

# STATE BOARD OF PENSION TRUSTEES

## THE DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Statutory Authority: 29 Delaware Code, Section 8308(c)(1) (29 Del.C. §8308(c)(1))

### FINAL

#### COUNTY AND MUNICIPAL POLICE/FIREFIGHTER PENSION PLAN

##### 1.0 Definitions

**"Application for Benefits"** The term "date on which the application for such benefit is filed" as used in Section 8826(a), Chapter 88, Title 11, Del.C., shall mean the date on which the written documentation is received by the Office of Pensions or by the individual's employer.

**"Gubernatorial Appointment"** The term "An official appointed by the Governor" as used in Section 8802(2), Chapter 88, Title 11, Del.C., shall mean an official appointed directly by the Governor and confirmed by the Senate.

**"Salary"** The word "salary" as used in Chapter 88, Title 11, Del.C., shall mean total salary prior to any payroll deductions, including but not limited to, deductions for contributions to the State's Deferred Compensation Program pursuant to Section 6055, Chapter 60, Title 29, Del.C. Salary shall not include payments in the nature of reimbursement or allowance for expenses.

##### 2.0 Maximum Income Limits

2.1 Effective with respect to plan years beginning on and after January 1, 1996, and before January 1, 2002, income to the annual compensation of a plan participant which exceeds \$150,000 (as indexed under Section 445(d) 401(a)(17)(B) of the Internal Revenue Code) 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 under this plan section, the Rules of Section 414(g)(6) of the Internal Revenue Code 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 19 before the close of the year.

2.2 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 Internal Revenue Code Section 401(a)(17)(B), 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 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 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 of months in the short determination period, and the denominator of which is 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.

2.3 The limits referenced in paragraphs 2.1 and 2.2 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 Internal Revenue Code Section 401(a)(17). Instead, pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that section, the annual compensation in effect under Internal Revenue Code Section 401(a)(17) does not apply to any such plan participant in any plan year.

### **3.0 Trustee Transfers**

- 3.1 This section applies to distributions made on and after January 1, 1993. An eligible pensioner A distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the pensioner distributee in a transfer made from a Trustee of the Delaware State Retirement Fund to a trustee of the eligible retirement plan specified: the Pension Fund.
- 3.1.1 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: 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; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will 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. However, such non-taxable portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or, in addition, on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), 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.
- 3.1.2 Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the code, an individual retirement annuity described in Section 408(b) of the code, an annuity plan described in Section 403(a) of the code, or a qualified trust described in Section 401(a) of the code any of the following that accepts the distributee's eligible rollover distribution:
- 3.1.2.1 an individual retirement account described in Internal Revenue Code Section 408(a).
  - 3.1.2.2 an individual retirement annuity described in Internal Revenue Code Section 408(b).
  - 3.1.2.3 an annuity plan described in Internal Revenue Code Section 403(a).
  - 3.1.2.4 a qualified trust described in Internal Revenue Code Section 401(a).
  - 3.1.2.5 effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b).
  - 3.1.2.6 effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) 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, or
  - 3.1.2.7 effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A. Such a transfer may be made on behalf of a member or former member.
- 3.1.3 Effective January 1, 2002, 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 Internal Revenue Code Section 414(p).
- 3.1.4 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 Internal Revenue Code Section 414(p). Effective July 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). 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.

3.1.5 Direct Rollover. A direct rollover is a payment by the Pension Fund to the eligible retirement plan specified by ~~Plan participant~~ the distributee.

#### **4.0 Maximum Benefit Limits and Maximum Contribution Limits**

4.1 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 Internal Revenue Code Section 415.

4.2 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 Section 1.415(c)-2, or successor regulation. Specifically, compensation will be defined as wages within the meaning of Internal Revenue Code Section 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 Internal Revenue Code Section 6041(d), 6051(a)(3) and 6052. 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 Internal Revenue Code Section 3401(a)(2).

4.2.1 However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for the an election under Internal Revenue Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 30, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Internal Revenue Code Section 132(f)(4).

4.2.2 The definition of compensation will exclude employee contributions picked up under Internal Revenue Code Section 414(h)(2).

4.2.3 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 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.

4.2.4 Back pay, within the meaning of Treas. Reg. §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.

4.3 Before January 1, 1995, a plan participant may not receive an annual benefit that exceeds the limits specified in Internal Revenue Code Section 415(b), 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 Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b).

