FPPA
Fire & Police Pension Association of Colorado

# FPPA Rules and Regulations

~~Adopted on emergency basis, effective August 12, 2026.~~
~~Adopted permanently, effective November~~Effective January 1, ~~2026~~2027.

In accordance with its duty to administer the Fire and Police Pension Association (FPPA), the Board of Directors has the authority to adopt and revise Rules and Regulations in accordance with 31-31-202, C.R.S. and 31-31.5-102(2), C.R.S.

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## PART I - DEFINITIONS AND RULES OF CONSTRUCTION

**101. Definitions.** As used in these Rules and Regulations, the following terms are defined as follows unless the context requires otherwise:

(1) "Accumulated Sick Leave Pay" means pay received at termination of employment as compensation for sick leave which was earned but not used.

(2) "Accumulated Vacation Leave Pay" means pay received at termination of employment as compensation for vacation leave which was earned but not used.

(3) "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 Board, used in the Plan's most recent actuarial valuation.

(4) "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 Retirement 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 Retirement Plan.

(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).

(4.5) "Actuarial Soundness for Volunteer Plans" means receiving, or scheduled to receive, employer contributions sufficient to fully fund the unfunded liability within the lesser of 20 years or the average life expectancy of plan members from the most recent valuation date, except that, for new unfunded liabilities created from plan improvements implemented on or after January 1, 2025, a separate amortization base shall be established and amortized over 10 years.

(5) "Accounts" means the accounts maintained by the Plan Administrator for each Member in the Money Purchase Component of the Plan. Each Member may have a Member Account, a Member Rollover Account, a Member Voluntary Account, a Member Transfer Account, a Member Pre-Tax Defined Benefit Excess Contribution Account, Member Post-Tax Defined Benefit Excess Contribution Account, an Employer/Member Funded Separate Retirement Excess Contributions Account, an Employer Excess Contribution Account, an Employer Account, an Employer Transfer Account, and an Employer Voluntary Account, all of which shall be held in the Defined Benefit System Trust Fund.

(6) "Aggregate Account" means the value of all Accounts in the Money Purchase Component maintained on behalf of a Member, whether attributable to Employer or Member contributions.

(7) "Applicable Form**"** means the appropriate form as designated and furnished by the Plan Administrator to make an election or provide a notice as required by the Plan, including a form in electronic medium.

(8) (a) "Base Salary" (also known as Pensionable Earnings) means the total base rate of pay for the Member's fixed, periodic scheduled hours, including Member Contributions to the Statewide Retirement Plan which are "picked up" by the Employer, and shall also include:

(I) 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.

(II) Accumulated Vacation Leave Pay if a Member completes the service requirement for purposes of normal retirement while exhausting accumulated vacation leave.

(III) 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.

(IV) Any amounts voluntarily contributed to an Internal Revenue Code Section 125 "Cafeteria Plan" shall be included in the Member's Base Salary.

(b) Base Salary shall not include overtime pay (except as noted in subparagraph (8)(a)(I) above), step-up pay or other pay for temporarily acting in a higher rank (a Member is deemed temporarily acting in a higher rank if the appointment to the rank is anticipated to last less than six months), uniform allowances, payout for accumulated sick leave, payout for accumulated vacation leave (except as noted in subparagraph (8)(A)(II) above), and other forms of extra pay (including Member Contributions which are paid by the Employer and not deducted from the Member's salary).

(9) "Board" means the Board of Directors established as the governing body of the Fire and Police Pension Association of Colorado as provided in C.R.S. § 31-31-102(2). Board includes representatives of FPPA as delegated by the Board.

(10) "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.

(11) "Civil Union" means a relationship established by two eligible persons pursuant to C.R.S. § 14-15-101, et seq., the Colorado Civil Union Act, that entitles them to receive the benefits and protections and be subject to the responsibilities of spouses, as a matter of state law.

(12) "Code" means the provisions of the Internal Revenue Code of 1986, as amended, applicable to governmental plans.

(13) "C.R.S." means the Colorado Revised Statutes, as amended from time to time.

(14) "Defined Benefit Component" is the defined benefit arrangement in the Statewide Retirement Plan.

(15) "DDRC" means the Death and Disability Review Committee of the Fire and Police Pension Association of Colorado.

(16) "Defined Benefit System", "FPPA Defined Benefit System", or "System**"** is a defined benefit plan, which is a qualified retirement plan under Section 401(a) of the Internal Revenue Code of 1986, and a governmental plan exempt from the provisions of Title I of the Employee Retirement Income Security Act of 1974 pursuant to § 4(b)(1) of that Act. The System has two plans: the Statewide Retirement Plan under Part 4 of C.R.S. § 31-31 and 31-31.5 and the Colorado Springs New Hire Pension Plan under C.R.S. § 31-31-706(2)(a).

(17) "Department Chief" means the senior command officer of any fire or police department of any Employer, by whatever title known, including but not limited to chief, administrator, director, sheriff or marshal.

(18) “Dependent Child” or "Dependent Children” pursuant to C.R.S. § 31-31-802(2), 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 at the time of the Member’s retirement for disability or the Member’s death while an active employee, that the child cannot provide for the child’s own care. In the case of an unmarried child or child who is not a party to a Civil Union under the age of 23, the term also includes an adopted child, and 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.

(19) “Designated Beneficiary” means the person(s) designated by a Member in writing to the Plan Administrator, entitled to receive benefits under this Plan after the death of a Member, except that a Designated Beneficiary must be a natural person in order to receive a defined benefit.

(20) “Direct Rollover” means a payment from one Eligible Retirement Plan to another Eligible Retirement Plan as specified by the Distributee.

(21) “Disability” means a Member has been found to be eligible for disability benefits as a result of such Member's becoming Totally Disabled or Occupationally Disabled as provided under and defined in C.R.S. § 31-31-802(3), (4), (6) and (7).

(22) “Distributee” includes a Member or former Member, as well as the Member's or former Member's surviving Spouse, Partner in a Civil Union, or former Spouse or former Partner in a Civil Union who is an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p). For federal tax purposes, only a marriage is recognized to be treated as a spouse. A Partner in a Civil Union is treated as a non-spouse beneficiary under federal law. Effective January 1, 2007, a Distributee also includes a non-spouse beneficiary who is a Designated Beneficiary as defined by Code Section 401(a)(9)(E). 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 shall be treated as an "inherited" individual retirement account or annuity.

(23) “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.

(24) “Effective Date” means the effective date of coverage by an Employer under the Statewide Retirement Plan, as approved by the Board. The Employer may establish a separate and distinct “Effective Date for New Hires”, which shall be a date after the filing of the certification of compliance and prior to the Effective Date, on and after which all Members hired shall participate in the Plan designated by the Employer for new hires.

