

# **FPPA**

**Fire & Police Pension Association  
of Colorado**

## **Rules & Regulations**

**Codified to be effective January 1, 2016**

Attached are the official Rules and Regulations of the Fire and Police Pension Association. For complete information about plans and benefits administered by FPPA please also refer to the FPPA Plan Brochures as well as the Colorado Revised Statutes, Title 31, Articles 30, 30.5 and 31. The FPPA Plan Brochures and Colorado Statutes may be viewed and/or downloaded from our web site at [www.fppaco.org](http://www.fppaco.org) or by requesting copies from the address below.

5290 DTC Parkway, Suite 100, Greenwood Village, CO 80111-2721  
(303) 770-3772 in the Denver metro area or (800) 332-3772 toll free nationwide

**FIRE AND POLICE PENSION ASSOCIATION  
 RULES AND REGULATIONS  
 CODIFIED SEPTEMBER 25, 2014  
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## FIRE AND POLICE PENSION ASSOCIATION

### RULES AND REGULATIONS

CODIFIED SEPTEMBER 25, 2014

#### CHAPTER 1 DEFINITIONS AND MEMBER STATUS

##### 101. Definitions

**101.01.** *Accumulated vacation leave pay* means pay received at termination of employment as compensation for vacation leave which was earned but not used.

**101.02.** *Accumulated sick leave pay* means pay received at termination of employment as compensation for sick leave which was earned but not used.

**101.03.** *Actuarial equivalent* means equality in value of the aggregate amount expected to be received under different forms of payment, based on the actuarial assumptions as approved by the FPPA Board of Directors.

**101.04.** *Actuarial present value of accrued benefits* means the value of the aggregate amount of the accrued benefit expected to be received by an individual based on service rendered prior to a specific date and the actuarial assumptions stated herein.

(a) **Statewide Defined Benefit Plan.** All actuarial present value calculations shall be based on the actuarial assumptions as stated in the most recently completed actuarial valuation for the Statewide Defined Benefit Plan fund.

(b) **Old hire pension plans.** All actuarial present value calculations shall be based on the actuarial assumptions as stated in the most recent complete actuarial valuation for the City and County of Denver's Police Pension Plan including full and limited rank escalation adjustments (if applicable) and including a cost-of-living adjustment (if applicable).

**101.05.** (a) *Base salary* means the total base rate of pay including Member Contributions to the Statewide Defined Benefit Plan or Statewide Money Purchase Plan which are "picked up" by the employer, and shall also include longevity pay, sick leave pay taken in the normal course of employment, vacation leave pay taken in the normal course of employment, shift differential, and mandatory overtime that is part of the Member's fixed, periodic compensation. Accumulated vacation leave pay will also be included if a Member completes his or her service requirement for purposes of Normal retirement while exhausting accumulated vacation leave. Base salary shall not include overtime pay (except as noted in the preceding sentence), step-up pay or other pay for temporarily acting in a higher rank, uniform allowances, accumulated sick leave pay, accumulated vacation leave pay (except as noted in the preceding sentence), and other forms of extra pay (including Member Contributions which are paid by the employer and not deducted from the Member's salary). In the event an employer has established or does establish a Deferred Compensation Plan, the amount of the Member's salary that is deferred shall be included in the Member's base salary. Any amounts voluntarily contributed to an Internal Revenue Code Section 125 "Cafeteria Plan" shall be included in the Member's base salary. A Member is deemed temporarily acting in a higher rank if the appointment to the rank is anticipated to last less than six months.

(b) Notwithstanding the definition of base salary contained herein paragraph (a), the base salary under the Statewide Death and Disability Plan for each Member of the Colorado Springs New Hire Pension Plan shall be the same as the base salary as defined in the Colorado Springs New Hire Pension Plan.

**101.06.** *Board* means the Board of Directors established as the governing body of the Fire and Police Pension Association of Colorado.

**101.07.** *Cash equivalent of the Death and Disability benefit* means the value of the benefits provided under the Statewide Death and Disability Plan determined, for each employer, by multiplying the cost percentage provided in the latest actuarial valuation of the Statewide Death and Disability Plan times the covered payroll of the applicable employer.

**101.07.1.** *Civil Union* means a relationship established by two eligible persons pursuant to § 14-15-101, et seq., C.R.S., the Colorado Civil Union Act, that entitles them to rights, benefits, protections, duties, obligations, and be subject to the responsibilities, and other incidents under law as are granted to or imposed upon spouses, whether those rights, benefits, protections, duties, obligations, responsibilities, and other incidents derive from statute, administrative or court rule, policy, common law, or any other source of law.

**101.08.** *DDRC* – means the Death and Disability Review Committee of the Fire and Police Pension Association of Colorado.

**101.08.1.1**      **REPEALED**

**101.09.** *Dependent child*, pursuant to § 31-31-801(2), C.R.S., means an unmarried child or child who is not a party to a civil union under the age of 23 and includes, if FPPA so determines, any child, regardless of age or marital status, who is so mentally or physically incapacitated that the child cannot provide for the child's own care. The term also includes a child who is conceived but unborn at the date of the Member's death or the date of disability, whichever applies. Conceived shall mean that a fertilized egg has become implanted in the uterus. Any applicable increase in benefits will occur upon birth.

**101.10.** *Earned income* means wages, salaries, professional fees, or other amounts received as compensation for personal services, actually rendered, but does not include that part of compensation derived by the Member for personal services rendered by him or her to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

**101.11.**            **REPEALED**

**101.12.** *Equal base pay* for purposes of § 31-31-805(2)(a), C.R.S., as amended, means base pay which is equal to the current base pay of an active Member having the same rank and grade and longevity as the disabled Member held at the time the disabled Member was retired for disability.

**101.12.1** *Executive Director* means the administrative officer in charge of FPPA and includes the title Chief Executive Officer (CEO).

**101.13.** *FPPA* means the Fire and Police Pension Association of Colorado, created by § 31-31-201, C.R.S., as amended.

**101.13.1**            *Member* for the purposes of § 31-31-102(4), C.R.S., as amended means an active employee who is a full-time salaried employee of a municipality, fire protection district, fire authority, or county improvement district normally serving at least one thousand six hundred hours in any calendar year and whose duties are directly involved with the provision of police or fire protection, as certified by the member's employer. "Member" also includes an active employee who works less than sixteen hundred hours per year but otherwise qualifies as a member and whose employer elects to treat all such



other similar employees as members. The term does not include clerical or other personnel whose services are auxiliary to police protection, or any volunteer firefighter, as such term is defined in section 31-30-1102 (9). For the purpose of participation in the statewide defined benefit plan pursuant to part 4 of this article or the statewide money purchase plan pursuant to part 5 of this article, but not for the purpose of participation in the statewide death and disability plan pursuant to part 8 of this article, the term may include clerical or other personnel employed by a fire protection district, fire authority, or county improvement district, whose services are auxiliary to fire protection. For the purpose of eligibility for disability or survivor benefits, "member" includes any employee on an authorized leave of absence.

**101.13.2** *Partner in a Civil Union or Party to a Civil Union* means a person who has established a civil union pursuant to § 14-15-101, et seq., C.R.S. A partner in a civil union or a party to a civil union is included in any definition or use of the terms "dependent", "family", "heir", "immediate family", "next of kin", "spouse", and any other term that denotes the familial or spousal relationship, as those terms are used throughout Colorado Revised Statutes, Title 31, Articles 30, 30.5 & 31, including Member Approved Plan Amendments, and of the Plan Documents and Rules and Regulations adopted thereunder.

**101.14.** *Salary*, for the purpose of calculating the contribution to the Statewide Death and Disability Plan required by § 31-31-811(4), C.R.S., as amended, means base salary as defined in Rule 101.05, except that for Members who are not enrolled in the Statewide Defined Benefit Plan or the Statewide Money Purchase Plan, salary shall include Member Contributions to any alternative retirement plan which are "picked up" by the employer.

**101.15.** *Required beginning date* means April 1 of the calendar year following the later of

- (a) the calendar year in which the Member attains 70½, or
- (b) the calendar year in which the employee retires.

**101.16.** *Total Pay and Service Method* – means the Member's retirement benefit is calculated using the total service (service from the original retirement plus credited service since the Member's return to work) and the Highest Average Salary (HAS) from the entire employment history.

## **102. Member Status**

### **102.01. Eligibility for Member Status**

**102.01.01.** When an application for membership in the FPPA Defined Benefit System, Statewide Money Purchase Plan or Statewide Death and Disability Plan is received by FPPA, the Chief Benefits Officer (CBO) may determine whether the applicant meets the eligibility requirements to become a Member. If the CBO determines that the applicant does not meet the eligibility requirements, it shall notify the applicant and the applicant's employer of its decision by mail.

**102.01.02.** Either the applicant or the applicant's employer may file a request for an evidentiary hearing pursuant to Rule 509 on the applicant's eligibility for membership within 30 days of the mailing of the notice of the determination of ineligibility.

### **102.02. Department Chief Exemption**

**102.02.01.** Except as provided in Rule 102.02.02, upon a Department Chief's election to be exempted from the FPPA Defined Benefit System within 180 days of his or her permanent appointment to the position of Department Chief, FPPA shall return to the employer, all Member and Employer Contributions made to the FPPA Defined Benefit System on behalf of the Department Chief unless he or she elects coverage under the Statewide Money Purchase Plan or the Statewide Hybrid Plan pursuant to Rule 102.02.02. In that event FPPA may transfer all Member and Employer Contributions to the FPPA plan as

elected by the Department Chief. The Department Chief's Member pre-tax contribution rate shall be the same rate as if the Department Chief had remained covered by the Statewide Defined Benefit Plan.

**102.02.02.** A Department Chief, upon his or her election to be exempted from the Statewide Defined Benefit Plan, may elect coverage under the Statewide Money Purchase Plan or the Statewide Hybrid Plan. The procedure for electing coverage under the Statewide Money Purchase Plan or the Statewide Hybrid Plan shall be in the form of an agreement signed by the Employer and Department Chief. The amount to be transferred to such plan shall include all time accrued in the Statewide Defined Benefit Plan and shall be consistent with the provisions of Rule 607 governing the election of Statewide Money Purchase Plan coverage by an entire department. A Department Chief who prior to his or her permanent appointment to the position of Department Chief and has qualified for a vested pension under the FPPA Defined Benefit System may elect a vested pension under that plan before electing to be covered by any alternate plan during his or her employment as Department Chief.

**102.02.03** A Department Chief who elects to be exempted from the FPPA Defined Benefit System and covered under Social Security or the Colorado Public Employees' Retirement Association shall not be covered under the Statewide Death and Disability Plan. A Department Chief who elects to be exempted from coverage under the FPPA Defined Benefit System may be covered under the Statewide Death and Disability Plan only if he or she has elected coverage in the Statewide Money Purchase Plan or a Local Money Purchase Plan..

**102.03. Clerical and Other Personnel of Fire Districts, Fire Authorities, and County Improvement Districts**

**102.03.01** Employers which cover clerical or other personnel, who provide services auxiliary to fire protection and which provide said employees with retirement benefits under the Colorado Public Employees Retirement Association, shall not be allowed to terminate such coverage and elect coverage under plans administered by the Fire and Police Pension Association.

**CHAPTER 2 RETURN OR TRANSFER OF MEMBER CONTRIBUTIONS TO THE STATEWIDE DEFINED BENEFIT PLAN**

**201.** Refunds of an employee's accumulated contributions shall not be made to any Members of employers who have failed to remit all contributions required under the provisions of the Statewide Defined Benefit Plan.

**202.** A refund shall be processed within 120 days after FPPA has received a completed Request for Refund of Contributions Form, all supporting documentation and the final contribution. This form may be obtained by contacting FPPA. If the contribution amount to be refunded is \$1,000 or less, the refund may be processed without applicant's signature notarized.

**203.** Unless a refund of contributions has been elected a Member who has at least five (5) years of credited service shall leave his or her contributions with the FPPA fund and elect a Vested retirement benefit as provided in § 31-31-404(2), C.R.S., as amended. The Member may elect a Vested retirement at any time following the date upon which he or she terminated employment but shall begin distribution no later than the Member's 65<sup>th</sup> birthday. If the Member has not completed a Vested retirement form prior to the Member's 65<sup>th</sup> birthday, it is presumed that he or she has elected the Normal benefits option.

**204. REPEALED August 21, 2008**

**205.** If a Member who is covered by the Statewide Defined Benefit Plan terminates his or her employment but, within 30 days of his or her termination, he or she becomes employed by another employer and in his or her new employment is again covered by the Statewide Defined Benefit Plan, his or her contributions will remain in the FPPA fund and he or she will retain all service credit earned with his or her prior employer.

**206. REPEALED August 21, 2008**

**CHAPTER 3 RULES OF THE STATEWIDE DEFINED BENEFIT PLAN**

**300. Contribution Rates**

Contribution rates for the Statewide Defined Benefit Plan are set by state statute. Employer contribution rates can only be amended by state statute. Member contribution rates can be amended by state statute or by election of the membership. Members of the Statewide Defined Benefit Plan and their employers are contributing at the rate of 8 percent of base salary for a total contribution rate of 16 percent through 2014. In 2014, the members elected to increase the member contribution rate to the Plan beginning in 2015. Member contribution rates will increase 0.5 percent annually through 2022 to a total of 12 percent of base salary. Employer contributions will remain at 8 percent resulting in a combined contribution rate of 20 percent in 2022.

Contributions from members and employers of plans re-entering the system are established by resolution and approved by the Fire & Police Pension Association's Board of Directors. The reentry group has a combined contribution rate of 20 percent of base salary through 2014. It is a local decision on who pays the additional 4 percent contribution. Per the 2014 member election, the reentry group will also have their required member contribution rate increase 0.5 percent annually beginning in 2015 through 2022 for a total combined member and employer contribution rate of 24 percent.

The contribution rate for members and employers of affiliated social security employers is 4 percent of base salary for a total contribution rate of 8 percent effective January 1, 2007 through 2014. Per the 2014 member election, the affiliated social security group will also have their required member contribution rate increase 0.25 percent annually beginning in 2015 through 2022 to a total of 6 percent of base salary. Employer contributions will remain at 4 percent resulting in a combined contribution rate of 10 percent in 2022.

**Statewide Defined Benefit Plan - Contribution Rate Implementation Schedule**

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<b>Effective Date</b>	<b>Member Contribution Rate</b>	<b>Employer Contribution Rate</b>	<b>Total Combined Contribution Rate</b>
1/1/2014	8.0%	8.0%	16.0%
1/1/2015	8.5%	8.0%	16.5%
1/1/2016	9.0%	8.0%	17.0%
1/1/2017	9.5%	8.0%	17.5%
1/1/2018	10.0%	8.0%	18.0%
1/1/2019	10.5%	8.0%	18.5%
1/1/2020	11.0%	8.0%	19.0%
1/1/2021	11.5%	8.0%	19.5%
1/1/2022	12.0%	8.0%	20.0%
Beyond	12.0%	8.0%	20.0%

Note: The Statewide Defined Benefit Plan - Reentry group has a combined contribution rate of 20 percent through 2014. It is a local decision on who pays the additional 4 percent contribution. Effective 1/1/2015, the member contribution rate will increase by 0.5 percent per year over 8 years for a total combined member and employer contribution rate of 24 percent.

**Statewide Defined Benefit Plan - Supplemental Social Security - Contribution Rate Implementation Schedule**

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<b>Effective Date</b>	<b>Member Contribution Rate</b>	<b>Employer Contribution Rate</b>	<b>Total Combined Contribution Rate</b>
1/1/2014	4.00%	4.00%	8.00%
1/1/2015	4.25%	4.00%	8.25%
1/1/2016	4.50%	4.00%	8.50%
1/1/2017	4.75%	4.00%	8.75%
1/1/2018	5.00%	4.00%	9.00%
1/1/2019	5.25%	4.00%	9.25%
1/1/2020	5.50%	4.00%	9.50%
1/1/2021	5.75%	4.00%	9.75%
1/1/2022	6.00%	4.00%	10.00%
Beyond	6.00%	4.00%	10.00%

**301. Rules on Service Credits and Vesting**

**301.01.** A Member's service with successive employers shall be aggregated to determine eligibility and benefits for Normal, Early, Deferred or Vested retirement under the Statewide Defined Benefit Plan if the Member's service was rendered while the employer(s) covered their Members under the Statewide Defined Benefit Plan for Normal retirement benefits. A Member's concurrent service with more than one FPPA covered employer will not be aggregated to determine eligibility and service credit for a retirement under the Statewide Defined Benefit Plan. If, however, a Member has received a refund of contributions as provided in § 31-31-404(1), C.R.S., as amended, no service will be credited for that period of time covered by the refunded contributions unless:

- (a) The former Member returns to service as an active Member with an employer that covers its Members under the Statewide Defined Benefit Plan for Normal retirement benefits; and
- (b) (i) The former Member returns the entire amount of his or her refunded contributions and interest, plus additional interest accrued from the date of refund to the date of return at the rate set by the Board, to FPPA within 12 months after returning to such service; or
  - (ii) The former Member pays the actuarial cost of the service credit to be reinstated as established by the Plan's actuary in the event the refunded contributions are not returned to FPPA within 12 months of the Member returning to service.
- (c) Service credit earned while working for an affiliated FPPA Supplemental Social Security employer cannot be reinstated. Members may purchase service credit pursuant to Rule 301.08.

- (d) Service credit earned while working for an affiliated Statewide Hybrid Plan employer cannot be reinstated in the Statewide Defined Benefit Plan. Members may purchase service credit for that service pursuant to Rule 301.08.

Any maternity or paternity leave of up to one year in duration shall not be included in calculating the applicable period. In this regard, FPPA may require the Member to furnish proof that the absence was due to the pregnancy of the Member, the birth of the Member's child, the adoption of a child and the care of that child immediately following such birth or adoption.

Notwithstanding the return of contributions by a Member within the time limits specified above, the Member shall not be entitled to the restoration of any amount in a Separate Retirement Account which the Member forfeited at the time of the Member's previous termination.

**301.011** In addition to the direct payment to FPPA of refunded contributions and interest, FPPA will accept eligible rollover contributions and direct transfers from an Eligible Retirement Plan, defined as an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a qualified trust described in Code Section 401(a), an annuity contract described in Code Section 403(b), a Code Section 457(b) plan which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or a Code Section 401(k) plan for the payment of previously refunded contributions and interest.

**301.02. REPEALED**

**301.03.** Based on information submitted by a Member applying for retirement benefits, FPPA shall compile a list of all former employers of the Member, and if there is a discrepancy, those employers may be requested to verify the Member's employment and shall certify the Member's service, if requested.

**301.04.** If an employer cannot verify a Member's employment and/or cannot certify a Member's service, and the FPPA records do not agree with the information submitted by the Member, FPPA may contact the Member for additional information.

**301.05.** A Member's service is the total period of eligible employment, as set forth in Rule 301 less lost service as specified in Rule 301.06. One month shall equal one unit of service credit.

**301.06.** In order to accrue service credit for a particular pay period, a Member must work or be paid on a full-time basis for at least 50% of the pay period. If a Member takes a Leave of Absence without pay, including military leave or leave under the Family Medical Leave Act, or is suspended without pay, a Member shall not receive service credit for any pay period in which the Member does not work. Credit for such a pay period shall be considered lost service, except as provided in this Rule. If a Member who is on leave without pay works for at least 50% of the pay period, the Member shall receive service credit for that pay period. The differential pay received by Members during any leave of absence, by itself, is not pensionable. Service credit may only be awarded for periods during the leave of absence upon submission of contributions based on the member's full base salary.

**301.061.** A Member returning from an authorized Leave of Absence will receive service credit for any period of lost service attributable to his or her leave not exceeding two years, except for a military leave of absence and then not exceeding five (5) years, upon FPPA's receipt of the amount of Member and employer contributions which would have been paid to the Fire and Police Members' Benefit Investment Fund if the Member had remained in active service. The five (5) year maximum credit for lost service attributable to an authorized Leave of Absence for military leave may be extended for good cause in the discretion of the Board and as required by federal law.

- (a) Except in the case of a Leave of Absence for military service, any such funds must be paid to FPPA within 12 months of the Member's return to service. The employer is not required to make the employer's contribution. In order for the Member to

receive full service credit, the Member shall remit the employer portion in the event the employer does not do so.

- (b) In the case of a military Leave of Absence, any such funds must be paid to FPPA within a period of time of up to one year when the leave period is 3 months or less, and maximum of 5 years after the Member's return to service from the Member's last military leave of absence when the leave period is greater than 3 months. Under federal law, the employer is required to match contributions made by the member.
- (c) Notwithstanding any period of time allowed under this rule for a Member to pay for service credit for any period of lost service attributed to an authorized Leave of Absence, a Member will not be credited for any service for which the Member has not paid in the calculation of a Member's retirement benefit.

**301.062.** When determining whether a Member has achieved vesting under the plan, the leave period for a family medical Leave of Absence and a military Leave of Absence shall be included for the purpose of determining whether a Member has achieved vesting under the plan regardless of whether service credit was awarded for the period.

**301.063** It is intended that with respect to military service, these Rules shall be construed so as to comply with Internal Revenue Code Section 414(u) and notwithstanding any provision to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u).

**301.07.** FPPA shall exclude ineligible prior service from a Member's application for retirement benefits, as set forth in Rule 301.01 through 301.06, but shall inform the Member of such exclusions, and the Member may challenge such deletions as provided in Rule 509.

**301.08.** A Member of the Statewide Defined Benefit Plan, including a Member of the Social Security Supplemental component, may purchase service credit pursuant to § 31-31-410, C.R.S., as amended, and these rules. An application to purchase service credit shall be filed with FPPA in the form prescribed by the association. The Member has the burden of providing the information and supporting documentation necessary to satisfy the requirements of the plan and these rules. Members of the Social Security Supplemental component purchasing service credit shall do so at the full cost and shall receive full Statewide Defined Benefit Plan service credit for the purchase.

**301.09.** The Member shall purchase service credit in the Statewide Defined Benefit Plan by contributing to the plan, in one lump sum, an amount which is equal to the actuarial cost of such service. No service credit shall be awarded to the Member until the association has approved the request and has received the full contribution of the prescribed amount. In order to receive credit for the service, the Member must complete the contribution no later than the last day of active Membership in the Statewide Defined Benefit Plan. In order to complete the purchase transaction, FPPA must receive the full amount required within 60 days from the date of the projected receipt of payment or the date that FPPA identifies as the purchase date for affiliating members. If all funds are not received within the 60 day period, FPPA may return the funds received to the source from which they came and cancel the transaction. No earnings or losses shall accrue on funds held by FPPA for service credit purchases. The CBO or the CBO's designee may grant an extension to the 60 day funding period upon request with good cause shown not to exceed 5 business days.

**301.09.01.** A Member may purchase service credit for part-time employment based on the following formula. Wages earned during the part-time employment period as the numerator and full-time wages (40 hours per week) for the same period of time based on minimum wage at the time of employment as the denominator. If the numerator divided by the denominator is 100 percent or greater, the Member may purchase full service credit for each month in the period of time of part-time employment. If the calculation is less than 100 percent, the Member may purchase the percentage of service credit

calculated. The Member may only purchase service credit for those months in which he or she actually worked.

**301.10.** Money received by FPPA for service credit purchased pursuant to § 31-31-410, C.R.S., as amended, shall not be considered for the purpose of making allocations to the Member's Separate Retirement Account.

**301.11.** For the purpose of § 31-31-410(1), C.R.S., as amended, and except to the extent otherwise required by federal law, "other public employment" shall mean service or employment that is (a) service as an employee of the federal, state, or local government, (b) service as an employee of a secondary or elementary education organization, or (c) service as an employee of an association of government employees. "Other public employment" shall not include service that is covered by the Statewide Defined Benefit Plan. For the purpose of § 31-31-410(2.5), C.R.S., as amended, "private employment" shall mean "nonqualified service" under I.R.C. Section 415(n)(3)(C), which includes any service or employment not meeting the definition of "other public employment" except military service.

**301.12.** Members of the Statewide Defined Benefit Plan who purchase credit for "private employment" service that is "nonqualified" under Section 415 (n) of the Internal Revenue Code (for example, employment with a private employer) must comply with the additional requirements of that section, including, but not limited to, the requirements that the Member has earned at least five years of service credit in the Statewide Defined Benefit Plan prior to purchase, and purchase no more than five years of nonqualified service.

**301.13.** In no case will FPPA allow Members of the Statewide Defined Benefit Plan to purchase service credit for: (1) any period of employment for which the Member is eligible for benefits under another retirement or annuity plan (except Social Security), payable at the time of purchase or in the future; (2) public or private employment concurrent with full-time FPPA-covered employment; (3) employment by a foreign government or by any foreign employer; or (4) any period of employment for which no pay was received. Members of the Statewide Defined Benefit Plan shall not purchase service credit to the extent that the additional accrued benefit derived from the purchased service credit, as actuarially determined by the association, would result in the annual amount of the Member's benefit exceeding the annual benefit limitation for Defined Benefit Plans as determined under Section 415 of the Internal Revenue Code.

**301.14.** A Member who is restored to active service after a Temporary Occupational Disability ceases to exist will receive service credit for the period during which the Member received Temporary Occupational Disability Benefits. As an employer contribution from an employer's trust, the Statewide Death and Disability Plan shall transfer to the Member's Normal retirement plan Member and employer contributions in the amount of up to sixteen percent of the monthly base salary that the Member was being paid at the time of Disability retirement multiplied by the number of months the Member received Temporary Occupational Disability benefits.

**301.15.** Payment for purchase of service credit for time served while on active duty in the uniformed services of the United States pursuant to § 31-31-410(2)(e) C.R.S. may include transfers as provided in Rule 301.011.

**301.16** A member shall be granted service credit upon the qualified plan-to-plan transfer of funds from an eligible pension plan for other public employment within the United States not covered by the FPPA Defined Benefit System. The member must have at least one year of continuous employment with the same employer covered by the SWDB, must provide documentation that the benefits in the eligible transferor plan were earned based on public employment and shall transfer the funds as subject to the requirements of FPPA Rule 301.09. The member shall be awarded service credit in an amount determined by actuarial calculation. No such transfer shall be allowed in an amount which would cause the benefit to exceed limits under IRC §415(b)(1)(A).

## **302. Rules of Calculating the Average of a Member's Highest Three Years' Base Salary**

**302.01.** The average of a Member's highest three (3) years' base salary, for purpose of calculating a Member's Normal, Early, Deferred or Vested retirement benefit, shall be the average of the Member's highest three (3) calendar years' actual salary on which contributions were paid. The calendar year's actual salary referenced above is based on the employer reported payroll period end date. If the employer changes payroll frequency resulting in a substantial reduction in the amount of salary paid in a given year, an adjustment may be made to account for the Member's salary in the year it was earned when calculating the average of a Member's highest three years' base salary. If the Member purchased service credit within the last three (3) years of service, the attributed salaries calculated by using the actuarial data in the service credit calculator for the periods of service credit purchase may also be used in calculating the average of a Member's highest three (3) years' service.

**302.02.** The year in which a Member retires may be considered in calculating the average of the Member's highest three years' base salary if the Member retired on or after July 1. In that event, FPPA will annualize the last year's salary by comparing total pay periods for the year to total pay periods actually paid. If a Member retires on or before June 30 of any given year, the Member's salary for that year shall not be considered for purposes of calculating the average of the Member's highest three years' salary. For the purpose of calculating the average of the Member's highest three (3) years' base salary for a Member who retires within three (3) years from the date his or her employer has reentered the FPPA Defined Benefit System, the year in which the reentry occurred may be considered in calculating the average of the Member's highest three year's base salary if the Member earned at least 6 months of service credit in that year. In that event, FPPA will annualize the salary for the reentry year by comparing total pay periods for the year to total pay periods actually paid. If a Member has less than 6 months of earned salary for the reentry year, the Member's salary for the reentry year shall not be considered for purposes of calculating the average of the Member's highest three years' salary.

**302.03** A Member with five (5) years of combined service credit under the Statewide Defined Benefit Plan and the Statewide Hybrid Plan DB Component is considered vested for purposes of the defined benefit pension payable from each Plan. The highest annual salary for periods of service that are less than three (3) years shall be calculated using the average salary paid for the period calculated on an annualized basis in addition to the method utilized under 302.01 and 302.02. If a Member terminates service with the Employer, has earned at least six (6) months of service credit within three (3) calendar years, and becomes reemployed with an Employer under the Statewide Hybrid Plan, the Member will be 100% vested in the service credits earned under the Statewide Defined Benefit Plan.

### **303. General Matters**

**303.01.** The effective date of Normal, Vested or Early retirement shall be the day after the last date for which the employer deducted FPPA contributions from the Member's base salary. The effective date of Normal retirement for Members classified as having a Temporary Occupational Disability shall be the date upon which the Member would have met the age and service requirement if the Member had not been granted a disability; however, the retirement benefit will be calculated as of the first day of the month following the Member's eligibility for Normal retirement.

**303.02.** A Member's election to receive Normal, Vested, Deferred or Early retirement benefits is irrevocable if the first pension payment has been deposited or otherwise negotiated, or 60 days has elapsed from the date of the check's issuance.