4.4 On and after January 1, 2009, for purposes of applying the limits under Internal Code Section 415(b) (Limit), the following will apply:

4.4.1 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;

4.4.2 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

- 4.4.3 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 Code Section 415(b)(1)(A) dollar limit under Code Section 415(d) and the regulations thereunder; and
- 4.5 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 Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity, then the preceding sentence is applied by reducing the Code Section 415(b) limit applicable at the annuity starting date 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 death benefits under the form of benefit.
- 4.6 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 Internal Revenue Code Section 415 by using the following methods:
- 4.6.1 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 Internal Revenue Code Sections 415(c) or 415(n).
- 4.6.2 If payment pursuant to paragraph 4.6.1 will not avoid a contribution in excess of the limits imposed by Internal Revenue Code Section 415(c), 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.
- 4.7 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:
- 4.7.1 the requirements of Internal Revenue Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Internal Revenue Code Section 415(b), or
- 4.7.2 the requirements of Internal Revenue Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).  
For purposes of applying subparagraph f.1 the Pension Fund will not fail to meet the reduced limit under Internal Revenue Code Section 415(b)(2)(C) solely by reason of this paragraph 4.7, and for purposes of applying subparagraph 4.7.2, the Pension Fund will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of this paragraph 4.7.
- 4.7.3 For purposes of this paragraph (4.7) the term "permissive service credit" means service credit—
- 4.7.3.1 recognized by the Pension Fund for purposes of calculating a plan participant's benefit under the Pension Fund,
- 4.7.3.2 which such plan participant has not received under the Pension Fund, and
- 4.7.3.3 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.  
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 clause 4.7.3.3, may include service credited in order to provide an increased benefit for service credit which a plan participant is receiving under the Pension Fund.
- 4.7.4 The Pension Fund will fail to meet the requirements of this paragraph 4.7 if—
- 4.7.4.1 more than five years of nonqualified service credit are taken into account for purposes of this paragraph 4.7.4, or
- 4.7.4.2 any nonqualified service credit is taken into account under this paragraph g. before the plan participant has at least five years of participation under the Pension Fund.

4.7.5 For purposes of paragraph 4.7.4, 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—

4.7.5.1 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 Internal Revenue Code Section 415(k)(3)).

4.7.5.2 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 Internal Revenue Code Section 170(b)(1)(A)(ii) 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.

4.7.5.3 service as an employee of an association of employees who are described in clause 4.7.5.1, or

4.7.5.4 military service (other than qualified military service under Internal Revenue Code Section 414(u)) recognized by such governmental plan.

In the case of service described in clause 4.7.5.1, 4.7.5.2, or 4.7.5.3, 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.

4.7.6 In the case of a trustee-to-trustee transfer after December 31, 2001, to which Internal Revenue Code Section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—

4.7.6.1 the limitations of subparagraph 4.7.5 will not apply in determining whether the transfer is for the purchase of permissive service credit, and

4.7.6.2 the distribution rules applicable under federal law to the Pension Fund will apply to such amounts and any benefits attributable to such amounts.

4.7.7 For an eligible plan participant, the limitation of Internal Revenue Code Section 415(c)(1) 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 this subparagraph 4.7.7, an eligible plan participant is an individual who first became a plan participant in the Pension Fund before January 1, 1998.

4.8 For purposes of Internal Revenue Code Section 415, the limitation year is the calendar year.

## **5.0 Military Service.**

Effective December 12, 1994, notwithstanding any other provision of law, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994. The Military Service credit provisions of this section are to be interpreted so as not to diminish any other rights relating to military service that may be granted under state law

## **6.0 Plan Year.**

The plan year for the Pension Fund is the twelve-month period beginning July 1.

## **7.0 Administration**

7.1 Appeals from Predecessor Boards of Commissions. All appeals from a decision of any predecessor boards or commissions will be automatically denied by the Board of Pension Trustees unless the aggrieved party shows that the Board of Pensions Trustees has jurisdiction in the matter.

## **8.0 Creditable Service**

### **8.1 Repayment of Withdrawal Benefits.**

- 8.1.1 If a former employee, who withdrew his or her accumulated contributions upon termination of service after the date of affiliation with this Plan by the employer, again becomes an employee, his or her service credits to the date of termination shall be restored in accordance with the provisions of Section 8814(b)(4), Chapter 88, Title 11, **Del.C.**, if he or she repays the total amount withdrawn, plus an interest rate charge as adopted by the Board, compounded annually, within 90 days after notification from the Office of Pensions.
- 8.1.2 If the repayment occurs subsequent to the 90 days after notification from the Office of Pensions, the repayment shall be equal to the amount in (a) plus, for each full month or fraction thereof following the last day of the 90 day period, interest rate charge as adopted by the Board.