(25) “Eligible Retirement Plan” means any program defined in Code Sections 401(a)(31) and 402(c)(8)(B), that accepts the Distributee's Eligible Rollover Distribution, as follows:

(a) An individual retirement account under Code Section 408(a);

(b) An individual retirement annuity under Code Section 408(b) (other than an endowment contract);

(c) A qualified trust;

(d) An annuity plan under Code Section 403(a);

(e) An eligible deferred compensation plan under Code Section 457(b) which is maintained by an eligible Employer under Code Section 457(e)(1)(A) (so long as the plan agrees to separately account for amounts rolled into the plan);

(f) An annuity contract under Code Section 403(b);

(g) Effective January 1, 2008, a Roth IRA under Code Section 408A; and

(h) Effective after December 18, 2015, a SIMPLE IRA as described in Section 408(p) of the Internal Revenue Code, provided that the rollover contribution is made after the two-year period beginning on the date the Distributee first participated in any qualified salary reduction arrangement maintained by the Distributee's employer under Section 408(p)(2) of the Internal Revenue Code, as described in Section 72(t)(6) of the Internal Revenue Code.

(26) "Eligible Rollover Distribution" means any distribution from an Eligible Retirement Plan under all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

(a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or 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;

(b) any distribution to the extent such distribution is required under Code Section 401(a)(9); or

(c) the portion of any distribution that is not includible in gross income, provided that any portion of any distribution that is not includible in gross income may be an Eligible Rollover Distribution for purposes of a rollover either (i) to a traditional individual retirement account or individual retirement annuity under Code Sections 408(a) or 408(b), (ii) on or after January 1, 2008, to a Roth IRA under Code Section 408A, or (iii) if a direct rollover that the receiving plan agrees to separately account, including the taxable and non-taxable portions of the direct rollover, to a qualified trust which is part of a defined contribution plan under Code Section 401(a), or on or after January 1, 2007, a qualified trust which is part of a defined benefit plan under Code Section 401(a) or an annuity contract described in Code Section 403(b).

(27) "Employer" has the meaning set forth in C.R.S. §§ 31-31-102(3) and 31-31.5-101(5)(d).

(28) "Employer Account" means the account maintained for a Member as part of the Money Purchase Component to which mandatory Employer contributions to the Statewide Retirement Plan are credited.

(29) "Employer Transfer Account" means the account maintained for a Member as part of the Money Purchase Component to which non-vested Employer contributions, earnings and adjustments that are transferred by the Employer or the Member from the Statewide Money Purchase Plan or from a Local Money Purchase Plan are credited. Members that entered the Statewide Hybrid Plan on or after September 24, 2009, or the successor Hybrid Component after January 1, 2023, are fully vested in the Employer Transfer Account upon entry into the Plan.

(30) "Employer Excess Contribution Account" means Employer contributions in excess of those required, which was formerly known as the Separate Retirement Account. These contributions reside within the Statewide Retirement Plan - Money Purchase Component. This account shall be used to offset any benefit payable under the Statewide Death and Disability Plan.

(31) “Employer/Member Funded Separate Retirement Excess Contributions Account” means the funds that were formerly known as the Reentry Separate Retirement Account. This account is not used to offset any benefit payable under the Statewide Death and Disability Plan.

(32) “Employer Voluntary Account” means the account maintained for a Member, as part of the Money Purchase Component to which voluntary Employer contributions to the Statewide Retirement Plan are credited.

(33) “Equal Base Pay” for purposes of C.R.S. § 31-31-813(2)(a), 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.

(34) “Examination” means the medical examination, either in person or by electronic means, or medical records review by a licensed physician.

(35) “Executive Director” means the administrative officer in charge of FPPA and includes the title Chief Executive Officer (CEO).

(36) “Expenses” means the administrative, legal, investment, banking and consulting fees and expenses of the Plan.

(37) “Fire and Police Member's Benefit Investment Fund” means one of three investment pools for the assets of the Plan and Affiliated Plans as set forth in Part XVIII:

(a) Long-Term Pool - Designed primarily for open plans with a longer time horizon, higher risk tolerance, and lower liquidity needs;

(b) Short-Term Pool - Designed primarily for closed plans with a shorter time horizon, lower risk tolerance, and higher liquidity needs;

(c) Glide-Path Pool - Designed for plans that need to transition over time from Long-Term Pool to the Short-Term Pool.

(38) “Fire and Police Member's Self-Directed Investment Fund” means the assets held by FPPA's third party administrator for the benefit of Members to self-direct their investments in their individual accounts.

(39) “Forfeiture” means the portion of a Member's Employer Account, Employer Transfer Account, Employer Voluntary Account, and Employer Statewide Defined Benefit Excess Contribution Account, which is forfeited because of a termination of employment prior to full vesting.

(40) “Forms” includes, but is not limited to, photocopies, printed forms, web forms, and any forms described in the FPPA Rules and Regulations.

(41) “FPPA” means the Fire and Police Pension Association, a corporate body and political subdivision of the State of Colorado, created pursuant to C.R.S. § 31-31-201.

(41.5) "Health History Form" means the form that shall be completed by each Member as required by C.R.S. § 31-31-803(4) that describes all the health conditions that exist as of the Member's date of hire or existed prior to the Member's date of hire.

(42) “HEART” means the Heroes Earnings and Assistance Relief Tax Act of 2008.

(43) "Highest Average Salary" means the average of the Member's highest three (3) calendar years' actual salary on which contributions were paid. The calendar years' actual salary 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. The year in which a Member retires may be considered in calculating the average of the Member's highest three (3) 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 the purpose of calculating the average of the Member's highest three (3) years' salary. If a 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' Base Salary. When a Member has less than 3 years of service credit, but is vested through a combination of service credits from the Defined Benefit Component, Social Security Component and the Hybrid Component, 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.

(44) "Hours of Service" means each hour for which a Member is:

(a) Directly or indirectly paid, or entitled to payment, by an Employer for the performance of duties;

(b) Directly or indirectly paid, or entitled to payment, by an Employer on account of a period during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military service or Authorized Leave of Absence; and

(c) Entitled to backpay (irrespective to mitigation of damages) which is awarded, or agreed to, by an Employer on behalf of a Member.

Hours of Service under (a) shall be credited to a Member for the period in which the duties are performed, and Hours of Service under (b) and (c) shall be credited for the period to which they relate, but there shall be no duplication of Hours of Service credited.

(45) "Hybrid Component" means the hybrid arrangement in the Statewide Retirement Plan, comprised of both a defined benefit and money purchase component.

(46) "Inactive Member" means a Member whose employment with the Employer has terminated but who has (i) a vested Account balance or (ii) an accrued defined benefit under the FPPA Defined Benefit System.

(47) "Investment Option" means an investment option selected and monitored by the Board and Plan Administrator for Accounts, subject to the provisions of C.R.S. § 31-31.5-503(2)(a).

(48) "Leave of Absence" includes a military leave of absence and a medical leave of absence, and means an authorized absence during which the employee does not receive compensation for one (1) month or more, but less than two (2) years, during which the employee has not been terminated from employment. For purposes of establishing eligibility to apply for disability or survivor benefits, leaves of absence are further defined in Rule 1604 below.

(49) "Lifetime Benefit Components" means the Defined Benefit Component, the Social Security Component, and the Hybrid Component, as described in C.R.S. § 31-31.5, collectively.