**303.03.** The reduced retirement pension provided under any option shall be calculated according to the appropriate actuarial assumptions adopted by the Board which take into account the life expectancy of both the Member and his or her designated beneficiary; the reduced retirement pension, however, shall be calculated as the actuarial equivalent of the full retirement pension otherwise payable. If the Member designates a new beneficiary, the reduced benefit calculated under the payment option originally selected shall be recalculated using the life expectancy of both the Member and his or her newly designated beneficiary.



**303.031** If a Member applies for retirement, and subsequently fails to elect a payment option within ninety (90) days of the issuance of the description of benefits under each option, he or she shall be deemed to have elected a deferred payment under Rule 306.01. If a Member has applied for retirement, reached age 65, entered DROP, and has named an eligible beneficiary on the retirement application, but has failed to elect a payment option within 90 days of the issuance of a description of benefits, the Member shall be considered to have elected Option 1 as provided by §31-31-403(5)(a)(I), C.R.S. If the Member does not name an eligible beneficiary on the retirement application, the Member shall be considered to have elected the Normal payment option.

**303.04.** If a Member has elected Option 3 provided by § 31-31-403(5)(a)(III), C.R.S., as amended, or has, prior to October 1, 2002, elected Option 3 provided by § 31-31-803(8)(a)(III), C.R.S., as amended, a new beneficiary may be designated only in the event of a change in the retired Member's marital status, occurring prior to the death of the beneficiary originally designated by the retired Member.

**303.041** If a Member has elected either Option 4 or Option 5 provided by §31-31-403(a)(IV) or (V), as contained in the Plan Amendment, and if the Member's designated beneficiary predeceases the Member, the Member's pension benefit shall increase to the amount calculated as the normal payment option at the time of the Member's retirement, including benefit adjustments. The Member's pension benefit shall remain at the amount the Member would have been paid had the Member selected the Normal option. The Member is not permitted to name a new beneficiary for the purpose of recalculating Option 4 or Option 5. The Member may name a new beneficiary for the purpose of a refund of unused Member contributions.

**303.041.1** If the Member has elected either Option 1 or Option 4, and has designated a new non-spouse beneficiary, the number of years between the Member's age at retirement and age 70 is subtracted from the age difference between the Member and his or her non-spouse beneficiary, If this difference is 10 years or greater, the non-spouse beneficiary's benefit is reduced in accordance with the table in Treas. Reg. § 1.401(a)(9)-6, Q & A-2(c), as may be amended.

**303.042 Pursuant** to § 31-31-403(5)(c)(II) C.R.S., an unmarried member, who receives a single life annuity at the time benefits commence and whose marital status subsequently changes as a result of marriage or civil union, may elect one of the payment options under § 31-31-403(5)(a) C.R.S, as amended, within one hundred eighty days of the date of the marriage or civil union. If, after such selection of a different payment option, the member subsequently dies within one hundred eighty days following the marriage or civil union, the only survivor benefit payable to the member's spouse shall be the difference between the single life option amount payable to the member prior to marriage or remarriage and the amount of the reduced benefit that was actually paid to the deceased member after the marriage or civil union and prior to the member's death.

**303.05.** Benefits will be calculated at the time of retirement based on current contribution information in the FPPA records. FPPA will recalculate the benefit once final contributions are received from the employers and will make any necessary adjustments.

**303.06.** Any benefit recipient whose benefit distribution method requires multiple payments shall provide authorization to FPPA for the electronic transfer of pension payments to the benefit recipient's banking institution. FPPA will mail pension payment information to the benefit recipient only in the event of a change in the net benefit amount. Benefit recipients may choose to have FPPA mail the pension payment information for a monthly mailing fee or opt out of pension payment mailings. Prepaid debit accounts are not eligible for the receipt of electronic transfers. In lieu thereof, the benefit recipient may apply for a waiver for electronic transfer of pension payments, which is subject to approval by FPPA for good cause. Such authorization or application for waiver shall be executed, in writing, in the form prescribed by the association. Benefit recipients who fail to provide such authorization and who fail to show good cause for a waiver shall pay reasonable administrative charges for the additional costs to FPPA of issuing benefit checks, and such charges shall be deducted from the benefits paid. In the event a member makes a special request for issuance of a payment, FPPA may assess the costs related to

issuing the payment including but not limited to delivery and administrative costs. Compliance with such requests is subject to FPPA's ability to process and administer the requested payment.

Members who are receiving benefits from the Fire and Police Members' Self-Directed Investment Fund shall be subject to the requirements of the Recordkeeper of the fund with regard to issuance of benefits.

**303.07.** Retirement applications and distributions and refund of contributions under the Statewide Defined Benefit Plan shall be approved or denied after administrative review by the Executive Director or the CBO. Such an application shall otherwise meet all criteria required for approval of a retirement application. An appeal of the Executive Director's or the CBO's decision shall be processed pursuant to Rule 509. The Executive Director shall report each such determination at a regularly scheduled Board meeting.

#### **304. Stabilization Reserve Account**

**304.01.** Each year following receipt of the annual actuarial study of the Statewide Defined Benefit Plan, the FPPA Board of Directors will determine whether any portion of the contributions to the plan to be made in the succeeding year will be allocated to the stabilization reserve account. In making its determination, the Board will consider the following:

- (a) No allocation will be made if the total amount of contributions to the New Hire benefits account are insufficient to meet the benefit liabilities funded by the actuarial account;
- (b) If the total amount of contributions to the New Hire benefits account exceeds the amount required to meet the benefit liabilities funded by the actuarial account, the Board, in its sole discretion, may allocate all, a part, or none of such excess to the stabilization reserve account. Among the factors, the Board may consider reserving funds within the actuarial account to pay for future benefit adjustments.
- (c) If there is an increase in liabilities such that the total amount of contributions to the New Hire benefits account is not sufficient to meet the benefit liabilities funded by the actuarial account on an actuarially sound basis, then such additional amount as may be necessary to fund the increase in liabilities shall be transferred from the stabilization reserve account to the actuarial account.

**304.02.** Any amounts allocated to the stabilization reserve account shall be further allocated to each Member's Separate Retirement Account in accord with the provisions of § 31-31-405(4), C.R.S., as amended. At the time the FPPA Board of Directors determines that a portion of contributions will be allocated to the stabilization reserve account, it shall also establish a date for the allocation to begin. Contributions received by FPPA on or after such date shall be subject to the determined portion being allocated to the Member's Separate Retirement Account.

**304.03.** Earnings, losses, and reductions to a Member's Separate Retirement Account shall be made as follows:

- (a) Until a Member elects retirement and until a Member distributes or transfers the balance of his or her Separate Retirement Account, the unpaid balance of the Member's account shall be invested in the Fire and Police Members' Benefit Investment Fund.
- (b) Gross undistributed member separate retirement accounts are allocated net earnings on a monthly time-weighted basis pursuant to C.R.S. 31-31-405(5). Gross earnings are allocated based upon the gross total performance of the combined accounts of the Fire & Police Members' Benefit Investment Fund. If final performance is not available at the time of allocation, applicable public market proxies may be used. Gross allocated earnings are adjusted monthly to include the impact of FPPA's administrative expenses, including investment management fees. If final accounting of administrative expenses, including

investment management fees, is not available at the time of allocation historical expenses may be used to estimate the current month administrative and investment management expenses. Upon determination of final earnings performance or administrative expenses, cumulative earnings will be adjusted in the following month's calculation. Member distributions based on estimates are final and will not be recalculated for any adjustments in estimate the following month.

- (c) The calculation of the SRA net investment performance is determined by FPPA by accumulating the member account monthly time-weighted earnings. The member account monthly time-weighted earnings are recorded by multiplying the above calculated monthly Fire & Police Members' Benefit Investment Fund net performance percentage by the SRA net assets available for investment at the beginning of the month, the time-weighted current month contributions, and the time-weighted current month distributions. The monthly Fire & Police Members' Benefit Investment Fund net performance percentage is calculated by taking the Fund's net earnings for the month (Numerator) and dividing it by the time-weighted net assets in the Fund (Denominator). The Fire and Police Members' Benefit Investment Fund's net earnings used to calculate the net investment performance, whether positive or negative, shall be the gross return of all investments, including both realized and unrealized gains, plus interest, dividends, other income, or other distributions, less all investment management fees, commissions, investment and performance consultant fees, custodial fees and costs, and FPPA's administrative expenses. No separate administrative fees are charged to a SRA member's account, except as identified above for the SRA accounts earning the FPPA actuarial rate.
- (d) A retired Member may transfer the balance of his or her account to the Fire and Police Members Self-directed Investment Fund. Said election shall be irrevocable and may be made at any time after retirement or entry into DROP. If a Member requests a partial distribution from his or her account, the remaining undistributed balance in the Fire and Police Members' Benefit Investment Fund shall be transferred to the Fire and Police Members Self-directed Investment Fund. If an account balance remains in the Fire and Police Members' Benefit Investment Fund in the October before the Member, beneficiary, or alternate payee reaches age 70 ½, the Member's account shall be transferred without request to the Self-directed Investment Fund for administration under the minimum required distribution rules pursuant to the Internal Revenue Code.
- (e) FPPA has several members accruing earnings at the FPPA actuarial rate. This option is no longer available. Members that chose this fund are charged a quarterly fee to account for administrative expenses incurred in servicing their Separate Retirement Account.

**304.03.01** SRA accounts held in the Fire and Police Members Self-directed Investment Fund shall be managed in accordance with the following:

- (a) The balance of such Accounts shall be adjusted daily to reflect any distribution to the Member and all interest, dividends, account charges, and changes of market value resulting from the investment of the Member's Accounts
- (b) The costs of administrative services (including record keeping, legal, administrative, etc.) will be covered by forfeitures, penalties received, any revenue credits derived from the investments offered by the plan, settlement proceeds, and other sources of revenue received. When the expense of administrative services exceeds the plan revenue, the administrative expenses of the plan may be charged to plan participants on a periodic basis in the form of an asset-based fee, a flat hard dollar fee, or a combination thereof. The

FPPA Self-Directed Plans Committee will review the administrative expenses on an annual basis and determine the allocation of administrative costs of the plan, if any, to participants.

- (c) In addition to overall administrative expenses, there may be individual service fees associated with optional features offered under the plan. Individual service fees are charged separately to the accounts of individuals who choose to utilize a particular plan feature.

**304.04.** Upon termination of employment or entry into DROP and election of an Early, Normal, Deferred, Vested, or Disability retirement, a Member's interest in his or her Separate Retirement Account shall be non-forfeitable. Upon termination of employment for reasons other than Early, Normal, Deferred or Vested retirement, a Member shall forfeit the entire amount in his or her Separate Retirement Account to the actuarial account if he or she elects to receive a refund of his or her contributions pursuant to § 31-31-404(1), C.R.S., as amended. If the Member does not elect to receive a refund of contributions, then upon his or her employment with another employer covered by the Statewide Defined Benefit Plan, the Member shall once again be credited with the amount accumulated in his or her Separate Retirement Account.

**304.05.** A Vested retired Member, prior to the selection of a payment option with respect to amounts in his or her Separate Retirement Account, may elect a refund of his or her Member Contributions to the Statewide Defined Benefit Plan, thereby revoking the Member's right to Vested retirement benefits and forfeiting the entire amount in the Member's Separate Retirement Account to the actuarial account. Once a Vested retired Member has selected a payment option with respect to amounts in the Member's Separate Retirement Account, the Member may not elect a refund of his or her Member Contributions to the Statewide Defined Benefit Plan.

**304.051** Subject to any limitations in this Article, a Member may elect, at the time and in the manner prescribed by the Board or the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to the Member's Separate Retirement Account after it has been transferred to the Fire and Police Member's Self-Directed Investment Fund in a Direct Rollover. Rollovers from other permissible sources will be allowed to the extent permitted by law, subject to any conditions, proofs, or acceptance the Board or its designee deems appropriate.

**304.06.** A Member eligible for an Early, Normal, Deferred, Vested, or Disability retirement, may elect to commence distribution of the amount in the Member's Separate Retirement Account at any time after the Member terminates service and has received approval of his or her retirement application, but the distribution must begin no later than the required beginning date. If the Member fails to elect a payment option, FPPA shall distribute the balance in the Member's Separate Retirement Account to the Member in a lump sum at the required beginning date.

**304.061.** REPEALED (September 24, 2009).

**304.07.** If a Member elects to receive distribution of the Member's Separate Retirement Account funds in periodic installments, the unpaid balance in the Member's Separate Retirement Account shall be transferred to the Fire and Police Members' Self-Directed Investment Fund and will continue to accrue earnings as directed by the Member until fully distributed.

**304.08.** In the event that a retired Member returns to work for an employer within the FPPA Defined Benefit System, the Member's Separate Retirement Account shall be transferred to the Fire and Police Member's Self-Directed Investment Fund and the Member's Separate Retirement Account shall not be subject to reduction. A retired Member returning to work with the same employer or with a different employer may continue to be eligible to receive distributions from the Separate Retirement Account. Also see Rule 311 addressing other return to service issues.

**304.09.** A Member who is awarded a Permanent Occupational or Total Disability pension, or who becomes disabled during a military leave of absence and does not return to employment with a covered

employer, shall elect a payment option and commencement date for distribution of the Member's Separate Retirement Account. FPPA shall distribute the balance in the Member's Separate Retirement Account to the disability retiree in a lump sum distribution on the required beginning date if the disability retiree fails to elect a payment option and commencement date prior to such time. If the disability retiree dies prior to making an election or if a Member dies while on a military Leave of Absence, the remaining funds in the account shall be distributed to the disability retiree's surviving spouse, partner in a civil union, or dependent children or designated beneficiary in accordance with their selection of one of the payment options permitted by § 31-31-406(3) , C.R.S. If there is no surviving spouse, partner in a civil union, dependent child or designated beneficiary, the remaining funds shall be paid to the Member's estate.

**304.10. REPEALED (See Rule 310.09) September 24, 2009**

**304.11** Regardless of the form of distribution selected, distribution must be made in accordance with minimum distribution requirements under Internal Revenue Code Section 401(a)(9) and the regulations thereunder. The minimum distribution may be recalculated on the basis of the life expectancy of the Member and/or the beneficiary, if applicable.

**304.12** If any retired vested Member, beneficiary, or alternate payee has an aggregate account balance of \$1,000 or less, the Board may distribute the aggregate account balance to the Member, beneficiary or alternate payee without receiving any request for distribution.

**305. REPEALED August 21, 2008**

**306. Deferred Retirement**

**306.01** Any Member retiring and eligible for a Normal retirement benefit or a Vested retirement benefit under the Statewide Defined Benefit Plan may elect to defer receipt of such pension until as late as the time at which the Member attains the age of sixty-five (65) years. In the case of such an election, the monthly deferred retirement pension amount shall be the actuarial equivalent of the Normal retirement pension as of the pension payment start date. A member may revoke his or her election for deferral at any time prior to age 65 and prior to the first payment of benefits and shall receive a retroactive payment of benefits. If the Member has not completed a retirement form and elected a payment option prior to the Member's 65<sup>th</sup> birthday, the member is deemed to have elected the normal payment option.

**306.02 REPEALED August 21, 2008**

**307. Conversion to a Monthly Lifetime Benefit**

**307.01** A Member who is eligible for retirement may elect to convert all or part of his or her Separate Retirement Account balance within the Statewide Defined Benefit Plan, and/or his or her account balance within the DROP, to a monthly lifetime benefit, with the exception of any balance rolled into the account(s) from another qualified plan which is not part of the FPPA Defined Benefit System. Only a Member may convert these accounts or account balances into a monthly lifetime benefit.. Funds may not be transferred from outside the Statewide Defined Benefit Plan to purchase a monthly benefit.

**307.02** The funds converted to a monthly lifetime benefit are to be considered part of the Member's accumulated contributions for purposes of § 31-31-403(6), C.R.S.

**307.03** At retirement or separation of service, which ever comes later, a Member may make a one-time, irrevocable election to convert all or a portion of the SRA, DROP or MP component of the SWH Plan account to a monthly lifetime benefit. The conversion must be in one lump sum, which must be initiated by the Member prior to the receipt of monthly benefits under the Statewide Defined Benefit Plan. The Member shall designate the entire account balance or a flat dollar amount for conversion. Members who return to work after a retirement are not permitted to subsequently purchase a monthly lifetime benefit.

**307.04** Once the conversion is calculated, it will be considered to be a portion of the Member's monthly pension. It shall be reduced if the Member elects one of the survivor options under the plan.

**307.05** As part of the pension, the converted monthly benefit may be adjusted pursuant to § 31-31-407, C.R.S.

**307.06** Once the monthly benefit is converted, the Member may not convert back to a lump sum payout. An application to convert to a monthly lifetime benefit shall be filed by the Member with the Plan Administrator on the applicable form. The Member must provide any documentation that is required by the Board to complete the conversion.

**308. REPEALED (September 25, 2014)**

**309. SRA for Members in the Statewide Defined Benefit Plan at the Re-entry Rate**

**309.01.** Contributions to the Statewide Defined Benefit Plan for Members who are subject to the continuing rate of contribution established by the Board pursuant to § 31-31-1103(2), C.R.S., shall be allocated to the actuarial account and the stabilization reserve account pursuant to § 31-31-405, C.R.S., and the Separate Retirement Accounts pursuant to § 31-31-406, C.R.S. The Board shall take all actions necessary to make such allocations.

**309.02.** Allocations to the actuarial account and the stabilization reserve account made pursuant to Rule 309.01 shall be based on two components: the general benefit cost calculated by the actuary for the Statewide Defined Benefit Plan and the incremental cost of benefits for Members required to pay the continuing rate of contribution pursuant to § 31-31-1103(2), C.R.S. Members required to pay the additional incremental cost shall have allocations made to their Separate Retirement Account in an amount calculated in the same manner as to all other Members of the Statewide Defined Benefit Plan plus an amount calculated using the difference between the incremental cost set by the Board at four percent of base salary and the actual additional cost of benefits, but not more than 4%, for the Members of the group paying the contribution rate established pursuant to § 31-31-1103(2), C.R.S.

**309.03.** SRA funds granted under Rule 309 shall be available to the Board in the same manner as other SRA funds are available to the Board under Colorado law, but for the sole purpose of meeting funding requirements that are uniquely identifiable to the group of Members for whom contributions are made pursuant to § 31-31-1103(2), C.R.S. In all other respects, the laws, rules and policies governing the stabilization reserve account and the Separate Retirement Accounts shall apply to the Re-entry SRA Funds.

**310. Rules for the Distribution of Benefits Under the SWDB Plan for Certain Members Who Die Prior to Retirement**

**310.01. Active Member Who Dies With Less Than Five Years of Service**

- (a) If the Member is active and covered by the Statewide Death & Disability (SWD&D) Plan, the Member's spouse, partner in a civil union and/or dependent child are eligible for survivor benefits under the SWD&D Plan; or
- (b) If the Member is not covered by the SWD&D Plan, the Member's spouse, partner in a civil union and/or dependent child shall be paid the Members contributions plus 5% as interest; or
- (c) If there is no spouse, partner in a civil union or dependent child, then the Member's contributions plus 5% as interest shall be paid to the designated beneficiary; or

- (d) If there is no designated beneficiary, then the Member's contributions plus 5% as interest shall be paid to the Member's estate.

**310.02. Active Member Who Dies With Five or More Years of Service But Prior to Eligibility for Normal or Early Retirement**

- (a) If the Member is active and covered by the SWD&D Plan, the Member's spouse, partner in a civil union and/or dependent child are eligible for survivor benefits under the SWD&D Plan. Monthly pension benefits are forfeited if SWD&D benefits are received; or
- (b) If no survivor benefits are paid under the SWD&D Plan, the designated beneficiary shall be paid the greater of 1) a refund of the Member's contributions plus 5% as interest or 2) survivor benefits under Option 1 payable when the Member would have been eligible to receive a Vested benefit.
  - (i) In order to determine the greater benefit, the designated beneficiary shall receive an explanation of each benefit and shall designate which benefit he/she elects to receive. The designated beneficiary's election shall be conclusive as to which benefit is deemed greater.
  - (ii) If the designated beneficiary elects survivor benefits under Option 1 and is living when the Member would have been eligible to receive a Vested benefit, the designated beneficiary shall be paid the Option 1 benefit.
  - (iii) If the designated beneficiary elects survivor benefits under Option 1 and dies prior to receipt of benefits under Option 1, the Member's contributions plus 5% as interest are refunded to the designated beneficiary's estate.
  - (iv) If the total amount of pension benefits paid to the designated beneficiary is less than the amount of the Member's accumulated contributions at the time of death, the difference plus 5% as interest shall be paid to the designated beneficiary's estate.
- (c) If no survivor benefits are paid under the SWD&D Plan and if there is no designated beneficiary, the Member's spouse or partner in a civil union shall be deemed the designated beneficiary under paragraph (b). If the Member is not survived by a spouse or partner in a civil union, the Member's dependent child shall be deemed the designated beneficiary under paragraph (b).
- (d) If no survivor benefits are paid under the SWD&D Plan and if the Member contributions are not otherwise distributed under this Section 310.02, then the Member contributions plus 5% as interest shall be paid to the Member's estate.
- (e) This rule would apply to a Member on a military Leave of Absence who has combined years of service under the plan and periods of military Leave of Absence equal to the five years required for vesting even in the event service credit is not earned during the military Leave of Absence.

**310.03. Active or Inactive Member Who is Eligible for Normal or Early Retirement Benefits and Dies Before Meeting the Contingencies in § 31-31-403(5)(b)(I) and (II), C.R.S.**

- (a)(i) A Member is considered to have retired the day before the Member's death and to have elected Option 1 on behalf of his or her spouse or partner in a civil union, or, if no spouse or partner in a civil union, on behalf of his or her dependent child; or
- (ii) Alternatively, for a Member who is eligible for an Early Retirement and dies, the surviving spouse or partner in a civil union or, if no spouse or partner in a civil union, the

dependent child may elect to receive survivor benefits under the SWD&D Plan if the Member is covered under the SWD&D Plan in lieu of receiving a monthly pension benefit; or

- (b) If there is no spouse, partner in a civil union or dependent child, a Member is considered to have retired the day before the Member's death and to have elected Option 1 on behalf of his or her designated beneficiary; or
- (c) If there is no designated beneficiary, the Member's contributions plus 5% as interest shall be paid to the Member's estate.
- (d) If the survivor dies prior to receipt of benefits under Option 1, the Member's accumulated contributions at the time of death plus 5% as interest shall be paid to the Member's estate.
- (e) If the total amount of pension benefits paid to the survivor is less than the amount of the Member's accumulated contributions at the time of death, the difference plus 5% as interest shall be paid to the survivor's estate.

**310.04. Active or Inactive Member Who is Eligible for Normal or Early Retirement Benefits and Dies After Meeting the Contingencies Under § 31-31-403(5)(b)(I) and (II), C.R.S.**

- (a)(i) If the Member has elected a beneficiary and made an election under § 31-31-403(5)(a), C.R.S., then the beneficiary shall receive the survivor benefits pursuant to the election made by the Member.
- (ii) If the total amount of monthly pension benefits paid to the Member and to the surviving beneficiary is less than the amount of the Member's accumulated contributions at the time of the Member's death, the difference plus 5% as interest shall be paid to the survivor's estate.
- (b) If the Member has not elected a beneficiary and made an election under § 31-31-403(5)(a), C.R.S., if the Member has received the first pension payment for a single life benefit, and if the total amount of monthly pension benefits paid to the Member is less than the amount of the Member's accumulated contributions at the time of the Member's death, then the difference plus 5% as interest shall be paid to the Member's estate.

**310.05 Active Member Dies While Participating in the Deferred Retirement Option Plan**

- (a)(i) If the Member participates in DROP based on a Normal retirement, a designated beneficiary will be paid a benefit if a benefit option was elected under the SWDB Plan. The surviving spouse, partner in a civil union and/or dependent child of a Member participating in DROP based on Normal retirement may also qualify for a supplemental death benefit under the SWD&D Plan subject to offsets for the Separate Retirement Account (SRA) and the DROP account balances. The re-entry portion of the Separate Retirement Account balance for a Member in the Statewide Defined Benefit Plan at the Reentry Rate shall not be used to offset a supplemental death benefit under the SWD&D Plan.
- (ii) If the surviving spouse, partner in a civil union and/or dependent child are eligible for supplemental death benefits under the SWD&D Plan, and the designated beneficiary is someone other than the Member's spouse, partner in a civil union or dependent child, the designated beneficiary shall be paid the survivor pension benefits under the elected pension option. The surviving spouse, partner in a civil union or dependent child shall receive supplemental death benefits under the SWD&D Plan subject to any required reductions for the primary pension benefit and other required offsets, even in the event



that the recipient of the supplemental SWD&D death benefit is not the recipient of any or all of the other benefits; or

- (b) If the Member participates in DROP based on a Vested or Early retirement, a spouse, partner in a civil union or dependent child may elect to be paid survivor benefits under the SWD&D Plan, subject to offsets for the SRA and the DROP account balances. If a spouse, partner in a civil union and/or dependent child makes such an election, no further pension monthly benefits shall be paid under the SWDB or SWH Plan to the designated beneficiary under the option election; or
- (c) If the member participates in DROP based on a Vested or Early retirement, and no election is made for primary death benefits under the SWD&D Plan, a designated beneficiary under a beneficiary election shall be paid the survivor pension benefits under the elected pension option.
- (d) If there is no surviving spouse, partner in a civil union or dependent child and no designated beneficiary, then the Member's estate shall be paid the difference between the amount of the Member's contributions and the amount of benefit paid into the DROP account, if any.
- (e) Pay out of the DROP account upon the death of an active or inactive Member shall be made as follows:
  - (i) If the DROP account balance shall be paid to the Member's designated beneficiary who is the Member's spouse or partner in a civil union, then the balance shall be paid as follows:
    - (1) In lump sum distribution prior to December 31 of the year in which the Member would have attained the age of 70 ½; or
    - (2) In periodic payments beginning no later than December 31 of the year in which the Member would have attained the age of 70 ½.
  - (ii) If the DROP account balance shall be paid to the Member's designated beneficiary who is not the Member's spouse or partner in a civil union, then the balance shall be paid as follows:
    - (1) In a lump sum payment to be made no later than December 31 of the fifth anniversary of the Member's death; or
    - (2) In periodic payments which must commence no later than December 31 of the year following the year of the Member's death and over a period no longer than the designated beneficiary's expected lifetime.
  - (iii) If there is no designated beneficiary or if the designated beneficiary is unable to be located, the DROP account balance shall be paid to the Member's estate.

**310.06. Retired Member Who Has Elected a Deferred Retirement Dies Prior to Commencement of Benefits**

- (a) Survivor benefits shall be paid to the Member's designated beneficiary, payable beginning on the date on which the benefits were deferred by the Member, or an actuarial equivalent monthly amount calculated as of the payment start date shall be paid to the Member's designated beneficiary beginning on such other date as the survivor elects payment to begin.

- (b) The survivor benefits shall be calculated as if the Member had selected Option 1 as set forth in § 31-31-403(5)(a), C.R.S.
- (c) In the event that the Member's designated beneficiary dies prior to the date of deferment, the Member's contributions plus 5% as interest shall be paid to the designated beneficiary's estate.
- (d) In the event there is no designated beneficiary, the Member's contributions plus 5% as interest shall be paid to the Member's estate.

**310.07. Inactive Member Dies With Less Than Five Years of Service**

- (a) The Member's spouse or partner in a civil union or, if no spouse or partner in a civil union, the Member's dependent child shall be paid the Member's contributions plus 5% as interest; or
- (b) If there is no spouse, partner in a civil union or dependent child, then the Member's designated beneficiary shall be paid the Member's contributions plus 5% as interest; or
- (c) If there is no designated beneficiary, the Member's estate shall be paid the Member's contributions plus 5% as interest.

**310.08. Inactive Member Dies Prior to Commencement of Benefits Who is Eligible for a Vested Retirement, But Not Including a Member Eligible for a Normal Retirement or Early Retirement**

- (a) If there is a designated beneficiary listed on the retirement application, the designated beneficiary shall be paid the greater of 1) a refund of the Member's contributions plus 5% as interest or 2) survivor benefits under Option 1 payable when the Member would have been eligible to receive a Vested benefit.
- (b) If there is not a designated beneficiary listed on the retirement application, then the Member's spouse, partner in a civil union or, if no spouse or partner in a civil union, the Member's dependent child shall be paid the greater of 1) a refund of the Member's contributions plus 5% as interest or 2) survivor benefits under Option 1 payable when the Member would have been eligible to receive a Vested benefit.
- (c) If there is not a designated beneficiary listed on the retirement application and there is no spouse, partner in a civil union or dependent child, the most recently designated beneficiary shall be paid the greater of 1) a refund of the Member's contributions plus 5% as interest or 2) survivor benefits under Option 1 payable when the Member would have been eligible to receive a Vested benefit.
- (d)(i) In order to determine the greater benefit, the designated beneficiary shall receive an explanation of each benefit and shall designate which benefit he/she elects to receive. The designated beneficiary's election shall be conclusive as to which benefit is deemed greater.
- (ii) If the designated beneficiary elects survivor benefits under Option 1 and is living when the Member would have been eligible to receive a Vested benefit, the designated beneficiary shall be paid the Option 1 benefit.
- (iii) If the designated beneficiary elects survivor benefits under Option 1 and dies prior to receipt of benefits under Option 1, the Member's contributions plus 5% as interest shall be paid to the designated beneficiary's estate.

