Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

DELAWARE BOARD OF PENSION TRUSTEES

Statutory Authority: 29 Delaware Code, Section 8308(c)(1) (29 **Del.C.** §8308(c)(1))
19 **DE Admin. Code** 2002, 2003, 2004, 2005, & 2006

PROPOSED

PUBLIC NOTICE

2002 State Employees' Pension Plan
2003 State Judiciary Pension Plan
2004 State Police Pension Plan
2005 County and Municipal Employees' Pension Plan
2006 County and Municipal Police/Firefighter Pension Plan

The Delaware Public Employees' Pension System ("DPERS") hereby give notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 Delaware Code, §8308(c)(1) and in compliance with Delaware's Administrative Procedures Act, 29 ***Del.C.*** §§10115 and 10117. The proposed regulations are reorganized to provide for clarity, to delete obsolete language, to bring the regulations into compliance with changes in federal law, and to incorporate current practices. Identical update and formatting changes are made in each set of regulations. The State Police and Country and Municipal Police/Firefighter Plans include updated standards for PTSD work related disability claims which are consistent with federal law and current practice.

DPERS solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are published in the Delaware Register of Regulations.

Any such submissions should be mailed or delivered to Joanna Adams, State of Delaware Office of Pensions, State of Delaware, Office of Pensions, McArdle Building, 860 Silver Lake Blvd., Suite #1, Dover, DE 19904-2402.

~~**2002 State Employees' Pension Plan**~~

~~**Rules and Regulations As Adopted by the State Board of Pension Trustees**~~

~~**1.0 Definitions**~~

~~"**Accredited Private School or College"**. The term "accredited private school or college" as used in 29 **Del.C.** §5501(b)(5) shall be interpreted to mean 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.~~

~~**"Application for Benefits"** The term "date on which the application for such benefit is filed" as used in 29 **Del.C.** §5531, shall mean the date on which the written documentation is received by the Office of Pensions or by the employee's agency/school district.~~

~~"**Casual/Seasonal**" The term "casual or seasonal employee" as used in 29 **Del.C.** §5502(a)(3) shall mean an employee employed by an agency under 29 **Del. C.** §5903(17) who works less than thirty (30) hours per week, who works thirty (30) hours or more per week for a duration of not longer than twelve (12) months, or who works in a position not defined as a Full-time or Regular Part-Time pension creditable position according to the Rules & Regulations contained herein. Prior to a retiree who is under the age of 65 obtaining employment as a casual/seasonal employee, independent contractor, an employee of an independent contractor, or as a leased employee by the State of Delaware, there must have been a termination of employment for a period greater than six (6) months.~~

~~"**Course of Professional or Vocational Training"**. The term "course of professional or vocational training" as used in 29 **Del.C.** §5501(b)(4) shall mean one leading to the attainment of a certificate, diploma or degree, and offered by a public or private, non-profit or proprietary institution as approved or accredited by an appropriate State agency or National/Regional organization. A person engaged in such course of instruction shall have been enrolled on a full-time basis, under regulations of the institution in effect at the time of attendance, and shall have completed the course of instruction in which enrolled, by continuous attendance, so as to complete the course of instruction on a scheduled date. Interruption of attendance may be occasioned only by reason of personal medical problems which militate against regular attendance or full-time military duty during war or other declared emergency.~~

~~"**Disability**" as used in 29 **Del.C.** §5501(b)(4), 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. Up to twelve (12) consecutive calendar months of leave may be granted by the employing agency or school. To extend the leave beyond twelve (12) consecutive calendar months, the employing agency or school must apply to the Medical Committee of the Board of Pension Trustees for an extension. Such application must be received by the Medical Committee of the Board of Pension Trustees not less than thirty (30) days prior to the expiration of said twelve (12) month period. Upon returning to State employment following a period of approved medical leave, an individual may secure restoration of his or her previously canceled pension credits by submitting medical evidence, of a nature satisfactory to the Executive Secretary to the Board of Pension Trustees, indicating that his or her disability terminated or that he or she was authorized to return to employment not more than four (4) months prior to the date of his or her actual return, or
- Was forced to terminate State employment due to medical disability. On returning to State employment following a period of medical disability for which a leave of absence was not granted, an individual may secure restoration of his or her previously canceled pension credits by submitting medical evidence, of a nature satisfactory to the Executive Secretary to the Board of Pension Trustees, indicating the nature of his or her disability, the date on which it commenced, and date on which said disability terminated or on which he or she was authorized by his or her physician to return to employment.

"**Disability**". The term "physical or mental disability" as used in 29 **Del.C.** §5524(c) shall mean a condition which causes an employee to be out of work for a least ninety (90) consecutive days from the inception of the disability to the date he or she returns to work.

"**Full-Time or Annual Basis**". The term "employed on a full-time or annual basis" as used in Title 29 **Del.C.** §§5501(a)(1) and 5527(e), shall mean, for those employees hired:

- Through July 31, 1973 employed for at least sixty-five (65) hours per month for at least 9 months during a period of twelve (12) consecutive months, and
- On and after August 1, 1973 employed in a 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.

"**Gubernatorial Appointment**". The term "An official appointed by the Governor" as used in 29 **Del.C.** §5502(a)(2), shall mean an official appointed directly by the Governor and confirmed by the Senate.

"Military Service Credit" The term "during time of war or national emergency" as used in 29 **Del.C.** §5501(b)(4), shall include all months commencing with the month of September, 1940 and continuing until the Board of Pension Trustees decides that a period of war or national emergency has ceased.

"Professional Educational Employment" The term "professional educational employment" as used in 29 **Del.C.** §5501(b)(5), shall mean full-time employment for another State, a municipality in another State, the Federal Government, or an accredited private school or college anywhere in the world, and shall not include part-time employment such as employment as a graduate teaching assistant. A school is accredited within the meaning of this Rule if the Delaware Department of Public Instruction allows teaching credit for service as a teacher in such school.

"**Regular Part-time Employee**". The term "regular part-time employee" as used in 29 **Del.C.** §§5501(e)(1) and 5527(e), shall mean an employee who either:

- 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
- is employed in a position where the part-time rate for the position is at least fifty (50) times hourly minimum wage for at least nine (9) months during a period of twelve (12) consecutive months.
- In determining the period of nine (9) months during twelve (12) consecutive months in the case of a regular part-time teacher or other school employee who has worked for less than twelve (12) months and whose work year is established as the school year, if such employee worked before and after any school breaks or vacations, the break time or vacation time would be considered as if the employee had worked.

"**Substitute**" The term "substitute employee" as used in 29 **Del.C.** §5502(a)(4) shall mean an employee in a school who is compensated on a daily basis pursuant to 14 **Del.C.** §1326. Prior to a retiree who is under the age of 65 obtaining employment as a substitute employee, independent

contractor, an employee of an independent contractor, or as a leased employee by the State of Delaware, there must have been a termination of employment for a period greater than six (6) months.

"**Temporary Employee**". The term "temporary employee" as used in 29 **Del.C.** §5502(a)(3), shall mean an employee employed in a position for a specific project or task and for a finite period of time that will not exceed twelve (12) months duration. The twelve (12) month period includes employment pursuant to a temporary employment services agreement. Prior to a retiree who is under the age of 65 obtaining employment as a temporary employee, independent contractor, an employee of an independent contractor, or as a leased employee by the State of Delaware, there must have been a termination of employment for a period greater than six (6) months.

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

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, the annual compensation of a plan participant which exceeds $150,000 (as indexed under section 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, section 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.

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 section 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 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.

2.3 The limits referenced in rules 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 section 401(a)(17) of the Internal Revenue Code of 1986. Instead, pursuant to section 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 section 401(a)(17) of the Internal Revenue Code of 1986 does not apply to any such plan participant in any plan year.

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

3.0 Trustee Transfers.

This rule applies to distributions made on and after January 1, 1993. 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 transfer made from the Pension Fund.

3.1 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 section 401(a)(9) of the Internal Revenue Code of 1986; 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 section 408(a) or (b) of the Internal Revenue Code of 1986, or to a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code of 1986, or, in addition, on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code of 1986 or to an annuity contract described in section 403(b) of the Internal Revenue Code of 1986, 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.

3.2 Eligible retirement plan: An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

3.2.1 An individual retirement account described in section 408(a) of the Internal Revenue Code of 1986,

3.2.2 An individual retirement annuity described in section 408(b) of the Internal Revenue Code of 1986,

3.2.3 An annuity plan described in section 403(a) of the Internal Revenue Code of 1986,

3.2.4 A qualified trust described in section 401(a) of the Internal Revenue Code of 1986,

3.2.5 Effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code of 1986,

3.2.6 Effective January 1, 2002, a plan eligible under section 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, or

3.2.7 Effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code of 1986.

3.3 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 section 414(p) of the Internal Revenue Code of 1986.

3.4 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 section 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 section 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.

3.5 Direct Rollover. A direct rollover is a payment by the Pension Fund to the eligible retirement plan specified by the distributee.

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

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 section 415 of the Internal Revenue Code of 1986.

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 §1.415(c)-(2), or successor regulation. Specifically, compensation will be defined as wages within the meaning of 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 sections 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 section 3401(a)(2) of the Internal Revenue Code of 1986.

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 sections 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 30, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of section 132(f)(4) of the Internal Revenue Code of 1986.

4.2.2 The definition of compensation will exclude employee contributions picked up under section 414(h)(2) of the Internal Revenue Code of 1986.

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.

4.2.3.1 Compensation shall also include payments for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; and payments 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.

4.2.3.2 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 reason of qualified military service (within the meaning of section 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.

4.2.4 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.

4.2.5 An employee who is in qualified military service (within the meaning of section 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).

4.3 Before January 1, 1995, a plan participant may not receive an annual benefit that exceeds the limits specified in section 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 section 415(b)(1)(A) of the Internal Revenue Code of 1986, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code of 1986.

4.4 On and after January 1, 2009, for purposes of applying the limits under section 415(b) of the Internal Revenue Code of 1986, 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 section 415(b)(1)(A) of the Internal Revenue Code of 1986 dollar limit under section 415(d) of the Internal Revenue Code of 1986 and the regulations thereunder.

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 section 415(d) of the Internal Revenue Code of 1986 and the regulations thereunder. 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:

4.5.1 For a benefit paid in a form to which section 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:

4.5.1.1 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

4.5.1.2 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code of 1986).

4.5.2 For a benefit paid in a form to which section 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:

4.5.2.1 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;

4.5.2.2 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code of 1986); or

4.5.2.3 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code of 1986), divided by 1.05.

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 section 415 of the Internal Revenue Code of 1986 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 sections 415(c) or 415(n) of the Internal Revenue Code of 1986.

4.6.2 If payment pursuant to paragraph 4.6.1 will not avoid a contribution in excess of the limits imposed by section 415(c) 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.

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 section 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 section 415(b) of the Internal Revenue Code of 1986, or

4.7.2 The requirements of section 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.

For purposes of applying Rule 4.7.1 the Pension Fund will not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code of 1986 solely by reason of this Rule 4.7, and for purposes of applying Rule 4.7.2 the Pension Fund will not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code of 1986 solely by reason of Rule 4.7.

4.7.3 For purposes of Rule 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 Rule 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 Rule 4.7 if:

4.7.4.1 More than five (5) years of nonqualified service credit are taken into account for purposes of this Rule 4.7.4, or

4.7.4.2 Any nonqualified service credit is taken into account under this Rule 4.7 before the plan participant has at least five (5) years of participation under the Pension Fund.

4.7.5 For purposes of Rule 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 section 415(k)(3)) of the Internal Revenue Code of 1986,

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 section 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,

4.7.5.3 Service as an employee of an association of employees who are described in Rule 4.7.5.1, or

4.7.5.4 Military service (other than qualified military service under section 414(u)) of the Internal Revenue Code of 1986 recognized by such governmental plan.