(50) "Local Money Purchase Plan" means a money purchase plan established pursuant to Part 6 of C.R.S. § 31-31 or to C.R.S. § 31-30.5.

(51) "Member" 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 (1600) 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.

(a) For purposes of the Statewide Money Purchase Plan and the Statewide Death and Disability Plan, "Member" includes an active part-time employee who works less than sixteen hundred (1600) hours per year but otherwise qualifies as a Member and whose Employer affiliates part-time employees with the Association and elects to treat all such other similar employees as Members. The term part-time employee only includes permanent employees that are regularly scheduled to work each month and shall not include temporary or seasonal employees or intermittent employment.

(b) 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 C.R.S. § 31-30-1102(9).

(c) For the purpose of participation in the Statewide Retirement Plan or the Statewide Money Purchase Plan, but not for the purpose of participation in the Statewide Death and Disability Plan pursuant to C.R.S. § 31-31-801, et seq., 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 if the Employer affiliates all such employees with the Plan.

(d) For the purpose of eligibility for disability or survivor benefits, the term includes any employee on an authorized leave of absence.

(52) "Member Account" means the account maintained for a Member as part of the Statewide Retirement Plan to which mandatory Member contributions to the Statewide Retirement Plan are credited. A Member may have multiple separate accounts, namely an Employer Account, a Member Account, an Employer Voluntary Account, a Member Voluntary Account, a Member Transfer Account, an Employer Transfer Account, a Member Excess Contribution Account, an Employer Funded Excess Contribution Account, and a Member Rollover Account(s), as applicable.

(53) "Member Defined Benefit Contributions" means Member contributions that have been allocated to the Lifetime Benefit Components under Part IV and includes amounts that have been contributed, transferred, or rolled over to the Lifetime Benefit Component for the purchase or restoration of service under Part IX.

(54) "Member Rollover Account" means the account maintained for a Member as part of the Money Purchase Component to which any Eligible Rollover Distributions from an Eligible Retirement Plan are credited.

(55) "Member Excess Contribution Account" means the amount of Member pre-tax or post-tax contributions in excess of the Member contribution rates, and includes sub-accounts for Member pre-tax and post-tax excess contributions. These contributions reside within the Statewide Retirement Plan - Money Purchase Component. This account is not used to offset any benefit payable under the Statewide Death and Disability Plan.

(56) "Member Transfer Account" means the account maintained for a Member as part of the Money Purchase Component to which all one hundred percent (100%) vested amounts transferred by the Employer or the Member from the Statewide Money Purchase Plan or a Local Money Purchase Plan are credited.

(57) "Member Voluntary Account" means the account maintained for a Member as part of the Money Purchase Component to which voluntary Member contributions are credited.

(58) "Money Purchase Component" is the money purchase arrangement in the Statewide Retirement Plan.

(59) "Normal Retirement Age" means age fifty-five (55) if the Member is employed by the Employer after reaching that age in the Money Purchase Component, or otherwise for the Statewide Retirement Plan, age fifty-five (55) or when the Member's combined age and years of accrued service is equal to at least eighty (80) with a minimum age of 50.

(60) "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. For purposes of state law, 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", "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, and 31.5 including Member Approved Plan Amendments, and of the Rules and Regulations adopted thereunder.

(61) "Peace Officer" means a Peace Officers Standards & Training (POST) certified officer or guard as described in C.R.S. § 16-2.5-101, and includes any guards employed by a county sheriff pursuant to C.R.S. § 17-26-122.

(62) "Pensionable Earnings" means Base Salary as defined in Rule 101(8)(a) and (b).

(63) "Plan" refers to the Statewide Retirement Plan or its individual Components, and the Predecessor Plans as the context requires.

(64) "Plan Administrator" means the FPPA and includes any entity to which the Board or FPPA has delegated duties under the Statewide Retirement Plan and Affiliated Plans set forth in Part XVIII of these Rules. The term includes a Recordkeeper if one is appointed by the FPPA.

(65) "Plan Year" means the calendar year.

(66) "Predecessor Plan(s)" means the Statewide Defined Benefit Plan, the Statewide Hybrid Plan, the Money Purchase Plan, and the Social Security Supplemental Plan, which are components of the Statewide Retirement Plan, effective January 1, 2023.

(67) "Recordkeeper" means the individual or entity appointed by FPPA to perform third-party service and administrative functions.

(68) "Required Beginning Date" means April 1 of the calendar year following the later of:

(a) the calendar year in which the Member attains 72 (or age 70 ½ if the Member was born before July 1, 1949), or

(b) the calendar year in which the employee retires.

(69) "Resolution" means a Resolution adopted by the Employer in accordance with the requirements of Part 7 of these Rules.

(70) "Salary" for the purpose of calculating the contribution to the Statewide Retirement Plan and the Statewide Death and Disability Plan required by C.R.S. § 31-31-819(4), as amended, means Base Salary as defined in Rule 101(8)(a) and (b), except that for Members who are not enrolled in the Statewide Retirement Plan or the Statewide Money Purchase Plan, salary shall

include Member Contributions to any alternative retirement plan which are "picked up" by the Employer. Contributions to the Statewide Death and Disability Plan, as required by C.R.S. § 31-31-819(4), are made by Members or on behalf of Members.

(71) "Self-Directed Plans Committee (SDPC)" means a committee designated by the Board to review, evaluate and monitor the self-directed assets in FPPA Plans.

(72) "Social Security Component" means the social security arrangement in the defined benefit portion of the Statewide Retirement Plan.

(73) "Spouse" means the individual to whom a Member is married or has established a Civil Union as determined under Colorado law. For federal tax purposes, only a marriage is recognized to be treated as a spouse. A Partner in a Civil Union is treated as a non-spouse beneficiary under federal law.

(74) "State" means the State of Colorado.

(75) "Statewide Money Purchase Plan" means the FPPA Statewide Money Purchase Plan established pursuant to Part 5 of C.R.S. § 31-31.

(76) "Statewide Retirement Plan" means the FPPA Statewide Retirement Plan established pursuant to C.R.S. § 31-31.5-101, et seq. The Statewide Retirement Plan is comprised of four (4) components: the Defined Benefit Component, the Social Security Component, the Hybrid Component, and the Money Purchase Component.

(77) "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.

(78) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act.

(79) "Year of Service in the Money Purchase Component" means a twelve-month (12-month) period commencing on the Member's hire date and ending one (1) year later in which a Member completes sixteen hundred (1600) Hours of Service.

(80) "Year of Service Credit" means a twelve-month (12-month) period, and can include a fractional period based upon one (1) month, that measures a Member's term of service for the Defined Benefit Component or Hybrid Component.

**102. Rules of Construction**. Words used herein in the masculine or feminine gender shall be construed to include the feminine or masculine gender where appropriate and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

**103. Successor Plan.** Pursuant to C.R.S. § 31-31-412, the components of the Statewide Retirement Plan are the successor plans to the Predecessor Plans in existence prior to January 1, 2023.

## PART II - MEMBER PARTICIPATION

**201. Eligibility for Member Status.** For the Statewide Retirement Plan, Statewide Money Purchase Plan or Statewide Death and Disability Plan, FPPA may determine whether the employee meets the eligibility requirements to become a Member.