- (iv) If the total amount of pension benefits paid to the designated beneficiary is less than the amount of the Member's accumulated contributions at the time of death, the difference plus 5% as interest shall be paid to the designated beneficiary's estate.
- (e) If there is no spouse, partner in a civil union, dependent child or designated beneficiary, the Member's estate shall be paid a refund of the Member's contributions plus 5% as interest.

**310.09. Payout of SRA Balance to Member's Spouse, Partner in a Civil Union, Dependent Child, Designated Beneficiary or Member's Estate Upon Member's Death**

- (a) An active Member's Separate Retirement Account (SRA) balance shall be paid to the spouse or partner in a civil union, and/or dependent child regardless of whether the Member is vested. If the spouse or partner in a civil union, and one or more dependent children do not live in the same household, one-half of the benefit shall be paid to the spouse or partner in a civil union and the other one-half of the benefit shall be paid in equal parts to the dependent children.
- (b) If there is no spouse, partner in a civil union or dependent child and the Member is vested, the Member's SRA balance shall be paid to the Member's designated beneficiary; or
- (c) If there is no designated beneficiary and the Member is vested, the Member's SRA balance shall be paid to the Member's estate in a lump sum.
- (d) A surviving spouse, partner in a civil union, dependent child, or designated beneficiary may elect a payment option permitted by § 31-31-406(3), C.R.S.
- (e) If the surviving spouse, partner in a civil union or legal guardian for the dependent child of the deceased Member fails to elect a payment option and commencement date, FPPA shall distribute the balance in the Member's Separate Retirement Account to the surviving spouse, partner in a civil union or legal guardian of the dependent children in a lump sum payment on the required beginning date.

**310.10 Unclaimed Accounts or Interests.**

If the account or interest of any Member or beneficiary remains unclaimed after December 31 of the calendar year containing the fifth anniversary of the Member's death, any remaining account balance, distributions, or other interest of the Member shall revert to the Plan for the purpose of payment of benefits and expenses of the Plan.

**311. Rules for Retired FPPA Defined Benefit System Plan Members Returning to Active Service**

**311.01** A Member who has retired from service under a Normal Retirement within the FPPA Defined Benefit System, who returns to work for the same employer for which the Member worked immediately prior to retirement shall be treated as follows:

- (a) If the Member has received one or more pension payments, the Member shall enter the Statewide Money Purchase Plan upon the Member's reemployment. The Member's defined benefit payment shall be suspended during the reemployment period. No deferral of benefits shall accrue for benefit payments not received during the suspension. Adjustments may be made to recoup any over payments of benefits made during the reemployment period. Upon the Member's subsequent separation from service following reemployment, the Member's retirement benefit shall resume with any benefit adjustments

the Member would have received if the Member's retirement benefit had not been suspended due to reemployment.

- (b) If the Member had elected a Deferred Normal Retirement prior to reemployment, the Member's Deferred Retirement date shall become the date of the Member's reemployment. The Member shall enter the Statewide Money Purchase Plan upon the Member's reemployment. The Member's defined benefit shall be suspended during the reemployment period. No deferral of benefits shall accrue for benefit payments not received during the suspension. Upon the Member's subsequent separation from service following reemployment, the Member's retirement benefit shall commence with any benefit adjustments the Member would have received if the Member's retirement benefit had not been suspended due to reemployment.

**311.02** A Member who has retired from service under a Normal Retirement within the FPPA Defined Benefit System, who returns to work for a different employer than for which the Member worked immediately prior to retirement shall be treated as follows:

- (a) If the Member has received one or more pension payments, the Member shall continue to receive his or her retirement benefit. If the Member's new employer also participates in the FPPA Defined Benefit System the Member shall become active in the SWMP plan. Upon the Member's subsequent separation from service, the Member shall be entitled to any benefit accrued based upon the Member's participation in the SWMP Plan.
- (b) If the Member has not received a pension payment, the Member shall enter the Statewide Money Purchase Plan upon the Member's reemployment. The Member's defined benefit payment shall be suspended during the reemployment period. If the Member had elected a Deferred Normal Retirement prior to reemployment, the Member shall retain his or her original deferral option and Deferred Retirement date. Upon the Member's subsequent separation from service following reemployment, the Member shall be entitled to any benefit accrued based upon the Member's participation in the SWMP Plan.

**311.03.** A Member in the FPPA Defined Benefit System who has elected a retirement other than a Normal Retirement or who has a vested defined benefit and who subsequently returns to work for an employer participating in the FPPA Defined Benefit System shall be treated as follows:

- (a) The Member shall become active in the plan offered to new hires by the subsequent employer unless the Member has previously participated in DROP. Such a member returning to work for the same employer may be reenrolled in the same plan in which they participated previously, if such reenrollment is not otherwise prohibited under the plan's rules and unless the Member has previously participated in DROP. If the Member has received one or more pension payments under a defined benefit plan at the time he or she returns to work, defined benefit payments shall be suspended during the reemployment period and no deferral of benefits shall accrue. If the Member earns additional service credit in a plan in which he or she had previously earned service credit, upon the Member's subsequent separation from service, the Member's original retirement shall be cancelled and the Member's defined benefit shall be recalculated as of the payment start date using the Total Pay and Service Method of calculation to include any additional service credit earned, and the payments shall resume. No adjustment to future benefits shall be made for prior retirement payments except to recoup any over payment of benefits made during reemployment. If the Member has earned a defined benefit under more than one plan, the member shall receive a pension as provided for under the rules of each of the plans upon separation of service from the subsequent employer.

- (b) If the Member has previously participated in DROP with any employer, the Member shall participate in the SWMP plan upon return to work:
  - (i) If the Member who has previously participated in DROP returns to work for the same employer for which the Member worked immediately prior to his or her first retirement date, the defined benefit payments shall be suspended, and no deferral of benefits shall accrue. Adjustments may be made to recoup any over payments of benefits made during the reemployment period. Upon the Member's subsequent separation from service following reemployment, the Member's retirement benefit shall resume with any benefit adjustments the Member would have received if the Member's retirement benefit had not been suspended due to reemployment.
  - (ii) If the Member who has previously participated in DROP returns to work for a different employer than the employer for which the Member worked immediately prior to his or her first retirement date, the defined benefit payments shall continue during the period of reemployment. Upon the Member's subsequent separation from service, the Member shall be entitled to any benefit accrued based upon the Member's participation in the SWMP Plan.

**311.04** A Member who has retired from service under a Normal, Early or Vested Retirement within the FPPA Defined Benefit System, who has participated in DROP and who does not terminate service at the end of the DROP period and remains working for the same employer, shall have their DROP participation annulled. The DROP annulment will operate as follows:

- (a) The Member's retirement benefit will be determined as if the Member had never entered DROP.
- (b) The Member's accumulated DROP account balance, containing monthly benefits and Member contributions including any earnings, and including any balance in an alternate payee's account, is transferred from the Fire & Police Members' Self-Directed Investment Fund to the plan assets contained in the Fire & Police Members' Benefit Investment Fund.
  - 1. If the Member's accumulated DROP account balance at the time of transfer is less than the amount of monthly benefits transferred to the DROP account and Member contributions made during the DROP period (the DROP Account Contributions), the Member shall make additional contributions in the amount that is the difference between the DROP Account Contributions and the balance transferred.
  - 2. The Member shall repay to the plan any amount which has been distributed from the DROP account, including from an alternate payee's account originating from the DROP account.
  - 3. If full repayment of distributions or the required additional contributions are not made, the Member's monthly benefit upon retirement shall be completely offset until the repayment and contribution obligations are completed.
- (c) The Member's accumulated SRA account balance transferred to a third party recordkeeper including any earnings, and including any balance in an alternate payee's account, is transferred from the Fire & Police Members' Self-Directed Investment Fund to the plan assets contained in the Fire & Police Members' Benefit Investment Fund.
  - 1. In the event an in-service distribution of SRA or Re-entry SRA funds, including any balance paid to an alternate payee, is made during the DROP period, the Member shall repay to the plan any amount of SRA benefits which would have been subject to

reduction prior to the time the member terminated service pursuant to Section 31-31-405(6) CRS had the SRA not been distributed while the member was still active.

2. The Member's monthly benefit upon retirement shall be completely offset until the repayment obligation is completed.
  - (d) The Member receives service credit for the DROP participation period in lieu of any DROP benefit. The Member's pension benefit, and any payment to an alternate payee pursuant to a domestic relations order, will subsequently be recalculated at the time the Member terminates service and applies for retirement.
  - (e) The employer is required to make employer contributions for the DROP period, plus interest at the rate assessed for late contributions. FPPA will calculate projections for the required employer contributions in the event of DROP annulment upon request of the Employer.
  - (f) The Member does not have another opportunity to enter into the DROP plan.
  - (g) SRA allocations and Re-entry SRA allocations for contributions required during the DROP period, if any, shall be made upon receipt of the Employer's contributions at the rate of allocation in effect at the time the Employer's contributions are made.
  - (h) Monthly pension distributions made during the Member's employment, if any, shall be deducted from the Member's benefit distribution at retirement if not previously collected from the Member through a repayment agreement.

The employer must consent to the Member's continued employment after the DROP period.

**311.05** Distributions made during a Member's reemployment, if any, shall be deducted from the reinstated benefit distribution if not previously collected from the Member through a repayment agreement.

## **CHAPTER 4    DISABILITY RETIREMENT AND SURVIVOR BENEFITS**

### **401.    Leaves of Absence**

**401.01.** For purposes of establishing eligibility to apply for disability or survivor benefits, leaves of absence are categorized into two general types:

- (a) Absences during which the employee receives compensation in an amount equal to or less than his or her regular salary and which lasts for a period of up to one month; and
- (b) Absences during which the employee does not receive compensation for one month or more but less than two years but during which the employee has not been terminated from employment (defined herein as a "Leave of Absence").

**401.02.** Members shall be eligible for disability or survivor benefits as follows:

- (a) A Member will continue to be covered under the Statewide Death and Disability Plan for death or injuries occurring during a month in which the Member receives compensation in an amount equal to or less than his or her regular salary and which lasts for a period of up to one month and if the Member has not been terminated from employment.
- (b) A Member will continue to be covered under the Statewide Death and Disability Plan while on a Leave of Absence. A Member hired on or after January 1, 1997 on a Leave of

Absence will continue to be covered only if FPPA receives a regular payroll contribution at the established contribution rate multiplied by the Member's base salary immediately prior to the beginning of the Leave of Absence. Coverage under the Statewide Death and Disability Plan shall be suspended if the contribution is not received by FPPA.

**401.03.** An absence attributable to a work stoppage in which the employee has been unable to work, for example, because of picket lines or employer lockout, shall be considered an authorized and certified Leave of Absence. However, the absence shall cease to be termed an authorized and certified leave whenever the person fails to observe a valid order issued by a court of proper jurisdiction to return to work.

**401.04.** A Member on military leave is entitled to the same Death and Disability benefits that a person on a Leave of Absence is entitled to receive. If monthly contributions are required to maintain coverage under Rule 401.02, contributions for Members receiving differential pay from their employer must be based on the Member's base salary prior to the beginning of the authorized leave and not on the amount of the differential pay. Members on military leave for service that is covered by USERRA may qualify for a Leave of Absence of up to five years. Any benefits payable under the Statewide Death and Disability Plan shall be offset by any Death or Disability benefits received from the military.

## **402. Marital Status, Civil Union Status and Dependent Children**

**402.01.** For purposes of calculating Disability benefits or eligibility for survivor benefits, the terms "spouse" and "surviving spouse" may include a spouse by common law marriage, if the Member or such spouse can prove the existence of a common law marriage. Evidence may include, but shall not be limited to, evidence of cohabitation, joint credit, joint checking and/or savings accounts, joint purchase of a house, joint tax returns, and/or evidence that the spouse or Member represented that they were married. In addition, a party to a valid civil union established under Colorado law or the laws of another state or foreign country is considered to be a spouse for purposes of calculating Disability benefits or eligibility for survivor benefits under Colorado law. Distributions, taxation and other matters regulated by federal law will be treated as allowed by federal law.

**402.02.** An initial determination as to whether an individual qualifies as a spouse by common law marriage for disability and survivor benefits, as set forth in Rule 402.01, shall be made by the DDRRC. An appeal of the initial determination may be made by requesting an evidentiary hearing before a hearing officer pursuant to Rule 508 within 30 days of issuance of the initial determination.

**402.03.** For purposes of calculating disability benefits or eligibility for survivor benefits, the term dependent child as defined in § 31-31-801(2), C.R.S., as amended, and Rule 101.09 of these Rules, includes a Member's birth child, adopted child, and stepchild living in the Member's household. It also may include a Member's birth child or adopted child living in another household or any other child living in the Member's household if:

- (a) The Member has, or prior to death had, the right to claim the birth child or adopted child living in another household, or any other child living in the Member's household, as dependents for federal income tax purposes, and did make that claim; or the Member or applicant for survivor benefits can otherwise establish that the Member is, or prior to death was, supporting such child to the same extent as that which would normally permit the Member to claim such child as a dependent for federal income tax purposes; or the Member is, or prior to death was, required to make payments for the support of the child pursuant to Court Order; and
- (b) The child otherwise meets the definition of dependent child as set forth in § 31-31-801(2), C.R.S., as amended, and Rule 101.09 of these Rules.

**402.04.** A Member or applicant for survivor benefits wishing to claim the Member's stepchild, stepchildren, birth children or adopted children living in another household as dependent children shall list the names of such children on the application for disability or survivor benefits. The Member or applicant for survivor benefits also shall give the percentage of support provided by the Member to such children. Failing to list a dependent child shall not prevent an otherwise eligible child from being eligible. A guardian or custodial parent may file a waiver of benefit or other document disclaiming a benefit for which a dependent child is eligible.

**402.05.** To determine eligibility for dependent status of a stepchild, stepchildren, birth children or adopted children living in another household, FPPA may require the Member or applicant for survivor benefits to submit to FPPA, or sign IRS Form 4506 allowing the FPPA to obtain, a copy of the Member's most recent Federal Income Tax Return.

**402.06.** An initial determination of eligibility for dependent status of a stepchild, stepchildren, birth children or adopted children living in another household, shall be made by the DDRRC. An appeal of the initial determination may be made by requesting an evidentiary hearing before a hearing officer pursuant to Rule 508 within 30 days of issuance of the initial determination.

**402.07.** Mental or physical incapacity of any dependent child shall be initially determined at the time of the award of disability or survivor benefits. Subsequent review and consideration of the continuing status of the child initially found to be incapacitated may be required as a condition of approval.

**402.08.** Members found to be Occupationally disabled prior to October 1, 2002 and receiving a spousal benefit who become divorced may continue to receive the spousal benefit in an amount equal to the amount of maintenance legally required to be paid by the Member to the former spouse, but not more than ten percent of the annual base salary, as provided under § 31-31-803(2)(a), C.R.S. For purposes of this determination, staff will also consider the amount paid to the former spouse per domestic relations order or other court order.

**402.09. REPEALED (September 24, 2009)**

**402.10 Regarding Option 3 Disability Survivors' Benefits under §31-31-803(1)(b)(III) C.R.S.:**

(a) If the spouse or partner in a civil union and one or more dependent children do not live in the same household, one-half of the benefit shall be paid to the spouse or partner in a civil union and the other one-half of the benefit shall be paid in equal parts to the dependent children.

(b) Upon the termination of the benefit payable to the child or children pursuant to paragraph (a) or (b) of this rule, the surviving spouse or partner in a civil union shall receive the entire benefit.

**403. Reduction of Disability and Survivor Benefits**

**403.01. REPEALED (September 24, 2009)**

**403.02. REPEALED (September 24, 2009)**

**403.03. REPEALED (September 24, 2009)**

**403.035 REPEALED (September 30, 2010)**

**403.04.** Spousal and dependent child benefits for Occupational disabilities granted prior to October 1, 2002, shall be reduced by the amount of benefit allocated to the spouse or dependent child at the time of the initial award of benefit, plus any pro-rated cost of living adjustment, upon the loss of eligibility of the spouse or dependent child. The member's portion of the benefit is not subject to recalculation using current actuarial tables.



**403.05** REPEALED (See Rule 405.08)

**403.06** REPEALED (See Rule 410.01)

**403.07** REPEALED (See Rule 403.09)

**403.08.** In the event where a Member is participating in a Deferred Retirement Option Plan under a Vested or Early retirement and where a Member's survivor is granted survivor benefits under the Statewide Death and Disability Plan and is eligible for a distribution of the Member's Deferred Retirement Option Plan account under any Statewide or Local Plan, the monthly survivor's benefit payable by the Statewide Death and Disability Plan shall be offset by the actuarial equivalent monthly amount of the Deferred Retirement Option Plan account.

**403.09** A permanent occupational disability benefit, a total disability benefit, or survivor's benefit granted under the Statewide Death and Disability Plan to a member or survivor of an active member who was covered under a pension plan in either part-time or full-time employment and that contained a money purchase account, separate retirement account of (but not that portion of the balance established for a reentry member under Rule 309), an alternative plan elected by a chief (which may include a 457 plan), and/or a DROP account (in this rule, collectively called a money purchase balance), social security as in the case of Supplemental Social Security Retirement Plan employers, or which is or was the Member's primary pension, shall be subject to offset pursuant to this Rule 403. A money purchase account which accrued during part-time employment prior to full-time employment or full-time employment prior to part-time employment with the same employer without a break in service and participation in the Statewide Defined Benefit Plan, shall also be subject to offset pursuant to this Rule 403.

**403.10** The calculation of the money purchase balance offset to a death or disability benefit shall be made pursuant to a calculator provided by FPPA's actuary using the following factors:

- (a) The member's life expectancy and the beneficiary's life expectancy if an optional benefit payment is selected;
- (b) The actuarial assumed rate of return used by FPPA on plans within the FPPA Defined Benefit System;
- (c) An additional margin for anticipated future benefit adjustments and/or adverse experience in order to protect the plan;
- (d) The vested amount of funds within the money purchase balance plus the actuarial equivalent value of any amount previously withdrawn from the plan;

**403.11** The first three factors are combined to calculate an annuity factor which is divided into the money purchase balance. This determines the amount of monthly payment a member could afford to pay him/herself from the money purchase account on a monthly basis over the expected life time. This amount is then subtracted from the monthly death or disability benefit. The resulting amount shall be paid to the member or survivor.

**403.12** The actuarially equivalent value of an amount previously withdrawn from the plan, as required to be added to the money purchase balance in Rule 403.10(d), shall be determined by using a calculator provided by FPPA's actuary using the following factors:

- (a) The amount withdrawn;
- (b) The length of the time period between the date of withdrawal and the date of death or disability;
- (c) The average gross actual rate of return for the Fire and Police Members' Benefit Investment Fund for the years included in the time period, less one percent.

**403.13** Rounding to whole months may be used in creating calculations under this Rule.

#### **404. General Rules Governing the Processing of Disability Retirement Applications**

**404.01.** FPPA will determine only those applications for Total or Occupational Disability benefits, where the Member became disabled on or after January 1, 1980. The Board presumes that all disability applications filed on and after January 1, 1980, concern disabilities occurring on and after January 1, 1980, until such time as this presumption is rebutted by substantial evidence. If the presumption is rebutted, then the Board shall refer the case to the appropriate local pension authority for determination in accordance with the applicable provisions of § 31-30.5-701 *et seq.*, C.R.S., as amended.

**404.02.** A Member is disabled when, as a reasonable person, he should recognize the nature, seriousness and probable compensable character of his or her injury.

**404.03.** An Applicant for Disability retirement is encouraged to file the application prior to termination of employment.

**404.04.** FPPA will accept applications within 180 days from the date certified by the employer to be the Applicant's last day on the payroll, provided that:

- (a) Said employee has not received a refund;
- (b) Said employee is not eligible for an age and service retirement or Normal retirement, as provided in § 31-31-803(1)(a)(I)(A) and (B), C.R.S.;
- (c) Said employee can demonstrate that the disability existed on the date of termination of Membership;
- (d) The Member has not elected to take a Deferred, Vested, or Early retirement, unless participating in DROP under Early or Vested retirement, in which case FPPA will accept applications within 180 days from the date the Member exits DROP regardless if post-DROP retirement payments have begun. The amount of any pension benefits received by the Member after exiting DROP shall be refunded to the pension plan from the Member's disability benefit distributions. All other disability offsets will be calculated based on the value of the account on the date of separation from service.

**404.05.** REPEALED August 21, 2008

**404.06.** As a supplement to a Member's application for Disability benefits, the Employer of such a Member shall indicate the reason for the Member's separation from employment. The Employer shall state any additional basis for disability, which the Employer believes exists and shall include any documentation of relevant medical evidence. The Employer shall, if requested, or may if not specifically requested, submit available records, reports and other information, which might be helpful in the determination of a Member's disability.

**404.07.** Records, reports and other information submitted under Rule 404.06 shall be retained by FPPA, placed in the appropriate file covering the Applicant for retirement, and treated as confidential, although the affected Member shall receive a copy and shall have the right to inspect said information.

**404.08.** An Application for Disability must be completed within 90 days from the date FPPA first receives any part of the application packet required by FPPA. If not completed within 90 days, FPPA will treat the application as having been withdrawn. Once withdrawn, a Member must file a completely new application packet in order to apply for Disability benefits.

**404.09.** Once a complete application for disability benefits has been received by FPPA, the DDRC shall, in consultation with its Medical Advisor, appoint a panel of three physicians to examine the Applicant unless the Applicant requests that a preliminary determination of jurisdiction be made. In the event such a request is made, the DDRC shall determine if the application reveals on its face whether

FPPA has jurisdiction to grant an award of Disability benefits, pursuant to the limitations set forth in Rule 404.01, and shall proceed as follows:

- (a) If FPPA determines that it has jurisdiction it shall, in consultation with its Medical Advisor, appoint a panel of three physicians to examine the Applicant.
- (b) If the FPPA is unable to determine that it has jurisdiction, it shall proceed in accordance with Subsection (a) of this Section.
- (c) If the FPPA determines it does not have jurisdiction, it shall notify the Applicant and the Local Pension Authority of its decision by mail. It shall further inform both the Applicant and the Local Pension Authority that either may file a request for redetermination of the jurisdictional question within 30 days of the mailing of the Notice of Determination of lack of jurisdiction. If either party files such request, then the matter shall proceed as provided in Rule 502.

**404.10.** A Member applying for disability benefits may refuse to undergo an invasive test during examination by the panel of three physicians. If, however, the panel of physicians cannot determine that a disability exists without performing the invasive test, then the Disability benefits cannot be awarded.

**404.11.** Once the examination required under Rule 404.09 (a) has been completed, the panel of three physicians shall submit its findings and conclusions to the Medical Advisor for review. On the basis of the reports of the three physicians, the Medical Advisor may make a recommendation regarding future reexaminations and treatment plans in the event the Member is granted Disability benefits.

**404.12.** The Applicant and his or her Attorney shall have full access to any medical information and reports in the possession of FPPA for the purposes of inspection and copying after DDRC review of the file.

**404.13.** Prior to the release of medical information and reports to the Attorney for the Applicant, the Applicant or his or her Attorney shall file a written release signed by the Applicant, and verified by a Notary Public or other officer entitled to administer oaths, authorizing FPPA to provide such medical information to the Attorney.

**404.14.** A Member who has been granted a Disability retirement will begin to accrue Disability benefits on the day following the Member's actual last day on the payroll or on the day that FPPA accepts the Member's disability application as complete for a Member on an authorized Leave of Absence. Last day on the payroll for purposes of this Rule shall include any form of accrued leave time if the Member remains on the Employer's payroll while exhausting such leave. Lump sum payments by the Employer for accrued leave will not be considered in calculating a Member's last day on the payroll if the Member's employment has been terminated. If a Member receives short-term disability benefits from the Employer, pending a determination regarding the Disability retirement application, Disability benefits under the State Plan will accrue from the date the Member's short-term Disability benefits are discontinued.

**404.141.** If a Disability retirement is granted and the Employer lists that the last day of payroll is pending an FPPA decision, the FPPA will notify the Member and the Employer of the effective date of the award, which will be the first day of the month following the decision or such other date as the Employer designates.

**404.15** The disability benefit will be calculated based on the Member's base salary immediately prior to the date of disability, pursuant to § 31-31-803 (1)(a)(II), (2)(b), (2.1)(b), and (2.2)(b), C.R.S. If due to the health condition, a Member has continued to be employed in a position of accommodation or light-duty at a lesser base salary, the disability benefits shall be calculated based on the base salary just prior to the Member beginning the accommodating position.

**404.16.** A Member who has been granted a Disability retirement must elect a payment option, as provided by § 31-31-803, C.R.S, within 90 days after the date of the FPPA decision letter granting the Disability retirement. Any Member who does not elect a payment option within 90 days after the date of the FPPA decision letter will have his or her payment option defaulted to the normal payment option, unless good cause is shown. If the Member has elected either Option 1 or Option 2 pursuant to §31-31-803(1)(b)(I) or (II) and designates a new beneficiary, the reduced benefit calculated under the payment option originally selected shall be recalculated using the life expectancy of both the Member and his or her newly designated beneficiary and the actuarial equivalent of the remainder of the original pension for which the member would otherwise have been eligible if the member had not designated a new beneficiary.

**404.17.** In the event of a disability application by a member with two employers, a Member is required to seek a disability determination with regard to each job. A Member may be found to be disabled for one but not both jobs. A Member may have a pre-existing condition that prevents a disability benefit for one job but not the other job. If a Member is determined disabled with regard to both jobs, a single disability benefit is awarded based on the combined salaries of the two jobs, unless there is a disqualification due to a pre-existing condition.

**404.18** Pursuant to § 31-31-803(5)(b)(I), C.R.S., an unmarried Member, who receives a single life annuity at the time benefits commence and whose marital status subsequently changes as a result of marriage or civil union, may elect one of the payment options pursuant § 31-31-803(5)(a) C.R.S., as amended, within one hundred eighty days of the date of the marriage or civil union. If, after such selection of a different payment option, the Member subsequently dies within one hundred eighty days following the marriage or civil union, the only survivor benefit payable to the Member's spouse shall be the difference between the single life option amount payable to the Member prior to marriage or remarriage and the amount of the reduced benefit that was actually paid to the deceased member after the marriage or civil union and prior to the Member's death.

#### **405. General Rules Governing Survivor Benefit Matters**

**405.01. REPEALED August 21, 2008**

**405.011. REPEALED August 21, 2008**

**405.02. REPEALED August 21, 2008**

**405.03.** If, preceding death, a Member was on extended sick leave drawing only a portion of the Member's normal base salary, the Member's normal salary, and not the Member's sick leave pay, shall be used to calculate survivor benefits as set forth in § 31-31-807, C.R.S., as amended. The survivor benefit will be calculated based on the Member's base salary immediately prior to the date of death. If due to a health condition, a Member was employed in a position of accommodation or light-duty at a lesser base salary at the time of death, the survivor benefits shall be calculated based on the base salary just prior to the Member beginning the accommodating position.

**405.04 REPEALED (See Rule 410.01)**

**405.05.** FPPA will not consider applications for survivor benefits if the Member was otherwise eligible for a retirement pension pursuant to § 31-31-807(1)(a)(I) and (II), C.R.S.

**405.06. REPEALED August 21, 2008**

**405.07.** In the event that a Member dies and the Member's survivor becomes eligible for supplemental Death benefits pursuant to § 31-31-807.5(1.5), C.R.S., the monthly retirement benefit, as used in the statute, shall include, but not be limited to, the monthly defined benefit, an amount that is the actuarial equivalent monthly amount of a Deferred Retirement Option Plan account, if any, the actuarial equivalent

monthly amount of a Separate Retirement Account, if any, and the actuarial equivalent monthly amount of a Member's local or Statewide Money Purchase Plan account, if any.

**405.08.** When a surviving spouse, partner in a civil union or dependent child becomes ineligible to receive survivor benefits, the amount of survivor benefits to which a remaining surviving spouse, partner in a civil union or remaining dependent children are entitled will be re-determined according to the current tables used for calculations under §§ 31-31-807 and 31-31-807.5, C.R.S., as amended.