In the case of service described in Rules 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 section 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):

4.7.6.1 The limitations of Rule 4.7.4 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 section 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 this Rule 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 section 415 of the Internal Revenue Code of 1986, the limitation year is January 1 through December 31.

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

5.0 Military Service.

5.1 Effective December 12, 1994, notwithstanding any other provision of law, contributions, benefits and service credit with respect to qualified military service are governed by Section 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(d), so as not to diminish the rights granted under that section.

5.2 Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code of 1986, an individual receiving differential wage payments (as defined under section 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 section 415(c) of the Internal Revenue Code of 1986. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

5.3 Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by section 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.

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

6.0 Plan Year.

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

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

7.0 Administration

Review of Disability Pensioners by Medical Committee. The frequency or review of disability pensioners under the age of sixty (60) shall be determined by the Medical Committee based on the relevant facts in individual situations.

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

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 **before** January 1, 1986 again becomes an employee, his or her service credits to the date of termination shall be restored in accordance with the provisions of 29 **Del.C.** §5501(b)(6) if he or she repays the total amount withdrawn within ninety 90 days after notification from the Office of Pensions.

8.1.2 If a former employee, who withdrew his or her accumulated contributions upon termination of service on or **after** January 1, 1986 again becomes an employee, his or her service credits to the date of termination shall be restored in accordance with the provisions of 29 **Del.C.** §5501(b)(6) if he or she 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.

8.1.3 If the repayment occurs subsequent to ninety 90 days after notification from the Office of Pensions, the repayment shall be equal to the amount in Rules 8.1.1 and 8.1.2 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.

8.1.4 .Any interest rate charges collected under Rules 8.1.2 and 8.1.3 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.

8.1.5 Prior to January 1, 1986, the withdrawal form signed by the employee stated that there would be no interest rate charge upon repayment. This exemption was deleted effective January 1, 1986.

8.2 RESERVED

8.3 Credit for Vacation and Accrued Sick Leave. An employee or his or her survivor may elect to use accrued periods of vacation and/or accrued sick leave as credited service under 29 **Del.C.** §5501(d)(1), provided that an employee or his or her survivor may not receive a pension for any month during the periods of vacation and/or sick leave so used. Service so credited may be used to establish eligibility for a service, disability, survivor or vested pension.

8.4 Educational Employment Credited Service. Service rendered for the regular school year shall be equivalent to one year's credited service, but in no case shall more than one (1) year of service be creditable for all employment services in one (1) year. Employees who render service for a lesser period of time than that which is established for the regular school year shall receive credited service based upon the actual time employed as a percentage of the time established for a regular school year. A regular school year shall be based upon the period of time established by the State Board of Education or any institution of higher education in the State. This Rule 8.4 is applicable to all retirements after June 30, 1985. In the case of a vested service pension, this Rule 8.4 shall be applicable to those employees who terminated employment after June 30, 1985.

8.5 Employee Work Conditions for Credited Service. To be deemed an employee for credited service, an employee of the State must:

8.5.1 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 his or her employer, and be directly accountable to the employer who supervises his or her work or course of instruction; or

8.5.2 Become eligible for Worker's Compensation in the course of employment as defined in Rule 8.4 hereof, in which event the employee's accrual of credited service shall continue only so long as he or she shall remain eligible for and be receiving Worker's Compensation and remains an employee as defined under 29 **Del.C.** §5501(e).

8.6 Leave of Absence Without Pay. Any employee on an agency approved leave of absence without pay as of June 1, 1970, who again became an employee or pensioner under 29 **Del.C.** Ch. 55 before June 1, 1971, shall not incur a break in service under 29 **Del.C.** §5501(d)(6). Any employee granted a leave of absence without pay on or after June 1, 1971, shall not incur a break in service under 29 **Del.C.** §5501(d)(6), provided that the leave of absence without pay must be approved in writing by the employing agency or school board, and a copy thereof must be immediately filed with the Office of Pensions and provided further that the leave of absence without pay may not exceed a period of twelve (12) consecutive calendar months.

8.7 Credited Service. In no case shall more than one (1) year of credited service be granted for any employment services during any twelve (12) month period.

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

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 twelve (12) month period, provided that the amount of monthly withholding may not exceed 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 of 15% of the monthly pension benefit until the overpayment has been recovered in full.

9.2 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 his or her period of credited service, including the period for which he or she received disability pension payments, meets the service requirements for a vested pension specified in 29 **Del.C.** §5523 at the time the disability pension commenced. Pensioner's period for which he or she received disability pension payments shall be used for eligibility purposes only and not for computation of monetary pension benefit.

9.3 RESERVED

9.4 Effective Date of Pensions. Beginning with the month of May 1972, all pensions shall become effective on the first day of the month. Under 29 **Del.C.** §5531, 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.

9.4.1 Deceased Pensioner Monthly Benefit and Survivor's Effective Date of Pension. Beginning with the month of May, 1972, 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 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 a pensioner's death occurs.

9.5 Reduction Factors for Survivor's Pensions Payable Under 29 **Del.C.** §5528 The Reduction Factors for Survivor's Pensions shall be adopted by resolution of the Board. Such benefits will not be subject to employer discretion.

9.6 Rights of Pensioners, other than disability pensioners, who return to active employment. A pensioner, other than a disability pensioner, who again becomes an employee under 29 **Del.C.** §5501, shall be eligible for an additional pension for each month of credited service during his or her period of re employment, with such additional pension computed as follows:

9.6.1 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(s) shall be eligible for a pension computed in accordance with all provisions of 29 **Del.C.** Ch. 55

9.6.2 Employees who return for subsequent terms of employment which total less than 5 years or employees who elect not to re-retire under 9.6.1 above shall be eligible for an additional pension for each month of credited service during his or her period of re-employment, with such additional pension computed in accordance with all provisions of 29 **Del.C.** Ch. 55, provided, however, that the original pension payable before he or she again became an employee shall not be recomputed and shall be payable in the same amount on the date of his or her subsequent retirement plus any post retirement increases he or she would have been eligible to receive during his or her period of active employment.

9.7 Rights of 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.** §5501(e), shall be eligible for his or her subsequent retirement to be considered as a regular retirement under the provisions of the pension law in effect at the time of his or her subsequent retirement.

9.8 Application of Minimums. The minimum pension amounts in 29 **Del.C.** §5527(b) and (c), shall only apply to an employee who is employed on a full-time or annual basis. The minimum pension amounts payable under 29 **Del.C.** §5527(b) and (c) to an employee who is employed on a full-time or annual basis for less than sixty (60) months during the period of sixty (60) consecutive months used to determine his or her final average compensation shall be determined by multiplying the applicable minimum by the ratio of the number of months employed on a full-time or annual basis to sixty (60).

9.9 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.

9.10 Integration with Social Security Service and Survivor Pensions. In applying the 75% maximum benefit limitation established in 29 **Del.C.** §5527(g)(1) the old age insurance benefit under the Federal Social Security Act, shall be the lesser of the member's imputed benefit using the applicable Social Security benefit table adopted by the Board of Pension Trustees, the member's actual age sixty-two (62) Social Security benefit or if the member is receiving Survivor benefits from Social Security, the age sixty-two (62) benefit based on the member's work history as estimated by Social Security.

9.11 Integration with Social Security Disability Pensions. In applying the 75% maximum benefit limitation established in 29 **Del.C.** §5527(g)(2), the disability insurance benefit or the old age insurance benefit under the Federal Social Security Act shall be the lesser of the member's imputed benefit using the applicable Social Security benefit table adopted by the Board of Pension Trustees or the member's initial Social Security disability benefit.

9.12 Buy-In Cost Factors For Computing Lump Sum Payments To Purchase Credit Under 29 **Del.C**. §5501(d)(8). The Buy-In Cost Factors shall be adopted by the Board of Pension Trustees. If a disabled

employee desires to purchase service credit under this Rule 9.12, his or her actual age will be increased by ten (10) years (but not to more than age 65).

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

10.0 Distribution of Benefits.

10.1 Distributions from the State Employees' Retirement 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 of 1986 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 section 401(a)(9) of the Internal Revenue Code of 1986, including the incidental death benefit requirement in section 401(a)(9)(G) of the Internal Revenue Code of 1986, 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 under section 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

10.3.5.2 Distributed by December 31 of the calendar year containing the fifth anniversary of the plan participant's death.

10.4 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 section 401(a)(9)(G) of the Internal Revenue Code of 1986.

10.5 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.

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

11.0 Vesting.

11.1 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**. §5523, shall be 100% vested and nonforfeitable to the extent funded and to the extent required by federal law.

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 29 **Del.C.** §5522(a)

11.3 A plan participant shall be 100% vested in his or her employee contributions.

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

12.0 Use of Forfeitures.

In conformity with section 401(a)(g)(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.

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

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 29 **Del.C.** §5522(a) or (b).

13.2 Normal retirement age for purposes of section 457(b) of the Internal Revenue Code of 1986 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 5522(a)(1), (a)(2), or (a)(3), Chapter 55, Title 29, **Del.C.**

13.3 For purposes of section 402(l) of the Internal Revenue Code of 1986, normal retirement age will be the earliest date when the employee has satisfied the requirements of 29 **Del.C.** §5522(a)(1), (a)(2), or (a)(3)

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

14.0 Prohibited Transactions.

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

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

15.0 Qualified Excess Benefit Arrangement.

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

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

16.0 Civil Unions and DOMA

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 state pension 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 sections 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.

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

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

2002 State Employees' Pension Plan
Sections 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:*

"**Accredited private school or college**" as used in 29 **Del.C.** §5501(e)(5) 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.

"**Application for benefits**" as used in 29 **Del.C.** §5531, means the date on which the signed written application and other necessary documentation is received by the Office of Pensions or by the employee's agency/school district.

"**Approved medical leave**" as used in 29 **Del.C.** §5501(9) means that period of time during which a participant is on a properly granted medical leave of absence from the participant's employer.

"**Course of professional or vocational training**" as used in 29 **Del.C.** §5501(e)(4) means an academic course leading to the attainment of a certificate, diploma or degree, and offered by a public or private, non-profit or proprietary institution as approved or accredited by an appropriate State agency or National/Regional organization. A person engaged in such course of instruction shall have been enrolled on a full-time basis, under regulations of the institution in effect at the time of attendance, and shall have completed the course of instruction in which enrolled, by continuous attendance, so as to complete the course of instruction on a scheduled date. Interruption of attendance may be occasioned only by reason of personal medical problems which militate against regular attendance or full-time military duty during war or other declared emergency.

"**During time of war or national emergency**" as used in 29 **Del.C.** §5501(e)(4), means all months commencing with the month of September, 1940 and continuing until the Board of Pension Trustees decides that a period of war or national emergency has ceased.

"**Full-time or annual basis**" as used in Title 29 **Del.C.** §§5501(f)(2) and 5527(e), means, for those employees hired:

(i) Through July 31, 1973 employed for at least sixty-five (65) hours per month for at least 9 months during a period of twelve (12) consecutive months; and

(ii) On and after August 1, 1973 employed in a 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.

"**Professional educational employment**" as used in 29 **Del.C.** §5501(e)(5), means documented Full-Time employment for another State, a municipality in another State, the Federal Government, or an accredited private school or college anywhere in the world, and shall not include part-time employment such as employment as a graduate teaching assistant. A school is accredited within the meaning of this § 3.1.1 if the Delaware Department of Public Education allows teaching credit for service as a teacher in such school. Documentation of such accreditation shall be provided to the Office of Pensions in the application.

"**Regular part-time employee**" as used in 29 **Del.C.** §§5501(f)(2) and 5527(f), means an employee who either:

(i) 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

(ii) is employed in a position where the part-time rate for the position is at least fifty (50) times hourly minimum wage for at least nine (9) months during a period of twelve (12) consecutive months.