**202. Clerical and Other Personnel.** Clerical and support staff may participate in the Statewide Retirement Plan at the election of the Employer, if they otherwise meet the definition of Member.

**203. Department Chief Election**.

(1) A newly hired Department Chief may be exempted from participating in the Statewide Retirement Plan. The department and the chief shall provide notice to FPPA within sixty (60) days of the first day of employment of the agreement to participate in an alternate pension plan. The newly hired Department Chief and the Employer may elect: (i) to be exempted pursuant to C.R.S. § 31-31.5-203 and (ii) to participate in the Statewide Money Purchase Plan, a Local Money Purchase Plan, Social Security, the Colorado Public Employees' Retirement Association, or an employer-sponsored 457 Deferred Compensation Plan. FPPA shall return to the Employer, all Member and Employer contributions made to the Statewide Retirement Plan on behalf of an exempt Department Chief within sixty (60) days of receipt of notice of the Department Chief's election of coverage, unless the Department Chief elects coverage under the Statewide Money Purchase Plan in which case the Member and Employer contributions shall be transferred to the Statewide Money Purchase Plan. If the Department Chief does not agree to participate in an alternate pension plan within the sixty (60) days, the Department Chief shall be a Member of the component of the Statewide Retirement Plan that the Employer participates in.

(2) A new Department Chief who is promoted into the position by the Department is not exempt from continuing participation in the Statewide Retirement Plan as prohibited by the restrictions against a cash or deferred arrangement contained in the Internal Revenue Code.

(3) A newly hired Department Chief who, prior to permanent appointment or election to the position of Department Chief, has qualified for a pension for employment with a different Employer under the Statewide Retirement Plan, may elect a pension under that component before electing to be covered by any alternate plan pursuant to this Rule during employment as a newly hired Department Chief.

(4) A Member who is newly hired by an employer and appointed for a temporary or interim period to serve in the Department Chief's capacity pending appointment as Chief shall participate in the same component of the Statewide Retirement plan as newly hired Members. In the event such Member is appointed the Department Chief and elects exemption pursuant to subparagraph (1), FPPA shall transfer the Member and Employer contributions received during the period the Member was serving as in the interim capacity as Chief to the plan elected for the exemption.

**204. Reemployment.**

(1) An Inactive Member who terminated employment prior to January 1, 2023 while in a Predecessor Plan, and is rehired by the same Employer after said date, shall participate in the component of the plan which succeeded the Predecessor Plan.

(2) An Inactive Member who terminated employment on or after January 1, 2023, and is thereafter reemployed by the same Employer shall participate in the same component in which the Member previously participated.

(3) An individual who terminates employment while in a local plan, and is thereafter reemployed by an Employer which covers its members in the Statewide Retirement Plan, shall participate in the component of the Plan in which the Employer's newly hired members participate.

**205. Rules for Retired Members from the Statewide Retirement Plan or its Predecessor Plans who Return to Active Service.**

(1) ~~A~~Subject to paragraph (3) below, a Member who has retired from service under a Normal, Early, or Vested Retirement within the Statewide Retirement Plan or its Predecessor Plans, 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 (1) 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 overpayments 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 Late Retirement prior to reemployment, the Member's Late 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.

(2) ~~A~~Subject to paragraph (3) below, a Member who has retired from service under a Normal, Early, or Vested Retirement within the Statewide Retirement Plan or its Predecessor Plans, who returns to work for a different Employer than for which the Member worked immediately prior to retirement shall be treated as follows:

(a) The Member shall~~-~~ receive the retirement benefit unless a Late Retirement is elected. If the Member's new Employer also participates in the Statewide Retirement Plan, the Member shall become active in the Statewide Money Purchase 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 Statewide Money Purchase Plan.

(b) If the Member had elected a Late Retirement prior to reemployment, the Member shall retain the original deferral option and Late 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 Statewide Money Purchase Plan.

(3) A Member who has elected a Vested or Early Retirement and who has not participated in DROP, may alternatively elect to participate as follows in lieu of participation in the Statewide Money Purchase Plan pursuant to Paragraphs 1 or 2 above. The Member may become active in the component of the Statewide Retirement Plan offered to new hires by the subsequent Employer or alternatively may be reenrolled in the same component in which the Member participated previously, if such reenrollment is not otherwise prohibited. If the Member has received one (1) or more pension payments under a Lifetime Benefit Component prior to returning 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 component in which the Member had previously earned service credit, upon the subsequent separation from service, the Member's original retirement shall be cancelled and the 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 overpayment of benefits made during reemployment. If the Member has earned a defined benefit under more than one (1) component, 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.

(4) A Member in the Statewide Retirement Plan or its Predecessor Plans who has not 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 Statewide Retirement Plan ~~shall be treated as follows:~~

~~(a) The Member~~ shall become active in the component offered to new hires by the subsequent Employer. If the Member has earned a defined benefit under more than one (1) component, 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. ~~unless the Member has previously participated in DROP. Such a Member returning to work for the same Employer may be reenrolled in the same component in which the Member participated previously, if such reenrollment is not otherwise prohibited under the rules. If the Member has received one (1) or more pension payments under a Lifetime Benefit Component when returning 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 component in which the Member had previously earned service credit, upon the subsequent separation from service, the Member's original retirement shall be cancelled and the 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 overpayment of benefits made during reemployment. If the Member has earned a defined benefit under more than one (1) component, 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 Statewide Money Purchase 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 the Member's first retirement date, the defined benefit payments shall be suspended, and no deferral of benefits shall accrue. Adjustments may be made to recoup any overpayments 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 the Member's 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 Statewide Money Purchase Plan.~~

(45) A Member who has retired from service, ~~under a Normal, Early or Vested Retirement within the Statewide Retirement Plan or its Predecessor Plans,~~ 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 the DROP participation annulled. The Employer must consent to the~~

Member's continued employment after the DROP period. The DROP annulment will operatebe treated as as follows:

(a) The Member's retirementdefined benefit will be determined as ifpayment shall be suspended during the Member had never entered DROPreemployment period.

(b) The Member's accumulated DROP account balance, containing monthlyNo deferral of 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 inshall accrue for benefit payments not received during the Fire & Police Members' Benefit Investment Fund Long-Term Pool suspension.

(I) If the Member's accumulated DROP account balance at the time of transfer is less than the amountAdjustments may be made to recoup any overpayments 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 transferredpost-DROP employment period.

(II) The Member shall repay to the plan any amount which has been distributed from Upon the DROP account, including from an alternate payee's account originatingMember's separation from the DROP account.

(III) If full repayment of distributions or the required additional contributions are not madeservice following post-DROP employment, the Member's monthlyretirement benefit upon retirement shall be completely offset untilresume with any benefit adjustments the repayment and contribution obligations are completed.

(c) TheMember would have received if the Member's accumulated Employer Excess Contribution Account balance transferredretirement benefit had not been suspended due to a third party recordkeeper including any earnings, and including any balance in an alternate payee's account, will remain in the Fire & Police Members' Self-Directed Investment Fundpost-DROP employment.