#### **406. Administrative Review**

**406.01.** The Board hereby establishes the Death and Disability Review Committee, which shall include the CBO and two additional voting members appointed by the CBO. The Medical Advisor and the General Counsel (GC) or the GC's designee shall act as advisors to the Committee. The Committee shall be referred to as the DDRC in these rules. The DDRC may take the following actions after administrative review:

- (a) Approval or denial of initial disability applications;
- (b) Approval of and modification of treatment plans and reexamination schedules for Members awarded Temporary Occupational Disability;
- (c) Determinations pursuant to Rule 503.05 and 504.03 regarding whether the disabling injury or illness or the death arose out of and in the course of the Member's employment;
- (d) Find compliance or non-compliance with a treatment plan upon review;
- (e) Approval or denial of continuing disability benefits;
- (f) Authority to order a reexamination;
- (g) Determination that no more reexaminations are required after a review of intervening medical records and a recommendation by the Medical Advisor.
- (h) Approval or denial of applications for survivor benefits.
- (i) Initial determinations regarding jurisdiction of the Board to hear Death and Disability applications.
- (j) Such other authority the Board may grant it by Rule or by specific grant.

**406.02.** Actions taken by the DDRC are subject to the following requirements:

- (a) Actions and determinations shall otherwise meet all criteria established under State law or by FPPA rule in order to receive approval.
- (b) An appeal of the DDRC's determination shall be processed pursuant to Rules 508 or 509. The appeal shall be made in writing, shall state the basis for the appeal, and shall be filed within 30 days of the date of issuance of the DDRC's determination;
- (c) The DDRC shall report each determination at a regularly scheduled meeting of the Board.
- (d) Determinations shall become effective upon issuance of the written determination unless an alternate date is indicated in the notice of determination.

#### **407. Election of Alternate Benefits**

**407.01.** A Member who is found to have a Permanent Occupational Disability and who is within five years of reaching the age and service requirements under a Defined Benefit Plan or the requirements under a Defined Contribution Plan for a Normal retirement may elect to be classified as having a Temporary Occupational Disability. Said election shall be irrevocable and shall be made prior to the election of a disability payment option.

**407.02.** A Member retired for Disability may elect to terminate his or her Disability benefits and shall receive his or her Vested retirement pension under the applicable plan, payable at Normal retirement age. A Member who is restored to active service after a Temporary Occupational Disability ceases to exist will receive service credit for the period during which the Member received Temporary Occupational Disability Benefits. The Statewide Death and Disability Plan shall transfer to the Member's Normal retirement plan the amount of Member and employer contributions, up to sixteen percent of the monthly base salary that the Member was being paid at the time of Disability retirement, multiplied by the number of months the Member received Temporary Occupational Disability benefits. As an employer contribution from an employer's trust, in the event that sixteen percent of the Member's monthly base salary transferred to the Statewide Money Purchase Plan, the Money Purchase Component of the Statewide Hybrid Plan, or a local money purchase plan would cause total annual contributions for the Member to exceed limitations for contributions to defined contribution plans under IRC §415(c), the amount of the contributions exceeding the limitations under IRC §415(c) shall be distributed to the Member. Any amount in excess of sixteen percent which would normally have been contributed to the Member's Normal retirement plan had the Member not been Temporarily Occupationally disabled shall be contributed by the Employer. A Member who is not restored to active service after a period of Temporary Disability but instead elects a vested retirement from the Statewide Money Purchase Plan, the Money Purchase Component of the Statewide Hybrid Plan, or a local money purchase plan, shall receive a distribution of the amount of Member and employer contributions of up to sixteen percent of the base salary that the Member was being paid at the time of the Disability retirement multiplied by the number of months the Member received Temporary Occupational Disability benefits.

#### **408. Payment of Premiums After Reaching Age and Service or Entry into DROP**

**408.01.** A Member having reached eligibility for Normal retirement under a Defined Benefit Plan or age 55 or older with 25 years of service under a Money Purchase Plan, or an alternative plan elected by a chief shall not be eligible to receive Death and Disability benefits except to the extent provided for supplemental death benefits for survivors due to an on-duty death, pursuant to § 31-31-807.5(1.5), C.R.S.

**408.02.** Statewide Death and Disability Plan contributions for a Member required to be made pursuant to § 31-31-811(4), C.R.S., shall not be required once the Member becomes ineligible for benefits under rule 408.01.

**408.03.** For a Member participating in a Deferred Retirement Option Plan under a Vested or Early retirement, the Member shall continue to be covered under the Statewide Death and Disability Plan. Contributions for the cost of the coverage shall continue to be made to the Statewide Death and Disability Plan during participation in Deferred Retirement Option Plan for the Member unless the Member was employed prior to January 1, 1997.

**408.04.** Contributions are required on all employment that qualifies for participation in the SWD&D plan, including situations where a member works for two employers concurrently. However, if a member becomes ineligible for coverage based on employment with one employer, the member is ineligible for coverage under the other employer.

#### **409. REPEALED (Sept. 24, 2009)**

#### **410. Eligibility Verification, Benefit Suspension and Discontinuation**

**410.01** Members or beneficiaries receiving death or disability benefits shall complete the forms necessary to verify eligibility for continuing benefits as requested from time to time. In order to remain eligible for disability or survivor benefits, a Member or the Member's survivors must comply with the applicable Rules and FPPA staff procedures. Failure to comply may result in the discontinuance of disability or survivor benefits, as provided in this Rule 410.

**410.02** Benefits shall be suspended after the FPPA has sent three notices First Class U.S. Mail, or by electronic delivery with the Member's or beneficiary's consent, to the Member's or the beneficiary's last known post office or electronic address requesting that required eligibility verification forms be completed and filed or requesting a copy of the Member's most recent Federal Income Tax Return. Benefits may be reinstated when the Member or beneficiary has complied with the requirement of filing the required information. Benefit payments accruing after the third notice and prior to reinstatement of benefits upon compliance shall not be paid upon compliance. Payment of benefit distributions to insurance providers or to other parties on behalf of suspended Members or beneficiaries shall also be suspended until the Member or beneficiary complies with the requirement. It shall be the Member's responsibility to reinstate insurance in the event that it is suspended due to non-payment and FPPA shall have no liability for the consequences of the suspension of insurance payments.

**410.03** After the suspension of benefits due to failure to comply, the CBO shall issue a notice demanding compliance. If the Member fails to comply after such notice and after a two-year period of non-compliance from the original deadline for receipt of the required information, the DDRC shall consider terminating the Member's benefits.

**410.04** A Member may appeal a determination made under this Rule pursuant to Rule 509.

**411. Transfer or Distribution of Missed Pension Contributions from the Statewide Death and Disability Plan upon Cessation of Temporary Occupational Disability.**

**411.01.** When a Member is restored to active service after a period of temporary occupational disability:

- (a) If the Member's normal retirement plan is the Statewide Defined Benefit Plan, the Statewide Hybrid Plan, or the Colorado Springs New Hire Pension Plan (Police or Fire Components), the Statewide Death and Disability Plan shall transfer as an employer contribution from an employer's trust the amount of sixteen percent of the monthly base salary that the Member was being paid at the time of the Member's disablement multiplied by the number of months the Member received Temporary Occupational Disability benefits. No distribution of contributions shall be made to the Member. Any service credit that the Member lost during the period of temporary occupational disability shall be restored under the Member's normal retirement plan.
- (b) If the Member's normal retirement plan is the Statewide Money Purchase Plan, the Money Purchase Only Component of the Statewide Hybrid Plan, or a local money purchase plan, the Statewide Death and Disability Plan shall transfer the amount of sixteen percent of the monthly base salary that the Member was being paid at the time of the Member's disablement multiplied by the number of months the Member received Temporary Occupational Disability benefits. If the transfer of contributions would cause total annual contributions for the Member to exceed limitations for contributions to defined contribution plans under IRC §415(c), the amount of the contributions exceeding the limitations under IRC §415(c) shall be distributed to the Member. Any amount in excess of sixteen percent which would have been contributed to the Member's Normal retirement plan had the Member not been temporarily occupationally disabled shall be contributed by the Employer.

**411.02.** When a Member is not restored to active service after a period of temporary occupational disability:

- (a) If the Member's normal retirement plan is the Statewide Defined Benefit Plan, the Statewide Hybrid Plan, or the Colorado Springs New Hire Pension Plan (Police or Fire Components), and if the Member would have attained the required age and service for a normal retirement under the Member's retirement plan, during the Member's period of disability, the Statewide Death and Disability Plan shall transfer as an employer contribution from an employer's trust the amount of sixteen percent of the base salary that the Member was being paid at the time of the Member's disablement multiplied by the number of months the Member received Temporary Occupational Disability benefits. No distribution of contributions shall be made to the Member. Any service credit that the Member lost during the period of temporary occupational disability shall be restored to the Member's normal retirement plan.
- (b) If the Member's normal retirement plan is the Statewide Money Purchase Plan, the Money Purchase Component of the Statewide Hybrid Plan, or a local money purchase plan, and if the Member would have attained the age of 55 with 25 years of service during the Member's period of disability, the Statewide Death and Disability Plan shall distribute to the Member the amount of sixteen percent of the monthly base salary that the Member was being paid at the time of the Member's disablement multiplied by the number of months the Member received Temporary Occupational Disability benefits. Any amount in excess of sixteen percent which would have been contributed to the Member's normal retirement plan had the Member not been temporarily occupationally disabled shall be distributed to the Member by the Employer.

## **CHAPTER 5 PROCEEDINGS AND HEARINGS**

### **501. Procedures for Hearings**

**501.01.** The following provisions shall apply to all hearings before the Hearing Officer except as otherwise specifically provided:

- (a) The Applicant, Employer and Local Pension Authority, as applicable, may be represented by an Attorney at his or her or its own expense;
- (b) The Hearing Officer shall rule on all questions of law that arise during the hearing. The General Counsel, or his designee (the GC), may advise the Hearing Officer on legal matters;
- (c) The Medical Advisor shall advise the Hearing Officer on medical matters, and shall not be considered a witness, but a confidential advisor;
- (d) All witnesses shall be placed under oath or affirmation by the Hearing Officer, as follows: "Do you swear (affirm), under the penalty of perjury, that the testimony you are about to give will be the truth?"
- (e) All witnesses, at the time of their testimony, may be questioned by the Hearing Officer, the General Counsel (GC), the Medical Advisor, the FPPA staff, or by any party to the proceeding;
- (f) The Colorado Rules of Evidence shall be followed to the extent practicable;
- (g) At the conclusion of the evidence, any party may make an oral argument. If desired by the Hearing Officer, a period of time, not to exceed 30 days, may be allowed for filing of written arguments. If more than one party is to file a written argument, their filing deadline dates shall be the same;



- (h) After the presentation of evidence is concluded, the Hearing Officer may, before issuance of his or her recommendation, order the submission of evidence reopened, with such limitations and instructions as the Hearing Officer desires;
- (i) All hearings shall be recorded and such recordings shall be made available to the Member or his or her attorney upon prior request. FPPA will not prepare or arrange for transcription of any recording unless necessary pursuant to judicial review of a final action. To the fullest extent allowed under Colorado law, any exhibits or documents introduced during a hearing or relied upon by the Hearing Officer in making his or her recommendation shall not be available for inspection and copying except to the Applicant or the Applicant's Attorney as provided by Rules 404.12 and 404.13.
- (j) All references to "days" shall be measured in calendar days unless stated otherwise. Any deadline falling on a day on which the FPPA's offices are not open for business shall be extended to the next business day.
- (k) Evidentiary hearings before a Hearing Officer shall be a new consideration of the entire application, including both questions of fact and issues of law, without deference to the previous determination.

## **502. Jurisdictional Hearings**

**502.01.** In the event that the DDRC has declined jurisdiction under Rule 404.09 (c), and either the Applicant or the Local Pension Authority has filed a written request for redetermination of the jurisdictional question, then such hearing shall be held before a Hearing Officer within 120 days from the receipt of the request. A Member, for good cause, may have the date of his or her evidentiary hearing continued but in no event will the Hearing Officer permit a continuance or continuances beyond one year from the date of the DDRC's initial determination.

**502.02.** Prior to the hearing, the DDRC shall state in writing the reasons that FPPA declined jurisdiction, and may, if necessary, call upon the Medical Advisor and the Attorney for FPPA to assist in the explanation.

**502.03.** The party requesting the redetermination of jurisdiction shall have the burden of proof and shall proceed with his or her proof first. The party opposing redetermination shall proceed second. The party requesting redetermination shall then have the opportunity to rebut. The DDRC may also present evidence and testimony.

**502.04.** If both parties request redetermination, then the Applicant shall proceed first and the Local Pension Authority second.

**502.05.** At the conclusion of the evidence offered by the parties, any other witness desired by the Hearing Officer or any Member thereof shall also testify. The Hearing Officer shall issue written findings and a recommendation in accordance with Rule 511 subject to review by the Executive Director or the Board.

**502.06.** If the CEO or the Board affirms the recommendation of the Hearing Officer, then that decision is final as of the date it is announced. Any allowable judicial review may then proceed.

**502.07.** If an initial denial of jurisdiction is reversed, then the application shall proceed in accordance with Rule 404.09 (a).

## **503. Initial Disability Proceedings**

**503.01.** In the event the DDRC has accepted jurisdiction under the provisions of Rule 404.09 (a), it shall, upon receipt of the reports of the physician panel and the Medical Advisor, determine disability. If it declines jurisdiction, then the matter shall proceed as set forth in Rule 502 of these Rules.

**503.02.** In a case where the DDRC has accepted jurisdiction, upon receipt of the reports of the physician panel and the Medical Advisor, the DDRC shall determine if a majority of the physician panel has found a Temporary Occupational Disability, a Permanent Occupational Disability or Total Disability as defined under § 31-31-801(3.2), (3.4) and (4), C.R.S., as amended. If not, the Applicant shall be notified by mail that his or her application has been denied and the reason therefore. The Applicant may, within 30 days of the date of mailing of the decision, file a written request that the DDRC order a reexamination.

**503.03.** The DDRC shall approve or deny disability benefits pursuant to the statutory requirements and shall determine the type of disability to be granted.

**503.04.** The Medical Advisor shall advise the DDRC and the Hearing Officer on the medical issues. The DDRC and the Hearing Officer may consider any relevant evidence in considering a Disability award.

**503.05.** If the Applicant is found to be Temporarily Occupationally Disabled, Permanently Occupationally Disabled, or Totally Disabled and the Applicant claims the disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Applicant's employment, the DDRC shall, on the basis of documentary evidence submitted by the Applicant with the Applicant's Disability Application, the reports of the three physician panel, and any additional information requested by the DDRC, either:

- (a) Make an initial determination that the Applicant's disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Applicant's employment; or
- (b) Make specific findings and an initial determination that the Applicant's disability is NOT the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Applicant's employment; or
- (c) Make specific findings and an initial determination that the Applicant's claim is not supported by the weight of the evidence and is therefore denied.

**503.051. REPEALED (August 23, 2006)**

**503.053.** In making the decision regarding a recommendation on an injury received while performing official duties or on an occupational disease, the following standards shall be considered:

- (1) An "injury received while performing official duties" means an injury occurring:
  - (1) during a scheduled shift of the Member; or
  - (2) while the Member is otherwise performing official duties for the Employer; or
  - (3) while the Member is performing official duties in the employ of a third party and the employment is authorized by the Member's Employer.
- (2) A Member's "official duties" are those set forth in the written job description for the Member's position, which the Member is regularly required to perform. If there is no written job description for the Member's position, the Employer shall submit a written summary of the Member's job duties, which the Member is regularly required to perform for the Hearing Officer's consideration in this regard.

- (3) An "occupational disease" shall be determined to have resulted directly from the employment of the Member or the conditions under which work was performed, if it follows as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment as a proximate cause and does not come from a hazard to which the Member would have been equally exposed outside of the Member's employment.
- (4) Standards established in applicable Colorado statutes and case law governing the award of Workmen's Compensation benefits and disability claims generally may also be considered, but shall not be controlling in the determination.

**503.054.** In making a decision regarding a recommendation on an injury received while performing official duties or on an occupational disease, any relevant evidence may be considered, including but not limited to the following:

- (a) Evidence demonstrating whether the injury or occupational disease is compensable under the Workmen's Compensation Act of Colorado as having occurred in the course of employment and in the place of employment as defined within § 8-40-201(17), C.R.S., as amended;
- (b) Employer records as of the date of injury demonstrating whether the disability resulted from an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment;
- (c) Other records or documents demonstrating whether the disability resulted from an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment;
- (d) The reports of the three physician panel retained by FPPA to examine the Member; and
- (e) Testimony or written statements from the Member or other persons.

**503.06.** If the applicant is found to be Temporarily Occupationally Disabled, the DDRC shall establish a treatment plan designed to facilitate the Member's improvement and return to work through surgical treatment, counseling, medication, therapy, or other means and based on the recommendations of the three physician panel and advice from the Medical Advisor.

**503.061. REPEALED (August 23, 2006)**

**503.07** In all cases under this Rule 503, the DDRC shall issue a written determination. FPPA shall mail the applicant a copy of the DDRC's written determination. .

**503.08.** The applicant may file a written request for an evidentiary hearing if the applicant disagrees with any aspect of the initial determination. Such request must be filed within 30 days from the date of mailing of the DDRC's determination. .

#### **504. Initial Survivor Benefit Proceedings**

**504.01.** Upon receipt of a completed application for survivor benefits or, where there is more than one applicant, upon receipt of all completed applications for survivor benefits, the DDRC shall approve or deny survivor benefits pursuant to the statutory requirements and these Rules.

**504.02. REPEALED (September 30, 2010)**

**504.03.** If the applicant claims that the Member's death was the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment, the DDRC shall, on the basis of documentary information submitted in connection with the application for survivor benefits, either:

- (a) Make an initial determination that the Member's death was the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment. In making its decision, DDRC shall consider the standards set forth in Rule 503.053. In the case of line-of-duty deaths occurring after December 31, 1996, DDRC shall also determine whether any of the exceptions specified in Section 101 (h) (2) of the Federal "Internal Revenue Code of 1986," as amended, are applicable; or
- (b) Make specific findings and an initial determination that the Member's death is NOT the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment;
- (c) Make specific findings and an initial determination that the Applicant's claim is not supported by the weight of the evidence and is therefore denied.

**504.04. REPEALED (September 30, 2010)**

**504.05. REPEALED (September 30, 2010)**

**504.06. REPEALED (September 30, 2010)**

**504.07.** The applicant may file a written request for an evidentiary hearing in the event the applicant believes the initial determination of the applicant's eligibility for survivor benefits is incorrect or, where it has been determined that more than one applicant is eligible for benefits, any such applicant may request an evidentiary hearing on the other applicants' eligibility for benefits. Such request must be filed within 30 days from the date of mailing of the DDRC's determination.

**504.08. REPEALED (September 30, 2010)**

### **505. Change in Status From Total to Permanent Occupational Disability**

**505.01.** When the CBO has received evidence that indicates a Member is no longer Totally disabled based upon a reexamination or based upon other evidence of ability to engage in substantial gainful activity, the CBO may direct an investigation to consider a change in the Member's status from Total to Permanent Occupational disability.

**505.02.** For purposes of determining whether a Member retired for Total disability who is employed during any period of his or her retirement should have his or her status changed from Total to Permanent Occupational Disability, the term "substantial gainful activity" means work that involves doing significant physical or mental activities for pay or profit.

**505.03.** In determining whether work performed by a Member constitutes substantial gainful activity, the CBO may consider the following criteria:

- (a) The nature of the work performed, including whether the Member's duties require the use of his or her experience, skills, abilities, supervision and management, or contribute substantially to the operation of a business or enterprise.
- (b) How well the Member performs his or her work.
- (c) Whether the work is done under special conditions, such as work done in a sheltered workshop or as a patient in a hospital.

(d) The amount of time spent in work.

(e) The amount of earnings from work.

**505.04.** FPPA will require that members who receive benefits under the SWD&D plan submit Verification of Eligibility form and any requested supporting documentation on an annual basis. If the Member fails to submit the required information, FPPA may withhold the distribution of benefits until such time as the information is submitted. Generally, earnings from work as an employee, including earnings or income from self-employment, will show that a Member is not engaged in substantial gainful activity if the Member's earnings on a monthly basis average less than 20 percent of the highest monthly base salary paid to the Chief of a Fire or Police Department in the largest 7 departments within the state of Colorado.

**505.05.** In calculating earnings as provided in Rule 505.04, FPPA will subtract the reasonable costs to the Member of certain items and services which, because of the Member's impairment, he/she needs and uses to enable him/her to work. The FPPA shall use the pertinent rules adopted by the Social Security Administration in determining the conditions for deducting impairment related work expenses.

**505.06. REPEALED (September 30, 2010)**

**505.07. REPEALED (September 30, 2010)**

**505.08.** Upon conclusion of the investigation, the CBO shall notify the Member of his or her determination in writing. Upon issuance of an initial determination, the CBO shall provide the retired Member with copies of any medical reports issued by physicians who have examined the Member and shall advise the Member of any other evidence of ability to engage in substantial gainful activity. If the CBO determines that the Member's status should be changed from Total to Occupational disability, the Member may file a written request for an evidentiary hearing pursuant to Rule 509. Such request must be filed within 30 days of the mailing of the CBO's initial determination.

**505.09** If it is finally determined that the member's status shall be changed from Total Disability to Permanent Occupational Disability, the change in benefit shall become effective on the first day of the month following the date of the CBO's determination. Where it is found that the member intended to mislead FPPA as to the facts and circumstances of the member's eligibility, the change in benefits shall become effective as of the date of loss of eligibility. Any overpayment shall be addressed pursuant to Rule 712.

**506. Change in Status From Occupational to Total Disability and From Temporary Occupational to Permanent Occupational or Total Disability**

**506.01.** A Member retired for a Permanent Occupational disability may apply to have his or her status changed to Total disability anytime within five years from the date of original disablement, the day after the last day on the payroll. A member requesting consideration of such a change in status must file a complete application with FPPA no later than the last day of the five-year period. The application should be accompanied by physician reports or other medical documentation, which supports the request for a change in status. FPPA will not process an incomplete application.

**506.011.** A Member retired for a Temporary Occupational disability may apply to have his or her status changed to Permanent Occupational disability or Total disability within five years from the date of original disablement, the day after the last day on the payroll. A member requesting consideration of such a change in status must file a complete application with FPPA no later than 180 days prior to the expiration of the five-year period. The application should be accompanied by physician reports or other medical documentation, which supports the request for a change in status. FPPA will not process an incomplete application.

**506.02.** The DDRC will review the application and supporting documentation and determine whether reasonable grounds exist for a reexamination.

**506.03.** If the DDRC determines there are no reasonable grounds for reexamination, the matter shall terminate and the DDRC shall notify the Member of its determination in writing. The Member may file a written request for an evidentiary hearing pursuant to Rule 509. Such request must be filed within 30 days from the date of mailing of the DDRC's determination.

**506.04.** If the DDRC determines there are reasonable grounds for reexamination, it shall, upon the recommendation of the Medical Advisor, appoint one or more physicians to examine the Member. The physician or physicians shall submit reports to the DDRC on the Member's disability status and, following submission of the reports, the DDRC shall approve or deny the change in disability status. Alternatively, on the basis of medical reports submitted by the Member, the DDRC may waive the requirement of a reexamination by the physician panel and declare the Member Permanently Occupationally or Totally disabled.

**506.05. REPEALED (September 30, 2010)**

**506.06.** The DDRC shall notify the Member of its determination in writing along with copies of the medical reports submitted by the physicians appointed to examine the Member. If the DDRC denies the request for a change in status, the Member may file a written request for an evidentiary hearing before a hearing officer. Such request must be filed within 30 days from the date of mailing of the DDRC's determination.

**506.07.** If the Member's disability status is changed from Permanent Occupational to Total or Temporary Occupational disability status is changed to Permanent Occupational or Total disability, the new benefit shall become effective on the 1<sup>st</sup> day of the month following that date on which the determination of change in status becomes final. The Member shall elect one of the payment options available under § 31-31-803(1), C.R.S., as amended, in writing, on the form prescribed by FPPA. The Member's election shall be made within 90 days of the date on which all determinations affecting the change in status have become final. Determinations shall not be deemed final until all applicable appeal periods have expired or have been waived. FPPA shall pay benefits in the amount of the previous award of benefits under the Member's prior status until the election is received for a period of up to 90 days, unless FPPA anticipates a substantial offset of the new benefit. If FPPA does anticipate a substantial offset, the benefit payment will be suspended until the required election forms are submitted. After 90 days, benefit payments shall be suspended until the Member submits the required election form. Upon receipt of the written election, FPPA shall adjust the benefit payments for any over or under payments made prior to receipt of the election and shall pay any unpaid suspended benefits resulting from the change in status, without interest or earnings. If the Member dies without making an election and the Member is survived by a spouse, or partner in a civil union and dependent child, the Member shall be considered to have elected Option 3 provided by § 31-31-803(1)(b), C.R.S., as amended. If the Member is survived by a spouse or partner in a civil union but no dependent child, the Member shall be considered to have elected Option 1 provided by § 31-31-803(1)(b), C.R.S., as amended.

**506.08.** A change in a Member's disability status shall be effective upon final approval. The benefit amount shall change effective on the first day of the month following approval.

**507. Discontinuance of Disability Benefits**

**507.00. Discontinuance Upon Reemployment**

**507.01.** If, subsequent to a grant of disability benefits to a Member, the Member is employed or reemployed in this state or any other jurisdiction, pursuant to either an agreement or court order, in a full-time paid position which normally involves working at least 1,600 hours in any given calendar year and the duties of which are directly involved with the provision of police or fire protection, the disability benefits provided to the Member shall be discontinued.

**507.02.** In the event a Member retired for disability is subsequently employed or re-employed in a full-time paid position, the CBO shall make an initial determination concerning the Member's continuing eligibility for disability benefits pursuant to Rule 507.01 and § 31-31-806, C.R.S., as amended. The CBO will base his or her initial determination upon a review of the written job description, or a similar explanation provided by the employer, for the position in question. In reviewing the written job description, the CBO, among other things, may consider the following matters:

- (a) Whether the position includes authority to make investigative stops and arrests.
- (b) Whether the position requires carrying a firearm while on duty or requires the operation or use of standard firefighting equipment such as fire trucks, fire hoses, etc.
- (c) Whether the position requires that the individual be certified by a local, state, federal, international or foreign law enforcement or fire safety authority.
- (d) Whether the position requires that the individual respond to or investigate crime or fire scenes.
- (e) Whether the position involves other duties or qualifications normally required of law enforcement officers or firefighters.
- (f) Whether the position is clerical in nature or primarily involved with the provision of services which are auxiliary to police or fire protection.

**507.03.** Employment in a position which is clerical in nature or primarily involved with the provision of services which are auxiliary to police or fire protection will not result in a discontinuation of Occupational disability benefits pursuant to Rule 507.01 and § 31-31-806, C.R.S., as amended. Generally, such positions may include the following:

- (a) Secretarial and other office support positions;
- (b) Civilian positions within law enforcement agencies and fire departments which provide only technical support services such as crime analysis, code enforcement, dispatch, etc.;
- (c) Technical consultants to law enforcement agencies and fire departments;
- (d) Private security personnel if they are not required to carry a firearm and do not have arrest powers; and
- (e) Private investigators.

**507.04.** If, the CBO finds that the position is one directly involved with the provision of police or fire protection, he or she shall notify the affected Member of his or her determination by mail. The affected Member may then file a request for an evidentiary hearing within 30 days of the mailing of the notice of the CBO's determination pursuant to Rule 509.

#### **507.10. Discontinuance of Temporary Occupational Disability**

**507.11.** The DDRC may suspend Temporary Occupational disability benefits if the Member fails to make rehabilitation efforts or if insufficient evidence of compliance and of a continuing disability is provided to the DDRC by the Member.

**507.12.** Members required to follow a treatment plan shall submit evidence of compliance with the treatment plan and evidence of continuing disability to FPPA no later than 30 days prior to their compliance review date. The DDRC shall suspend benefit payments to disabled Members who fail to

timely comply with deadlines for the submittal of evidence of compliance with treatment plans and continuing disability.

**507.13.** If, after reviewing the evidence submitted, and after considering any comments submitted by the Medical Advisor, the DDRC finds that the Member has failed to comply with the treatment plan, the DDRC shall suspend disability benefits and the Member shall have no right to be restored to active service. The DDRC shall notify the affected Member of its determination by mail. The affected Member may then file a request for an evidentiary hearing pursuant to Rule 509 within 30 days of the mailing of the notice of the DDRC's determination.

**507.14.** If the DDRC finds that the Member has failed to submit evidence of compliance with the treatment plan and evidence of continuing disability, the DDRC shall suspend disability benefits and the Member shall have no right to be restored to active service. The DDRC shall notify the affected Member of its determination by mail. The affected Member may then file a request for an evidentiary hearing pursuant to Rule 509 within 30 days of the mailing of the notice of the DDRC's determination.

**507.15** If no evidentiary hearing is timely requested, the Board shall conduct an administrative appellate review of the DDRC's findings and determination in accordance with Rules 511.06 through 511.09. After the review, the Board may terminate the benefits or may reverse all or part of the findings and determination.

## **508. Evidentiary Hearings on Initial Determinations for Death and Disability**

**508.01.** Within 120 days from the receipt of a request for an evidentiary hearing, such hearing shall be held before a Hearing Officer. A Member, for good cause, may have the date of the evidentiary hearing continued but in no event will the Hearing Officer permit a continuance or continuances beyond one year from the date of the initial determination.

