revenue Code of 1986.
- 9.5 *Distributee*: A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in §414(p) of the Internal Revenue Code of 1986. Effective July 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by §401(a)(9)(E) of the Internal Revenue Code of 1986. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
- 9.6 *Direct Rollover*: A direct rollover is a payment by the Pension Fund to the eligible retirement plan specified by the distributee.

10.0 Maximum Benefit Limits and Maximum Contribution Limits [Compliance with IRS Code §415; IRS-approved language]

- 10.1 Employee contributions paid to, and retirement benefits paid from, the Pension Fund may not exceed the annual limits on contributions and benefits, respectively, allowed by §415 of the Internal Revenue Code of 1986.
- 10.2 *Compensation*: For purposes of applying these limits only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation §1.415(c)-(2), or successor regulation. Specifically, compensation will be defined as wages within the meaning of §3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under §§6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code of 1986. Compensation will be determined without regard to any rules under Internal Revenue Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in §3401(a)(2) of the Internal Revenue Code of 1986.
- 10.2.1 However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under §§125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code of 1986. For limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of §132(f)(4) of the Internal Revenue Code of 1986.
- 10.2.2 The definition of compensation will exclude employee contributions picked up under §414(h)(2) of the Internal Revenue Code of 1986.
- 10.2.3 For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of 2 ½ months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:
- 10.2.3.1 The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continue in employment with the employer; or
- 10.2.3.2 The payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or
- 10.2.3.3 The payment is pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.
- 10.2.3.4 Any payments not described above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by

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reason of qualified military service (within the meaning of §414(u)(1) of the Internal Revenue Code of 1986) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

- 10.2.4 *Back Pay.* Back pay, within the meaning of Treasury Regulation §1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
- 10.2.5 *Qualified Military Service.* An employee who is in qualified military service (within the meaning of §414(u)(1) of the Internal Revenue Code of 1986) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).
- 10.3 *Basic 415(b) Limitation.* Before January 1, 1995, a plan participant may not receive an annual benefit that exceeds the limits specified in §415(b) of the Internal Revenue Code of 1986, subject to the applicable adjustments in that section. On and after January 1, 1995, a plan participant may not receive an annual benefit that exceeds the dollar amount specified in §415(b)(1)(A) of the Internal Revenue Code of 1986, subject to the applicable adjustments in §415(b) of the Internal Revenue Code of 1986. In no event shall a plan participant's annual benefit payable from the Pension Fund in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to §415(d) of the Internal Revenue Code of 1986 and the regulations thereunder.
- 10.4 On and after January 1, 2009, for purposes of applying the limits under §415(b) of the Internal Revenue Code of 1986, the following will apply:
- 10.4.1 A Plan participant's applicable limit will be applied to the Plan participant's annual benefit in the first limitation year without regard to any automatic cost of living increases;
- 10.4.2 To the extent the Plan participant's annual benefit equals or exceeds the limit, the Plan participant will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the limit; and
- 10.4.3 Thereafter, in any subsequent limitation year, the Plan participant's annual benefit including any automatic cost of living increase applicable shall be tested under the then applicable benefit limit including any adjustment to the §415(b)(1)(A) of the Internal Revenue Code of 1986 dollar limit under §415(d) of the Internal Revenue Code of 1986 and the regulations thereunder.
- 10.5 *Non-Straight Life Annuity.* If the benefit under the plan is other than a straight life annuity, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation §1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:
- 10.5.1 For a benefit paid in a form to which §417(e)(3) of the Internal Revenue Code of 1986 does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:
- 10.5.1.1 The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or
- 10.5.1.2 The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation § 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in §417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing §417(e)(3)(B) of the Internal Revenue Code of 1986).