(d) (b) The Member receives service credit forshall enter the DROP participation period in lieu of any DROP benefit. TheStatewide Money Purchase Plan during the Member's pension benefit, and any payment to an alternate payee pursuant to a domestic relations order, will subsequently be recalculated at the timepost-DROP employment. No additional service credit accrues under the Member terminates service and applies for retirementStatewide Retirement Plan.

(e) The Employer is required to make Employer contributions for the(c) The Member's DROP period, plus interest ataccount remains intact during the rate assessed for late contributionspost-DROP employment period. FPPA will calculate projections for the required Employer contributions in the event of DROP annulment upon request of the Employer.

(f) TheNo additional pension benefits or Member does not have another opportunitycontributions shall be made to enter into the DROP planaccount.

(g) Employer/Member Funded Separate Retirement Excess Contributions Account balance and Hybrid - Money Purchase Component continuing rateThe Member shall continue self-direction of contribution allocations required during the DROP period, if any,account. No

distributions shall be made ~~upon receipt of the Employer's contributions at~~ from the ~~rate of allocation in effect at the time~~DROP account during the ~~Employer's contributions are made~~post-DROP employment period.

~~(h) Monthly pension distributions made during the Member's employment, if any, shall be deducted from~~(d) The Employer must consent to the Member's ~~benefit distribution at retirement if not previously collected from~~continued employment after the ~~Member through a repayment agreement~~DROP period.

(~~5~~6) ~~D~~Retirement 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.

(6) Effective January 1, 2025, the contribution rates for Members who participate in the Statewide Money Purchase Plan under this Rule 205 shall be at least as follows:

(a) The rates in effect under the Defined Benefit Component if the employer enrolls new hires in the Defined Benefit Component; or

(b) The rates in effect under the Hybrid Component if the employer enrolls new hires in the Hybrid Component; or

(c) Eight percent for the employer and eight percent from the Member if the employer enrolls new hires in the Social Security Component.

**206. USERRA and HEART**.

(1) 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 Code Section 401(a)(37), survivors of a Member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the Member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the Member's death while employed.

(2) Beginning January 1, 2009, to the extent required by Code Sections 3401(h) and 414(u)(2), 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). The differential pay received by Members during any leave of absence, by itself, is not pensionable. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(3) 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 thirty (30) days before a Member is allowed to take an early distribution of voluntary Member contributions from the Money Purchase Component as provided by the HEART Act.

(4) In accordance with Code Section 414(u)(12)(B), any voluntary contributions from a Member on military leave must be ceased for six (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).

## PART III - CONTRIBUTIONS TO THE STATEWIDE RETIREMENT PLAN

**301. Payment of Contributions**. The contributions for each payroll period shall be transmitted to the Plan Administrator no later than ten (10) days following the date of payment of salary to the Member, as required by C.R.S. § 31-31.5-309 and in accordance with established policies and procedures. An interest charge of one-half of one percent (1/2%) per month may be levied against any unpaid amount and added to the Employer payments required under this Rule. FPPA may waive the interest charge on delinquent contributions provided for in C.R.S. § 31-31.5-309, where the amount is found to be de minimis, or for good cause.

**302. Delinquent Contributions**. It is the Employer's responsibility to correctly calculate and remit the contributions. The Plan Administrator reserves the right to give notice to the highest elected official, the designated representative of the Employer, and/or the Members of the delinquent Employer in the event it comes to the Plan Administrator's attention that contributions are not being remitted in a timely manner. Neither the Board nor the Plan Administrator has any liability for the delinquency of an Employer. The Plan Administrator may waive the interest charge on delinquent contributions provided for C.R.S. § 31-31.5-309, where the amount is found to be de minimis, or for good cause.

## PART IV - BENEFITS FOR LIFETIME BENEFIT COMPONENTS

**401. Applicability**. This Part applies to Members participating in the Lifetime Benefit Components of the Statewide Retirement Plan.

**402. Calculation of Retirement Benefits**.

Normal Retirement. A Member who has accumulated at least twenty-five (25) Years of Service Credit and has attained Normal Retirement Age of fifty-five years (55); or the Member has attained age fifty (50) and whose combined age and years of service is equal to at least eighty, shall be eligible for an unreduced retirement pension.

(1) Defined Benefit Component. In calculating the Normal Retirement pension for a Member who has Years of Service Credit in the Statewide Retirement Plan, the benefit shall be the sum of the following:

(a) Two Percent (2%) multiplied by the Years of Service Credit earned or purchased in the Defined Benefit Component, not to exceed ten (10) Years of Service Credit, multiplied by the average of the Member's highest three (3) years' Base Salary; plus

(b) Two and one-half percent (2.5%) multiplied by the Years of Service Credit earned or purchased in the Defined Benefit Component in excess of ten (10) years multiplied by the average of the Member's highest (3) three years' Base Salary.

(2) Social Security Component. In calculating the Normal Retirement pension for a Member who has service credit in the Social Security Component, the benefit is the sum of the following:

(a) One percent (1%) multiplied by the years of earned service credit in the Social Security Component, not to exceed ten (10) years of service credit, multiplied by the average of the Member's highest three (3) years' Base Salary; plus

(b) One and one-quarter percent (1.25%) multiplied by the years of earned service credit in the Social Security Component in excess of ten (10) years multiplied by the average of the Member's highest three (3) years' Base Salary.

(3) Hybrid Component. In calculating the Normal Retirement pension for a Member who has service credit in the Hybrid Component, the benefit is the sum of the following:

(a) One and nine-tenths percent (1.9%) multiplied by the years of service credit earned or purchased in the Statewide Hybrid Plan prior to January 1, 2023, multiplied by the average of the Member's highest three (3) years' Base Salary; plus

(b) One and one-half percent (1.5%) multiplied by the years of service credit earned or purchased in the Hybrid Component on or after January 1, 2023, multiplied by the average of the Member's highest three (3) years' Base Salary.

(4) Rules of Calculating the Average of a Member's Highest Three Years' Base Salary

(a) The average of a Member's highest three (3) years' Base Salary, for purpose of calculating a Member's Normal, Early, Late ~~-~~or Vested Retirement benefit, shall be the average of the Member's highest three (3) calendar years' Base Salary on which contributions were paid. The calendar year's ~~-~~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 (3) 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.

(b) The year in which a Member retires may be considered in calculating the average of the Member's highest three (3) years' Base Salary if the Member retired on or after July 1 and has accrued at least 6 months of service credit upon retirement date in that calendar year. 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 the Employer has reentered or affiliated with the Statewide Retirement Plan, the ~~year in which the reentry or affiliation occurred may be considered in calculating the average of the Member's highest three (3) year's Base Salary if~~salaries used for the ~~Member earned at least six (6) months~~ purchase of service credit ~~in that year. In that event, FPPA will annualize the salary for the reentry or affiliation year~~as calculated by ~~comparing total pay periods for~~ the ~~year to total pay periods actually paid. If a Member has less than six (6) months~~actuary shall be used to the extent necessary to have three years of ~~earned salary for the reentry or affiliation year, the Member's~~ salary ~~for the reentry or affiliation year shall not be considered~~ for ~~purposes of calculating~~inclusion in the average ~~of the Member's highest three (3) years' salary~~.