(iii) In determining the period of nine (9) months during twelve (12) consecutive months in the case of a regular part-time teacher or other school employee who has worked for less than twelve (12) months and whose work year is established as the school year, if such employee worked before and after any school breaks or vacations, the break time or vacation time would be considered as if the employee had worked.

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

"**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 the employee's survivor may elect to use accrued periods of vacation or accrued sick leave as credited service under 29 **Del.C.** §5501(e)(1), provided that an employee or the 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 *Educational employment credited service.* Service rendered for the regular school year shall be equivalent to one year's credited service, but in no case shall more than one (1) year of service be creditable for all employment services in one (1) year. Employees who render service for a lesser period of time than that which is established for the regular school year shall receive credited service based upon the actual time employed as a percentage of the time established for a regular school year. A regular school year shall be based upon the period of time established by the State Board of Education or any institution of higher education in the State.

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

3.4.1 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 employee's employer, and be directly accountable to the employer who supervises the employee's work or course of instruction; or

3.4.2 Become eligible for Worker's Compensation during the course of employment as defined in subsection 3.4.1. The employee's accrual of credited service shall continue only so long as the employee shall remain eligible for and be receiving Worker's Compensation and remains an employee as defined under 29 **Del.C.** §5501(f).

3.5 *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.** §5501(e)(6), 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.

3.6 *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.

3.7 *Ordinary service purchase.* The actuarial rate to purchase credit under 29 **Del.C.** §5501(e)(8) shall be adopted by resolution of the Board of Pension Trustees.

3.8 *Rights of former employees returning to active service as an employee.*

3.8.1 *Repayment of withdrawal benefits.*

3.8.1.1 If a former employee, who withdrew the employee's 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.** §5501(e)(6) if the employee repays the total amount withdrawn

within ninety (90) days after written notification of such repayment option from the Office of Pensions.

3.8.1.2 If a former employee, who withdrew the former 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(e)(6) 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.

3.8.1.3 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 3.8.2 or 3.8.3 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.

3.8.1.4 Any interest rate charges collected under subsections 3.8.2 or 3.8.3 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.

3.8.2 *Rights of non-disability pensioners who return to active service as a full-time or regular part-time employee.*

3.8.2.1 A pensioner, other than a disability pensioner, who again becomes an employee under 29 **Del.C.** §5501, shall be eligible for an additional pension for each month of credited service during the employee's period of re-employment, with such additional pension computed as follows:

3.8.2.2 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 or retirements shall be eligible for a pension computed in accordance with all provisions of 29 **Del.C.** Ch. 55.

3.8.2.3 Employees who return for subsequent terms of employment which total less than 5 years or employees who elect not to re-retire under subsection 3.6.1.1 above shall be eligible for an additional pension for each month of credited service during the employee's period of re-employment, with such additional pension computed in accordance with all provisions of 29 **Del.C.** Ch. 55, provided, however, that the original pension payable before the employee again became an employee shall not be recomputed and shall be payable in the same amount on the date of the employee's subsequent retirement plus any post retirement increases the employee would have been eligible to receive during the employee's period of active employment.

4.0 Distribution of benefits

4.1 *Effective date of pensions.*

4.1.1 *Pension beneficiary:* Beginning with the month of May 1972, all pensions shall become effective on the first day of the month. Under 29 **Del.C.** §5531, 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:* Beginning with the month of May, 1972, 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.** §5530. 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.** §5528 (d)(3) and (e)(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 him or her 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.** §5528 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 Section 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, or attainment of the age of 70½ (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 sections 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 $70\frac{1}{2}$ years of age (if the Plan participant was born before July 1, 1949) or after 72 years of age (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 he or she reaches $70\frac{1}{2}$ 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 he or she 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, 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 section 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.** §5524(c) shall mean a condition which causes an employee with a medically documented physical or mental disability which prevents the employee from performing the duties of the employee's position and causing absence from work for period of at least ninety (90) consecutive days from the documented inception of the disability to the date the employee returns to work.

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 *Period of disability.*

6.4.1 The employing agency or school may grant up to twelve (12) consecutive calendar months of leave.

6.4.2 To extend the leave beyond twelve (12) consecutive calendar months, the employing agency or school must apply to the Pension Administrator.

6.4.3 An application for such extension must be received by the Pension Administrator no fewer than thirty (30) days prior to the expiration of prior Disability period.

6.5 *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's period of credited service, including the period for which he or she received disability pension payments, meets the service requirements for a vested pension specified in 29 **Del.C.** §5523 at the time the disability pension commenced. Pensioner's period for which he or she received disability pension payments shall be used for eligibility purposes only and not for computation of monetary pension benefit.

6.6 *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.** §5501(e), 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.

6.7 *Return to work following disability with approved medical leave:* Upon returning to State employment following a period of approved medical leave, an individual may secure restoration of the individual'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 the individual's disability has:

6.7.1 Terminated or;

6.7.2 That the individual authorized to return to employment not more than four (4) months prior to the date of the individual's actual return; or

6.7.3 That the individual was forced to terminate State employment due to medical disability.

6.8 *Return to work following disability with no approved medical leave:* Upon returning to State employment following a period of medical disability for which a leave of absence was not granted, an individual may secure restoration of the individual's previously canceled pension credits by submitting medical evidence, in form set forth by the Pension Office, which establishes the nature of the individual's disability, the date on which it commenced, and date on which said disability terminated or on which the individual was authorized by the individual's physician to return to employment.

6.9 *Disability service purchase.* The actuarial rate to purchase credit under 29 **Del.C.** §5501(e) shall be adopted by resolution of the Board of Pension Trustees. For 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 "**Casual/seasonal**" The term "casual or seasonal employee" as used in 29 **Del.C.** §5502(a)(3) shall mean an employee employed by an agency under 29 **Del.C.** §5903(17) who works less than thirty (30) hours per week, who works thirty (30) hours or more per week for a duration of not longer than twelve (12) months, or who works in a position not defined as a Full-time or Regular Part-Time pension creditable position according to the sections and regulations contained herein.

7.1.2 **Gubernatorial appointment**. The phrase "An official appointed by the Governor" as used in 29 **Del.C.** §5502(a)(2), shall mean an official appointed directly by the Governor and confirmed by the Senate.

7.1.3 "**Substitute**" The term "substitute employee" as used in 29 **Del.C.** §5502(a)(4) shall mean an employee in a school who is compensated on a daily basis pursuant to 14 **Del.C.** §1326.

7.1.4 "**Temporary employee"**. The term "temporary employee" as used in 29 **Del.C.** §5502(a)(3), shall mean an employee employed in a position for a specific project or task and for a finite period of time that will not exceed twelve (12) months duration. The twelve (12) month period includes employment pursuant to a temporary employment services agreement, or other Indirect Employment with the State as defined in subsection 7.1 of this regulation.

7.2 *Separation from service with the state:* The IRS requires that any retired employee contemplating reemployment with the State shall have a separation from service from the State 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.** §5502.

8.0 Maximum Income Limits. [*Compliance with 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 sections, 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 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 section 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 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 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 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 §§6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code of 1986. Compensation will be determined without regard to any sections under Internal Revenue Code §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 $^{1}/_{2}$ 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 2$^{1}/_{2}$ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by 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 paragraph 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 §415(c) of the Internal Revenue Code of 1986.

10.7.3 For purposes of applying subsection 10.7.1 of this regulation 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 4.7.2 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 10.7 of this regulation.

10.7.4 For purposes of subsection 10.7 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,

10.7.4.2 Which such plan participant has not received under the Pension Fund, and

10.7.4.4 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.

10.8 *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 10.7.4.3 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.

10.8.1 The Pension Fund will fail to meet the requirements of subsection 10.8 of this regulation if:

10.8.1.1 More than five (5) years of nonqualified service credit are taken into account for purposes of subsection 10.7.6 of this regulation, or

10.8.1.2 Any nonqualified service credit is taken into account under subsection 10.8 of this regulation before the Plan participant has at least five (5) years of participation under the Pension Fund.

10.8.2 For purposes of subsection 10.8 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:

10.8.2.1 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;

10.8.2.2 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;

10.8.2.3 Service as an employee of an association of employees who are described in subsection 10.8.1 of this regulation; or

10.8.2.4 Military service (other than qualified military service under §414(u)) of the Internal Revenue Code of 1986 recognized by such governmental plan.

10.8.3 In the case of service described in subsections 10.8.2.1, 10.8.2.2 or 10.8.2.3 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.

10.8.4 In the case of a trustee-to-trustee transfer after December 31, 2001, to which §§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):

10.8.4.1 The limitations of subsection 10.8 of this regulation will not apply in determining whether the transfer is for the purchase of permissive service credit; and

10.8.4.2 The distribution sections applicable under federal law to the Pension Fund will apply to such amounts and any benefits attributable to such amounts.

10.8.5 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 Plan as in effect on August 5, 1997. For purposes of subsection 10.8.5, an eligible plan participant is an individual who first became a plan participant in the Pension Fund before January 1, 1998.

10.9 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 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 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.** §5523, 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.** §5522(a).

12.3 A Plan participant shall be 100% vested in the Participant’s employee contributions.

13.0 Use of forfeitures. ***[Compliance with 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 State Employees Pension Plan.* Normal Retirement Age, for the purposes of the State 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.** §5522(a) or (b).

14.2 *Normal Retirement Age of 457(b) Plan.* The Normal Retirement Age for purposes of §457(b) of the Internal Revenue Code of 1986 to the extent the State Employees’ Pension Plan's normal retirement

age is referenced in the Delaware Deferred Compensation Plans (457 (b)) will be the earliest date when the employee has satisfied the requirements of 29, **Del.C.** §5522(a)(1), (a)(2), or (a)(3).

14.3 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.** §5522(a)(1), (a)(2), or (a)(3).

15.0 Prohibited transactions. ***[Compliance with 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 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 state pension 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.

~~**2003 State Judiciary Pension Plan**~~

~~**Rules and Regulations As Adopted by the State Board of Pension Trustees**~~

~~**1.0 Definitions**~~

~~"**Application for Benefits**". The term "date on which the application for such benefit is filed" as used in 29 **Del.C.** §5606 shall mean the date on which the written documentation is received by the Office of Pensions or the Office of the Court of jurisdiction.~~

~~"**Compensation".** The term "compensation" as used in 29 **Del.C.** Ch. 56 shall mean total compensation prior to any payroll deductions, including but not limited to, deductions for contributions to the State's Deferred Compensation Program pursuant to 29 **Del.C.** §6055 Compensation shall not include payments, which are in the nature of reimbursements or allowances for expenses.~~

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

~~**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, the annual compensation of a plan participant which exceeds $150,000 (as indexed under section 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 section 414(q)(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.~~

~~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 section 401(a)(17)(B) 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 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.

2.3 The limits referenced in Rules 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 section 401(a)(17) Internal Revenue Code of 1986. Instead, pursuant to section 13212(d)(3)(A) of Omnibus Budget Reconciliation Act of 1993 ("OBRA"), and the regulations issued under that section, the annual compensation in effect under section 401(a)(17) Internal Revenue Code of 1986 does not apply to any such plan participant in any plan year.

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

3.0 Trustee Transfers.

This Rule applies to distributions made on and after January 1, 1993. 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 transfer made from the Pension Fund.

3.1 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 section 401(a)(9) Internal Revenue Code of 1986; 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 section 408(a) or (b) Internal Revenue Code of 1986, or to a qualified defined contribution plan described in section 401(a) Internal Revenue Code of 1986, or, in addition, on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) Internal Revenue Code of 1986 or to an annuity contract described in section 403(b) Internal Revenue Code of 1986, 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.