**508.01.01** A Pre-Hearing Conference shall be set with the applicant and FPPA staff for the purpose of identifying and narrowing the issues and witnesses for the evidentiary hearing and an explanation to the applicant of the FPPA evidentiary hearing procedures. If the FPPA staff identifies new issues or additional evidence, the new issues or evidence may be considered by the DDRC prior to the evidentiary hearing for review of the initial determination pursuant to Rules 503 and 504.

**508.02.** At the commencement of the hearing, the Hearing Officer shall state the reasons for the hearing.

**508.03.** The applicant may present testimony or other evidence. The applicant has the burden of proof. If the applicant is challenging the determination of eligibility for survivor benefits with respect to another applicant, the other applicant may also present evidence. In that case, the applicant requesting the evidentiary hearing has the burden of proof.

**508.04.** The DDRC may call any witnesses or present any evidence following the applicant's case in chief.

**508.05.** Following the conclusion of the evidence, the Hearing Officer may make the following recommendations:

- (a) If, in the initial determination, the applicant was found not disabled because less than a majority of the physician panel has found a disability as required by § 31-31-803 (4)(a)(I), C.R.S., as amended, the Hearing Officer may recommend finding the member not disabled or may order a reexamination by a new panel of physicians. If a reexamination is ordered, the case shall proceed in all particulars as a new case under Rule 404.09 (a).



- (b) If the initial panel of physicians included physicians having different specialties or areas of expertise, the Hearing Officer may order a reexamination by a new panel of physicians. If the Hearing Officer orders a reexamination, then the case shall proceed in all particulars as a new case under Rule 404.09 (a).
- (c) In all other cases where an initial determination has been made, the Hearing Officer shall make findings of fact and law and shall make a recommendation granting or denying an award of benefits.
- (d) In all cases, the decision is final at the time final action is taken pursuant to Rule 511.

## **509. Evidentiary Hearings on Staff Determinations**

**509.01.** When these rules provide for an evidentiary hearing pursuant to Rule 509 or when a determination is made by FPPA staff or the DDRRC affecting benefit eligibility, amount or duration of benefits, an employer's obligation to enroll Members under one of the state plans administered by FPPA, the calculation of a benefit or alternate payee's portion of a benefit pursuant to a domestic relations order, or any other matter upon which a determination is made and an evidentiary hearing on such a determination is not provided elsewhere in these Rules, then the person or entity affected by the determination will be granted an evidentiary hearing by a Hearing Officer upon request as provided by Rule 509.02.

**509.02.** The person or entity affected may file a request for a hearing on staff's determination within 30 days from the date of mailing of the determination. Such hearing shall be held within 120 days from receipt of the request. For good cause, the person or entity requesting the hearing may have the date of the hearing continued but in no event will the Hearing Officer permit a continuance or continuances beyond one year from the date of staff's determination.

**509.02.01** A Pre-Hearing Conference shall be set with the applicant and FPPA staff for the purpose of identifying and narrowing the issues and witnesses for the evidentiary hearing and an explanation to the applicant of the FPPA evidentiary hearing procedures. If the FPPA staff identifies new issues or additional evidence, the new issues or evidence may be considered by the staff prior to the evidentiary hearing pursuant to Rules 505, 506, 507 and 712.

**509.03.** Prior to the hearing, the FPPA staff shall submit a statement of the basis for the staff's determination to the hearing officer, with a copy to the member. This statement may be a copy of the notice of determination originally mailed to the member.

**509.04.** At the hearing, the person or entity requesting the hearing shall present the person or entity's evidence, including testimony, in support of their objection to the staff determination. The person or entity requesting the hearing shall have the burden of proof. The staff may also present evidence and call witnesses. The Hearing Officer may also call witnesses.

**509.05.** At the conclusion of the evidence offered by the parties, any other witness desired by the Hearing Officer or by any Member affected by the determination may also testify.

**509.06.** The Hearing Officer shall make findings of fact and law and shall make a recommendation to grant or deny the benefit or shall make a recommendation as to such other issue as is before the hearing officer. In all cases, the decision is final at the time final action is taken pursuant to Rule 511.

**509.07.** The applicable provisions of Rule 501 shall apply to proceedings under this Rule 509.

## **510. REPEALED**

## **511. Recommendations by a Hearing Officer**

**511.01.** The Hearing Officer shall promptly set any matter referred to it for a hearing and shall notify the Member of the date and time of the hearing. The Member may attend the hearing and may be represented by counsel at the Member's expense. A Member, for good cause, may have the date of the hearing continued but in no event may the hearing be continued beyond one year from the date of the initial hearing date. All hearings before the Hearing Officer shall be recorded and all witnesses appearing at any hearing shall be placed under oath or affirmation.

**511.02.** The Hearing Officer shall be governed by the standards as set forth in the Colorado Revised Statutes, in the FPPA Rules, or as otherwise provided by law.

**511.03** REPEALED

**511.04.** In making a recommendation on a case referred, the Hearing Officer may consider any relevant evidence.

**511.05.** Within 30 days after any type of evidentiary hearing the Hearing Officer shall file written findings and a recommendation. The Member shall be notified of the Hearing Officer's written findings and recommendation and shall have 30 days from the date of the mailing of the findings to file objections thereto. Objections shall be in writing and shall set forth in detail the particular errors and objections relied upon, and may be accompanied by a supporting brief. If objections are not timely filed, the Hearing Officer's written findings and recommendation shall be considered uncontested. The Executive Director may affirm an uncontested recommendation of the Hearing Officer which grants an application or maintains a benefit without further review of the Board. The Executive Director shall give notice of such affirmation to the affected parties. If the Executive Director affirms the recommendation of the Hearing Officer, then that decision is final as of the date that the notice of affirmation is mailed to the parties and any allowable judicial review may then proceed. The Executive Director may remand a recommendation, in writing, to the Hearing Officer for further consideration and recommendation.

**511.05.01** Within 30 days after the Executive Director remands a recommendation, the Hearing Officer shall respond to the remand by either re-filing the original findings and recommendation or filing amended written findings and an amended recommendation. The Member shall be notified of the Hearing Officer's written findings and recommendation on remand and shall be allowed the same time allowed under this rule to object in writing in detail, with or without a supporting brief, to the findings and recommendation on remand as the Member had to object to the original findings and recommendation. If objections are not timely filed, the Hearing Officer's written findings and recommendation shall be considered uncontested, and may be affirmed by the Executive Director without further review of the Board if the uncontested recommendation either grants or maintains a benefit. The Executive Director shall give notice of such affirmation to the affected parties. If the Executive Director affirms the recommendation of the Hearing Officer, then that decision is final as of the date that the notice of affirmation is mailed to the parties and any allowable judicial review may then proceed. The Executive Director is not limited in the number of remands to the Hearing Officer.

**511.06.** The Board shall conduct an administrative appellate review of the Hearing Officer's written findings and recommendation not affirmed by the Executive Director and any timely filed Member objections to the recommendation, at a regularly scheduled Board meeting. The Member shall be notified of the date the Board will conduct such review.

**511.07.** At the review hearing, the Board may issue a summary decision affirming the recommendation of the Hearing Officer. Alternatively, the Board may correct, modify or set aside, or remand any recommendation, but only on the following grounds:

- (a) That the Hearing Officer's findings are not sufficient to permit appellate review;
- (b) That conflicts in the evidence are not resolved in the written findings;
- (c) That the written findings are not supported by the evidence; or

(d) That the recommendation is not supported by applicable law.

**511.08.** If the Board corrects, modifies or sets aside a Hearing Officer's recommendation, the Board may direct the preparation of new written findings for its final review and approval prior to its decision on the Member's application becoming final.

**511.09.** A copy of the Board's final decision shall be sent to the Member. If the Board affirms the recommendation of the Hearing Officer, then that decision is final as of the date it is announced and any allowable judicial review may then proceed. If the Board directs the preparation of new written findings for its review and approval pursuant to Rule 511.07, the decision is final as of the date the Board adopts such written findings. The Member may then proceed with any allowable judicial review.

## **512. Determination of Employer Liability**

**512.01.** The DDRC may determine whether there are reasonable grounds to believe that an employer is liable for payment of disability or survivor benefits.

**512.03.** If the DDRC determines that reasonable grounds exist to believe that the employer may be liable then it shall schedule a hearing before a Hearing Officer on the issue.

**512.04.** At least 20 days before the date scheduled for the hearing, FPPA staff shall give written notice of the hearing to the affected employer and to the Member.

**512.05.** The notice of hearing shall be accompanied by a written statement containing the reasons why the DDRC determined that reasonable grounds exist to believe that the employer may be liable.

**512.06.** Within 30 days after the evidentiary hearing the Hearing Officer shall file written findings and a recommendation. The Member or the Employer shall be notified of the Hearing Officer's written findings and recommendation and shall have 30 days from the date of the mailing of the findings to file objections thereto. Objections shall be in writing and shall set forth in detail the particular errors and objections relied upon, and may be accompanied by a supporting brief. If objections are not timely filed, the Board shall consider the Hearing Officer's written findings and recommendation uncontested.

**512.07.** The Board shall conduct an administrative appellate review of the Hearing Officer's written findings and recommendation and any timely filed Member or Employer objections to the recommendation, at a regularly scheduled Board meeting. The Member and the Employer shall be notified of the date the Board will conduct such review.

**512.08.** At the review hearing, the Board may issue a summary decision affirming the recommendation of the Hearing Officer. Alternatively, the Board may correct, modify or set aside, or remand any recommendation, but only on the following grounds:

- (a) That the Hearing Officer's findings are not sufficient to permit appellate review;
- (b) That conflicts in the evidence are not resolved in the written findings;
- (c) That the written findings are not supported by the evidence; or
- (d) That the recommendation is not supported by applicable law.

## **513. Statewide Standard Health History Form**

**513.01.** The Statewide Standard Health History Form shall be a form approved by the Board.

**513.02.** Employers may use photocopies of the form or may print their own forms, so long as the content is identical with the most recent form approved by the Board.

**513.03.** The Board may revise the form from time to time and shall provide copies of any such revised form to all employers not later than 30 days prior to the effective date of use of such revised form.

**514.** REPEALED

**515.** REPEALED (September 30, 2010)

**515.03.** REPEALED

## **516. Reexamination Hearings and Additional Basis for Disability**

**516.01.** The DDRC shall establish a period for reexamination of all Members awarded Temporary disability. Reexamination of Members retired for any type of Occupational disability may be ordered as deemed warranted. The DDRC may delegate the decision regarding the necessity and timing of the reexamination to the Medical Advisor. At each subsequent reexamination review, the DDRC may establish the subsequent period for reexamination.

**516.02.** The Medical Advisor may schedule a reexamination with a physician panel. The reexamination shall include a review of compliance with the treatment plan if one was required.

**516.03.** If at least two Members of the physician panel examining the Member find that in their opinion an Occupational disability ceases to exist, the DDRC may, but is not required to, determine that such disability ceases to exist. In the event an Occupational disability is based on a medical determination of mental impairment or disease, all three Members of the physician panel must agree before the DDRC may determine that the Occupational disability ceases to exist.

**516.04.** Upon a preliminary DDRC determination that a disability ceases to exist, the FPPA shall provide written notice to the employer and the Member of the physicians' findings and of the opportunity for an evidentiary hearing pursuant to Rule 509 upon request of the employer or Member. Such request for an evidentiary hearing must be received within 30 days after the date of mailing of the determination.. The evidentiary hearing shall be scheduled no sooner than 30 days after the date of the original written notice. If no evidentiary hearing is timely requested and it has been determined that the disability ceases to exist, the Board shall conduct an administrative appellate review of the findings and determination of the DDRC in accordance with Rules 511.06 through 511.09. After the review, the Board may terminate the benefits or may reverse all or part of the findings and determination.

**516.05.** If the appropriate number of physicians agree that the disability ceases to exist, and if the employer has filed a statement of additional basis for disability with the original application, the Member shall be examined by a three Member physician panel and evaluated for disability based on the statement of additional basis for disability. If it is found that the Member refuses or fails to cooperate with additional examination, the Member's benefits shall be suspended. Such suspension shall be subject to an administrative appellate review by the Board. Review of the physicians' findings shall be made pursuant to Rule 516.03 and 516.04.

**517.** REPEALED (September 30, 2010)

## **CHAPTER 6 AFFILIATIONS AND WITHDRAWALS**

### **601. Affiliation of Old Hire Plans**

**601.01.** An affiliating old hire plan employer shall furnish FPPA with all information necessary to administer its old hire plan and manage the plan's fund.

**601.02.** For Members of an affiliating old hire plan who, pursuant to § 31-31-701(1), C.R.S., as amended, elect coverage under the Statewide Defined Benefit Plan for retirement benefits, the greater of the following shall be transferred from the old hire pension fund to the FPPA:

- (a) The actuarial present value of accrued benefits under the state plan for each electing Member; or
- (b) Two times the amount of the electing Members' accumulated contributions.

**601.03.** If an employer is unable to make the transfers required under Rule 601.02, the employer shall transfer what funds are available, and shall transfer the balance within the employer's own time frame, but subject to the conditions set forth in Rule 601.04 through Rule 601.06.

**601.04.** An interest rate shall be charged on the balance of funds owed by the employer to the FPPA fund, as set forth in Rule 601.02.

**601.05.** The interest rate, set forth in Rule 601.04, shall be calculated to be the yield rate to maturity, as determined by the Plan's record keeper or as published by a nationally recognized newspaper that publishes the prime rate on a daily basis effective for a U. S. treasury bill, note, or bond, with the maturity date falling nearest the date on which the final installment of transferring liability is due, but in no event shall the interest rate be less than the then current actuarial earnings assumptions adopted by the Board.

**601.06.** The interest rate, set forth in Rule 601.04, shall be calculated on the first active trading day of the New York Stock Exchange coincident with, or the next day following, the date of affiliation.

**601.07.** The cost of any actuarial study performed pursuant to § 31-30.5-306, C.R.S., as amended, shall be a cost of the old hire pension plan.

## **602. Optional Affiliation by Social Security Employers**

**602.01.** (a) A Social Security employer may elect affiliation with FPPA for:

- (1) Retirement benefits under the Social Security Supplemental Plan provided pursuant to § 31-31-704.6, C.R.S., in these Rules referred to as the Revised SWDB SS Plan.; or
- (2) Both retirement benefits under paragraph (1) and disability and survivor benefits provided pursuant to § 31-31-801 et seq., C.R.S .

- (b) An employer may initiate affiliation with FPPA by filing a resolution with FPPA. The resolution shall state the employer's intent to affiliate, whether the employer wishes to affiliate for retirement benefits, or retirement benefits and disability and survivor benefits. Any employer intending to affiliate for disability and survivor benefits must also affiliate or participate in the Social Security Supplemental Retirement Plan created pursuant to § 31-31-704.6, C.R.S. The resolution shall also indicate whether the employer intends to offer the Social Security Supplemental Plan in addition to or in place of any other retirement plan offered by the employer. The employer shall certify that all active fire and law enforcement employees as certified by the employer shall become participants in the plan and the employer's election to participate in the plan is irrevocable and that the employer agrees to participate in the Social Security Supplemental Plan and to be bound by the terms of the plan and the decisions and actions of the board with respect to the plan.

- (c) FPPA will accept a resolution for affiliation under this Section 602 at any time. A timeline for the affiliation process will be established upon acceptance of the resolution.
- (d) The affiliation resolution shall be revocable by the employer at any time prior to commencement of the withholding of contributions from the Members' salaries. If the employer does not revoke the resolution prior to the withholding of contributions, affiliation becomes irrevocable.
- (e) An employer which elects to affiliate pursuant to this Section 602 shall furnish FPPA with all information necessary in order to carry out the provisions of the Plan.
- (f) Prior to affiliation by a County under § 31-31-704, C.R.S., the County shall certify to FPPA a list of positions which constitute salaried employees whose duties are directly involved with the provision of law enforcement or fire protection.

**602.02. Revised Statewide Defined Benefit Plan - Social Security Supplemental Plan Component**

- (a) The level of contributions for Members of employers which affiliate pursuant to this Section 602 for supplemental retirement benefits will be determined in accord with the provisions of § 31-31-704.6(3), C.R.S., as amended.
- (b) Election for participation
  - (1) Social Security employers who have adopted a resolution seeking affiliation shall prepare a disclosure statement which describes and compares the main provisions of the current retirement plan, if any, and if the current plan is to be replaced, and the Revised SWDB SS Plan for affiliated Social Security employers. The disclosure statement shall be submitted to FPPA for its approval. Once approved, the employer shall hand deliver or mail a copy of the disclosure statement to each Member eligible to vote in the election at least 10 days prior to the date the employer has set for the Member election.
  - (2) All employees whose duties are directly involved with the provision of law enforcement or fire protection, who are employed on the date or dates of the Member election, are eligible to vote. Those hired less than 10 days prior to the commencement of the election shall be personally handed a disclosure statement by the employer on the date of their employment.
  - (3) All Members voting in the election shall sign a register of voters at the time they receive their ballots.
  - (4) At the election conducted by the employer concerning coverage under the Revised SWDB SS Plan, all Members shall vote by secret ballot. The ballot shall contain the following statement: I have read and I understand the disclosure statement, and I vote in favor of participating in the following plan. The ballot shall then contain the applicable options. A sample ballot shall be approved by FPPA prior to the election. Subject to approval of the procedure by FPPA, an employer may allow Members to vote by absentee ballots.
  - (5) After all of those eligible to vote have had an opportunity to cast their ballots, the election shall be closed, but in no event shall the election be conducted during more than five consecutive days.
  - (6) After the election, the employer shall deliver the following to FPPA:
    - (1) A list of Members eligible to vote, showing their dates of employment;

- (2) The register of voters;
  - (3) The sealed ballots; and
  - (4) A certification by an officer of the employer that the disclosure statement was properly served to all eligible Members, and that the election was conducted fairly.
- (7) FPPA shall count the ballots in the presence of designated representatives of the employer.
- (8) If the above procedures have been completed and if 65 percent of the Members eligible to vote approve coverage under the Revised SWDB SS Plan, such coverage shall be considered approved, subject to compliance with the other requirements of this Rule 602 and § 31-31-704.5, C.R.S., as amended.
- (c) Members of affiliated Social Security employers, who are covered under the Revised SWDB SS Plan, shall be eligible to receive retirement benefits equivalent to one half of the benefits paid under the Normal benefits of the Statewide Defined Benefit Plan.
  - (d) All additional benefits, optional benefits, and all rules and regulations applicable to the Statewide Defined Benefit Plan shall apply to the Revised SWDB SS Plan. This shall include, but not be limited to, the Separate Retirement Account, the Deferred Retirement Option Plan, and the options and deferrals available for payment of retirement benefits. Service credit may be purchased by Members in the Revised SWDB SS Plan component and benefits from service credit purchase shall be at the same rate as awarded in the Statewide Defined Benefit Plan.
  - (e) Benefits paid from the Revised SWDB SS Plan shall not be subject to reduction pursuant to Rule 603.

**602.03. Social Security Supplemental Plan to the Statewide Death and Disability Plan**

- (a) Members of employers which affiliate for coverage under the Statewide Death and Disability Plan will be eligible to receive the disability and survivor benefits provided by § 31-31-801, C.R.S., as amended, but any benefits so received shall be reduced pursuant to Rule 603.
- (b) The level of contributions for Members of employers which affiliate for coverage under the Statewide Death and Disability Plan will be determined in accordance with the provisions of § 31-31-801, C.R.S., as amended.
- (c) Any employer affiliating for disability and survivor benefits must also affiliate or participate in the Social Security Supplemental Retirement Plan created pursuant to § 31-31-704.6, C.R.S.

**602.04. Legacy Statewide Defined Benefit Plan - Social Security Supplemental Plan Component**

- (a) Retirement benefits payable under the Social Security Supplemental Plan provided pursuant to § 31-31-704 C.R.S, which was closed as of December 31, 2007, shall be referred to in these Rules as the Legacy SWDB SS Plan.
- (b) Benefits earned through participation in the Legacy SWDB SS Plan shall be paid based on service credit earned pursuant to the Statewide Defined Benefit Plan and subject to reduction pursuant to Rule 603.

- (c) A Member who has earned benefits under the Legacy SWDB SS Plan and whose employer has elected not to participate in the Revised SWDB SS Plan., may elect an in-service transfer of his or her Member Contributions to an alternative pension or Deferred Compensation Plan as allowed under the Internal Revenue Code.
- (d) For members with service under both the Legacy SWDB SS Plan and the Revised SWDB SS Plan, the Members highest average salary during the period the Member was in either plan shall be used to calculate benefits under both plans. The Member's service credit under both plans shall also be accumulated to establish the Member's benefit.

### **603. Reduction of Benefits Payable to Members of Affiliated Social Security Employers**

**603.01.** This Section 603 applies to the reduction in benefits paid under the following plans:

- (a) Legacy SWDB SS Plan;
- (b) Social Security Supplemental Plan to the Statewide Death and Disability Plan

This Section 603 shall not apply to benefits paid under the Revised SWDB SS Plan.

#### **603.02. Reduction for Social Security Pension Benefits.**

- (a) The amount of benefits to which a person is determined to be entitled shall be reduced by the pro rata amount of any Estimated Social Security benefits to be received by the Member attributable to the Member's Social Security coverage derived from employment as a Member. To calculate the amount of the reduction, FPPA will multiply the Member's Estimated Social Security benefit by a fraction, the numerator of which is equal to the Member's years of service in the plan with an affiliated Social Security employer, and the denominator of which is equal to the Member's years for all Social Security employment. Social Security employment shall be assumed to begin at age 21, or the date on which participation in FPPA began if earlier. Social Security employment shall be assumed to end at retirement in the case of a retirement benefit calculation, or at the earliest Social Security eligibility date in the case of a Vested benefit calculation. Commencement of Social Security benefits to the Member shall be calculated based on the Member attaining age 62, notwithstanding the actual age at which the Member actually begins receiving the Social Security benefit.
- (b) The Estimated Social Security Benefit is the estimated monthly amount of income that would be payable to a Member under the provisions of Title II of the Social Security Act (Monthly Primary Insurance Amount) as in effect on the Member's date of termination, commencing as of the Member's retirement date, regardless of whether or not the Member is eligible for or receives a Social Security benefit.
- (c) The determination of an Estimated Monthly Social Security Benefit shall be made with the assumption that the Member had been continuously covered under the Social Security Act from the earlier of his or her 21<sup>st</sup> birthday, or FPPA hire, until the Member's date of termination, and that the Member's last full year of Compensation prior to the date of determination was discounted backward in time at an annual rate of 6%, compounded annually, continuously during each year of such period of coverage, subject to the following subparagraphs. The determination of the Estimated Monthly Social Security Benefit for a Vested benefit calculation shall be made with the assumption that the Member continues employment until the earliest Social Security eligibility date at the same rate of Compensation which was paid to the Member in the last full calendar year of employment prior to his or her termination.



- (d) The reduction will not be increased to reflect subsequent cost of living increases in Social Security benefits. Any adjustment for FPPA cost of living increases shall apply to the Member's or survivor's benefit as reduced.
- (e) No additional reduction for survivor benefits paid by Social Security will be made against payments by FPPA to a survivor pursuant to the election by the Member of a joint and survivor annuity. Any adjustment for Member elections shall apply to the Member's benefit as reduced in the manner described.

### **603.03 Reduction for Social Security Disability Benefits.**

- (a) In the event a disabled Member receives Social Security disability benefits, a reduction for the pro rata amount of actual disability benefits paid by Social Security attributable to the Member's Social Security coverage derived from employment as a Member shall be implemented against the FPPA disability benefit payments. To calculate the amount of the reduction, FPPA will multiply the Member's Social Security disability benefit by a fraction, the numerator of which is equal to the Member's years of service in the plan with an affiliated Social Security employer, and the denominator of which is equal to the Member's years for all Social Security employment. Social Security employment shall be assumed to begin at age 21, or the date on which participation in FPPA began if earlier. Social Security employment shall be assumed to end at disability retirement.
- (b) The reduction for Social Security disability benefits to a Member's SWD&D disability benefit payment shall cease and a reduction calculated under Rule 603.02 shall be implemented in its place beginning the first month after the Member attains the age of 62.
- (c) No additional reduction for survivor benefits paid by Social Security will be made against payments by FPPA to a survivor pursuant to the election by the Member of a joint and survivor annuity. Any adjustment for Member elections shall apply to the Member's benefit as reduced in the manner described.

**603.04. Reduction for Social Security Survivor Benefits received by a Survivor of an Active Member.** No reduction of death benefits from the Statewide Death and Disability plan received by a survivor shall be made for Social Security benefits received by the Survivor.

**603.05.** Whenever Social Security benefits received by or through a Member are amended or changed, or the Social Security coverage derived from employment as a Member is increased, the benefits provided by FPPA may be adjusted accordingly.

**603.06. REPEALED**

**603.07. REPEALED (September 25, 2014)**

### **604. Affiliation of Volunteer Fire Departments**

**604.01.** Any municipality, fire protection district, fire authority or county improvement district having a fire department which utilizes volunteer firefighters or a combination of paid and volunteer firefighters may elect affiliation with FPPA relating to a volunteer pension plan for its volunteer firefighters.

**604.02.** The district must file with FPPA a resolution of intent to affiliate no less than 30 days prior to the effective date. Procedures for affiliating such a plan are as follows:

- (a) The municipality, fire protection district, fire authority or county improvement district prior to the effective date of affiliation, unless a shorter waiting period is approved by

the Board. The effective date of affiliation shall be the first day of the month next following the waiting period;

- (b) The municipality, fire protection district, fire authority or county improvement district must sign an affiliation agreement with FPPA which sets forth the respective liabilities and responsibilities of the municipality, fire protection district, fire authority or county improvement district and FPPA;
- (c) Prior to approval of the affiliation by the FPPA Board, the affiliating entity shall supply FPPA with a list of assets currently held by the pension plan. As a condition of approval of the affiliation, FPPA may require the sale or conversion of certain of the plan's assets prior to the effective date of affiliation;
- (d) On the effective date of affiliation, or on such date as mutually agreed upon by the employer and FPPA, the assets of the volunteer pension plan shall be transferred to the fund created by § 31-31-301, C.R.S., as amended. Such transfer shall be at the market value of such assets at the close of business on the date the assets are received by FPPA's custodian bank.

**604.03.** Subsequent to the date of affiliation, all contributions to the local volunteer firefighter's pension plan shall be paid to FPPA.

**604.04.** An affiliating municipality, fire protection district, fire authority or county improvement district shall furnish FPPA with all information necessary to implement FPPA's affiliation agreement with the governing body providing the local volunteer firefighters' pension plan. FPPA may terminate the affiliation of a volunteer plan upon sixty day's written notice to the governing body for failure to fulfill its responsibilities to the pension plan or its failure to renew the affiliation agreement.

**604.05.** Any municipality, fire protection district, fire authority or county improvement district which entered into an agreement with FPPA for the purpose of having the association administer and manage a pension plan for the municipality, fire protection district, fire authority or county improvement district volunteer firefighters, may terminate such an agreement in accord with the following procedures:

- (a) The municipality, fire protection district, fire authority or county improvement district must file with FPPA a resolution of intent to disaffiliate no less than 60 days prior to the effective date of disaffiliation, unless a shorter waiting period is approved by the Board. The effective date of disaffiliation shall be the January 1, April 1, July 1, or October 1 next following the waiting period;
- (b) Within 90 days after the effective date of disaffiliation from FPPA, the association shall return to the municipality, fire protection district, fire authority or county improvement district all monies in the municipality, fire protection district, fire authority or county improvement district volunteer firefighter pension fund together with the net earnings thereon. For the purposes of this subparagraph 2, "net earnings" means actual earnings less actual administrative expenses and expenses connected with the disaffiliation. The determination of net earnings shall be made by the Board; and
- (c) Between the effective date of disaffiliation and the actual return of monies by FPPA, assets in the volunteer fund will accrue interest based upon the yield rate to maturity of a 90-day U.S. treasury bill. as determined by the Plan's record keeper or as published by a nationally recognized newspaper that publishes the prime rate on a daily basis. Monies returned by FPPA shall remain assets of the volunteer firefighter pension fund.

**604.06.** Upon the effective date of disaffiliation, the municipality, fire protection district, fire authority or county improvement district will be liable for the payment of all benefits then vested under the volunteer firefighter pension plan.

**604.07.** Upon the effective date of disaffiliation, FPPA will be released and indemnified from all liabilities and obligations it may have with respect to the volunteer firefighter pension plan except as noted in Rule 604.05 (c).

**605.** **REPEALED** pursuant to the passage of SB10-024.

**606. Exempt Plan Election of Death and Disability Coverage**

**606.01.** Any employer which has established a money purchase plan on or before December 1, 1978, in accordance with the provisions of § 31-30.5-801 *et seq.*, C.R.S., as amended, may elect to have its Members covered by the provisions of the death and disability plan.