(c) A Member with five (5) years of combined service credit under the Lifetime Benefit Components of the Statewide Retirement Plan is considered vested for purposes of the defined benefit pension payable from each Lifetime Benefit Component. 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 subparagraphs (1) ~~and~~, (2), and (3) of this Rule.

(5) 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 Part. 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.

(6) 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.

(7) The Plan Administrator shall exclude ineligible prior service from a Member's retirement benefit, as set forth in this Part, but shall inform the Member of such exclusions.

**403. Late Retirement.** In the event that a Member who has selected a Late Retirement dies prior to the commencement of the Member's benefit payments, the Plan Administrator shall pay survivor benefits to the Member's Designated Beneficiary, payable beginning on the date on which the benefits were deferred by the Member or shall pay an actuarial equivalent monthly amount beginning on such other date as the survivor elects payment to begin. The survivor benefits shall be calculated as if the Member had selected the 100 percent joint and survivor benefit option set forth in subparagraph (1)(b) of Rule 407. In the event the Member's Designated Beneficiary dies prior to the date of commencement, the Plan Administrator shall refund the Member's Contributions to the Designated Beneficiary's estate plus 5% interest. In the event there is no Designated Beneficiary, the Member's contributions plus 5% interest shall be paid to the Member's estate.

**404. Early Retirement**. Any vested Member who has attained the age of fifty (50) years and who is not receiving benefits pursuant to the Statewide Death and Disability Plan may elect to retire and shall be eligible for an Early Retirement pension. The annual Early Retirement pension for the Member shall be the benefit that the Member would have received at Normal Retirement reduced on an Actuarially Equivalent basis to reflect the early receipt of the benefit.

**405. Vested Retirement.**

(1) Any Vested Member shall be eligible to receive the applicable Vested Retirement as provided in this Part IV or to make an election for a Benefit Payment Option as provided in Rule 407. All the provisions of Rule 407 apply to the Member, except that the factors used to calculate the payment options shall be based on the vested benefit provided to the Member under this Part IV. The Member may not elect one of the options earlier than sixty (60) days prior to the commencement of the vested benefit payments.

(2) In the event that an Inactive Member who is eligible for vested benefits dies prior to the commencement of the Member's benefit payments, the Plan Administrator shall either (i) refund the inactive Member's Defined Benefit Contributions to the Member's estate; or (ii) provide survivor benefits to the Member's Designated Beneficiary, payable when the Member would have been eligible to receive a vested benefit under this Part IV. The survivor benefits shall be calculated as if the Member had selected the 100 percent joint and survivor benefit option set forth in subparagraph (1)(b) of Rule 407. If the Member's Designated Beneficiary dies prior to the date the Member would have been eligible to receive a vested benefit under this Part IV, the Plan Administrator shall refund the Inactive Member's Defined Benefit Contributions to the Designated Beneficiary's estate.

(3) In the event that an active Member, who is eligible for vested benefits, but not a Normal or Early retirement, and for whom no survivor benefits are paid under the Statewide Death and

Disability Plan, dies, the Plan Administrator shall either (i) refund the Inactive Member's Defined Benefit Contributions to the Member's Designated Beneficiary; or (ii) provide survivor benefits to the Member's Designated Beneficiary, payable when the Member would have been eligible to receive a vested benefit. The survivor benefits shall be calculated as if the Member had selected the 100 percent joint and survivor benefit option set forth in subparagraph (1)(b) of Rule 407. If the Member's Designated Beneficiary dies prior to the date the Member would have been eligible to receive a vested benefit under this Part IV, the Plan Administrator shall refund the active Member's Defined Benefit Contributions to the Designated Beneficiary's estate.

**406. Initial Benefit Calculation.** 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.

**407. Benefit Payment Options**.

(1) A Member eligible for Retirement may elect to receive one (1) of the following Benefit Payment Options:

(a) Normal Option. A pension payable to the Member for the life of the Member and upon the Member's death, monthly benefits cease.

(b) An Actuarially Equivalent pension payable to the Member and upon the Member's death, 100% of such pension to be paid to the Member's Designated Beneficiary for life.

(c) An Actuarially Equivalent pension payment to the Member and upon the Member's death, 75% of such pension to be paid to the Member's Designated Beneficiary for life. This Option shall be offered for retirements effective on or after February 1, 2025.

(d) An Actuarially Equivalent pension payable to the Member and upon the Member's death, 50% of such pension to be paid to the Member's Designated Beneficiary for life.

(e) An Actuarially Equivalent pension payable jointly to the Member and the Member's Designated Beneficiary and, upon the death of either, 50% of such pension to be paid to the survivor for life.

(f) An Actuarially Equivalent pension payable to the Member and upon the Member's death, 100% of such pension to be paid to the Member's Designated Beneficiary for life; provided, however, that if the Member's Designated Beneficiary predeceases the Member, the Member's benefit payment shall adjust to the amount computed in accordance with the Normal Option, effective the first day of the month ~~next~~ following the date of death of the Member's Designated Beneficiary. The Member is not permitted to name a new Designated Beneficiary for the purpose of recalculating the pension. The Member may name a new Designated Beneficiary for the purpose of a refund of Member contributions.

(g) An Actuarially Equivalent pension payable to the Member and upon the Member's death, 75% of such pension to be paid to the Member's Designated Beneficiary for life; provided, however, that if the Member's Designated Beneficiary predeceases the Member, the Member's benefit payment shall adjust to the amount computed in accordance with the Normal Option, effective the first day of the month ~~next~~ following the date of death of the Member's Designated Beneficiary. The Member is not permitted to name a new Designated Beneficiary for the purpose of recalculating the pension. The Member may name a new Designated Beneficiary for the purpose of a refund of Member contributions. This option shall be offered for retirements effective on or after February 1, 2025.

(h) An Actuarially Equivalent pension payable to the Member and upon the Member's death, 50% of such pension to be paid to the Member's Designated Beneficiary for life; provided,

however, that if the Member's Designated Beneficiary predeceases the Member, the Member's benefit payment shall adjust to the amount computed in the Normal Option, effective the first day of the month ~~next~~ following the date of death of the Member's Designated Beneficiary. The Member is not permitted to name a new Designated Beneficiary for the purpose of recalculating the pension. The Member may name a new Designated Beneficiary for the purpose of a refund of Member contributions.