- 10.5.2 *Lump Sum Benefit.* For a benefit paid in a form to which §417(e)(3) of the Internal Revenue Code of 1986 applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:
- 10.5.2.1 The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence;
 - 10.5.2.2 The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in §417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing §417(e)(3)(B) of the Internal Revenue Code of 1986); or
 - 10.5.2.3 The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation § 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in §417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing §417(e)(3)(B) of the Internal Revenue Code of 1986), divided by 1.05.
- 10.6 Notwithstanding any other provision of law to the contrary, the Board may modify a request by a Plan participant to make a contribution to the Pension Fund if the amount of the contribution would exceed the limits provided in §415 of the Internal Revenue Code of 1986 by using the following methods:
- 10.6.1 If the law requires a lump sum payment for the purchase of service credit, the Board may establish a periodic payment plan for the Plan participant to avoid a contribution in excess of the limits under §415(c) or 415(n) of the Internal Revenue Code of 1986.
 - 10.6.2 If payment pursuant to subsection 4.6.1 will not avoid a contribution in excess of the limits imposed by §415(c) or 415(n) of the Internal Revenue Code of 1986, the Board may either reduce the plan participant's contribution to an amount within the limits of that section or refuse the plan participant's contribution.
- 10.7 *Permissive Service Credit Contributions after December 31, 1997.* Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a plan participant makes one or more contribution to purchase permissive service credit under the Pension Fund, then the requirements of this section will be treated as met only if:
- 10.7.1 The requirements of §415(b) of the Internal Revenue Code of 1986 are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of §415(b) of the Internal Revenue Code of 1986; or
 - 10.7.2 The requirements of §415(c) of the Internal Revenue Code of 1986 are met, determined by treating all such contributions as annual additions for purposes of section 415(c) of the Internal Revenue Code of 1986.
 - 10.7.3 For purposes of applying subsection 10.7.2, the Pension Fund will not fail to meet the reduced limit under §415(b)(2)(C) of the Internal Revenue Code of 1986 solely by reason of subsection 10.7 of this regulation, and for purposes of applying subsection 10.7.3 of this regulation the Pension Fund will not fail to meet the percentage limitation under §415(c)(1)(B) of the Internal Revenue Code of 1986 solely by reason of subsection 9.7 of this regulation.
 - 10.7.4 For purposes of subsection 12.9 of this regulation, the term "permissive service credit" means service credit that is:
 - 10.7.4.1 Recognized by the Pension Fund for purposes of calculating a plan participant's benefit under the Pension Fund;

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- 10.7.4.2 Which such Plan participant has not received under the Pension Fund; and
- 10.7.4.3 Which such Plan participant may receive only by making a voluntary additional contribution, in an amount determined under the Pension Fund, which does not exceed the amount necessary to fund the benefit attributable to such service credit.
- 10.7.5 *Permissive Service Credit Contributions after December 31, 1997.* Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding subsection 10.7.5 of this regulation, may include service credited in order to provide an increased benefit for service credit which a plan participant is receiving under the Pension Fund.
- 10.7.6 The Pension Fund will fail to meet the requirements of this subsection 10.7.6 of this regulation if:
 - 10.7.6.1 More than five (5) years of nonqualified service credit are taken into account for purposes of subsection 10.7.6.1; or
 - 10.7.6.2 Any nonqualified service credit is taken into account under subsection 10.6 of this regulation before the plan participant has at least five (5) years of participation under the Pension Fund.
- 10.7.7 For purposes of subsection 10.7.5 of this regulation, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:
 - 10.7.7.1 Service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in §415(k)(3)) of the Internal Revenue Code of 1986;
 - 10.7.7.2 Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an education organization described in §170(b)(1)(A)(ii) of the Internal Revenue Code of 1986 which is a public, private, or sectarian school which provides elementary or secondary education (through Grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;
 - 10.7.7.3 Service as an employee of an association of employees who are described in subsection 10.7.7.1 of this regulation; or
 - 10.7.7.4 Military service (other than qualified military service under §414(u) of the Internal Revenue Code of 1986) recognized by such governmental plan.
- 10.7.8 In the case of service described in subsections 10.7.7.1, 10.7.7.2, or 10.7.7.3 of this regulation, such service will be nonqualified service if recognition of such service would cause a Plan participant to receive a retirement benefit for the same service under more than one plan.
- 10.7.9 In the case of a trustee-to-trustee transfer after December 31, 2001, to §403(b)(13)(A) or 457(e)(17)(A) of the Internal Revenue Code of 1986 applies (without regard to whether the transfer is made between plans maintained by the same employer).
- 10.7.10 The limitations of subsection 10.7 of this regulation will not apply in determining whether the transfer is for the purchase of permissive service credit; and
- 10.7.11 The distribution rules applicable under federal law to the Pension Fund will apply to such amounts and any benefits attributable to such amounts.
- 10.7.12 For an eligible Plan participant, the limitation of §415(c)(1) of the Internal Revenue Code of 1986 shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the Delaware Code as in effect on August 5, 1997. For purposes of subsection 4.7.10 of this regulation, an eligible plan participant is an individual who first became a plan participant in the Pension Fund before January 1, 1998.
- 10.8 For purposes of §415 of the Internal Revenue Code of 1986, the limitation year is January 1 through December 31.