3.2 Eligible retirement plan. An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

3.2.1 An individual retirement account described in section 408(a) Internal Revenue Code of 1986,

3.2.2 An individual retirement annuity described in section 408(b) Internal Revenue Code of 1986,

3.2.3 An annuity plan described in section 403(a) Internal Revenue Code of 1986,

3.2.4 A qualified trust described in section 401(a) Internal Revenue Code of 1986,

3.2.5 Effective January 1, 2002, an annuity contract described in section 403(b) Internal Revenue Code of 1986,

3.2.6 Effective January 1, 2002, a plan eligible under section 457(b) 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, or

3.2.7 Effective January 1, 2008, a Roth IRA described in section 408A Internal Revenue Code of 1986.

3.3 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 section 414(p) Internal Revenue Code of 1986.

3.4 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 section 414(p) Internal Revenue Code of 1986. Effective July 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) 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.

3.5 Direct Rollover. A direct rollover is a payment by the Pension Fund to the eligible retirement plan specified by the distributee.

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

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 section 415 Internal Revenue Code of 1986.

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 §1.415(c)-2), or successor regulation. Specifically, compensation will be defined as wages within the meaning of section 3401(a) Internal Revenue Code of 1986 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 section 6041(d), 6051(a)(3) and 6052 Internal Revenue Code of 1986. Compensation will be determined without regard to any rules under section 3401(a) Internal Revenue Code of 1986 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 section 3401(a)(2) Internal Revenue Code of 1986.

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 sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) Internal Revenue Code of 1986. 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 section 132(f)(4) Internal Revenue Code of 1986.

4.2.2 The definition of compensation will exclude employee contributions picked up under section 414(h)(2) Internal Revenue Code of 1986.

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 Compensation shall also include payments for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; and payments 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.

4.2.5 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 reason of qualified military service (within the meaning of section 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.

4.2.6 "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.

4.2.7 An employee who is in qualified military service (within the meaning of section 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).

4.3 Before January 1, 1995, a plan participant may not receive an annual benefit that exceeds the limits specified in section 415(b) 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 section 415(b)(1)(A) Internal Revenue Code of 1986, subject to the applicable adjustments in section 415(b) Internal Revenue Code of 1986.

4.4 On and after January 1, 2009, for purposes of applying the limits under section 415(b) Internal Revenue Code of 1986, 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 section 415(b)(1)(A) Internal Revenue Code of 1986 dollar limit under Code Section 415(d) and the regulations thereunder.

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 section 415(d) of the Internal Revenue Code of 1986 and the regulations thereunder. 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 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 as follows:

4.5.1 For a benefit paid in a form to which section 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:

4.5.1.1 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

4.5.1.2 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3(B) of the Internal Revenue Code of 1986).

4.5.2 For a benefit paid in a form to which section 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:

4.5.2.1 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;

4.5.2.2 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code of 1986); or

4.5.2.3 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code of 1986), divided by 1.05.

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 section 415 Internal Revenue Code of 1986 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 sections 415(c) or 415(n) Internal Revenue Code of 1986.

4.6.2 If payment pursuant to paragraph 4.6.1 will not avoid a contribution in excess of the limits imposed by section 415(c) 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.

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 section 415(b) 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 section 415(b) Internal Revenue Code of 1986, or

4.7.2 The requirements of section 415(c) Internal Revenue Code of 1986 are met, determined by treating all such contributions as annual additions for purposes of section 415(c) Internal Revenue Code of 1986.

For purposes of applying Rule 4.7.1 the Pension Fund will not fail to meet the reduced limit under section 415(b)(2)(C) Internal Revenue Code of 1986 solely by reason of this paragraph 4.7, and for purposes of applying Rule 4.7.2 the Pension Fund will not fail to meet the percentage limitation under section 415(c)(1)(B) Internal Revenue Code of 1986 solely by reason of Rule 4.7.

4.7.3 For purposes of this Rule 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 Rule 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 Rule 4.7 if:

4.7.4.1 More than five (5) years of nonqualified service credit are taken into account for purposes of this Rule 4.7.4, or

4.7.4.2 Any nonqualified service credit is taken into account under this Rule 4.7 before the plan participant has at least five years of participation under the Pension Fund.

4.7.5 For purposes of Rule 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 section 415(k)(3)) Internal Revenue Code of 1986,

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 section 170(b)(1)(A)(ii) 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,

4.7.5.3 Service as an employee of an association of employees who are described in Rule 4.7.5.1, or

4.7.5.4 Military service (other than qualified military service under section 414(u)) Internal Revenue Code of 1986 recognized by such governmental plan.

4.7.6 In the case of service described in Rules 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.

4.7.6.1 In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) Internal Revenue Code of 1986 applies (without regard to whether the transfer is made between plans maintained by the same employer):

4.7.6.1. The limitations of Rule 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.

4.7.6.2 For an eligible plan participant, the limitation of section 415(c)(1) 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 this Rule 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 section 415 Internal Revenue Code of 1986, the limitation year is January 1 through December 31.

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

5.0 Military Service.

5.1 Effective December 12, 1994, notwithstanding any other provision of law, contributions, benefits and service credit with respect to qualified military service are governed by section 414(u) 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 so as not to diminish any other rights relating to military service that may be granted under state law.

5.2 Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code of 1986, an individual receiving differential wage payments (as defined under section 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 section 415(c) of the Internal Revenue Code of 1986. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

5.3 Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by section 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.

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

6.0 Plan Year.

The plan year for the Pension Fund is the twelve (12) - month period beginning July 1.

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

7.0 Administration

RESERVED

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

8.0 Benefits

8.1 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 twelve (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 twelve (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.

8.2 Effective Date of Pensions. All pensions shall become effective on the first (1st) day of the month. Under 29 **Del.C.** §5606(a) a monthly benefit shall not be payable for any period earlier than the first (1st) day of the second (2nd) month preceding the date on which application for such benefit is filed.

8.3 Deceased Pensioner Monthly Benefit and Survivor's Effective Date of Pension. Beginning with the month of May 1972, 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 (1st) day of the next month following the month in which the pensioner's death occurs.

8.4 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.

8.5 RESERVED

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

9.0 Distribution of Benefits.

9.1 Distributions from the 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.

9.2 The Pension Fund will pay all benefits in accordance with a good faith interpretation of section 401(a)(9) Internal Revenue Code of 1986 and the regulations under that section.

9.3 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:

9.3.1 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.

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

9.3.3 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.

9.3.4 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.

9.3.5 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

9.3.5.1 Distributed (in accordance with federal regulations under section 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

9.3.5.2 Distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the plan participant's death.

9.4 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 section 401(a)(9)(G) of the Internal Revenue Code of 1986.

9.5 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.

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

10.0 Vesting.

10.1 Plan Terminations. In the event of a full or partial termination of, or a complete discontinuance of employer contributions to, the Delaware State Judiciary Retirement Fund, all accrued benefits which have been vested according to the provisions of 29 **Del.C**. Ch. 56 shall be 100% vested and nonforfeitable to the extent funded.

10.2 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**. §5602(a) or (b) or 5612(a) or (b).

10.3 A plan participant shall be 100% vested in his or her employee contributions.

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

11.0 Use of Forfeitures.

In conformity with section 401(a)(8) 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.

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

12.0 Normal Retirement Age.

12.1 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 29 **Del.C.** §5602(a) or (b) or 5612(a) or (b)

12.2 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 29 **Del.C.** §5602(a) or (b) or 5612(a)

12.3 For purposes of section 402(l) Internal Revenue Code of 1986, normal retirement age will be the earliest date when the employee has satisfied the requirements of 29 **Del.C.** ch. 56 §5602(a) or 5612(a)

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

13.0 Prohibited Transactions.

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

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

14.0 Qualified Excess Benefit Arrangement

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

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

~~**15.0 Civil Unions and DOMA**~~

~~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 state pension 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 sections 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.~~

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

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

2003 State Judiciary 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 "**Application for benefits**" as used in 29 **Del.C.** §5606, shall mean the date on which the signed written application and other necessary documentation is received by the Office of Pensions or the Office of the Court of jurisdiction.

3.1.2 "**Compensation**" as used in 29 **Del.C.** Ch. 56 shall mean total compensation prior to any payroll deductions, including but not limited to, deductions for contributions to the State's Deferred Compensation Program pursuant to 29 **Del.C.** 60A. Compensation shall not include payments, which in the nature of reimbursements or allowances for expenses.

4.0 Distribution of Benefits

4.1 *Effective date of pensions.*

4.1.1 *Pension beneficiary:* Beginning with the month of May 1972, all pensions shall become effective on the first day of the month. Under 29 **Del.C.** §5606(a), 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:* Beginning with the month of May 1972, 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.** §5608. 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 *Determination of 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.** §5614(d)(2)c. and (e)(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.

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, or attainment of the age of 70 ½ 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 70 ½ 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 he or she reaches 70 ½ 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 he or she 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, 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 Return to Work Post-retirement.

6.1 *Separation from service with the state:* The IRS requires that any retired employee contemplating reemployment with the State shall have a separation from service from the State for a period of at least six (6) months, if the employee is under the age of 65.

6.2 *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.

6.3 *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.

6.4 *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.** §5502.

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

7.1 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.

7.2 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 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.

7.3 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 section 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 section 401(a)(17) of the Internal Revenue Code of 1986 does not apply to any such plan participant in any plan year.

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

8.1 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.

8.2 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:

8.2.1 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;

8.2.2 Any distribution to the extent such distribution is required under §401(a)(9) of the Internal Revenue Code of 1986;

8.2.3 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:

8.2.3.1 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;

8.2.3.2 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

8.2.3.3 On or after January 1, 2008, to a Roth IRA described in §408A of the Internal Revenue Code; and

8.2.4 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.

8.3 Eligible retirement plan: An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

8.3.1 An individual retirement account described in §408(a) of the Internal Revenue Code of 1986;

8.3.2 An individual retirement annuity described in §408(b) of the Internal Revenue Code of 1986;

8.3.3 An annuity plan described in §403(a) of the Internal Revenue Code of 1986;

8.3.4 A qualified trust described in §401(a) of the Internal Revenue Code of 1986;

8.3.5 An annuity contract described in §403(b) of the Internal Revenue Code of 1986;

8.3.6 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;

8.3.7 A Roth IRA described in §408A of the Internal Revenue Code of 1986; or

8.3.8 Effective January 1, 2015, a SIMPLE IRA that has been established for at least two years.

8.4 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.

8.5 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.

8.6 *Direct Rollover.* A direct rollover is a payment by the Pension Fund to the eligible retirement plan specified by the distributee.

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

9.1 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.

9.2 *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 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 sections 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 §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.

9.2.1 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.

9.2.2 The definition of compensation will exclude employee contributions picked up under §414(h)(2) of the Internal Revenue Code of 1986.

9.2.3 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:

9.2.3.1 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

9.2.3.2 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

9.2.3.3 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.

9.2.3.4 Any payments not described above are not considered compensation if paid after severance from employment, even if they are paid within 2 ½ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by 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.

9.2.4 *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.

9.2.5 *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).

9.3 *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.

9.4 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:

9.4.1 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;

9.4.2 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

9.4.3 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.

9.5 *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:

9.5.1 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:

9.5.1.1 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

9.5.1.2 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).

9.5.2 *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:

9.5.2.1 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;

9.5.2.2 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

9.5.2.3 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.

9.6 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:

9.6.1 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.

9.6.2 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.

9.7 *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:

9.7.1 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

9.7.2 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 §415(c) of the Internal Revenue Code of 1986.

9.7.3 For purposes of applying subsection 9.7.1 of this regulation 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 this subsection 9.7 of this regulation, and for purposes of applying subsection 9.2.2, 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.