**606.02.** The procedures for making such an election are as follows:

- (a) The employer must file with FPPA a resolution of the employer electing coverage under the death and disability plan. The resolution shall set forth an effective date of the election and must be filed with FPPA no less than 60 days prior to the effective date.
- (b) Upon filing the resolution with FPPA, the employer shall also certify to FPPA the results of an election by the active Members of the plan regarding the Members' approval of the employer's election of coverage under the death and disability plan. At least 65 percent of the active Members must approve the employer's election of coverage.
- (c) No less than 30 days prior to the date set for the Member election, the employer shall submit to FPPA a disclosure statement that is to be given to all Members eligible to vote on the question of death and disability coverage. The disclosure statement shall be in a format prescribed by FPPA and shall compare the main provisions of the state death and disability plan with the Members' current coverage for death and disability. A sample format for the disclosure statement may be obtained by contacting the FPPA offices. FPPA shall determine the sufficiency of the disclosure statement.
- (d) At least 10 days prior to the date of the election, the employer shall hand deliver or mail a copy of the disclosure statement to each Member eligible to vote in the election and shall certify such fact to FPPA at the time election results are certified to FPPA.
- (e) Upon filing of the employer resolution with FPPA and the necessary certifications regarding the Member election, coverage under the state death and disability plan shall be approved as of the effective date set forth in the employer resolution.

**606.03.** Each active Member hired prior to the effective date of the employer's election of coverage under the statewide death and disability plan shall individually elect whether the Member wishes to be covered under that plan or the current death and disability plan provided by the employer. The individual Member election shall be made on a form prescribed by FPPA and shall be filed with FPPA prior to the effective date of the employer's election. For those Members electing coverage under the statewide death and disability plan, their election is subject to the requirements set forth in Rule 513 and the election form shall be accompanied by a statewide standard health history form and FPPA Member form. The Member's election shall be irrevocable.

**606.04.** Any Member hired by the employer on or after the effective date of the employer's election of coverage shall be covered under the statewide death and disability plan and shall have no right of individual election. All provisions governing the statewide death and disability plan, including the completion and filing of the statewide health history form and the requirements set forth in Rule 513, shall apply to such Member.

**607. Withdrawal From the Statewide Defined Benefit Plan/Election of Coverage**

## **Under the Statewide Money Purchase Plan**

**607.01.** Any employer may withdraw its police officers and/or firefighters from the Statewide Defined Benefit Plan for the purpose of covering them under the Statewide Money Purchase Plan, subject to the limitations set forth in this Rule 607 and § 31-31-501, C.R.S., as amended.

**607.02.** Any employer desiring to withdraw from the Statewide Defined Benefit Plan pursuant to the provisions of this Section 607 shall file with FPPA a letter of intent to withdraw. The letter of intent to withdraw shall state that the employer desires to withdraw from the Statewide Defined Benefit Plan for the purpose of covering its eligible Members under the Statewide Money Purchase Plan.

**607.03.** Within 60 days of FPPA's receipt of a letter of intent to withdraw pursuant to Rule 607.02, FPPA shall direct the actuary for the Statewide Defined Benefit Plan to prepare and file with FPPA a certified actuarial report which calculates the amount of reserves which must be set aside, and the actuarial impact of the withdrawal on the Statewide Defined Benefit Plan, in accordance with § 31-31-501(4), C.R.S., as amended. For the purpose of calculating the amount of reserves, the actuary shall assume that all of the employer's Members who are Vested under the Statewide Defined Benefit Plan will elect a Vested retirement as provided by § 31-31-404(2), C.R.S., as amended. Upon written request by the employer, the actuary shall make an alternative reserve calculation to reflect the employer's estimate of those Members who will elect a Vested retirement as provided by § 31-31-404(2), C.R.S., as amended. The cost of the actuarial study or studies shall be paid by the employer.

**607.04.** Upon receipt of the actuarial study prepared in accordance with Rule 607.03, FPPA shall transmit a copy to the employer. If the actuary determines that the withdrawal will have an adverse financial impact on the actuarial soundness of the New Hire benefits account, the employer shall not be permitted to withdraw. If the actuary determines that the withdrawal will not have an adverse financial impact on the actuarial soundness of the New Hire benefits account, the employer may proceed to withdraw by filing a resolution, adopted by the governing body of the employer, stating that the employer intends to withdraw from participation in the Statewide Defined Benefit Plan for the purpose of electing participation in the Statewide Money Purchase Plan, in accordance with applicable law and regulations promulgated by FPPA. The resolution of withdrawal shall also state a requested date for withdrawal.

**607.05.** Filing of the resolution of withdrawal is completed when FPPA receives a certified copy of the resolution. FPPA shall notify the employer that the resolution of withdrawal has been received, and the FPPA notice shall also state the date of filing.

**607.06.** Unless a shorter waiting period is approved by the Board, the resolution of withdrawal must be filed with FPPA no less than nine months prior to the effective date of withdrawal. The effective date of withdrawal shall be the first day of the month immediately following the month in which the waiting period expires.

**607.07.** FPPA shall prepare a disclosure statement which compares the main provisions of the Statewide Defined Benefit Plan and the Statewide Money Purchase Plan. At least 10 days prior to the date of the Member election, the employer shall hand deliver or mail a copy of the disclosure statement to each Member eligible to vote in the election.

**607.08.** All police officers and/or firefighters, as appropriate, which are employed on the date or dates of the election and are participating in the Statewide Defined Benefit Plan, are eligible to vote. Those hired less than 10 days prior to the commencement of the election shall be personally handed a disclosure statement by the employer on the date of their employment.

**607.09.** A public meeting must be held to discuss the withdrawal and the two statewide plans no later than five days before the election. Written notice of the meeting, by mail or hand delivery, must be given to each Member eligible to vote on the question of withdrawal and to FPPA, at least ten days before the meeting.

**607.10.** All Members voting in the election shall sign a register of voters at the time they receive their ballots.

**607.11.** At the election conducted by the employer concerning the withdrawal, all Members shall vote by secret ballot. The ballot shall contain the following statement: *I have read and I understand the disclosure statement.* The ballot shall then contain the applicable options. A sample ballot shall be approved by FPPA prior to the election. Subject to approval of the procedure by FPPA, an employer may allow Members to vote by absentee ballots.

**607.12.** After all of those eligible to vote have had an opportunity to cast their ballots, the election shall be closed, but in no event shall the election be conducted during more than five consecutive days. In addition, all Members who are Vested under the Statewide Defined Benefit Plan must complete a notice which will be provided by FPPA. The notice shall state whether the Vested Member, in the event the withdrawal becomes effective, wishes to leave the Member's Contributions with the Statewide Defined Benefit Plan and elect a Vested retirement, or whether the Member wishes to transfer the Member Contributions to the Statewide Money Purchase Plan. The notice shall be returned to the employer by the close of the election. If a Vested Member fails to return a notice it will be presumed that the Member wishes to have the Member Contributions transferred to the Statewide Money Purchase Plan.

**607.13.** After the election, the employer shall deliver the following to FPPA:

- (a) A list of Members eligible to vote, showing their dates of employment;
- (b) The register of voters;
- (c) The sealed ballots;
- (d) A certification by an officer of the employer that the disclosure statement was properly served to all eligible Members, and that the election was conducted fairly; and
- (e) Notices completed by Vested Members regarding their election of a Vested retirement.

**607.14.** FPPA shall count the ballots in the presence of designated representatives of the employer. If both police officers and firefighters are voting on the withdrawal, the ballots of each group will be counted separately.

**607.15.** If the above procedures have been completed and if 65 percent of the Members eligible to vote in each voting group approve the withdrawal, it shall be considered adopted, and the withdrawal approved, unless subsequently revoked as provided in Rule 607.17 and § 31-31-501(4)(a)(II)(A), C.R.S., as amended. If fewer than 65 percent of the Members eligible to vote in a voting group approve the withdrawal, the resolution of withdrawal will be considered null and void as to that group.

**607.16.** All disputes concerning the election shall be resolved by FPPA.

**607.17.** If deemed necessary by FPPA, the actuary shall update the report prepared pursuant to Rule 607.03 and finalize the amount of reserves required for purposes of that Rule and § 31-31-501(4)(a)(II), C.R.S., as amended. The cost of the updated study or studies shall be paid by the employer. FPPA will promptly provide the employer with a copy of the updated study, a preliminary estimate of each Member's initial account balance under the Statewide Money Purchase Plan, and a revoking ballot for each Member. The employer shall promptly provide each Member with FPPA's estimate of the Member's initial account balance under the Statewide Money Purchase Plan and a revoking ballot. Within 30 days of the employer's receipt of the updated actuarial study, the employer may terminate the withdrawal by filing with the FPPA Board a resolution revoking the employer's resolution of intent to withdraw. The withdrawal will also terminate if, within 30 days of the employer's receipt of the updated actuarial study, more than 35 percent of the employer's active Members who are eligible to vote, file revoking ballots with FPPA.

**607.18.** Within 60 days of FPPA's receipt of the updated actuarial report, and assuming the withdrawal is not subsequently terminated, FPPA shall make the allocations required by § 31-31-501(5) and (6), C.R.S., as amended, and shall notify the employer of any additional payments which the employer must make in order to fund the amount of reserves as calculated in the actuarial report. Payment shall be due within 30 days of the date FPPA mails notice of the amount to the employer, but in no event later than 10 working days after the effective date of withdrawal.

**607.19.** Each eligible Member of a withdrawing employer shall be enrolled in the Statewide Money Purchase Plan as of the effective date of withdrawal. All subsequent contributions made by the Member and his or her employer shall be credited to the Member's individual account under the Statewide Money Purchase Plan as provided by the plan.

**608. Electing Coverage Under the Statewide Money Purchase Plan for Members of a Local Money Purchase Plan**

**608.01.** Any employer may elect to cover police officers and/or firefighters in a local money purchase plan under the Statewide Money Purchase Plan administered by FPPA, subject to the limitations set forth in this Section 608 and § 31-31-502(6), C.R.S., as amended.

**608.02.** Any employer desiring to cover the Members of its local money purchase plan under the Statewide Money Purchase Plan shall file a resolution with FPPA, adopted by the governing body of the employer, stating the employer's intent to cover the Members of its local money purchase plan under the Statewide Money Purchase Plan. The resolution shall state a requested effective date of coverage which shall be the first day of the employer's pay period. The resolution must be filed with FPPA no less than six months prior to the proposed effective date, unless a shorter waiting period is requested and approved by the Board.

**608.03.** The employer shall prepare a disclosure statement which compares the main provisions of the local money purchase plan and the Statewide Money Purchase Plan. The disclosure statement shall be submitted to FPPA for its approval. Once approved, the employer shall hand deliver or mail a copy of the disclosure statement to each Member eligible to vote in the election at least 10 days prior to the date the employer has set for the Member election.

**608.04.** All police officers and/or firefighters, as appropriate, which are employed on the date or dates of the election and are participating in the local money purchase plan, are eligible to vote. Those hired less than 10 days prior to the commencement of the election shall be personally handed a disclosure statement by the employer on the date of their employment.

**608.05.** All Members voting in the election shall sign a register of voters at the time they receive their ballots.

**608.06.** At the election conducted by the employer concerning Statewide Money Purchase Plan coverage, all Members shall vote by secret ballot. The ballot shall contain the following statement: *I have read and I understand the disclosure statement.* The ballot shall then contain the applicable options. A sample ballot shall be approved by FPPA prior to the election. Subject to approval of the procedure by FPPA, an employer may allow Members to vote by absentee ballots.

**608.07.** After all of those eligible to vote have had an opportunity to cast their ballots, the election shall be closed, but in no event shall the election be conducted during more than five consecutive days.

**608.08.** After the election, the employer shall deliver the following to FPPA:

- (a) A list of Members eligible to vote, showing their dates of employment;
- (b) The register of voters;

(c) The sealed ballots; and

(d) A certification by an officer of the employer that the disclosure statement was properly served to all eligible Members, and that the election was conducted fairly.

**608.09.** FPPA shall count the ballots in the presence of designated representatives of the employer. If both police officers and firefighters are voting on the withdrawal, the ballots of each group will be counted separately.

**608.10.** If the above procedures have been completed and if 65 percent of the Members eligible to vote in each voting group approve coverage under the Statewide Money Purchase Plan, such coverage shall be considered approved, subject to compliance with the other requirements of this Rule 608 and § 31-31-502(6), C.R.S., as amended.

**608.11.** At least 30 days prior to the proposed effective date of coverage under the Statewide Money Purchase Plan, the employer shall file with FPPA the certification required by § 31-31-502(6)(e), C.R.S., as amended.

**608.12.** On the effective date of coverage under the Statewide Money Purchase Plan, the employer shall transfer the assets of the local money purchase plan to FPPA, together with such records regarding the benefits of retired Members and the accrued benefits of active Members, as FPPA may require in order to properly commence covering the Members under the Statewide Money Purchase Plan.

**609. Electing Coverage Under the Statewide Hybrid Plan for Members of a Local Money Purchase Plan or the Statewide Money Purchase Plan**

**609.01.** Any employer may irrevocably elect to cover police officers and/or firefighters in a local money purchase plan or the Statewide Money Purchase Plan under the Statewide Hybrid Plan administered by FPPA, subject to the limitations set forth in this Section 609 and the plan document created pursuant to § 31-31-1102, C.R.S., as amended.

**609.02.** Any employer desiring to cover the Members of its money purchase plan under the Statewide Hybrid Plan shall file a resolution with FPPA, adopted by the governing body of the employer, stating the employer's intent to cover the Members of its money purchase plan under the Statewide Hybrid Plan. The resolution shall state a requested effective date of coverage which shall be the first day of the employer's pay period. The resolution shall state the Member and the employer contribution rates proposed under the plan. The resolution shall state whether the employer elects to offer Members the option of participating in the Statewide Defined Benefit Plan and include how the contributions shall be split between the employer and the Member. The resolution shall also indicate the employer's election to cover the Members hired after the effective date under either the Statewide Hybrid Plan or the Statewide Defined Benefit Plan. The resolution shall indicate whether the employer intends to transfer the active and retired Members' account balances to FPPA. The resolution shall indicate that Members are fully vested in all balances that are transferred. The resolution shall acknowledge that election for coverage under the Statewide Hybrid Plan is irrevocable. The resolution must be filed with FPPA no less than six months prior to the proposed effective date, unless a shorter waiting period is requested and approved by the Board.

**609.03.** The employer shall prepare a disclosure statement which compares the main provisions of its money purchase plan and the Statewide Hybrid Plan. The disclosure statement shall be submitted to FPPA for its approval. Once approved, the employer shall hand deliver or mail a copy of the disclosure statement to each Member eligible to vote in the election at least 10 days prior to the date the employer has set for the Member election.

**609.04.** All police officers and/or firefighters, as appropriate, which are employed on the date or dates of the election and are participating in the money purchase plan, are eligible to vote. Those hired less than 10 days prior to the commencement of the election shall be personally handed a disclosure statement by the employer on the date of their employment.

**609.05.** All Members voting in the election shall sign a register of voters at the time they receive their ballots.

**609.06.** At the election conducted by the employer concerning Statewide Hybrid Plan coverage, all Members shall vote by secret ballot. The ballot shall contain the following statement: *I have read and I understand the disclosure statement, and I vote for the following plan.* The ballot shall then contain the applicable options. A sample ballot shall be approved by FPPA prior to the election. Subject to approval of the procedure by FPPA, an employer may allow Members to vote by absentee ballots.

**609.07.** After all of those eligible to vote have had an opportunity to cast their ballots, the election shall be closed, but in no event shall the election be conducted during more than five consecutive days.

**609.08.** After the election, the employer shall deliver the following to FPPA:

- (a) A list of Members eligible to vote, showing their dates of employment;
- (b) The register of voters;
- (c) The sealed ballots; and
- (d) A certification by an officer of the employer that the disclosure statement was properly served to all eligible Members, and that the election was conducted fairly.

**609.09.** FPPA shall count the ballots in the presence of designated representatives of the employer. If both police officers and firefighters are voting on the coverage and they are in separate plans, the ballots of each group will be counted separately.

**609.10.** If the above procedures have been completed and if at least sixty-five (65) percent of the Members eligible to vote in each voting group approve coverage under the Statewide Hybrid Plan, such coverage shall be considered approved, subject to compliance with the other requirements of this Rule 609 and of the plan document created pursuant to § 31-31-1102, C.R.S., as amended.

**609.11.** In lieu of the election to obtain approval by at least sixty-five (65) percent of all active Members (as contemplated in Rules 609.03 – 609.10) and when the local plan allows the individual self-direction of each Member's account, the employer may allow currently active local plan Members to choose between continued participation in the local money purchase plan or participation in the Statewide Hybrid Plan. Any requirement for an election of the Members that may be contained in a local plan document, trust agreement or labor agreement shall remain in effect.

**609.12.** At least 30 days prior to the proposed effective date of coverage under the Statewide Hybrid Plan, the employer shall file with FPPA the certification required by § 31-31-1101(5) or (6), C.R.S., as amended.

**609.13.** On the effective date of coverage under the Statewide Hybrid Plan or on such date as mutually agreed upon by the employer and FPPA, the employer, if it has so elected, shall transfer the assets of its local money purchase plan to FPPA, together with such records regarding the benefits of retired Members and the accrued benefits of active Members, as FPPA may require in order to properly commence covering the Members under the FPPA Defined Benefit System which includes the Statewide Hybrid Plan. On and after the effective date, all persons hired by the department meeting the definition of Member shall participate in the tier of the FPPA defined benefit system as elected by the employer.



**610. Electing Reentry Into the Statewide Defined Benefit Plan for Members of a Local Money Purchase Plan or the Statewide Money Purchase Plan**

**610.01.** Any employer may irrevocably elect to cover police officers and/or firefighters in a local money purchase plan or the Statewide Money Purchase Plan under the Statewide Defined Benefit Plan administered by FPPA, subject to the limitations set forth in this Section 610 and § 31-31-1103, C.R.S., as amended.

**610.02.** Any employer desiring to cover the Members of its money purchase plan under the Statewide Defined Benefit Plan shall file a resolution with FPPA, adopted by the governing body of the employer, stating the employer's intent to cover the Members of its money purchase plan under the Statewide Defined Benefit Plan. The resolution shall state a requested effective date of coverage which shall be the first day of the employer's pay period. The resolution shall state the contribution rate and how the contributions shall be split between the employer and Member. The resolution shall indicate whether the employer intends to transfer the active and retired Members' account balances to FPPA. The resolution shall acknowledge that election for coverage under the Statewide Defined Benefit Plan is irrevocable. The resolution must be filed with FPPA no less than nine months prior to the proposed effective date, unless a shorter waiting period is requested and approved by the Board.

**610.03.** The employer shall prepare a disclosure statement which compares the main provisions of its money purchase plan and the Statewide Defined Benefit Plan. The disclosure statement shall be submitted to FPPA for its approval. Once approved, the employer shall hand deliver or mail a copy of the disclosure statement to each Member eligible to vote in the election at least 10 days prior to the date the employer has set for the Member election.

**610.04.** All police officers and/or firefighters, as appropriate, which are employed on the date or dates of the election and are participating in the money purchase plan, are eligible to vote. Those hired less than 10 days prior to the commencement of the election shall be personally handed a disclosure statement by the employer on the date of their employment.

**610.05.** All Members voting in the election shall sign a register of voters at the time they receive their ballots.

**610.06.** At the election conducted by the employer concerning reentry into the Statewide Defined Benefit Plan coverage, all Members shall vote by secret ballot. The ballot shall contain the applicable options. A sample ballot shall be approved by FPPA prior to the election. Subject to approval of the procedure by FPPA, an employer may allow Members to vote by absentee ballots.

**610.07.** After all of those eligible to vote have had an opportunity to cast their ballots, the election shall be closed, but in no event shall the election be conducted during more than five consecutive days.

**610.08.** After the election, the employer shall deliver the following to FPPA:

- (a) A list of Members eligible to vote, showing their dates of employment;
- (b) The register of voters;
- (c) The sealed ballots; and
- (d) A certification by an officer of the employer that the disclosure statement was properly served to all eligible Members, and that the election was conducted fairly.

**610.09.** FPPA shall count the ballots in the presence of designated representatives of the employer. If both police officers and firefighters are voting on the reentry, the ballots of each group will be counted separately.

**610.10.** If the above procedures have been completed and if at least sixty-five (65) percent of the Members eligible to vote in each voting group approve coverage under the Statewide Defined Benefit Plan, such coverage shall be considered approved, subject to compliance with the other requirements of this Rule 610 and § 31-31-1103, C.R.S., as amended.

**610.11.** In lieu of the election to obtain approval by at least sixty-five (65) percent of all active Members (as contemplated in Rules 610.03 – 610.10) and when the local plan allows the individual self-direction of each Member's account, the employer may allow currently active local plan Members to choose between continued participation in the local money purchase plan or participation in the Statewide Defined Benefit Plan. Any requirement for an election of the Members that may be contained in a local plan document, trust agreement or labor agreement shall remain in effect.

**610.12.** At least thirty (30) days prior to the proposed effective date of coverage under the Statewide Defined Benefit Plan, the employer shall file with FPPA the certification required by § 31-31-1103(1)(e), C.R.S., as amended.

**610.13.** Prior to the effective date of coverage under the Statewide Defined Benefit Plan or on such date as mutually agreed upon by the employer and FPPA, the employer, shall transfer such records regarding the accrued benefits of active Members, as FPPA may require in order to properly commence covering the Members under the Statewide Defined Benefit Plan. On and after the effective date, all persons hired by the department meeting the definition of Member shall participate in the tier of the Defined Benefit System as elected by the employer.

## **611. Employer Election to Cover Part-Time Employees**

**611.01.** Employers whose Members participate in the Statewide Defined Benefit Plan, the Statewide Hybrid Plan or the Statewide Money Purchase Plan and the Statewide Death and Disability Plan may elect to cover police officers and/or firefighters working less than 1600 hours, but who otherwise qualify as Members, in the Statewide Money Purchase Plan. If such part-time members are enrolled in the Statewide Money Purchase Plan, the employer may also elect to enroll the part-time members in the Statewide Death and Disability Plan.

**611.02.** Employers whose Members participate in a local money purchase plan and in the Statewide Death and Disability Plan may elect to cover police officers and/or firefighters working less than 1600 hours, but otherwise qualifying as Members, in the Statewide Death and Disability Plan administered by FPPA if the part-time members also participate in the local money purchase plan.

**611.03.** Any employer desiring to make an election pursuant to Rule 611.01 or 611.02 shall file a resolution with FPPA, adopted by the governing body of the employer, stating the employer's intent to cover its police officers and/or firefighters working less than 1600 hours under the Statewide Money Purchase Plan and/or the Statewide Death and Disability Plan. The resolution shall state a requested effective date of coverage which shall be the first day of the employer's payroll period.

**611.04.** Coverage of part-time employees under the Statewide Death and Disability Plan and the Statewide Money Purchase Plan shall only include permanent employees that are regularly scheduled to work each month and shall not include temporary or seasonal employees or intermittent employment.

## **612. Employer Election to Cover Clerical and Other Personnel**

**612.01.** A fire protection district, fire authority, or county improvement district providing fire protection services whose Members participate in the FPPA Defined Benefit System or the Statewide Money Purchase Plan may elect to cover clerical or other personnel whose services are auxiliary to fire protection in the Statewide Defined Benefit Plan or the Statewide Money Purchase Plan administered by

FPPA, unless said clerical or other personnel participate the Public Employees' Retirement Association established under Title 24, Article 51, *Colorado Revised Statutes*.

**612.02.** Any employer desiring to make an election pursuant to Rule 612.01 shall file a resolution with FPPA, adopted by the governing body of the employer, stating the employer's intent to cover its clerical and other personnel under plan in which its firefighters participate. The resolution shall state a requested effective date of coverage which shall be the first day of the employer's payroll period.

**613. Election for Reentry into the Statewide Defined Benefit Plan or Statewide Hybrid Plan by Members Transferred to or Employed by an Employer Resulting from a Merger, Consolidation, Exclusion or Dissolution Between or Among One or More Employers**

**613.01.** Any employer may allow any Members who participate in a money purchase plan or Social Security who are transferred to or employed by an employer resulting from a merger, consolidation, exclusion or dissolution proceeding between one or more employers to elect to participate in the Statewide Defined Benefit Plan or the Statewide Hybrid Plan through the partial re-entry process stated in Rule 610. The contribution rate for any partial re-entry Members under this rule shall be set by the FPPA Board in accordance with Title 31, Article 31, Section 401(3), *Colorado Revised Statutes*.

**CHAPTER 7 ADMINISTRATIVE MATTERS**

**701. REPEALED (September 30, 2010)**

The Board shall operate in the manner set forth in the adopted Board Governance Manual.

**702. Rules on Rule-Making by the Board**

**702.01.** Notice of proposed rule-making shall be given in the following manner:

- (a) The notice shall state the time, place, and nature of public rule-making proceedings which shall not be held less than 20 days after the publication of such notice;
- (b) The notice shall contain the authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved; and
- (c) Notice shall be published by mailing or faxing a copy of the notice to all employers employing full-time paid police officers and firefighters and to any persons and entities who have requested that they receive such notice.

**702.02.** At the place and time stated in the notice, the Board shall hold a public hearing at which it shall afford interested persons an opportunity to submit written data, views, or arguments and to present the same orally unless the Board deems it unnecessary. Any proposed rule or revised proposed rule by the Board which is to be considered at the public hearing, together with a proposed statement of basis, statutory authority, and purpose, shall be made available to any person at least five days prior to said hearing. The Board shall consider all submissions. The rules, promulgated by the Board, shall be based on the record which shall consist of proposed rules, evidence, exhibits, and other matters presented or considered, matters officially noticed, rulings on exceptions, any findings of fact and conclusions of law proposed by any party, and any written brief filed. If no change is made, the Board may adopt said rule at the last public hearing. However, if a change is to be made therein, the Board shall announce at said public hearing the date of availability to any party of the incorporated change in the proposed final rule and shall afford any party to the public hearing at least four working days following the availability of such

proposed final rule to submit written comments thereon prior to the adoption thereof. After consideration of the relevant matter presented, the Board shall incorporate by reference on the rules adopted, a written concise general statement of their basis and purpose. The written statement of the basis and purpose of a rule which involves scientific or technological issues shall include a detailed, analytical evaluation of the scientific rationale justifying the rule.

**702.03.** FPPA shall maintain a copy of its currently effective rules and the current status of each published proposal for rules and minutes of all its action upon rules which shall be available for inspection by any person during regular office hours.

**702.04.** A temporary or emergency rule may be adopted without compliance with the procedures prescribed in Rule 702.02 and with less than the 20 days' notice prescribed in Rule 702.01 (or where circumstances imperatively require, without notice) where the Board finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements otherwise provided in this Section 702 would be contrary to the public interest. Such findings and a statement of the reasons for the action shall be published with the rule. A temporary or emergency rule shall become effective on adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for not more than three months from the adoption thereof, unless made permanent by compliance with Rule 702.01 and Rule 702.02 of this Section 702.

**702.05.** Any interested person shall have the right to petition for the issuance, amendment, or repeal of a rule. Such petition shall be open to public inspection. Action on such petition shall be within the discretion of the Board; but when the Board undertakes rule-making on any matter, all related petitions for the issuance, amendment, or repeal of rules on such matters shall be considered and acted upon in the same proceeding.

**702.06.** FPPA shall make available to the public and shall deliver to anyone requesting it a copy of any rule of FPPA then in effect or of any notice of proposed rule-making proceeding in which action has not been completed. FPPA shall provide a certified copy upon request. FPPA may make a reasonable charge for supplying any such copy.

**702.07.** Upon adoption by the Board of all new rules, amendments to rules and repealers of rules, notice of such action shall be in the same manner as provided in Rule 702.01 of this Section 702.

**702.08.** Unless they are temporary or emergency measures, adopted pursuant to Rule 702.04, all rules, amendments and repealers shall be effective on the date of mailing of the appropriate notice, as set forth in Rule 702.07.

**702.09.** The FPPA General Counsel may authorize such minor modifications to the FPPA Rules as are necessary from time to time to correct clerical errors or to correct references to statutes, other rules, or other legal sources.

### **703. Plan Modification of Old Hire Plans**

**703.01.** In the event that an election concerning plan modification of a local pension plan is concurrent with an election on other matters, the employer must demonstrate that the proposed modification was approved in a separate vote by a separate ballot, by those Members of the plan eligible to vote on the modification. FPPA, in its discretion, reserves the right to examine all ballots submitted in an election on plan modification. The employer must also demonstrate compliance with all other procedures set forth in § 31-30.5-210(2), C.R.S., as amended.

**703.02.** Notwithstanding any other provision of these Rules, the percentage of annual state contributions toward an employer's unfunded pension liability will not be increased due to any local plan modification. The employer will be required to separately track and account for increases in unfunded

liabilities attributable to any local plan modification in order to ensure that the amount of state funds the employer receives is not affected by any such plan modification.