(2) After an election has been made of any of the options provided in Rule 407(1) and the first pension payment has been deposited or otherwise negotiated by the Member, or sixty (60) days from the date of issuance of the check have elapsed, whichever occurs first, the election shall be irrevocable. The Member's Designated Beneficiary named shall also be irrevocable at such time unless the Member's marital or Civil Union status changes as the result of dissolution of marriage or Civil Union, death of a Designated Beneficiary, marriage or entry into a Civil Union, or remarriage or reentry into a Civil Union. In the event of the death of a Designated Beneficiary, the Member may designate a new Designated Beneficiary. Notwithstanding the foregoing, an unmarried Member who also is not a Partner in a Civil Union who is receiving a single life annuity and whose marital or Civil Union status changes as the result of marriage or remarriage, Civil Union or reentry into a Civil Union may elect one of the options provided in subparagraph (1) of this Rule, within one hundred and eighty days of the date of the marriage or remarriage, Civil Union or reentry into a Civil Union; provided, however, if such a Member revokes the prior election and chooses a different payment option, and the Member subsequently dies during the first six (6) months following the Member's marriage or entry into a Civil Union, the only survivor benefit payable to the Member's Designated Beneficiary shall be the difference between the Normal Option amount payable to the Member prior to marriage or entry into a Civil Union and the amount of the reduced benefit that was actually paid to the deceased Member during the period after the Member's marriage or remarriage, entry or reentry into a Civil Union and prior to the Member's death.

(3) The joint pension benefits provided by this Rule shall be calculated as the Actuarial Equivalent of the Normal, Vested, or Early Retirement pension otherwise payable under this Part. In the event of a change in Designated Beneficiary pursuant to paragraph (2) of this Rule, the joint pension benefits payable shall be recalculated so as to be the Actuarial Equivalent of the remainder of the original pension benefits based upon the Member's initial Designated Beneficiary designation, if any. In the event of a change in option elected pursuant to paragraph (2) of this Rule, the joint pension benefits payable shall be recalculated so as to be the Actuarial Equivalent of the remainder of the original pension benefits plus eligible cost of living adjustments payable to the Member immediately prior to the change in option.

(4) 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 the newly Designated Beneficiary.

(5) 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, the Member shall be deemed to have elected a Late Retirement under Rule 403. 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 ninety (90) days of the issuance of a description of benefits, the Member shall be considered to have elected the 100 percent joint and survivor benefit option set forth in subparagraph (1)(b) of Rule 407. 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.

(6) If the Member elects the 100 percent joint and survivor benefit option set forth in subparagraph (1)(b) of Rule 407 or the option specified in subparagraph (1)(f) of Rule 407 and designates a 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 the 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).

(7) The effective date of Normal, Vested or Early retirement shall be the first of the month following the day after the last date for which the Employer deducted FPPA contributions from the Member's Base Salary.

**408. Minimum Benefit**. If the total amount of pension benefits paid under the Lifetime Benefit Component is less than the amount of the Member's contributions to the Lifetime Benefit Component at the time of death, the difference shall be paid, along with five (5) percent interest on the total amount, to:

(1) The Member's estate, if no pension payment was made pursuant to an option under Rule 407; or

(2) The survivor's estate, if pension payments were made pursuant to an option under Rule 407.

**409. Aggregation of Service**. If the Member has not taken a refund of contributions from the Statewide Retirement Plan, all Years of Service Credit of a Member who is employed by successive Employers shall be aggregated for determining eligibility for benefits if the service for each Employer was rendered while the Employer covered its Members under the Plan.

**410. Restoration of Service.**

(1) If a Member has received a refund of contributions from the Statewide Retirement Plan, no service shall 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 Members under the Statewide Retirement Plan; and

(b) The former Member returns the entire amount of the refunded contributions and interest, plus additional interest accrued from the date of the refund to the date of return of the refund of contributions at the rate set by the Board to the Plan Administrator within twelve (12) months after returning to such service; or 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 twelve (12) months of the Member returning to service.

(c) For the restoration of service credit, the Plan Administrator shall accept lump sum payments from the Member, eligible rollover distributions, and trustee-to-trustee transfers under Code Section 457(e)(17) and Code Section 403(b)(13).

(d) If the Member fails to return such refunded contributions and interest, the Member shall be treated as a new Member, and the Member's prior service shall not be recognized in determining pension eligibility or pension benefits.

(2) A Member's service is that total period of eligible employment, as set forth in Rule 409 and this Rule 410, less lost service specified in subparagraph (1)(d). One (1) month shall equal one unit of service credit, and can include a fractional period of one (1) month.

(3) Upon a Member's return from a Leave of Absence, the Member will receive service credit for any period of lost service attributable to the leave not exceeding five (5) years upon the Plan Administrator's receipt of the amount of Member and Employer contributions that would have been paid to the Trust Fund if the Member had remained in active service.

(a) Except when a Member is returning to service from a military leave, any such funds must be paid to the Plan Administrator within twelve (12) months of the Member's return to service.

(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 (1) year when the leave period is three (3) months or less, and a maximum of five (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 three (3) months. Under federal law, the Employer is required to match contributions made by the Member. The differential pay received by Members during any leave of absence, by itself, is not pensionable.

(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 was not paid in the calculation of a Member's retirement benefit.

(4) 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).

(5) The Plan Administrator shall exclude ineligible prior service from a Member's retirement benefit, as set forth in this Part, but shall inform the Member of such exclusions.

**411. Deferred Retirement Option Plan ("DROP")**. This rule adds, as a part of the Statewide Retirement Plan, the Deferred Retirement Option Plan as authorized in C.R.S. § 31-31.5-409.

(1) The provisions of this rule are applicable with respect to those otherwise eligible members of the Statewide Retirement Plan whose election to participate in the Deferred Retirement Option Plan occurs on or after the effective date of this rule or who elected to participate in DROP in a Predecessor Plan. An "eligible member" is any member who is eligible ~~for Normal Retirement in accordance with C.R.S. § 31-31.5-401, who has reached retirement age but has not reached the required service, who is eligible for~~to commence receiving a ~~vested retirement in accordance with C.R.S. § 31-31.5-401, or who is eligible for an Early Retirement in accordance with C.R.S. § 31-31.5-401(4)~~ benefit.

(2) The program set forth in this rule may be referred to as the "DROP."

(3) The purpose of the DROP is to allow an eligible Member to elect, in lieu of immediate termination of employment and receipt of a retirement benefit, to continue employment for a specified period of time and to have the Member's otherwise deductible Member contribution and retirement benefits paid into the DROP account until the end of such specified period of the Member's participation, at which time employment is to cease. An eligible Member must choose one of the Benefit Payment Options provided in Rule 407 at the same time the Member elects to participate in the DROP.

(4) An eligible Member may participate in the DROP only once.

(5) The duration of a Member's participation in the DROP shall not exceed a total of five (5) years. As a condition precedent to participation in the DROP, the Member shall execute an irrevocable agreement with their Employer in the form prescribed by the Board which shall, among other items, clearly and unequivocally state that the Member must retire no later than the fifth anniversary of the Member's participation in the DROP, and the Member shall also acknowledge that no disbursement of any DROP funds can occur absent the retirement or death of the Member. The Employer shall provide a copy of such agreement to ~~the Board~~FPPA.

(6) If the Member's participation in the DROP is interrupted by military service, reduction in work force, or job-related disability, then, upon reestablishment of membership and provided that the Member has not received any distribution from his DROP account, the Member shall be immediately eligible for resumption of participation in the DROP for the balance of the five-year maximum. Other than the above-described types of interruptions of participation, the five-year period shall continue to run in all other cases.