9.7.4 For purposes of subsections 9.7 and 9.8 of this regulation, the term "permissive service credit" means service credit that is:

9.7.4.1 Recognized by the Pension Fund for purposes of calculating a plan participant's benefit under the Pension Fund,

9.7.4.2 Which such plan participant has not received under the Pension Fund, and

9.7.4.3 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.

9.8 *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 9.7.4.3 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.

9.8.1 The Pension Fund will fail to meet the requirements of this subsection 9.8 of this regulation if:

9.8.1.1 More than five (5) years of nonqualified service credit are taken into account for purposes of this subsection 9.8 of this regulation; or

9.8.1.2 Any nonqualified service credit is taken into account under this subsection 9.8 of this regulation before the Plan participant has at least five (5) years of participation under the Pension Fund.

9.8.2 For purposes of subsection 9.8 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:

9.8.2.1 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;

9.8.2.2 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;

9.8.2.3 Service as an employee of an association of employees who are described in Rule 9.8.2.1; or

9.8.2.4 Military service (other than qualified military service under §414(u) of the Internal Revenue Code of 1986) recognized by such governmental plan.

9.8.3 In the case of service described in subsections 9.8.2.1, 9.8.2.2, and 9.8.2.3, 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.

9.8.4 In the case of a trustee-to-trustee transfer after December 31, 2001, to which §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):

9.8.4.1 The limitations of subsection 9.8.4 will not apply in determining whether the transfer is for the purchase of permissive service credit; and

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

9.8.5 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 4.8.5 of this regulation, an eligible plan participant is an individual who first became a plan participant in the Pension Fund before January 1, 1998.

9.9 For purposes of §415 of the Internal Revenue Code of 1986, the limitation year is January 1 through December 31.

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

10.1 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 so as not to diminish the rights granted under that section.

10.2 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.

10.3 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.

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

11.1 *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.** Ch. 56, shall be 100% vested and nonforfeitable to the extent funded and to the extent required by federal law.

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 29 **Del.C.** Ch. 56.

11.3 A Plan participant shall be 100% vested in his or her employee contributions.

12.0 Use of forfeitures. *[Compliance with 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.

13.0 Normal Retirement Age.

13.1 *Normal Retirement Age for State Judiciary Pension Plan.* Normal Retirement Age, for the purposes of the State Judiciary 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.** §5602(a) or (b), or 5612(a).

13.2 *Normal Retirement Age of 457(b) Plan.* The Normal Retirement Age for purposes of §457(b) of the Internal Revenue Code of 1986 to the extent the State Judiciary Pension Plan's normal retirement age is referenced in the Delaware Deferred Compensation Plans (457 (b)) will be the earliest date when the employee has satisfied the requirements of 29 **Del.C.** §5602(a) or (b), or 5612(a).

13.3 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.** §5602(a) or (b), or 5612(a).

14.0 Prohibited Transactions. *[Compliance with Code §503(b); IRS-approved language]*

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

15.0 Qualified Excess Benefit Arrangement. *[Compliance with § 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.

16.0 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 state pension 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.

~~2004 State Police Pension Plan~~

~~Rules and Regulations As Adopted by the State Board of Pension Trustees~~

~~1.0 Definitions~~

~~"Application for Benefits"~~ ~~The term "date on which the application for such benefit is filed" as used in 11 **Del.C.** §8376(a) shall mean the date on which the written documentation is received by the Office of Pensions or the Office of State Police.~~

~~"Gubernatorial Appointment"~~ ~~The term "An official appointed by the Governor" as used in 11 **Del.C.** §§8323(c)(2) and 8352(2) shall mean an official appointed directly by the Governor and confirmed by the Senate.~~

~~"Salary"~~ ~~The term "salary" as used in 11 **Del.C.** Ch. 83 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 29 **Del.C.** Ch. 60A. Salary shall not include payments in the nature of reimbursement or allowance for expenses.~~

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

~~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, the annual compensation of a plan participant which exceeds $150,000 (as indexed under section 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 section 414(q)(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.~~

~~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 section 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 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.~~

~~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 section 401(a)(17) of the Internal Revenue Code. Instead, pursuant to section 13212(d)(3)(A) of Omnibus Budget Reconciliation Act of 1993, and the regulations issued under that section, the annual compensation in effect under section 401(a)(17) of the Internal Revenue Code of 1986 does not apply to any such plan participant in any plan year.~~

3.0 Trustee Transfers

This Rule applies to distributions made on and after January 1, 1993. 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 transfer made from the Pension Fund.

3.1 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 section 401(a)(9) of the Internal Revenue Code of 1986; 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 sections 408(a) or (b) of the Internal Revenue Code of 1986, 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.

3.2 Eligible retirement plan:. An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

3.2.1 An individual retirement account described in section 408(a) of the Internal Revenue Code of 1986,

3.2.2 An individual retirement annuity described in section 408(b) of the Internal Revenue Code of 1986,

3.2.3 An annuity plan described in section 403(a) of the Internal Revenue Code of 1986,

3.2.4 A qualified trust described in section 401(a) of the Internal Revenue Code of 1986,

3.2.5 Effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code of 1986,

3.2.6 Effective January 1, 2002, a plan eligible under section 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, or

3.2.7 Effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code of 1986.

3.3 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 section 414(p) of the Internal Revenue Code of 1986.

3.4 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 section 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 section 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.

3.5 Direct Rollover. A direct rollover is a payment by the Pension Fund to the eligible retirement plan specified by the distributee.

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

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 section 415 of the Internal Revenue Code of 1986.

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 §1.415(c)-(2), or successor regulation. Specifically, compensation will be defined as wages within the meaning of section 3401(a) of the Internal Revenue Code of 1986 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 section 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code of 1986. Compensation will be determined without regard to any rules under section 3401(a) of the Internal Revenue Code of 1986 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 section 3401(a)(2) of the Internal Revenue Code of 1986.

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 sections 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 30, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of section 132(f)(4) of the Internal Revenue Code of 1986.

4.2.2 The definition of compensation will exclude employee contributions picked up under section 414(h)(2) of the Internal Revenue Code of 1986.

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.

Compensation shall also include payments for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; and payments 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.

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 reason of qualified military service (within the meaning of section 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.

4.2.4 "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.

4.2.5 An employee who is in qualified military service (within the meaning of section 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).

4.3 Before January 1, 1995, a plan participant may not receive an annual benefit that exceeds the limits specified in section 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 section 415(b)(1)(A) of the Internal Revenue Code of 1986, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code of 1986.

4.4 On and after January 1, 2009, for purposes of applying the limits under section 415(b) of the Internal Revenue Code of 1986, 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 section 415(b)(1)(A) of the Internal Revenue Code of 1986 dollar limit under section 415(d) of the Internal Revenue Code of 1986 and the regulations thereunder.

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 section 415(d) of the Internal Revenue Code of 1986 and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity of 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:

4.5.1 For a benefit paid in a form to which section 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:

4.5.1.1 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

4.5.1.2 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3(B) of the Internal Revenue Code of 1986).

4.5.2 For a benefit paid in a form to which section 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:

4.5.2.1 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;

4.5.2.2 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code of 1986); or

4.5.2.3 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code of 1986), divided by 1.05.

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 section 415 of the Internal Revenue Code of 1986 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 sections 415(c) or 415(n) of the Internal Revenue Code of 1986.

4.6.2 If payment pursuant to Rule 4.6.1 will not avoid a contribution in excess of the limits imposed by section 415(c) 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.

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 section 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 section 415(b) of the Internal Revenue Code of 1986, or

4.7.2 The requirements of section 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.

For purposes of applying Rule 4.7.1 the Pension Fund will not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code of 1986 solely by reason of this Rule 4.7, and for purposes of applying Rule 4.7.2 the Pension Fund will not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code of 1986 solely by reason of this Rule 4.7.

4.7.3 For purposes of this Rule 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 Rule 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 Rule 4.7 if:

4.7.4.1 More than five (5) years of nonqualified service credit are taken into account for purposes of this Rule 4.7.4, or

4.7.4.2 Any nonqualified service credit is taken into account under this Rule 4.7 before the plan participant has at least five (5) years of participation under the Pension Fund.

4.7.5 For purposes of Rule 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 section 415(k)(3) of the Internal Revenue Code of 1986),

4.7.5.2 Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in Rule 4.7.5.1) of an education organization described in section 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,

4.7.5.3 Service as an employee of an association of employees who are described in Rule 4.7.5.1, or

4.7.5.4 Military service (other than qualified military service under section 414(u) of the Internal Revenue Code of 1986) recognized by such governmental plan.

In the case of service described in Rules 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 section 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):

4.7.6.1 The limitations of Rule 4.7.4 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 section 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 this Rule 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 section 415 of the Internal Revenue Code of 1986, the limitation year is January 1 through December 31.

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

5.0 Military Service.

5.1 Effective December 12, 1994, notwithstanding any other provision of law, contributions, benefits and service credit with respect to qualified military service are governed by section 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 so as not to diminish any other rights relating to military service that may be granted under state law, including 11 **Del.C.**, ch. 88 §8369 and 11 **Del.C.**, ch. 88 §8375.

5.2 Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code of 1986, an individual receiving differential wage payments (as defined under section 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 section 415(c) of the Internal Revenue Code of 1986. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

5.3 Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by section 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.

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

6.0 Plan Year.

The plan year for the Pension Fund is the twelve (12) -month period beginning July 1.

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

7.0 Creditable Service

7.1 Repayment of Withdrawal Benefits.

7.1.2 If a former employee, who withdrew his or her accumulated contributions upon termination of service again becomes an employee, his or her service credits to the date of termination shall be restored in accordance with the provisions of 11 **Del.C.**, ch. 83 §8364(b)(3), Subchapter III, Chapter 83, 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 ninety (90) days after notification from the Office of Pensions.

7.1.2 If the repayment occurs subsequent to ninety (90) days after notification from the Office of Pensions, the repayment shall be equal to the amount in Rule 7.1.1 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.

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

8.0 Benefits

8.1 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 twelve (12) month period, provided that the amount of monthly withholding may not exceed 15% of the monthly benefit. If repayment of any overpayment

amount will require more than twelve (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.

8.2 Effective Date of Pensions.

Commencing July 27, 1983, all pensions awarded under 11 **Del.C.**, ch. 83 shall become effective on the date of the individual's retirement.

All pensions awarded under 11, **Del.C.** ch. 83 shall become effective on the first day of the month. Under 11 **Del.C.**, ch. 83 §8376(a), a monthly benefit shall not be payable for any period earlier than the first (1st) day of the second (2nd) month preceding the date on which application for such benefit is filed.

8.3 Deceased Pensioner Monthly Benefit and Survivor's Effective Date of Pension. Beginning with the month of May, 1972, 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 (1st) day of the next month following the month in which the pensioner's death occurs.

8.4 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.

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

9.0 Distribution of Benefits.

9.1 Distributions from the 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.

9.2 The Pension Fund will pay all benefits in accordance with a good faith interpretation of section 401(a)(9) of the Internal Revenue Code of 1986 and the regulations under that section.

9.3 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:

9.3.1 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.

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

9.3.3 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.

9.3.4 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.

9.3.5 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

9.3.5.1 Distributed (in accordance with federal regulations under section 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

9.3.5.2 Distributed by December 31 of the calendar year containing the fifth (5^{th}) anniversary of the plan participant's death.

9.4 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 section 401(a)(9)(G) of the Internal Revenue Code of 1986.

9.5 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.

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

10.0 Vesting.

10.1 Plan Terminations. In the event of a full or partial termination of, or a complete discontinuance of employer contributions to, the Pension Fund, all accrued benefits which have been vested according to the provisions 11 **Del.C**., ch. 83 shall be 100% vested and nonforfeitable to the extent funded and to the extent required by federal law.