**703.03.** An employer which elects to “pick-up” mandatory employee contributions to an FPPA-affiliated local pension plan pursuant to Section 414(h) of the Internal Revenue Code must file a written certification with FPPA stating that it has elected to “pick-up” such contributions and has complied with all applicable provisions of federal law governing the “pick-up” of such contributions. The certification shall also state the effective date of the pickup provision and must be filed with FPPA at least 60 days prior to the effective date. If the employer pick-up provision is enacted through plan modification of the local pension plan, all statutory procedures governing modification of such plan must be complied with.

#### **704. Modification of State Plan**

**704.01.** Whenever the FPPA Board of Directors proposes a modification to the Statewide Defined Benefit Plan or the Statewide Money Purchase Plan which requires a vote of the Members and employers, FPPA shall provide to each employer employing active Members covered by the state plan the following information to be distributed by the employer to each such Member:

- (a) A copy of the language of the proposed plan modification;
- (b) A plain language summary of the proposed plan modification including the proportionate amount of current contributions necessary to fund the modification, if applicable; and
- (c) A Member election ballot.

**704.02.** In addition to the Member information set forth in Rule 704.01, FPPA shall provide the following information to each employer:

- (a) A list of the active Members of the state plan employed by the employer as reflected in FPPA records; and
- (b) For the Statewide Defined Benefit Plan, a certification from the FPPA Board of Directors that the proposed modification complies with the requirements set forth in § 31-31-408, C.R.S., as amended; or
- (c) For the Statewide Money Purchase Plan, a certification from the FPPA Board of Directors that the proposed modification complies with the requirements set forth in § 31-31-502(5), C.R.S., as amended; and
- (d) One employer election ballot or, if the employer employs both fire and police Members of the state plan, two employer election ballots.

**704.03.** FPPA will forward the information required by Rules 704.01 and 704.02 by certified mail or hand-delivery to the applicable Department Chief or Chiefs for each employer unless the employer designates a different individual in writing to FPPA; or the employer may pick up the information in the FPPA offices. In cases of delivery by other than certified mail, the employer shall provide FPPA with a written receipt for such information.

**704.04.** The following procedures shall govern the Member election:

- (a) Within 15 days of the date of mailing of the information required by the Rules, the employer shall provide each active Member of the state plan, a copy of the information set forth in Rule 704.01.

- (b) The Member election may commence at any time following the employer's receipt of the information required by Rules 704.01 and 704.02 and shall conclude no later than the 30<sup>th</sup> day from the date of such receipt;
- (c) The employer may prescribe rules for the return of ballots by Members including rules for absentee balloting as long as such rules ensure the confidentiality of the vote, do not permit voting by proxy, and are not inconsistent with FPPA Rules;
- (d) The employer shall exclude from voting any individuals on the roster provided by FPPA who terminate employment prior to the commencement of the vote and shall include state plan Members not reflected in FPPA's roster who were hired prior to the conclusion of the voting;
- (e) Within 60 days from the date of FPPA's mailing to the employer, an authorized representative of the employer must certify the results of the Member election, including:
  - (1) The vote count for and against the proposed modification;
  - (2) A roster of those Members receiving ballots and a list of those Members who actually submitted ballots;
  - (3) A statement that, to the best of the employer's knowledge, all eligible Members timely received the information set forth in Rule 704.01; and
  - (4) The election was conducted in a fair and impartial manner.

**704.05.** At the time the Member election results are certified to FPPA, the employer shall also return the employer election ballot. The employer election shall be made by the governing body of the employer. The employer shall submit a copy of the motion, resolution or other action evidencing the governing body's decision.

**704.06.** Within 90 days from the date of FPPA's mailing to employers, the Executive Director for FPPA shall certify the results of the Member and employer elections to the Board of directors. If at least 65 percent of the voting Members and more than 50 percent of the employers approve the proposed modification, the Board will consider final approval at a subsequent meeting of the Board. The effective date of the proposed modification will be the date of the Board's final approval, or such other date as may be prescribed by the Board.

**704.07.** Each employer shall retain all Member ballots actually voted for a period of six months and shall make such ballots available for inspection by FPPA upon its request.

**704.08 Alternative Voting Procedures.** In lieu of using the paper ballots and the process contemplated by this Rule 704, the FPPA Board may prescribe an election procedure whereby a third party vendor can conduct the election and the membership can vote using a paper ballot and/or the phone, internet or e-mail.

## **705. Availability of Records**

**705.01.** It is the policy of the Board to make the records of FPPA open for inspection as is required under Colorado law, including under the Colorado Open Records Act, § 24-72-201 *et seq.*, C.R.S.

**705.02.** For purposes of § 24-72-204, C.R.S., as amended, all documents, without regard to the form of transmission, received from or sent to, private equity investment managers and entities in which FPPA has made, or has contemplated making, private equity investments are deemed to contain trade secrets, privileged information, and confidential commercial information and shall therefore not be released,

except as necessary for FPPA to conduct business and meet its fiduciary obligations, and except to the extent a document is specifically identified by the sender as being a document that may be made available in the public domain. FPPA shall offer for public inspection and copying periodic reports produced by FPPA for the Board of Directors which contain the return on investments and such periodic reports shall not be deemed to fall within the definition of trade secrets, privileged information, or confidential commercial information.

**705.03.** When an inspection of records is conducted, the person or entity performing the inspection may request copies of those records. Copies are to be made by, or under the supervision of, FPPA staff. A reasonable fee will be charged for copies furnished.

**705.04.** Notwithstanding any other provision of this section, FPPA shall release information on disability benefit awards to Pinnacol Assurance or any qualified self-insurer, upon their request, in order to assist them in implementing any statutorily required offsets against workmen's compensation awards granted to disabled Members.

**705.05. Reporting Under Investment Disclosure Requirements.** In order to comply with § 31-31-302(8)(d), C.R.S., FPPA shall publish and make available for the public on an annual basis the name of each private equity partnership or commingled investment vehicle in which the Association directly invests, the aggregate amount of money invested in the private equity partnership or commingled investment vehicle, and the rate of return realized on the investment since the investment's inception. For investments that were made in the last three (3) years, the rate of return may be reported as "not meaningful," where such reporting is consistent with industry practices due to the nature of the investment.

## **706. Compliance With Domestic Relations Orders**

**706.01.** The Board shall recognize and implement domestic relations orders subject to Rule 1011 and the following rules.

**706.02.** A "domestic relations order" means a judgment, decree or order issued by a court of competent jurisdiction in this state relating to dissolution of marriage, dissolution of civil union, legal separation or declaration of invalidity action, which complies with § 14-10-113, C.R.S., as amended, and this Rule 706.

**706.03.** The Board shall recognize and administer only those domestic relations orders which seek to implement a written agreement between a Member of a retirement plan administered by FPPA and the Member's former spouse or partner in a civil union. The Board and the FPPA staff as designated by the Board have the exclusive authority to administer domestic relations orders as they may apply to retirement plans administered by FPPA in compliance with § 14-10-113, C.R.S. The General Counsel shall provide a standardized form of agreement which must be used by the parties in this regard.

**706.04.** Any written agreement concerning the division of benefits in a retirement plan administered by FPPA shall be submitted to FPPA within 90 days after entry of the decree and the permanent orders regarding property distribution in the proceeding for the dissolution of marriage, dissolution of civil union, legal separation, or declaration of invalidity of marriage. The order approving the agreement shall be certified by the clerk of the court and submitted to and received by FPPA at least 30 days before the plan may make its first payment. Domestic relations orders under local pension plans administered by FPPA must be approved by the local pension board or its designee prior to implementation by FPPA. The local pension board or its designee must provide FPPA with written direction on implementing the domestic relations order.

**706.041.** If the Member is active when a court ordered domestic relations order is submitted and approved by the FPPA, the alternate payee's portion of a monthly benefit shall be calculated using the Normal benefit prior to any reduction made under a beneficiary option. If the Member dies prior to the first payment of benefits, no payments shall be due to the alternate payee. In the event the Member dies

before the alternate payee after payments have commenced, the alternate payee's portion of the monthly benefit shall terminate upon the Member's death. In the event the alternate payee dies before the Member, the alternate payee's portion of the monthly benefit shall cease, and the amount of the alternate payee's portion shall revert and be added to the Member's portion of the monthly benefit, subject to any reduction based on beneficiary options previously elected by the Member.

**706.042.** In recognition of the fact that disability benefits under the Statewide Death and Disability Plan are paid in lieu of defined benefits under the FPPA Defined Benefit System, that disability benefits paid after a divorce but prior to a retirement are not considered marital property under Colorado Law, and that disability benefits paid in lieu of a retirement benefit may be considered marital property subject to division under a domestic relations order under Colorado, the Board adopts the following rules:

- (a) If a Member retires on a permanent occupational or total disability under the Statewide Death and Disability Plan, receiving the disability benefit in lieu of a defined benefit under the FPPA Defined Benefit System, and has previously filed a domestic relations order prior to the date of disability which requires the division of a disability benefit, the alternate payee shall become eligible for payment of a portion of the disability benefit upon the Member attaining age 55 (or age 50 for the Colorado Springs New Hire Pension Plan, Police Component). The alternate payee's portion of the disability benefit shall be calculated pursuant to the division methodology agreed upon pursuant to the domestic relations order. However, the division methodology shall be applied to the normal defined benefit amount that the member would have been eligible to receive at age 55 (or age 50 for the Colorado Springs New Hire Pension Plan, Police Component) if the Member had separated from service on the date of disability and based on the service credit the Member earned in the defined benefit plan, before any reductions for survivor options. The division methodology shall not be applied to the Member's disability retirement benefit to calculate the alternate payee's portion of the benefit.
- (b) If a Member dies prior to the first payment of benefits, no payments shall be due to the alternate payee. In the event the Member dies before the alternate payee after payments have commenced, the alternate payee's portion of the monthly benefit shall terminate upon the Member's death. In the event the alternate payee dies before the Member, the alternate payee's portion of the monthly benefit shall cease, and the amount of the alternate payee's portion shall revert and be added to the Member's monthly benefit, subject to any reduction based on beneficiary options previously elected by the Member.
- (c) If the alternate payee and the Member have designated the Severed Benefit Option in accordance with Rule 706.05 in a domestic relations order which requires the division of a disability benefit, and the domestic relations order is received by FPPA prior to the date the Member is awarded a disability retirement, the alternate payee's actuarial equivalent of the alternate payee's portion of the defined benefit shall be calculated pursuant to the division methodology agreed upon pursuant to the domestic relations order. However, the division methodology shall be applied to the normal payment option of the defined benefit amount that the Member would have been eligible to receive at age 55 (or 50 for the Colorado Springs New Hire Pension Plan - Police Component) if the Member had separated from service on the date of disability and based on the service credit the Member earned in the defined benefit plan, before any reductions for survivor options. If the domestic relations order divides an SRA account, but the Member has been retired for disability before the Member would have been eligible to receive the defined benefit retirement, the Member's SRA account shall not be divided.

**706.043.** If the Member is retired under a Normal, Early, or Vested retirement or for disability when a court ordered domestic relations order is submitted and approved by the FPPA, the alternate payee's portion of a monthly benefit shall be calculated using the benefit payment after any reduction made under a benefit option. If the Member dies before the alternate payee, the alternate payee's portion of the monthly benefit shall terminate upon the Member's death. In the event the alternate payee dies before



the Member, the alternate payee's monthly benefit shall cease, and the amount of the alternate payee's share shall revert and be added to the Member's monthly benefit. The Severed Benefit Option is not available to an alternate payee when a Member is retired when a court-ordered domestic relations order is submitted to FPPA.

**706.044.** Any Member or alternate payee who disagrees with calculation of a monthly benefit or a portion of a monthly benefit may then file a request for an evidentiary hearing pursuant to Rule 509 within 30 days of the mailing of the notice of the calculation.

**706.05. Alternate Payee Severed Benefit Option.** If the Member is active and has not entered DROP, when a court ordered domestic relations order is submitted and approved by the FPPA, the alternate payee and the Member may designate that the alternate payee receive the actuarial equivalent of the alternate payee's portion of the defined benefit under the Statewide Defined Benefit Plan, Statewide Hybrid Plan, or Statewide Death and Disability Plan paid out over the lifetime of the alternate payee. The alternate payee and the Member shall make such designation prior to the first payment of benefits. If the Member dies prior to entering DROP or separation from service, no payments shall be due to the alternate payee under the severed option. After the benefit payments have begun, if the alternate payee dies before the Member, the severed benefit payable to the alternate payee shall terminate and shall not be restored to the Member. In the event that a severed benefit option is designated, and the Member subsequently enters DROP, a separate DROP account shall be established for the alternate payee and the alternate payee's severed portion of the benefit shall be deposited in the alternate payee's DROP account. The alternate payee shall self-direct the investment of the alternate payee's DROP account. The alternate payee shall not take a distribution from the DROP account until the Member has terminated employment.

**706.06.** Any formula in a written agreement concerning the division of benefits must enable FPPA to make a one-time calculation of the alternate payee's share. Any expenses incurred by FPPA in making the calculation shall be paid by the Member.

**706.07.** FPPA permits (and hence, state law requires) benefit adjustments to the alternate payee's share of a Member's defined benefit at the same time and in the same manner as any benefit adjustments applied to the participant's distribution.

**706.08. Successor Plans.** When a court-ordered domestic relations order has been approved for an active Member and subsequently the active Member elects or opts into a successor plan prior to retirement, the agreement in the court-ordered domestic relations order concerning the division of benefits shall also apply to the division of benefits the Member may have at retirement under any successor plan.

## **707. Deferred Retirement Option Plan ("DROP")**

**707.01.** A Member of the Statewide Defined Benefit Plan who elects to participate in the DROP shall be entitled to elect one of the following distribution methods by executing, in writing, a DROP distribution payment option selection form as prescribed by FPPA:

- (a) Deferral of any payment(s) from the account until a specified date. If a deferral of payment(s) is selected, the participant shall select one of the following distribution methods. However, all distributions must start no later than the required beginning date;
- (b) A lump sum distribution of the entire account balance;
- (c) Periodic monthly payments with a designated amount until the balance of the DROP account has been entirely distributed;

- (d) Periodic monthly payments for a designated period of years. FPPA, or its Recordkeeper, will calculate the dollar amount of the participant's periodic payment, so that the entire balance in the participant's DROP account will have been distributed to the participant by the end of the period selected by the participant. This amount will be periodically recalculated;
- (e) Initial minimum required distribution. FPPA, or its Recordkeeper, will calculate the dollar amount of the participant's periodic payment based on the participant's current DROP account balance. The minimum distribution is based on the participant's life expectancy (and the life expectancy of his or her designated beneficiary, if applicable); or
- (f) Combination of a lump sum and periodic payments by designating an initial lump sum payment of a specified amount and a balance to be paid in a specified number of monthly payments of a specified dollar amount until the balance of the DROP account has been entirely distributed to the participant.
- (g) Conversion to a monthly lifetime benefit pursuant to Rule 307. A partial lump sum distribution may also be combined with a conversion to a monthly lifetime benefit.

**707.02.** Regardless of the form of payment the participant chooses, the minimum distribution amount will be determined and made in accordance with Internal Revenue Code Section 401(a)(9) and the regulations there under. The minimum distribution is recalculated by FPPA or its Recordkeeper periodically on the basis of the life expectancy of the participant and the participant's designated beneficiary, if applicable. If elected in writing before the required beginning date by the participant and/or the participant's spouse or partner in a civil union, if applicable, the life expectancy of the participant and/or the participant's spouse or partner in a civil union shall be recalculated periodically.

**707.03.** If the retiree does not select a distribution method, benefit payments will be made in compliance with applicable federal law regarding minimum distributions.

**707.04.** If the Member dies during the period of the Member's participation in the DROP and the Member's designated beneficiary is the Member's surviving spouse to whom the Member was legally married or partner in a civil union with whom the Member established a valid civil union under applicable Colorado law or the laws of another state or foreign country at the time of the Member's death, the Member's designated beneficiary shall be entitled to select one of the distribution methods set forth in Rule 707.01, subject to the provisions of Rule 707.02.

**707.05.** If a retiree or surviving spouse chooses a distribution method involving periodic payments, he/she may make a change in payment as may be allowed by the Recordkeeper.

**707.06.** If the Member has not designated a Designated Beneficiary or the Plan is unable to locate the Designated Beneficiary upon death, the Member's remaining interest will be paid in a lump sum to the Member's estate. Notwithstanding the foregoing, any payment to an estate shall be made in a lump sum.

**707.07.** Self-directed DROP Accounts shall be adjusted in accordance with the following:

- (a) The balance of such Accounts shall be adjusted daily to reflect any distribution to the Member and all interest, dividends, account charges, and changes of market value resulting from the investment of the Member's Accounts.
- (b) Contributions shall be allocated to each account of each eligible Member not less frequently than monthly, according to the amount that is actually contributed on behalf of each Member.
- (c) The costs of administrative services (including record keeping, legal, administrative, etc.) will be covered by forfeitures, penalties received, any revenue sharing derived from the

investments offered by the plan, settlement proceeds, and other sources of revenue received. When the expense of administrative services exceeds the plan revenue, the administrative expenses of the plan may be charged to plan participants on a periodic basis in the form of an asset-based fee, a flat hard dollar fee, or a combination thereof. The FPPA Self-Directed Plans Committee will review the administrative expenses on an annual basis and determine the allocation of administrative costs of the plan to participants, if any.

In addition to overall administrative expenses, there may be individual service fees associated with optional features offered under the plan. Individual service fees are charged separately to the accounts of individuals who choose to utilize a particular plan feature.

**707.08** Subject to any limitations in this Article, a Member may elect, at the time and in the manner prescribed by the Board or the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to the Member's Self-directed DROP Account in a Direct Rollover. Rollovers from other permissible sources will be allowed to the extent permitted by law, subject to any conditions, proofs, or acceptance the Board or its designee deems appropriate. A Member may not use any balance rolled into the Member's Self-directed DROP Account from another permissible source not part of the FPPA Defined Benefit System to purchase a defined benefit.

**707.09** If any Member, beneficiary, or alternate payee has an aggregate account balance of \$1,000 or less, the Board may distribute the aggregate account balance to the Member, beneficiary or alternate payee without receiving any request for distribution.

## **708. Delinquent Contributions**

**708.01.** All contributions to plans administered by FPPA are due ten days following the date of payment of salary to the Member. Each employer shall also submit the required contribution report with the contributions required to process the deposit. Payments are subject to interest if not submitted when due at a daily rate equivalent to one-half of one percent per month on the contribution amount. Penalties shall not be compounded.

**708.02.** The Executive Director, the Chief Operations Officer (COO), or the Chief Benefits Officer (CBO), may waive the interest charged on delinquent contributions mandated by § 31-31-402(4), C.R.S., as amended, where he or she finds the amount to be de minimis or for good cause.

**708.03. REPEALED (September 24, 2015)**

**708.04. REPEALED (September 25, 2014)**

## **709. Investment Options for DROP**

### **709.00. Self-Directed Investment Fund**

**709.01.** Old hire plans may be amended to provide for the self direction of Vested DROP assets and contributions by allocating such assets of the plan to the Fire and Police Members' Self-Directed Investment Fund subject to the terms of Rule 709 herein. Any such amendment must remove all of its Members' DROP assets from the Fire and Police Members' Benefit Investment Fund to the Fire and Police Members' Self-Directed Investment Fund and all DROP retirees who are currently in pay status shall be included.

**709.02.** FPPA shall transfer the DROP assets of an old hire plan providing for self direction of the assets to its Recordkeeper for self-direction no later than 120 days after the latter of the effective date of the old hire plan amendment or the date on which the FPPA Board permitted the amendment.

**709.03.** FPPA shall keep an accurate account of each such individual old hire fund. In addition, FPPA shall keep an accurate account of each Member's separate account in any such individual fund. The FPPA Board shall allow a Member to exercise control of the investment of all of the Member's accrued benefit under the Member's plan. The Board shall designate a fund for investments of a Member's funds of which the Member fails to direct the investment.

**709.04.** In allowing a Member to exercise such control, the FPPA Board shall:

- (a) Select at least three investment alternatives, each of which is diversified in itself, that allow the Member a broad range of investments and a meaningful choice between risk and return in the investment of the Member's accrued benefit;
- (b) Allow the Member to change investments at least once each calendar quarter; and
- (c) Provide the Member with information describing the investment alternatives, the nature, investment performance, fees, and expenses of investment alternatives, and other information to enable a Member to make informed investment decisions.

**709.05.** FPPA, or its Recordkeeper, shall adopt procedures governing the calculation and allocation of earnings and losses under the various investment alternatives that it may offer, the transfer of assets between funds under each alternative, the allocation of a Member's account between investment alternatives, and such other matters as may be necessary to its administration and management of the fund.

**709.06.** The FPPA Board shall be the trustee of the Fire and Police Members' Self-Directed Investment Fund subject to the Members' allocation of moneys in their accounts to the alternatives offered by the FPPA Board. A Member who exercises control over the plan assets in the Member's account shall not be deemed to be a fiduciary of the fund by reason of such exercise of control, and neither the FPPA Board nor the FPPA shall be liable for any loss that results from such exercise of control.

**709.07.** The FPPA Board shall designate one or more financial institutions as custodians of the fund. All moneys paid or transmitted to the custodian shall be credited to appropriate accounts in the fund, and the custodian shall maintain a current inventory of all investments of the fund.

**709.08.** Disbursements from the fund shall be made, subject to the approval of FPPA, only for payment of the expenses of the association in connection with the administration of the fund, refunds to the Members, benefits, and investment purposes.

**709.09.** The FPPA Board shall submit an annual audit of the Fire and Police Members' Self Directed Investment Fund to the general assembly and to each employer that has active or retired Members with balances in the fund. Each employer shall make the audit and study available for review by its Members.

**709.10.** Self-directed DROP Accounts shall be adjusted in accordance with the following:

- (a) The balance of such Accounts shall be adjusted daily to reflect any distribution to the Member and all interest, dividends, account charges, and changes of market value resulting from the investment of the Member's Accounts.
- (b) Contributions shall be allocated to each account of each eligible Member not less frequently than monthly, according to the amount that is actually contributed on behalf of each Member.
- (c) The costs of administrative services (including record keeping, legal, administrative, etc.) will be covered by forfeitures, penalties received, any revenue sharing derived from the investments offered by the plan, settlement proceeds, and other sources of revenue

received. When the expense of administrative services exceeds the plan revenue, the administrative expenses of the plan may be charged to plan participants on a periodic basis in the form of an asset-based fee, a flat hard dollar fee, or a combination thereof. The FPPA Self-Directed Plans Committee will review the administrative expenses on an annual basis and determine the allocation of administrative costs of the plan to participants, if any.

In addition to overall administrative expenses, there may be individual service fees associated with optional features offered under the plan. Individual service fees are charged separately to the accounts of individuals who choose to utilize a particular plan feature.

**709.11** Subject to any limitations in this Article, a Member may elect, at the time and in the manner prescribed by the Board or the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to this Plan in a Direct Rollover. Rollovers from other permissible sources will be allowed to the extent permitted by law, subject to any conditions, proofs, or acceptance the Board or its designee deems appropriate.

## **710. Investment Fund Option**

**710.01.** A Member who participates in an old hire plan DROP program, the assets of which are not subject to self-direction pursuant to Rule 709, will invest all contributions to his or her DROP account in the Fire & Police Members' Benefit Investment Fund at the time of commencement of participation in the DROP.

**710.02.** Gross undistributed old hire member deferred retirement option plan accounts are allocated net earnings on a monthly time-weighted basis. Gross earnings are allocated based upon the gross total performance of the combined accounts of the Fire & Police Members' Benefit Investment Fund. If final performance is not available at the time of allocation, applicable public market proxies may be used. Gross allocated earnings are adjusted monthly to include the impact of FPPA's administrative expenses, including investment management fees. If final accounting of administrative expenses, including investment management fees, is not available at the time of allocation historical expenses may be used to estimate the current month administrative and investment management expenses. Upon determination of final earnings performance and/or administrative expenses, cumulative earnings will be adjusted in the following month's calculation. Member distributions based on estimates are final and will not be recalculated for any adjustments in estimate the following month.

The calculation of the old hire deferred retirement option plan net investment performance is determined by FPPA by accumulating the member account monthly time-weighted earnings. The member account monthly time-weighted earnings are recorded by multiplying the above calculated monthly Fire & Police Members' Benefit Investment Fund net performance percentage by the member DROP net assets available for investment at the beginning of the month, the time-weighted current month contributions, and the time-weighted current month distributions. The monthly Fire & Police Members' Benefit Investment Fund net performance percentage is calculated by taking the Fund's net earnings for the month (Numerator) and dividing it by the time-weighted net assets in the Fund (Denominator). The Fire and Police Members' Benefit Investment Fund's net earnings used to calculate the net investment performance, whether positive or negative, shall be the gross return of all investments, including both realized and unrealized gains, plus interest, dividends, other income, or other distributions, less all investment management fees, commissions, investment and performance consultant fees, custodial fees and costs, and FPPA's administrative expenses. No separate administrative fees are charged to an undistributed DROP member's account.

The methodology used in this rule is effective on and after January 1, 2009.

**710.03** A retired old hire Member may transfer the balance of his or her account to the Fire and Police Members Self-directed Investment Fund. Said election shall be irrevocable and may be made at any time

after termination from employment. If a Member requests a partial distribution from his or her account, the remaining undistributed balance in the Fire and Police Members' Benefit Investment Fund shall be transferred to the Fire and Police Members Self-directed Investment Fund. If an account balance remains in the Fire and Police Members' Benefit Investment Fund in the October before the Member, beneficiary, or alternate payee reaches age 70 ½, the Member's account shall be transferred without request to the Self-directed Investment Fund for administration under the minimum required distribution rules pursuant to the Internal Revenue Code.

**711. REPEALED (September 25, 2014)**

**712. Overpayment and Underpayment of Benefits and Fraud**

**712.01.** The award and payment of benefits under any plan administered by FPPA may be reviewed at any time by FPPA staff or upon a request from a Member or beneficiary. The review may include consideration and confirmation of methods of calculation, factors required for calculations, eligibility for the benefit, benefit processing issues, or any other relevant matter. Local pension authorities shall be responsible for determining issues within their authority. FPPA may refer issues to the local pension authority for determination. The CBO or the COO may issue repayment agreements consistent with those determinations. A Member or beneficiary shall provide any information requested by staff deemed necessary to make a determination.

**712.02.** If the CBO or COO determines that an underpayment of benefits has been made to a Member or beneficiary, payment shall be made for the underpaid amount. A Member or beneficiary may appeal a staff determination of the underpayment of benefits pursuant to Rule 509.

**712.03.** If the CBO or COO discovers an overpayment of benefits due to an error or mistake for any plan administered by the FPPA he or she shall make a determination as to the amount of overpayment made for the five (5) years prior to the date of the first notice of overpayment made to the Member or beneficiary. Notice shall be given to the Member or beneficiary who has received the overpayment. The monthly benefit payment may be immediately adjusted to the correct amount as determined by the FPPA staff subject to any final determination made as a result of an appeal of the staff's determination.

The CBO or COO shall determine a plan for the reimbursement of any overpayment made for the five (5) years prior to the date of the first notice of overpayment made to the Member or beneficiary. Such plan may include offset from future benefits. Future benefits shall not be offset for reimbursement of the overpayment by more than 50% from any monthly benefit payment, unless the Member or beneficiary agrees to a larger offset. Offsets may also be made against a Deferred Retirement Option Plan account balance or a Separate Retirement Account balance. The plan for the reimbursement of the overpayment determined by staff shall be included with the notice to the Member of overpayment.

The Member may appeal the staff determination of overpayment pursuant to Rule 509.

**712.04.** If the CBO determines that a Member or beneficiary is ineligible for a benefit previously awarded, the CBO shall give notice to the Member of the determination of ineligibility. If there has been an overpayment of benefits, the CBO shall also demand repayment for overpaid benefits made within the last five (5) years. If the Member objects to the determination or the repayment, he/she may appeal pursuant to Rule 509.

If a Member or beneficiary continues to receive a benefit after a determination of an overpayment of benefits, the future monthly benefit payment shall be reduced or completely suspended upon the issuance of the notice of the determination, subject to any final determination made as a result of an appeal of the staff's determination. The Member or beneficiary shall continue to receive any benefit for which there has been no determination of ineligibility.

The Executive Director, the CBO, or the COO shall have the authority to direct a schedule for the recovery of overpayments made under the FPPA Defined Benefit System and the Statewide Death and Disability Plan. When developing such schedule, the FPPA staff shall consider the cause of the overpayment, the probability of recovery of the full amount over a period of time, the amount to be recovered and the impact of the amount of recovery on the monthly pension benefit. The first priority is recovery of the overpayment, but recovery may be implemented in a way to lessen the impact on the Member. Where an overpayment is disputed or the schedule of recovery is disputed, the payee shall have the right to appeal the staff determination as provided in these rules.

**712.05.** (a) If the CBO determines that a Member is not eligible and determines that there is evidence that supports a finding that the benefit was fraudulently obtained from the FPPA Defined Benefit System, the Statewide Money Purchase Plan, or the Statewide Death and Disability Plan, the CBO shall give notice to the Member of the determination. The Hearing Officer shall conduct an evidentiary hearing to determine eligibility for benefits, whether the benefit has been fraudulently obtained, and may order repayment of all or part of the previously paid benefit. The procedures for the evidentiary hearing shall follow Rule 509.