11.0 Military Service [Compliance with IRS Code §§414(u) and 401(a)(37) and the HEART Act; IRS-approved language]

- 11.1 Notwithstanding any other provision of law, contributions, benefits and service credit with respect to qualified military service are governed by §414(u) of the Internal Revenue Code of 1986 and the Uniformed Services

Employment and Reemployment Rights Act of 1994. The Military Service credit provisions of this section are to be interpreted in accordance 29 **Del.C.** §5501(e), so as not to diminish the rights granted under that section.

- 11.2 To the extent required by §414(u)(12) of the Internal Revenue Code of 1986, an individual receiving differential wage payments (as defined under §3401(h)(2) of the Internal Revenue Code of 1986) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under §415(c) of the Internal Revenue Code of 1986. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.
- 11.3 With respect to deaths incurred while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent required by §401(a)(37) of the Internal Revenue Code of 1986, survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.

12.0 Vesting [Compliance with IRS Code §401(a)(7); IRS-approved language]

- 12.1 *Plan Terminations.* In the event of a full or partial termination of, or a complete discontinuance of employer contributions to, the Delaware State Retirement Fund, all accrued benefits which have been vested according to the provisions of 29 **Del.C.** §5573, shall be 100% vested and nonforfeitable to the extent funded and to the extent required by federal law.
- 12.2 A Plan participant shall be 100% vested in all Plan benefits upon attainment of the Plan's age and service requirements for the Plan's normal retirement benefit in 29 **Del.C.** §5572(a).
- 12.3 A Plan participant shall be 100% vested in the Plan participant's employee contributions.

13.0 Use of Forfeitures [Compliance with IRS Code §401(a)(8); IRS-approved language]

In conformity with §401(a)(8) of the Internal Revenue Code of 1986, forfeitures of benefits by members or former members of the Plan will not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

14.0 Normal Retirement Age

- 14.1 *Normal Retirement Age for County and Municipal Employees' Pension Plan.* Normal Retirement Age, for the purposes of the County and Municipal Employees' Pension Plan, will be the date the employee becomes eligible for a service pension not reduced because of the employee's age, pursuant to 29 **Del.C.** §5572(a) or (b).
- 14.2 For purposes of §402(l) of the Internal Revenue Code of 1986, the Normal Retirement Age will be the earliest date when the employee has satisfied the requirements of 29 **Del.C.** §5572(a)(1), (a)(2), or (a)(3).

15.0 Prohibited transactions [Compliance with IRS Code §503(b); IRS-approved language]

The board may not engage in a transaction prohibited by §503(b) of the Internal Revenue Code of 1986.

16.0 Qualified Excess Benefit Arrangement [Compliance with IRS Code §415(m); IRS-approved language]

Pursuant to the enactment of any necessary legislative authority, the Board may establish a qualified excess benefit arrangement (QEBA) under §415(m) of the Internal Revenue Code of 1986 pursuant to the terms of a separate plan document adopted by the Board.

17.0 Civil Unions and DOMA [Compliance with United States v. Windsor; IRS-approved language]

In applying the provisions of 13 **Del.C.** §§212 and 214, the Board shall interpret the term "spouse" in the provisions of Delaware law that apply to each DPERS pension plan and benefit set forth in 29 **Del.C.** §8308(b) in accordance with the federal Defense of Marriage Act to the extent required by that law, federal preemption principles, and guidance issued by the Internal Revenue Service and to the extent necessary in order to preserve the qualified governmental plan status of each such state pension plan and benefit under §§401(a) and 414(d) of the Internal Revenue Code of 1986 or such other provision of the Internal Revenue Code as applicable. This provision shall apply in the same manner to the terms husband, wife, surviving spouse, survivor, widow, widower, and other terms, whether or not gender-specific, that denote or depend upon a spousal relationship.

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12 DE Reg. 359 (09/01/08)

17 DE Reg. 91 (07/01/13)

25 DE Reg. 272 (09/01/21)