10.2 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 11 **Del.C.**, ch. 83 §§8323(a) or 8363(a) or (b)

10.3 A plan participant shall be 100% vested in his or her employee contributions.

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

11.0 Use of Forfeitures.

In conformity with section 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.

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

12.0 Normal Retirement Age.

12.1 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 11 **Del.C.**, ch. 83 §§8323(a) or 8363(a) or (b), Chapter 83, Title 11, **Del.C**.

12.2 Normal retirement age for purposes of section 457(b) of the Internal Revenue Code of 1986 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 11 **Del.C.**, ch. 83 §§8323(a) or 8363(a)

12.3 For purposes of section 402(l) of the Internal Revenue Code of 1986, normal retirement age will be the earliest date when the employee has satisfied the requirements of 11 **Del.C.**, ch. 83 §§8323(a) or 8363(a).

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

13.0 Prohibited Transactions.

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

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

14.0 Civil Unions and DOMA

~~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 state pension 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 sections 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.~~

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

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

2004 State Police 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 "**Application for benefits**" as used in 11 **Del.C.** §8376, means the date on which the signed written application and other necessary documentation is received by the Office of Pensions or by the employee's agency/school district.

3.1.2 "**The Plan**" means the State Police Service, Disability and Survivors' Pension Plan, as set forth in 11 **Del.C.** Ch. 83.

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

3.1.4 "**Salary**" as used in 11 **Del.C.** Ch. 83 means total salary prior to any payroll deductions, including but not limited to, deductions for contributions to the State's Deferred Compensation Program pursuant to 29 **Del.C.** Ch. 60A. Salary shall not include payments in the nature of reimbursement, allowance for expenses, overtime payments, and special payments.

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 11 **Del.C.** §8376(a), 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 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 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 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 11 **Del.C.** §8374. 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.

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, or attainment of the age of $70\frac{1}{2}$ (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 $70\frac{1}{2}$ years of age (if the Plan participant was born before July 1, 1949) or after 72 years of age (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 he or she reaches $70\frac{1}{2}$ years of age (if the Plan participant was born before July 1, 1949) or after 72 years of age (if the Plan participant was born after June 30, 1949) 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 Section 5.0.

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, 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 *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.

6.1.1 *Post-Traumatic Stress Syndrome ("PTSD")* claims: The Board applies the standard of proof required under the Diagnostic and Statistical Manual of Mental Disorder. Applicants for a disability pension should submit a certification from a qualified psychiatrist, psychologist or physician with demonstrated experience in treating PTSD claims and establishing the following criteria:

6.1.1.1 Exposure to trauma or in response to duties;

6.1.1.2 Persistent experience such as flashbacks, trauma related thoughts or reminders, negative thoughts such as feelings of isolation or blame, trauma related reactivity such as hypervigilance or blame;

6.1.1.3 Symptoms last more than one month;

6.1.1.4 Symptoms cause functional impairment; or

6.1.1.5 Symptoms not due to medication or substance abuse.

6.2 *Disability review.*

6.2.1 The determination of disability and its cause shall be made by the Pension Administrator after receiving the recommendation of a qualified and independent third-party medical expert approved by the Board, and who shall provide a report to the Pension Administrator. Based upon the recommendation, the Pension Administrator shall make the following determinations:

6.2.1.1 The date of the onset of disability.

6.2.1.2 The cause of such disability and whether such cause is duty or non-duty related.

6.2.1.3 The extent of such disability, and whether it is Partial Disability or Total Disability.

6.2.1.3.1 Partial Disability means a medically determined physical or mental impairment which renders the member unable to function as a State Police Officer and which is reasonably expected to last at least 12 months. See 11 **Del.C.** §8351(12).

6.2.1.3.2 Total Disability shall mean a medically determined physical or mental impairment which renders the member totally unable to work in any occupation for which the member is reasonably suited by training or experience, which is reasonably expected to last at least 12 months. See 11 **Del.C.** §8351(15).

7.0 Return to Work Post-Retirement

7.1 *Gubernatorial appointment.* The phrase "An official appointed by the Governor" as used in 11 **Del.C.** §8352(a)(2) means an official appointed directly by the Governor and confirmed by the Senate.

7.2 Repayment of withdrawal benefits.

7.2.1 If a former employee, who withdrew his or her accumulated contributions upon termination of service again becomes an employee, his or her service credits to the date of termination shall be restored in accordance with the provisions of 11 **Del.C.** §8364(b)(3), if he or she 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.

7.2.2 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 subsection 7.2.1 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.

7.2.3 Any interest rate charges collected under subsections 7.2.1 and 7.2.2 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.

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 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 section 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 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 §§ 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 §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 $^{1}/_{2}$ 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 2$^{1}/_{2}$ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by 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 section 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 §415(c) of the Internal Revenue Code of 1986.

10.7.3 For purposes of applying subsection 10.7.1 of this regulation 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 10.7.2 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 10.7 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;

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.

10.8 *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 10.7.4.3 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.

10.8.1 The Pension Fund will fail to meet the requirements of subsection 10.8 of this regulation if:

10.8.1.1 More than five (5) years of nonqualified service credit are taken into account for purposes of subsection 10.8.1 of this regulation; or

10.8.1.2 Any nonqualified service credit is taken into account under subsection 10.8 of this regulation before the Plan participant has at least five (5) years of participation under the Pension Fund.

10.8.2 For purposes of subsection 10.8 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:

10.8.2.1 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;

10.8.2.2 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;

10.8.2.3 Service as an employee of an association of employees who are described in subsection 10.8.2.1 of this regulation; or

10.8.2.4 Military service (other than qualified military service under §414(u) of the Internal Revenue Code of 1986) recognized by such governmental plan.

10.8.3 In the case of service described in subsections 10.8.1, 10.8.2, or 10.8.3 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.

10.8.4 In the case of a trustee-to-trustee transfer after December 31, 2001, to which § 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):

10.8.4.1 The limitations of subsection 10.8.4 of this regulation will not apply in determining whether the transfer is for the purchase of permissive service credit; and

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

10.8.5 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.

10.9 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.

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 11 **Del.C.** Ch. 83, 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 11 **Del.C.** Ch. 83.

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 State Employees Pension Plan.* Normal Retirement Age, for the purposes of the Plan, will be the date the employee becomes eligible for a service pension not reduced because of the employee's age, pursuant to 11 **Del.C.** Ch. 83.

14.2 *Normal Retirement Age of 457(b) Plan.* The Normal Retirement Age for purposes of §457(b) of the Internal Revenue Code of 1986 to the extent the Plan's normal retirement age is referenced in the Delaware Deferred Compensation Plans (457(b)) will be the earliest date when the employee has satisfied the requirements of 11 **Del.C**. §8323(a) or (b), (a)(2), or (a)(3), and 11 **Del.C.** §8363(a).

14.3 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 11 **Del.C.** §8323(a).

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 state pension and benefit set forth in 11 **Del.C.** Ch. 83 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.

12 DE Reg. 359 (09/01/08)
17 DE Reg. 91 (07/01/13)

~~**2005 County and Municipal Employees' Pension Plan**~~

~~**Rules and Regulations As Adopted by the State Board of Pension Trustees**~~

~~**1.0 Definitions.**~~

~~**"Accredited Private School or College"**. The term "accredited private school or college" as used in 29 **Del.C.** §5551(4)(d) shall be interpreted to mean 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.~~

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

~~**"Disability"** as used in 29 **Del.C.** §5551(4)(c)(i) shall refer to that period of time during which an individual:~~

~~•Is on a properly granted medical leave of absence from his or her employer. The employer may grant up to twelve (12) consecutive calendar months of leave. To extend the leave beyond twelve (12) consecutive calendar months, the employer must apply to the Medical Committee of the Board of Pension Trustees for an extension. Such application must be received by the Medical Committee of the Board of Pension Trustees not less than thirty (30) days prior to the expiration of said twelve (12-)month period. Upon returning to employment following a period of~~

approved medical leave, an individual may secure restoration of his or her previously canceled pension credits by submitting medical evidence, of a nature satisfactory to the Executive Secretary to the Board of Pension Trustees, indicating that his or her disability terminated or that he or she was authorized to return to employment not more than four (4) months prior to the date of his or her actual return, or

- Was forced to terminate employment due to medical disability. On returning to employment following a period of medical disability for which a leave of absence was not granted, an individual may secure restoration of his or her previously canceled pension credits by submitting medical evidence, of a nature satisfactory to the Executive Secretary to the Board of Pension Trustees, indicating the nature of his or her disability, the date on which it commenced, and date on which said disability terminated or on which he or she was authorized by his or her physician to return to employment.

"Full Time or Annual Basis". The term "employed on a full time or annual basis" as used in 29 **Del.C.** §5551(5)(a), shall mean employment in a permanent position which requires at least 130 hours per month for at least 9 months during a period of 12 consecutive months.

"Gubernatorial Appointment". The term "An official appointed by the Governor" as used in 29 **Del.C.** §5552(2), shall mean an official appointed directly by the Governor and confirmed by the Senate.

"Regular Part Time Employee". The term "regular part time employee" as used in 29 **Del.C.** §5551(5)(a) shall mean an employee who either:

- is employed in a position which requires at least fifty (50) hours per month for at least nine (9) months during a period of twelve (12) consecutive months, or
- 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.

"Temporary Employee". The term "temporary employee" as used in 29 **Del.C.** §5552(3), shall mean an employee who is not employed on a "full time or annual basis" or as a "regular part time" employee.

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

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, the annual compensation of a plan participant which exceeds $150,000 (as indexed under section 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 section 414(q)(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.

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 section 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 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.

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 section 401(a)(17) of the Internal Revenue Code. Instead, pursuant to section 13212(d)(3)(A) of Omnibus Budget Reconciliation Act of 1993, and the regulations issued under that section, the annual compensation in effect under section 401(a)(17) of the Internal Revenue Code of 1986 does not apply to any such plan participant in any plan year.

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

3.0 Trustee Transfers.

This section applies to distributions made on and after January 1, 1993. 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 transfer made from the Pension Fund.

3.1 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 (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code of 1986; 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 section 408(a) or (b) of the Internal Revenue Code of 1986, or to a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code of 1986, or, in addition, on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code of 1986 or to an annuity contract described in section 403(b) of the Internal Revenue Code of 1986, 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.

3.2 Eligible retirement plan:. An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

3.2.1 An individual retirement account described in section 408(a) of the Internal Revenue Code of 1986,

3.2.2 An individual retirement annuity described in section 408(b) of the Internal Revenue Code,

3.2.3 An annuity plan described in section 403(a) of the Internal Revenue Code of 1986,

3.2.4 A qualified trust described in section 401(a) of the Internal Revenue Code of 1986,

3.2.5 Effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code,

3.2.6 Effective January 1, 2002, a plan eligible under section 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, or

3.2.7 Effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code of 1986.

3.3 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 section 414(p) of the Internal Revenue Code of 1986.

3.4 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 section 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 section 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.

3.5 Direct Rollover. A direct rollover is a payment by the Pension Fund to the eligible retirement plan specified by the distributee.

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

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 section 415 of the Internal Revenue Code of 1986.

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 §1.415(c)-(2), or successor regulation. Specifically, compensation will be defined as wages within the meaning of section 3401(a) of the Internal Revenue Code of 1986 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 sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code of 1986. Compensation will be determined without regard to any rules under section 3401(a) of the Internal Revenue Code of 1986 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 section 3401(a)(2) of the Internal Revenue Code of 1986.

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 sections 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 30, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of section 132(f)(4) of the Internal Revenue Code of 1986.

4.2.2 The definition of compensation will exclude employee contributions picked up under section 414(h)(2) of the Internal Revenue Code of 1986.

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.

Compensation shall also include payments for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; and payments 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.

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 reason of qualified military service (within the meaning of section 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.

4.2.4 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.

An employee who is in qualified military service (within the meaning of section 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).