(b) The monthly benefit payment shall be reduced or completely suspended immediately upon the issuance of the notice of the determination, subject to any final determination made as a result of an appeal of the staff's determination.

(c) A benefit is fraudulently obtained if the award of the benefit is based on a representation of material fact which is false or misleading, and the Member receiving the benefit knew the representation to be false or misleading and intended to mislead or deceive FPPA in granting the benefit.

**712.06.** The standard for review of an appeal to a determination made pursuant to this Rule 712 shall be based on a preponderance of the evidence.

**713.** REPEALED (see Rule 719) (August 23, 2006)

**714.** REPEALED (September 27, 2012)

**715.** REPEALED (See Rule 706.05) (August 23, 2006)

**716.** REPEALED (See Rule 705) (August 23, 2006)

**717.** REPEALED (See Rule 309) (August 23, 2006)

**718.** REPEALED (See Rule 602) (August 21, 2008)

**719. Administrative Pension Approvals and Overpayment Recoveries**

**719.01.** The Executive Director and the CBO or a designee of either the Executive Director or the CBO shall have the authority to approve the following applications and certifications on behalf of the Board:

- (a) Applications for retirement from the Defined Benefit System;
- (b) Applications for refund of contributions from the Defined Benefit System, including expedited applications;
- (c) Applications for distributions from the Statewide Money Purchase Plan and the Statewide Hybrid Plan – Money Purchase Component.

**719.02.** Actions approved by the Executive Director or the CBO or their designee are subject to the following requirements:

- (a) Actions receiving administrative approval shall otherwise meet all criteria established under state law or by FPPA rule in order to receive approval;
- (b) The Executive Director may defer consideration of any application to the Board;
- (c) An appeal of the Executive Director's or the Chief Benefit Officer's decision shall be processed pursuant to Rule 509;
- (d) The Executive Director shall report each such action taken and the actions shall become effective at the next regularly scheduled meeting of the Board unless an earlier date is indicated in the approval;
- (e) Any application or action not approved by the Executive Director or CBO shall be processed for consideration by the Board.

**719.03** **REPEALED** (See Rule 712.04) September 27, 2012.

**720. Distributions to Members and Beneficiaries**

**720.01.** To the fullest extent allowed under federal law, any beneficiary, under any plan administered by FPPA, shall be allowed to transfer, or rollover, any distribution from an account administered by FPPA to any other qualified plan or to a properly qualified inherited IRA account.

**720.02.** Under the FPPA Defined Benefit System and the Statewide Death and Disability Plan, benefits shall be paid through the end of the month in which the member or beneficiary passes away or is otherwise eliminated as beneficiary. Subsequent benefits calculated using the new beneficiary will begin in the month following the month through which the preceding benefits are paid. Benefits calculated using a new beneficiary for single members who subsequently marry or enter into a valid civil union and elect a benefit with a designated beneficiary will begin in the month following the month through which the preceding benefits are paid.

**720.03.** Under any plan administered by FPPA, when an active Member dies and FPPA has not been notified that the Member is survived by a spouse or partner in a civil union, and dependent children, FPPA is allowed a reasonable time after the death of the Member to begin distributions of any refunds of contributions or account balances.

**800. PENSION PROTECTION ACT OF 2006**

**801. Payment of Distributions for Health Insurance Premiums**

**801.01.** This Rule 801 shall apply to all Members of plans within the FPPA Defined Benefit System, the Statewide Money Purchase Plan, "Local" Plans administered by FPPA, an FPPA 457 Deferred Compensation Plan and the Statewide Death and Disability Plan who qualify as eligible public safety officers under the Pension Protection Act of 2006.

**801.02.** (a) Distributions from monthly pension benefits from defined benefit plans for the payment of health insurance premium(s) to health insurance plan(s) sponsored by FPPA or by the Member's former employer may be subject to the \$3000 exclusion from federal taxable gross income on an annual basis to the extent allowed by the federal Pension Protection Act of 2006 and shall be reported as such. The FPPA staff may adopt procedures, forms, and requirements as necessary to ensure compliance with the applicable laws.

(b) Upon adoption and implementation of the process necessary to administer such distributions, distributions from monthly pension benefits from defined benefit plans for the payment of health insurance premiums to other health insurance plans are authorized and shall be subject to the



\$3000 exclusion from federal taxable gross income on an annual basis to the extent allowed by the federal Pension Protection Act of 2006 and shall be reported as such. The FPPA staff may adopt procedures, forms, and requirements as necessary to ensure compliance with the applicable laws.

(c) Upon the adoption of and implementation of the process necessary to administer such distributions by FPPA and its Recordkeeper, distributions for the payment of health insurance premiums from the Statewide Money Purchase Plan and the Statewide Hybrid Plan Money Purchase Component and the FPPA 457 Deferred Compensation Plan are authorized and shall be subject to the \$3000 exclusion from federal taxable gross income on an annual basis to the extent allowed by the federal Pension Protection Act of 2006 and shall be reported as such. The FPPA staff and the Recordkeeper may adopt procedures, forms, and requirements as necessary to ensure compliance with the applicable laws.

**801.03.** It shall ultimately be the Member's responsibility to determine his or her own eligibility for the health insurance exclusion under the federal Pension Protection Act of 2006. If a Member does not wish to have such exclusion made, the Member shall notify FPPA.

**801.04.** The Member's monthly benefit must be equal to or greater than the monthly health insurance premium to be paid.

**801.05.** FPPA, in its sole discretion, may refuse to process requests for insurance premium(s) distributions.

## **900. COMPLIANCE WITH THE INTERNAL REVENUE CODE**

### **901. Internal Revenue Code**

**901.01.** The Statewide Defined Benefit Plan shall satisfy the qualification requirements specified in Section 401 of the Federal Internal Revenue Code of 1986, as amended, (the "Internal Revenue Code") and as applicable to governmental plans as defined in Section 414(d) of the Internal Revenue Code. In order to meet those requirements, the Statewide Defined Benefit Plan is subject to the provisions of this Chapter 9, notwithstanding any other provisions, statutes or rules applicable to the plan.

### **902. Distributions**

**902.01.** The Board shall distribute the corpus and income of the pension plan to Members and their beneficiaries in accordance with this Chapter 9 and the plan documents and rules adopted by the Board. Notwithstanding the other provisions of the Statewide Defined Benefit Plan, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

### **903. Exclusive Benefit**

**903.01.** No part of the corpus or income of the pension plan may be used for or diverted to any purpose other than that of providing benefits to Members and their beneficiaries, including assignments for child support purposes as provided for in § 14-14-104, C.R.S., child support arrearages as requested as part of an enforcement action under Article 5 of Title 14, C.R.S., or child support arrearages that are the subject of enforcement services provided under § 26-13-106, C.R.S., income assignments for child support purposes pursuant to § 14-14-111.5, C.R.S., writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, and payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to § 14-10-113(6), C.R.S., and defraying reasonable expenses of administering the plan. The Trust Fund must not revert, and no contributions shall be permitted to be returned, to the Employers, except as permitted by Revenue Ruling 91-4.

## **904. Forfeitures**

**904.01** Forfeitures arising from severance of employment, death, or any other reason shall not be applied to increase the benefits any Member would otherwise receive under this Chapter 9.

## **905. Plan Termination**

**905.01** If the pension plan is terminated, or if all contributions to the pension plan are permanently discontinued, the rights of each affected Member to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are non-forfeitable.

## **906. Section 401(a) Requirements**

**906.01.** All benefits paid from the pension plan shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations promulgated under that Section as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. In order to meet those requirements, the pension plan is subject to the provisions of this Rule 906.

**906.02.** Distribution of a Member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the Member attains age 70 1/2 or April 1 of the year following the calendar year in which the Member terminates. If a Member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit.

**906.03.** The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated beneficiary, or over a period not extending beyond the life expectancy of the Member or of the Member and a designated beneficiary.

**906.04.** The Statewide Defined Benefit Plan pursuant to a domestic relations order may establish separate benefits for a Member and nonmember.

**906.05.** If a Member dies after the required distribution of benefits has begun, the remaining portion of the Member's interest must be distributed at least as rapidly as under the method of distribution before the Member's death.

**906.06.** The life expectancy of a Member, the Member's spouse or partner in a civil union, or the Member's beneficiary shall not be recalculated after the initial determination for purposes of determining benefits.

**906.07.** If a Member dies before the distribution of the Member's benefits has begun, distributions to beneficiaries shall be distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year in which the Member died.

**906.08.** The amount of an annuity paid to a Member'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, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

**906.09.** Notwithstanding the other provisions of Rule 906 or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that Section.

## **907. Section 415 Requirements**

**907.01.** Benefits paid under the Statewide Defined Benefit Plan may not exceed the limitations specified by Section 415 of the Internal Revenue Code.

**907.02.** Notwithstanding any other provisions of the Statewide Defined Benefit Plan to the contrary, the Member Contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.

### **907.03. Participation in Other Qualified Plans: Aggregation of Limits**

- (a) The Section 415(b) limit with respect to any Member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the Member has been a member were payable from one (1) plan.
- (b) The Section 415(c) limit with respect to any Member who at any time has been a member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the Member has been a member were payable from one (1) plan.

**907.04. Adjustments to Basic 415(b) Limitation for Form of Benefit.** For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations. If the benefit under the plan is a form other than the annual benefit, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

- (a) 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 either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:
  - (1) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):
    - (A) 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
    - (B) 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 the applicable mortality

tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62); or

- (2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):
  - (A) 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 experience; or
  - (B) 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 the applicable mortality table for the distribution under Treasury Regulation Section 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); or
  - (C) 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 Section 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 the applicable mortality rate for the distribution under Treasury Regulation Section 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)), divided by 1.05.

**907.05. Benefits Not Taken Into Account for 415(b) Limitation.** For purposes of Rule 907, the following benefits shall not be taken into account in applying these limits:

- (a) Any ancillary benefit which is not directly related to retirement income benefits;
- (b) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- (c) Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

**907.06. Other Adjustments in 415(b) Limitation.**

- (a) In the event the Member's retirement benefits become payable before age sixty-two (62), the limit prescribed by Rule 907 shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such

retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

- (b) In the event the Member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in paragraph (a) above shall not apply.

**907.07. Less than Ten (10) Years of Service Adjustment for 415(b) Limitations.** The maximum retirement benefits payable to any Member who has completed less than ten (10) years of service shall be the dollar amount determined under Section 415(b) of the Internal Revenue Code multiplied by a fraction, the numerator of which is the number of the Member's years of service and the denominator of which is ten (10). The reduction provided by this Rule 907.07 cannot reduce the maximum benefit below 10%. The reduction provided for in this Rule 907.07 shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

**907.08. Ten Thousand Dollar (\$10,000) Limit.** Notwithstanding the foregoing rule, the retirement benefit payable with respect to a Member shall be deemed not to exceed the Section 415 limit if the benefits payable, with respect to such Member under this plan and under all other qualified defined benefit pension plans to which the Member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the Member participated.

**907.09. Effect of COLA Without a Lump Sum Component on 415(b) Testing.** Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a Member with no lump sum benefit, the following will apply:

- (a) A Member's applicable Limit will be applied to the Member's annual benefit in the Member's first limitation year without regard to any cost of living adjustments under § 31-31-407, C.R.S.;
- (b) To the extent that the Member's annual benefit equals or exceeds the Limit, the Member 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
- (c) Thereafter, in any subsequent limitation year, a Member's annual benefit, including any cost of living increases under § 31-31-407, C.R.S., shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

**907.10. Effect of COLA With a Lump Sum Component on 415(b) Testing.** On and after January 1, 2009, with respect to a Member who receives a portion of the Member's annual benefit in a lump sum, a Member's applicable Limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

**907.11. Service Purchases under Section 415(n).** Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under a plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

- (a) The requirements of Section 415(b) of the Internal Revenue Code 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; or

- (b) The requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.
- (c) For purposes of applying this Rule 907.11, a plan will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this Rule 907.11 and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this Rule 907.11.
- (d) The plan will fail to meet the requirements of this Rule 907.11 if:
  - (1) More than five (5) years of nonqualified service credit are taken into account for purposes of this Rule 907.11; or
  - (2) Any nonqualified service credit is taken into account under this paragraph (d) before the Member has at least five (5) years of participation under a plan.
- (e) For purposes of this Rule 907.11, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the parameters for "permissive service credit" and "nonqualified service credit" are set forth in Rules 301.09 through 301.13.
- (f) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer):
  - (1) The limitations of paragraph (d) will not apply in determining whether the transfer is for the purchase of permissive service credit; and
  - (2) The distribution rules applicable under federal law to a plan will apply to such amounts and any benefits attributable to such amounts.
- (g) For an eligible Member, the limitation of Section 415(c)(1) of the Internal Revenue Code 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 a plan as in effect on August 5, 1997. For purposes of this paragraph (g), an eligible Member is an individual who first became a Member in a plan before January 1, 1998.

**907.12. Modification of Contributions for 415(c) and 415(n) Purposes.** Notwithstanding any other provision of law to the contrary, the system may modify a request by a Member to make a contribution to a plan if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

- (a) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the Member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.
- (b) If payment pursuant to paragraph (a) will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the system may either reduce the Member's Contribution to an amount within the limits of those Sections or refuse the Member's Contribution.

**907.13. Repayments of Cashouts.** Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the Statewide Defined Benefit Plan shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

## **908. Rollover Distributions**

**908.01.** Any distributee who is entitled to an eligible rollover distribution, as defined in Section 402(c)(4) of the Internal Revenue Code, from the Statewide Defined Benefit Plan on and after January 1, 1993, may elect to rollover the distribution to an eligible retirement plan, as defined in Section 402(c)(8)(B) of the Internal Revenue Code, designated by the distributee.

**908.02.** "Eligible rollover distribution" means 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; 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 portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code, or on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 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. 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 qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

**908.03.** "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

- (a) An individual retirement account described in Section 408(a) of the Internal Revenue Code;
- (b) An individual retirement annuity described in Section 408(b) of the Internal Revenue Code;
- (c) An annuity plan described in Section 403(a) of the Internal Revenue Code;
- (d) A qualified trust described in Section 401(a) of the Internal Revenue Code;
- (e) Effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;
- (f) Effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code 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 that plan from the Statewide Defined Benefit Plan;  
or

- (g) Effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

**908.04.** "Distributee" means a Member or former Member. It also includes the Member's or former Member's surviving spouse and the Member's or former Member'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. Effective January 1, 2007, a distributee further includes a non-spouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a non-spouse 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.

**908.05.** "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

## **909. Vesting**

**909.01.** Upon attaining the eligibility requirements for a benefit, a Member shall be fully vested in the benefits such Member has accrued. For purposes of compliance with the Internal Revenue Code and related guidance, A Member's normal retirement benefit is nonforfeitable upon attainment of normal retirement age, which:

- (a) for the Statewide Defined Benefit Plan tier, is age 55 with 25 years of active service;
- (b) for the Statewide Hybrid Plan tier, is age 55 with 25 years active service; and
- (c) for the Colorado Springs New Hire Pension Plan tier, is age 55 with 25 years of service for the fire component and age 50 with 25 years of service for the police component.

This rule is not to be construed as a reduction or limitation of rights heretofore existing, nor as an indication that vested benefits would be forfeitable before the stated age is attained.

## **910. HEART Act**

**910.01.** For purposes of this Rule 910, "HEART" means the Heroes Earnings and Assistance Relief Tax Act of 2008.

**910.02.** 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, survivors of a Member in a state or local retirement or pension system are entitled to any additional pension benefits that the Member's pension plan would provide if the Member had resumed employment and then died.

**910.03.** Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code)) 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 Code Section 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

**910.04.** Any voluntary contributions from a member on military leave must be ceased for 6 months following an early withdrawal by a Member who is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code).



**910.05.** A Member must be on a leave to perform qualified military service (as defined in Chapter 43 of Title 38, United States Code) for a minimum of 30 days before a Member is allowed to take an early distribution as provided by the HEART Act.

#### **1000. COMPLIANCE WITH THE INTERNAL REVENUE CODE – OLD HIRE PLANS**

**1001.** Purpose: Pursuant to Colorado Revised Statutes ("C.R.S.") § 31-30.5-212(2), as amended from time to time, the Board hereby creates regulations for the purpose of amending the Old Hire Pension Plans established under C.R.S. § 31-30.5-101 *et seq.* (hereinafter referred to collectively as "Old Hire Plans" or "Plans" or individually as "Plan") to satisfy the qualification requirements specified in sections 401(a) and 414(d) of the federal internal revenue code of 1986, as amended ("Internal Revenue Code"), and such other applicable provisions of the Internal Revenue Code, the Treasury Regulations thereunder, and related guidance. In order to meet those requirements, the Old Hire Plans are subject to the provisions of this chapter 10 notwithstanding any provisions to the contrary of an Old Hire Plan's current plan document (if any).

#### **1002. Compliance with Internal Revenue Code § 401(a)(2) for exclusive benefit and non-diversion of pension funds:**

- (a) The assets of the plan shall never inure to the benefit of an employer and shall be held for the exclusive purposes of providing benefits to Members and their beneficiaries and defraying reasonable expenses of administering the plan.
- (b) The pension fund must not revert, and no contributions shall be permitted to be returned, to the Employers, except due to a mistake of fact as permitted by revenue ruling 91-4

#### **1003. Compliance with Internal Revenue Code §§ 401(a)(7) and 401(a)(8) for vesting and forfeitures:**

- (a) A Member shall be 100% vested in his or her service retirement benefit upon attaining eligibility for a service retirement benefit as specified in C.R.S. §§ 31-30.5-601 through 31-30.5-604. In the event a Member separates from service prior to attaining eligibility for a service retirement benefit, such Member shall be fully vested, in satisfaction of the pre-1974 Internal Revenue Code vesting requirements, if he or she has served for a period of 20 years or such lesser number of years provided under the plan.
- (b) A Member shall be 100% vested in his or her accumulated contributions at all times.
- (c) In the event of a full or partial termination of, or a complete discontinuance of employer contributions to, the plan, the accrued benefits of the affected members under the plan shall be 100% vested and non-forfeitable to the extent funded and to the extent required by federal law.
- (d) In conformity with Internal Revenue Code § 401(a)(8), any forfeitures of benefits by Members or former Members of the plan shall not be used to pay benefit increases. However, such forfeitures shall be used to reduce employer contributions.

**1004. Compliance with Internal Revenue Code § 401(a)(9) for required minimum distributions**  
The plan shall pay all benefits in accordance with a good faith interpretation of the requirements of Internal Revenue Code § 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Internal Revenue Code § 414(d). The plan is subject to the following provisions:

(a) Distribution of a Member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the Member attains age 70 1/2 or April 1 of the year following the calendar year in which the Member terminates. If a Member fails to apply for retirement benefits by the later of either of those dates, the Board (as defined in C.R.S. § 31-30.5-102(1.5)) shall begin distribution of the monthly benefit as required by this regulation.

(b) The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated beneficiary, or over a period not extending beyond the life expectancy of the Member or of the Member and a designated beneficiary.

(c) The plan pursuant to a qualified domestic relations order may establish separate benefits for a Member and nonmember.

(d) If a Member dies after the required distribution of benefits has begun, the remaining portion of the Member's interest must be distributed at least as rapidly as under the method of distribution before the Member's death.

(e) If a member dies before required distribution of the Member's benefits has begun, the Member's entire interest must be distributed within five (5) years of his or her death, unless it is to be distributed in accordance with the following rules:

(1) If the Member's surviving spouse is the sole designated beneficiary, the Member'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 70 1/2, if later, and if the surviving spouse dies before the distribution to the surviving spouse begins, this section shall be applied as if the surviving spouse were the plan Member; or

(2) If the Member's surviving spouse is not the sole designated beneficiary, the Member's remaining interest is to be distributed over the life of the designated beneficiary or over a period not extending beyond the life expectancy of the designated beneficiary; and such distribution begins no later than December 31 of the calendar year immediately following the calendar year of the Member's death.

(f) The amount of an annuity paid to a Member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code § 401(a)(9)(g), and the minimum distribution incidental benefit rule under Treasury Regulation § 1.401(a)(9)-6, Q&A-2.

(g) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in Internal Revenue Code § 401(a)(9)(g) and Treasury Regulation § 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the Members' benefits received from the plan.

(h) At the earlier of the October before the Member, beneficiary, or alternate payee reaches age 70 ½, or first requests a distribution from his or her account, the unpaid account balance in the Fire and Police Members' Benefit Investment Fund shall be transferred without request to the Fire and Police Members Self-directed Investment Fund after the first request for a distribution from the DROP Account has been processed and distributed.

**1005. Compliance with Internal Revenue Code § 401(a)(17) for the limitation on compensation:**

For purposes of compliance with Internal Revenue Code § 401(a)(17), the term "eligible member" means a person who first became a Member of the plan prior to the plan year beginning after December 31, 1995. Pursuant to § 13212(d)(3)(A) of the Omnibus Budget Reconciliation Act of 1993, and the regulations issued under that section, eligible Members are not subject to the limits of Internal Revenue Code § 401(a)(17).

**1006. Compliance with Internal Revenue Code § 401(a)(25) for actuarial assumptions:**

The plan shall determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board pursuant to C.R.S. § 31-31-701(5); such benefits shall not be subject to employer discretion. The Board actuarial assumptions adopted for this purpose are incorporated herein.

**1007. Compliance with Internal Revenue Code § 401(a)(31) for eligible rollover distributions:**

For purposes of compliance with Internal Revenue Code § 401(a)(31), effective on and after January 1, 1993, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. If a plan provides for any form of distribution that is an eligible rollover distribution, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (a) "Eligible rollover distribution" means 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:
  - (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;
  - (2) any distribution to the extent such distribution is required under Internal Revenue Code § 401(a)(9);
  - (3) the portion of any distribution that is not includible in gross income; provided, however, effective January 1, 2002, 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:
    - (A) to an individual retirement account or annuity described in Internal Revenue Code § 408(a) or (b) or to a qualified defined contribution plan described in Internal Revenue Code § 401(a) 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;
    - (B) on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code § 401(a) or to an annuity contract described in Internal Revenue Code § 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; or
    - (C) on or after January 1, 2008, to a Roth IRA described in Internal Revenue Code § 408A; and

- (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 Internal Revenue Code § 415 or any distribution that is reasonably expected to total less than \$200 during the year.

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 qualified domestic relations order, as defined in Internal Revenue Code § 414(p).

- (b) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:
  - (1) an individual retirement account described in Internal Revenue Code § 408(a),
  - (2) an individual retirement annuity described in Internal Revenue Code § 408(b),
  - (3) an annuity plan described in Internal Revenue Code § 403(a),
  - (4) a qualified trust described in Internal Revenue Code § 401(a),
  - (5) effective January 1, 2002, an annuity contract described in Internal Revenue Code § 403(b)
  - (6) effective January 1, 2002, a plan eligible under Internal Revenue Code § 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 that plan from the plan, or
  - (7) effective January 1, 2008, a Roth IRA described in Internal Revenue Code § 408A.
- (c) "Distributee" means 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 § 414(p). Effective January 1, 2010, a distributee further includes a non-spouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code § 401(a)(9)(e). However, a non-spouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.
- (d) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

**1008. Compliance with Internal Revenue Code § 401(a)(31)(B) for certain mandatory distributions:** If on or after March 28, 2005 a plan provides for mandatory distribution of eligible rollover distributions with a present value greater than One Thousand Dollars (\$1,000), and if a Member in such plan does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution directly, then the plan shall pay the distribution in a direct rollover to an individual retirement plan designated by the Board in accordance with Internal Revenue Code § 401(a)(31)(B) and Internal Revenue Service Notice 2005-5.

**1009. Compliance with Internal Revenue Code § 401(a)(36) for in-service distributions:** In no event shall a plan permit distributions to a Member who has not attained eligibility for a service retirement

benefit as specified in C.R.S. §§ 31-30.5-601 through 31-30.5-604 and has not separated from employment at the time of the distribution.

**1010. Compliance with Internal Revenue Code § 401(a)(37) for benefits payable on the death of a Member while performing qualified military service:** Effective January 1, 2007, notwithstanding any other provision of the plan, vesting and compensation with respect to qualified military service are governed by Internal Revenue Code § 401(a)(37) and the Heroes Earnings Assistance and Relief Tax Act of 2008.

**1011. Compliance with Internal Revenue Code § 414(p) for qualified domestic relations orders:** If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in Internal Revenue Code § 414(p), then the applicable requirements of Internal Revenue Code § 414(p) shall be followed by the plan.

**1012. Compliance with Internal Revenue Code § 414(u) for reemployed veterans:** Effective December 12, 1994, notwithstanding any other provision of the plan, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code § 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

**1013. Compliance with Internal Revenue Code § 415 for limitations on contributions and benefits:**

(a) Notwithstanding any other provisions of the plan to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Internal Revenue Code § 415 for a qualified pension plan. Notwithstanding any other law, the limitation with respect to a person who first became a Member under the plan prior to January 1, 1990 shall not be less than the accrued benefit of the Member under the plan (determined without regard to any amendment to the plan adopted after October 14, 1987).

(b) *Participation in Other Qualified Plans: Aggregation of Limits.*

(1) The Internal Revenue Code § 415(b) limit with respect to any Member who at any time has been a Member in any other defined benefit plan as defined in Internal Revenue Code § 414(j) maintained by the Member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the Member has been a member were payable from one (1) plan.

(2) The Internal Revenue Code § 415(c) limit with respect to any Member who at any time has been a member in any other defined contribution plan as defined in Internal Revenue Code § 414(i) maintained by the Member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the Member has been a member were payable from one (1) plan.

(e) *Basic 415(b) Limitation.*

(1) Before January 1, 1995, a Member may not receive an annual benefit that exceeds the limits specified in Internal Revenue Code § 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a Member may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code § 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code § 415(b)

and subject to any additional limits that may be specified in the plan. In no event shall a Member's annual benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code § 415(d) and the regulations thereunder.

- (2) For purposes of Internal Revenue Code § 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Internal Revenue Code § 415(n)) and to rollover contributions (as defined in Internal Revenue Code § 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(d) *Internal Revenue Code § 415(c) limitations on contributions and other additions.*

After-tax member contributions or other annual additions with respect to a Member may not exceed the lesser of \$40,000 (as adjusted pursuant to Internal Revenue Code § 415(d)) or 100% of the Member's compensation.

- (1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a Member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.
- (2) For purposes of applying Internal Revenue Code § 415(c) and for no other purpose, the definition of compensation where applicable shall be compensation actually paid or made available during a limitation year, as defined under Treasury Regulation § 1.415(c)-2(a), or successor regulation; provided, however, that member contributions picked up under Internal Revenue Code § 414(h) shall not be treated as compensation.
- (3) If the annual additions for any Member for a plan year exceed the limitation under Internal Revenue Code § 415(c), the excess annual addition shall be corrected as permitted under the Employee Plans Compliance Resolution System (or similar Internal Revenue Service correction program).

(f) *Reduction of Benefits Priority.*

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such Member.

**1014. Compliance with Internal Revenue Code § 503(b) for prohibited transactions:** Effective as of the first day of the plan year beginning on or after January 1, 1989, the Board may not engage in a transaction prohibited by Internal Revenue Code § 503(b).

**1015. Compliance with Rev. Ruls. 2009-31 and 2009-32 for leave conversions:** Leave conversions, if permitted under the plan, shall be permitted for application towards the accrual of the plan's normal retirement benefit during each plan year of a Member's employment with an employer only in the plan year in which the Member terminates employment; notwithstanding the foregoing, leave conversions shall be permitted only if (i) the leave is for unused accrued paid time off for vacation and/or sick leave or for comparable paid-time-off under an established leave policy without regard to whether the leave is due to illness or incapacity, (ii) the leave policy qualifies as a bona fide sick and/or vacation leave plan for purposes of Internal Revenue Code § 409A and Treasury Regulation § 1.409A-1(a)(5), (iii) the plan provides for service credit for a Member's unused paid time off, provided that the eligibility requirements for participation in the Plan do not permit an employee to become a Member only in the plan year in which the Member terminates employment, (iv) the conversion is automatic and the Member has no right to request a cash payment, (v) the unused paid time off is converted to service credit under a specified formula which satisfies the definitely determinable standard of Treasury Regulation § 1.401-1(b)(1)(i), (vi) the plan otherwise provides for service credit unrelated to the conversion of any Member's unused paid time off, and (vii) the Member's annual benefit, as adjusted by the leave conversion, does not exceed the limit under Internal Revenue Code § 415(b).

**1016. Fees and Costs:** On behalf of any Old Hire Plan, the Board may prepare, process or execute any applications, other forms or filings, and to pay any fees or costs, necessary to satisfy the qualification requirements under the Internal Revenue Code. Any fees or costs expended in the preparation or processing of any applications, forms or filings may be allocated to each Old Hire Plan.