## **9.0 Benefits**

- 9.1 **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 12 month period, provided that the amount of the monthly withholding may not exceed 15% of the monthly pension benefit. If repayment of any overpayment amount will require more than 12 months, the withholding shall be made at the rate of 15% of the monthly pension benefit until the overpayment has been recovered in full.
- 9.2 **Effective Date of Pension.** All pensions shall become effective on the first day of the month. Under Section 8826, Chapter 88, Title 11, **Del.C.**, 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 as defined in Rule and Regulation 10.2.
- 9.3 **Deceased Pensioner Monthly Benefit and Survivor's Effective Date of Pension.** The full pension benefit shall be payable for the month in which the pensioner's death occurs and shall be payable to the pensioner or his or her estate. Survivor's monthly pension benefit, if any, shall become effective the first day of the next month following the month in which the pensioner's death occurs.
- 9.4 **Withdrawal Benefits.** Effective for employees terminating State employment, an employee's accumulated contributions, with interest rate as adopted by the Board, shall not be paid to him or her until, in the ordinary course of business, the Pension Office has verified the employee's total pension contributions.
- 9.5 **Integration with Social Security – Service and Survivor Pensions.** Decoupled from Social Security effective 7/1/05
- 9.6 **Integration with Social Security – Disability Pensions.** Decoupled from Social Security effective 7/1/05  
**Inception of Benefits. DELETED**

## **10.0 Distribution of Benefits.**

- 10.1 Distributions from the ~~State Employees' Retirement Pension~~ Fund 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/or attainment of the age of 70½ years except for an employee in active status.
- 10.2 The Pension Fund will pay all benefits in accordance with a good faith interpretation of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section.
- 10.3 Notwithstanding any other provision of these rules and regulations, effective on and after January 1, 2003, the Pension Fund is subject to the following provisions:
  - 10.3.1 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 70½ years of age 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 he or she reaches 70½ years of age or April 1 of the calendar year following the calendar year in which he or she terminates employment, whichever is later, the Board will begin distributing the benefit as required by this section.

- 10.3.2 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 Internal Revenue Code Section 401(a)(9), including the incidental death benefit requirement in Internal Revenue Code Section 401(a)(9)(G), and the regulations implementing that section.
- 10.3.3 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.
- 10.3.4 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.
- 10.3.5 If a plan participant dies before required distribution of the plan participant's benefits has begun, the plan participant's entire interest must be either
  - 10.3.5.1 distributed (in accordance with federal regulations) 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
  - 10.3.5.2 distributed by December 31 of the calendar year containing the fifth anniversary of the plan participant's death.
- 10.3.6 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 the Internal Revenue Code.
- 10.3.7 The death and disability benefits provided by Pension Fund are limited by the incidental benefit rule set forth in Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto.

## **11.0 Vesting**

- 11.1 Plan Terminations. In the event of a 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 Ch. 88, Title 11, Del.C., shall be 100% vested and nonforfeitable to the extent funded.
- 11.2 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 Section 8813(a) or (b), Chapter 88, Title 11, Del.C.
- 11.3 A plan participant shall be 100% vested in his or her employee contributions.

## **12.0 Use of Forfeitures.**

- 12.1 In conformity with Internal Revenue Code Section 401(a)(~~e~~)(8), 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.

## **13.0 Normal Retirement Age.**

- 13.1 Normal retirement age, for the purposes of the Pension Fund, will be the date the employee becomes eligible for a service pension not reduced because of the employee's age, pursuant to Section 8813(a) or (b), Chapter 88, Title 11, Del.C.

13.2 Normal retirement age for purposes of Internal Revenue Code Section 457 to the extent this plan's normal retirement age is referenced in a deferred compensation plan will be the earliest date when the employee has satisfied the requirements of Section 8813(a), Chapter 88, Title 11, Del.C.

13.3 For purposes of Internal Revenue Code Section 402(l), normal retirement age will be the earliest date when the employee has satisfied the requirements of Section 8813(a), Chapter 88, Title 11, Del.C.

**14.0 Prohibited Transactions.**

14.1 The board may not engage in a transaction prohibited by Internal Revenue Code Section 503(b).

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