4.3 Before January 1, 1995, a plan participant may not receive an annual benefit that exceeds the limits specified in section 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 section 415(b)(1)(A) of the Internal Revenue Code of 1986, subject to the applicable adjustments in Internal Revenue Code § 415(b).

4.4 On and after January 1, 2009, for purposes of applying the limits under section 415(b) of the Internal Revenue Code of 1986, 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 section 415(b)(1)(A) of the Internal Revenue Code of 1986 dollar limit under section 415(d) of the Internal Revenue Code of 1986 and the regulations thereunder.

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 section 415(d) of the Internal Revenue Code of 1986 and the regulations thereunder. 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:

For a benefit paid in a form to which section 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:

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

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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3(B) of the Internal Revenue Code of 1986).

~~For a benefit paid in a form to which section 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:~~

~~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;~~

~~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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code of 1986); or~~

~~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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code of 1986), divided by 1.05.~~

~~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 section 415 of the Internal Revenue Code of 1986 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 sections 415(c) or 415(n) of the Internal Revenue Code of 1986.~~

~~4.6.2 If payment pursuant to Rule 4.6.1 will not avoid a contribution in excess of the limits imposed by section 415(c) 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.~~

~~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 section 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 section 415(b) of the Internal Revenue Code of 1986, or~~

~~4.7.2 The requirements of section 415(c) of the Internal Revenue Code of 1986 are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).~~

~~For purposes of applying Rule 4.7.1 the Pension Fund will not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code of 1986 solely by reason of Rule 4.7, and for purposes of applying Rule 4.7.2 the Pension Fund will not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code of 1986 solely by reason of this Rule 4.7.~~

~~4.7.3 For purposes of this Rule 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 Rule 4.7 if:

4.7.4.1 More than five years of nonqualified service credit are taken into account for purposes of Rule 4.7.4, or

4.7.4.2 Any nonqualified service credit is taken into account under Rule 4.7 before the plan participant has at least five (5) years of participation under the Pension Fund.

4.7.5 For purposes of Rule 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 section 415(k)(3) of the Internal Revenue Code of 1986),

4.7.5.2 Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in Rule 4.7.5.1) of an education organization described in section 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,

4.7.5.3 Service as an employee of an association of employees who are described in Rule 4.7.5.1, or

4.7.5.4 Military service (other than qualified military service under section 414(u)) of the Internal Revenue Code of 1986 recognized by such governmental plan.

In the case of service described in Rules 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 section 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):

4.7.6.1 the limitations of Rule 4.7.4 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 section 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 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.

4.7.8 For purposes of section 415 of the Internal Revenue Code of 1986, the limitation year is January 1 through December 31.

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

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 section 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 with 29 **Del.C.**, §5551(4)(d) so as not to diminish the rights granted under that section.

Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code of 1986, an individual receiving differential wage payments (as defined under section 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 section 415(c) of the Internal Revenue Code of 1986. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by section 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.

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

6.0 Plan Year.

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

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

7.0 Administration

7.1 Review of Disability Pensioners by Medical Committee. The frequency of review of disability pensioners under the age of 60 shall be determined by the Medical Committee based on the relevant facts in individual situations.

7.2 Appeals from Predecessor Boards or 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 Pension 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 29 **Del.C**. §5551(4)(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 90 days after notification from the Office of Pensions, the repayment shall be equal to the amount in Rule 8.1.1, for each full month or fraction thereof following the last day of the 90-day period, interest rate charge as adopted by the Board.

8.2 Credit for Vacation and Accrued Sick Leave. An employee or his or her survivor may elect to use accrued periods of vacation and/or accrued sick leave as credited service under 29 **Del.C**. §5551(4),

provided that an employee or his or her survivor may not receive a pension for any month during the periods of vacation and/or sick leave so used. Service so credited may be used to establish eligibility for a service, disability, survivor or vested pension.

8.3 Employee Work Conditions for Credited Service. To be deemed an employee for credited service, an employee must:

8.3.1 report for and work in an official work place of the employer or must report for and attend a school or course of instruction in the manner required by the school or other institution in the manner required by the school or other institution pursuant to the direction or authorization of the employer, and be directly accountable to his or her employer who supervises his or her work or course of instruction; or

8.3.2 become eligible for Worker's Compensation in the course of employment as defined in subsection (a) hereof, in which event the employee's accrual of credited service shall continue only so long as he or she shall remain eligible for and be receiving Worker's Compensation and remains an employee as defined under 29 **Del.C**. §5551(5).

8.4 Leave of Absence Without Pay. Any employee granted a leave of absence without pay shall not incur a break in service under Section 29 **Del.C.** §5551(4)(c)(i), provided that the leave of absence without pay must be approved in writing and validated by the employer and a copy thereof must be immediately filed with the Office of Pensions and provided further that the leave of absence without pay may not exceed a period of 12 consecutive calendar months.

8.5 Credited Service. In no case shall more than one year of credited service be granted for any employment services during any twelve (12) month period.

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

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 twelve (12) month period, provided that the amount of monthly withholding may not exceed 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 of 15% of the monthly pension benefit until the overpayment has been recovered in full.

9.2 Effective Date of Pensions. 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.

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 a 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 a pensioner's death occurs.

9.4 Reduction Factors for Survivor's Pensions Payable Under 29 **Del.C.** §5578(d).The Reduction Factors for Survivor's Pensions shall be adopted by resolution of the Board. Such benefits will not be subject to employer discretion.

9.5 Rights of Pensioner, other than disability pensioners, who return to active employment. A pensioner, other than a disability pensioner, who again becomes an employee under 29 **Del.C.** Ch. 55A shall be eligible for an additional pension for each month of credited service during his or her period of re-employment, with such additional pension computed as follows:

9.5.1 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(s) shall be eligible for a pension computed in accordance with all provisions of 29 **Del.C**., ch. 55A.

9.5.2 Employees who return for subsequent terms of employment which total less than 5 years or employees who elect not to re-retire under Rule 9.5.1 above, shall be eligible for an additional pension for each month of credited service during his or her 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 he or she again became an employee shall not be recomputed and shall be payable in the same amount on the date of his or her subsequent retirement plus any post retirement increases he or she would have been eligible to receive during his or her period of active employment.

9.6 Rights of 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**. Ch. 55A, shall be eligible for his or her subsequent retirement to be considered as a regular retirement under the provisions of the pension law in effect at the time of his or her subsequent retirement.

9.7 Withdrawal Benefits. Effective for employees terminating 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.

9.8 Integration with Social Security Service and Survivor Pensions. In applying the 75% maximum benefit limitation established in 29 **Del.C**. §5577(1), the old age insurance benefit under the Federal Social Security Act shall be the lesser of the member's imputed benefit using the applicable Social Security benefit table adopted by the Board of Pension Trustees, the member's actual age 62 Social Security benefit, or if the member is receiving survivor benefits from Social Security, the age 62 benefit based on the member's work history as estimated by Social Security.

9.9 Integration with Social Security Disability Pensions. In applying the 75% maximum benefit limitation established in 29 **Del.C**.§5577(2), the disability insurance benefit or the old age insurance benefit under the Federal Social Security Act shall be the lesser of the member's imputed benefit using the applicable Social Security benefit table adopted by the Board of Pension Trustees or the member's initial Social Security disability benefit.

9.10 Buy-In Cost Factors For Computing Lump Sum Payments To Purchase Credit Under 29 **Del.C.** §5501 (4)(d).

9.11 The Buy-In Cost Factors shall be adopted by the Board of Pension Trustees.

9.12 If a disabled employee desires to purchase service credit under this Rule 9.12, his or her actual age will be increased by ten (10) years (but not to more than age 65).

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

10.0 Distribution of Benefits.

10.1 Distributions from the 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 of 1986 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 section 401(a)(9) of the Internal Revenue Code of 1986, including the incidental death benefit requirement in section 401(a)(9)(G) of the Internal Revenue Code of 1986, 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 under section 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

10.3.5.2 Distributed by December 31 of the calendar year containing the fifth anniversary of the plan participant's death.

10.4 The amount of an annuity paid to a plan participant's survivor under state law may not exceed the maximum determined under the incidental death benefit requirement of section 401(a)(9)(G) of the Internal Revenue Code of 1986.

10.5 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.

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

11.0 Vesting.

11.1 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**. Ch. 55A shall be 100% vested and nonforfeitable to the extent funded and to the extent required by federal law.

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 29 **Del.C.** §§5572(a) or (b).

11.3 A plan participant shall be 100% vested in his or her employee contributions.

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

12.0 Use of Forfeitures.

In conformity with section 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.

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

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 29 **Del.C.** §§5572(a) or (b).

13.2 Normal retirement age for purposes of section 457(b) of the Internal Revenue Code of 1986 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 29 **Del.C**. §5572(a).

13.3 For purposes of section 402(l) of the Internal Revenue Code of 1986, normal retirement age will be the earliest date when the employee has satisfied the requirements of 29 **Del.C**. §5572(a).

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

~~**14.0 Prohibited Transactions.**~~

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

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

~~**15.0 Civil Unions and DOMA**~~

~~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 state pension 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 sections 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.~~

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

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

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 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 $70^{1}/_{2}$ 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 $70^{1}/_{2}$ 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 $70^{1}/_{2}$ 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, 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 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 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;

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.

~~**2006 County and Municipal Police/Firefighter Pension Plan**~~

~~**Rules and Regulations As Adopted by the State Board of Pension Trustees**~~

1.0 Definitions

"**Application for Benefits**" The term "date on which the application for such benefit is filed" as used in 11 **Del.C**. §8826(a) 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 11 **Del.C**. §8802(1) shall mean an official appointed directly by the Governor and confirmed by the Senate.

"**Salary**" The word "salary" as used in 11 **Del.C** Ch. 88 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 29 **Del.C**. §6055. Salary shall not include payments in the nature of reimbursement or allowance for expenses.

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

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, the annual compensation of a plan participant which exceeds $150,000 (as indexed under section 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 section 414(q)(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.

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 section 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 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.

2.3 The limits referenced in Rules 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 section 401(a)(17) of the Internal Revenue Code of 1986. Instead, pursuant to section 13212(d)(3)(A) of Omnibus Budget Reconciliation Act of 1993 ("OBRA"), and the regulations issued under that section, the annual compensation in effect under section 401(a)(17) of the Internal Revenue Code of 1986 does not apply to any such plan participant in any plan year.

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

3.0 Trustee Transfers

This Rule applies to distributions made on and after January 1, 1993. 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 transfer made from the Pension Fund.

3.1 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 sections 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.

3.2 Eligible retirement plan: An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

3.2.1 An individual retirement account described in Internal Revenue Code section 408(a) of the Internal Revenue Code of 1986,

3.2.2 An individual retirement annuity described in Internal Revenue Code section 408(b) of the Internal Revenue Code of 1986,

3.2.3 An annuity plan described in Internal Revenue Code section 403(a) of the Internal Revenue Code of 1986,

3.2.4 A qualified trust described in Internal Revenue Code section 401(a) of the Internal Revenue Code of 1986,

3.2.5 Effective January 1, 2002, an annuity contract described in Internal Revenue Code section 403(b) of the Internal Revenue Code of 1986,

3.2.6 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.

3.3 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).

3.4 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.

3.5 Direct Rollover. A direct rollover is a payment by the Pension Fund to the eligible retirement plan specified by 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 section 415 of the Internal Revenue Code of 1986.

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 section 3401(a) of the Internal Revenue Code of 1986 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 section 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code of 1986. Compensation will be determined without regard to any rules under section 3401(a) of the Internal Revenue Code of 1986 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 section 3401(a)(2) of the Internal Revenue Code of 1986.

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 sections 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 30, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of section 132(f)(4) of the Internal Revenue Code of 1986.

4.2.2 The definition of compensation will exclude employee contributions picked up under section 414(h)(2) of the Internal Revenue Code of 1986.

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.

Compensation shall also include payments for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; and payments 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.

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 reason of qualified military service (within the meaning of section 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.

4.2.4 "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.

4.2.5 An employee who is in qualified military service (within the meaning of section 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).

4.3 Before January 1, 1995, a plan participant may not receive an annual benefit that exceeds the limits specified in section 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 section 415(b)(1)(A) of the Internal Revenue Code of 1986, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code of 1986.

4.4 On and after January 1, 2009, for purposes of applying the limits under section 415(b) of the Internal Revenue Code of 1986, 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 section 415(b)(1)(A) of the Internal Revenue Code of 1986 dollar limit under section 415(d) of the Internal Revenue Code of 1986 and the regulations thereunder.

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 section 415(d) of the Internal Revenue Code of 1986 and the regulations thereunder. 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:

4.5.1 For a benefit paid in a form to which section 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:

4.5.1.1 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

4.5.1.2 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3(B) of the Internal Revenue Code of 1986).

4.5.2 For a benefit paid in a form to which section 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:

4.5.2.1 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;

4.5.2.2 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code of 1986); or

4.5.2.3 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 section 417(e)(3)(B) of the Internal Revenue Code of 1986 (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Internal Revenue Code of 1986), divided by 1.05.

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 section 415 of the Internal Revenue Code of 1986 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 sections 415(c) or 415(n) of the Internal Revenue Code of 1986.

4.6.2 If payment pursuant to Rule 4.6.1 will not avoid a contribution in excess of the limits imposed by section 415(c) 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.

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 section 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 section 415(b) of the Internal Revenue Code of 1986, or

4.7.2 The requirements of section 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.

For purposes of applying Rule 4.7.1 the Pension Fund will not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code of 1986 solely by reason of this Rule 4.7, and for purposes of applying Rule 4.7.2 the Pension Fund will not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code of 1986 solely by reason of this Rule 4.7.

4.7.3 For purposes of this Rule 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 Rule 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 Rule 4.7 if:

4.7.4.1 More than five (5) years of nonqualified service credit are taken into account for purposes of Rule 4.7.4, or

4.7.4.2 Any nonqualified service credit is taken into account under this Rule 4.7 before the plan participant has at least five (5) years of participation under the Pension Fund.

4.7.5 For purposes of Rule 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 section 415(k)(3) of the Internal Revenue Code of 1986),

4.7.5.2 Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in Rule 4.7.5.1) of an education organization described in section 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,

4.7.5.3 Service as an employee of an association of employees who are described in Rule 4.7.5.1, or

4.7.5.4 Military service (other than qualified military service under section 414(u) of the Internal Revenue Code of 1986) recognized by such governmental plan.

In the case of service described in Rules 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 section 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):

4.7.6.1 The limitations of Rule 4.7.4 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 section 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 this Rule 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 section 415 of the Internal Revenue Code of 1986, the limitation year is January 1 through December 31.

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 section 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 so as not to diminish any other rights relating to military service that may be granted under state law, including 11 **Del.C.** §8819.

Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code of 1986, an individual receiving differential wage payments (as defined under section 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 section 415(c) of the Internal Revenue Code of 1986. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by section 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.

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

6.0 Plan Year.

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

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

7.0 Administration

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.

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

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 11 **Del.C.** §8814(b) 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 ninety (90) days after notification from the Office of Pensions, the repayment shall be equal to the amount in Rule 8.1.1 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.

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

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 twelve (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 twelve (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 (1st) day of the month. Under 11 **Del.C**. §8826 a monthly benefit shall not be payable for any period earlier than the first (1st) day of the second (2nd) month preceding the date on which application for such benefit is filed.

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 (1st) day of the next month following the month in which the pensioner's death occurs.

9.4 Withdrawal Benefits. Effective for employees terminating 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.

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

10.0 Distribution of Benefits.

10.1 Distributions from the 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 of 1986 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 section 401(a)(9) of the Internal Revenue Code of 1986, including the incidental death benefit requirement in section 401(a)(9)(G) of the Internal Revenue Code of 1986, 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 under section 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

10.3.5.2 Distributed by December 31 of the calendar year containing the fifth (5th) 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 section 401(a)(9)(G) of the Internal Revenue Code of 1986.

10.3.7 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.

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

11.0 Vesting

11.1 Plan Terminations. In the event of a full or partial termination of, or a complete discontinuance of employer contributions to, the Pension Fund, all accrued benefits which have been vested according to the provisions of 11 **Del.C.** Ch. 88 shall be 100% vested and nonforfeitable to the extent funded and to the extent required by federal law.

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 11 **Del.C.** §§8813(a) or (b)

11.3 A plan participant shall be 100% vested in his or her employee contributions.

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

12.0 Use of Forfeitures.

In conformity with section 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.

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

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 and not reduced because of the employee's age, pursuant to 11 **Del.C.** §§8813(a) or (b)

13.2 Normal retirement age for purposes of section 457(b) of the Internal Revenue Code of 1986 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 11 **Del.C**. §8813(a).

13.3 For purposes of section 402(l) of the Internal Revenue Code of 1986, normal retirement age will be the earliest date when the employee has satisfied the requirements of 11 **Del.C.** §8813(a).

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

14.0 Prohibited Transactions.

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

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

15.0 Civil Unions and DOMA

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 state pension 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 sections 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.~~

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

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

2006 Delaware County and Municipal Police/Firefighter 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 "**Application for Benefits**" as used in 11 **Del.C.** Ch. 88, means the date on which the signed written application and other necessary documentation is received by the Office of Pensions or by the employee's agency/school district.

3.1.2 "**The Plan**" means the Delaware County and Municipal Police/Firefighter Pension Plan, as set forth in 11 **Del.C.** Ch 88.

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

3.1.4 "**Salary**" as used in 11 **Del.C.** Ch. 88, means total salary prior to any payroll deductions, including but not limited to, deductions for contributions to the State's Deferred Compensation Program pursuant to 29 **Del.C.** Ch. 60A. Salary shall not include payments in the nature of reimbursement, allowance for expenses, overtime payments, and special payments.

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 11 **Del.C.** Ch. 88, 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 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 11 **Del.C.** Ch. 88. 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.

5.0 Repayment of Withdrawal Benefits

5.1.1 If a former employee, who withdrew the employee's accumulated contributions upon termination of service again becomes an employee, the employee's service credits to the date of termination shall be restored in accordance with the provisions of 11 **Del.C.** Ch. 88, 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.

5.1.2 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 subsection 5.1.1 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.

5.1.3 Any interest rate charges collected under subsection 5.1.1 or 5.1.2 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.

6.0 Distribution Requirements to Comply with IRS Code §401(a)(9). ***[Compliance with Code §401(a)(9)(RMDs); IRS-approved Language]***

6.1 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, or attainment of the age of $70^{1}/_{2}$ (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.

6.2 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.

6.3 Notwithstanding any other provision of these rules and regulations, the Pension Fund is subject to the following provisions:

6.3.1 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 $70^{1}/_{2}$ years of age (if the Plan participant was born before July 1, 1949) or after 72 years of age (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 he or she reaches $70^{1}/_{2}$ years of age (if the Plan participant was born before July 1, 1949) or after 72 years of age (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.

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

6.3.3 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.

6.3.4 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.

6.3.5 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:

6.3.5.1 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

6.3.5.2 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

6.3.5.3 Distributed by December 31 of the calendar year containing the fifth anniversary of the Plan participant's death.

6.3.6 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.

6.3.7 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.

7.0 Disability

7.1 *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.

7.1.1 *Post-Traumatic Stress Syndrome ("PTSD") claims:* The Board applies the standard of proof required under the Diagnostic and Statistical Manual of Mental Disorder. Applicants for a disability pension should submit a certification from a qualified psychiatrist, psychologist or MD with demonstrated experience in treating PTSD claims. establishing the following criteria:

7.1.1.1 Exposure to trauma or in response to duties;

7.1.1.2 Persistent experience such as flashbacks, trauma related thoughts or reminders, negative thoughts such as feelings of isolation or blame, trauma related reactivity such as hypervigilance or blame;

7.1.1.3 Symptoms last more than one month;

7.1.1.4 Symptoms cause functional impairment; and

7.1.1.5 Symptoms not due to medication or substance abuse.

7.2 *Disability review.*

7.2.1 The determination of disability and its cause shall be made by the Pension Administrator after receiving the recommendation of a qualified and independent third-party medical expert approved by the Board, and who shall provide a report to the Pension Administrator. Based upon the recommendation, the Pension Administrator shall make the following determinations:

7.2.1.1 The date of the onset of disability;

7.2.1.2 The cause of such disability and whether such cause is duty or non-duty related; and

7.2.1.3 The extent of such disability, and whether it is Partial Disability or Total Disability.

7.2.1.3.1 Partial Disability means a medically determined physical or mental impairment which renders the member unable to function as a State Police Officer and which is reasonably expected to last at least 12 months. See 11 **Del.C.** §8801(13).

7.2.1.3.2 Total Disability shall mean a medically determined physical or mental impairment which renders the member totally unable to work in any occupation for which the member is reasonably suited by training or experience, which is reasonably expected to last at least 12 months. See 11 **Del.C.** §8801(16).

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 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 section 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; or

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 §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 $^{1}/_{2}$ 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 2$^{1}/_{2}$ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by 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 section 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 paragraph 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 §415(c) of the Internal Revenue Code of 1986.

10.7.3 For purposes of applying subsection 10.7.1 of this regulation, 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

this subsection 10.7 of this regulation, and for purposes of applying subsection 10.7.2 of this regulation, the Pension Fund will not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code of 1986 solely by reason of subsection 10.7 of this regulation.

10.7.4 For purposes of subsection 10.7 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;

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.

10.8 *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 10.7.4.3 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.

10.8.1 The Pension Fund will fail to meet the requirements of subsection 10.9 of this regulation if:

10.8.1.1 More than five (5) years of nonqualified service credit are taken into account for purposes of subsection 10.8.1 of this regulation; or

10.8.1.2 Any nonqualified service credit is taken into account under subsection 10.8 of this regulation before the Plan participant has at least five (5) years of participation under the Pension Fund.

10.8.2 For purposes of subsection 10.8 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:

10.8.2.1 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;

10.8.2.2 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;

10.8.2.3 Service as an employee of an association of employees who are described in subsection 10.8.2.1; or

10.8.2.4 Military service (other than qualified military service under §414(u) of the Internal Revenue Code of 1986) recognized by such governmental plan.

10.8.3 In the case of service described in subsections 10.8.2.1, 10.8.2.2, or 10.8.2.3 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.

10.8.4 In the case of a trustee-to-trustee transfer after December 31, 2001, to which §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):

10.8.4.1 The limitations of subsection 10.8 of this regulation will not apply in determining whether the transfer is for the purchase of permissive service credit; and

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

10.8.5 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.

10.9 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.

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 11 **Del.C.** Ch. 88, 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 11 **Del.C.** Ch 88.

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 State Employees Pension Plan.* Normal Retirement Age, for the purposes of the Plan will be the date the employee becomes eligible for a service pension not reduced because of the employee's age, pursuant to 11 **Del.C.** Ch. 88.

14.2 *Normal Retirement Age of 457(b) Plan.* The Normal Retirement Age for purposes of §457(b) of the Internal Revenue Code of 1986 will be the earliest date when the employee has satisfied the requirements of 11 **Del.C.** 8813(a).

14.3 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 11 **Del.C.** §8813(a).

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 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 state pension and benefit set forth in 11 **Del.C.** Ch. 88 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.

12 DE Reg. 359 (09/01/08)
17 DE Reg. 91 (07/01/13)
24 DE Reg. 1033 (06/01/21) (Prop.)