(7) Upon commencement of the Member's participation in the DROP, the Member shall remain an active Member. Nevertheless, the Member shall earn no additional service credit or additional benefits under the Statewide Retirement Plan. In the event that a Member electing to participate in DROP is employed concurrently by a second employer participating in the Statewide Retirement Plan, the Member may elect DROP participation with the second employer. If the Member does not elect DROP participation with the second employer, the Member's employment with the second employer shall be treated as return to work and Rule 205 shall apply.

(8) Upon commencement of the Member's participation in the DROP, the retirement benefits provided in this part 4 and the Member contributions provided in this part 4 shall be paid into the Member's DROP account. In no case shall the Employer contribution be used to fund the DROP.

(9) The DROP assets shall be held for investment purposes as part of the Fire and Police Member's Self-Directed Investment Fund, subject to such rules as may be adopted for the administration of the trust. The Board shall be authorized to charge each account a fee for the administration of the DROP.

(10) (a) A Member in the DROP who terminates employment or reaches the five-year limit for participation shall become a retiree and shall receive, at the retiree's option:

(I) a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses; or

(II) periodic monthly payments from the retiree's individual DROP account over a period not to exceed the retiree's life expectancy or the joint life expectancies of the retiree and the retiree's designated beneficiary; or

(III) 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; or

(IV) Conversion to a monthly lifetime benefit. A partial lump sum distribution may also be combined with a conversion to a monthly lifetime benefit.

If no selection is made by the retiree, the funds shall remain in the Member's self-directed account with FPPA's recordkeeper.

(b) Notwithstanding any provision to the contrary, any distribution under the DROP shall be made in accordance with Code Section 401(a)(9) and the regulations established there under as they are amended and shall comply with the following rules:

(I) To the extent required by Code Section 401(a)(9) and the regulations promulgated there under, payment of the benefits of a Member shall begin no later than the "required beginning date." ~~For purposes of this rule, "required beginning date" means April 1 of the calendar year following the later of the calendar year in which the Member reaches age seventy-two (72) (or age seventy and one-half (70 1/2 if the Member was born before July 1, 1949), or the calendar year in which the Member retires.~~

(II) No payment option may be selected by a Member unless the amounts payable to the Member are expected to be at least equal to the minimum distribution required under Code Section 401(a)(9).

(III) The amounts payable must satisfy the minimum distribution incidental benefit requirements of Code Section 401(a)(9)(G).

(11) 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 at the time of the Member's death, the Member's designated beneficiary shall receive, at the beneficiary's option, a lump sum payment from the retiree's individual DROP account equal to its balance plus net investment earnings and losses, or equal monthly installment payments from the retiree's individual DROP account over a period not to exceed the spouse's life or life expectancy. If no selection is made by the designated beneficiary, the funds shall remain in the Member's self-directed account with FPPA's recordkeeper.

(a) In the event of the Member's death, any remaining benefit shall be distributed according to the following, subject to compliance with Code Section 401(a)(9) and regulations there under.

(b) If the Member had begun receiving periodic payments from the Plan that were not annuitized, the balance of the Accounts shall be paid to the Designated Beneficiary at least as rapidly as under the payment option selected by the Member.

(c) If the Member had begun receiving payments in the form of a pension or annuity, the Designated Beneficiary shall be bound by all restrictions applicable to the pension or annuity, and the form of payment selected there under, and remaining payments, if any, shall be paid to the Designated Beneficiary in the same manner.

(d) If the Member dies before distributions have commenced, a Spouse Designated Beneficiary may take a lump sum distribution or may delay the commencement of benefits until not later than December 31 of the year the Member would have attained age seventy-two (72) (or age seventy and one-half (70½) if the member was born before July 1, 1949) and may elect to receive periodic payments over the Spouse's life expectancy.

(e) If the Member dies before distributions have commenced, a Designated Beneficiary other than a surviving Spouse may take a lump sum or a periodic payment. In the case of a lump sum, payment must be made no later than December 31 of the calendar year containing the fifth anniversary of the Member's death. In the case of a periodic payment distribution, payment must commence no later than December 31 of the year following the year of the Member's death, and in no event be payable over a period longer than the Designated Beneficiary's life expectancy at the time the distribution commences.

(f) 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. If the Designated Beneficiary is someone other than the Member's surviving Spouse to whom the Member was legally married at the time of the Member's death, the Designated Beneficiary shall receive a lump sum payment equal to the Member's individual DROP account balance plus net investment earnings or losses.

(12) If the Member dies during the period of the Member's participation in the DROP and the Designated Beneficiary has not survived the Member, the Member's estate shall receive a lump sum payment equal to the Member's individual DROP account balance plus net investment earnings or losses.

**412. Refund of Contributions.** A Member who terminates employment with an Employer may withdraw from the Plan and request a refund of all the Member's Lifetime Benefit Component Contributions together with (5) five percent of the Member's total accumulated contributions as interest in a lump sum and thereafter shall have no right to lifetime benefits provided by the Plan.

**413. Processing Refunds.** A refund shall be processed within one hundred twenty (120) days after the Plan Administrator has received a completed Request for Refund of Contributions Form, all supporting documentation, and the final contribution. A Member must acknowledge that by requesting a refund the Member has no further rights to benefits provided by the Lifetime Benefit Components. A Member shall only be eligible for a refund of the Member's contributions, including amounts that were transferred or rolled over to a Lifetime Benefit Component for the purchase of Years of Service Credit, the restoration of service, and the purchase of monthly benefits.

**414. Alternative to Refunds.** Unless a refund of contributions has been elected, a Member who has at least five (5) Years of Service Credit in the Statewide Retirement Plan shall leave their Member Contributions with the Trust Fund and elect a Vested Retirement benefit as provided in C.R.S. § 31-31-401. The Member may elect a Vested Retirement at any time following the date upon which the Member terminated their employment, but shall begin distribution no later than when the Member attains age 65. If a Member has not completed a ~~Vested Retirement form~~retirement application prior to the Member attaining age 65, it is presumed that the Member has elected the Normal Option described under Rule 407.

**415. Refunds of Delinquent Contributions.** Refunds of Member Contributions shall not be made to any Members of Employers who have failed to remit all contributions required under the provisions of the Statewide Retirement Plan.

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

(1) Active Member Who Dies With Less Than Five Years of Service

(a) If the Member is active and covered by the Statewide Death and Disability (SWDD) Plan, the Member's Spouse, Partner in a Civil Union and/or Dependent Child are eligible for survivor benefits under the SWDD Plan; or

(b) If no benefit is payable under the SWDD Plan, the Member's contributions plus five (5) percent as interest shall be paid first to the Member's Designated Beneficiary; if there is no Designated Beneficiary, then to the surviving Spouse or Partner in a Civil Union and if none, then to the Dependent Child; or

(c) If there is no Designated Beneficiary, Spouse, Partner in a Civil Union or Dependent Child, then the Member's contributions plus five (5) percent as interest shall be paid to the Member's estate.

(2) 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 SWDD Plan, the Member's Spouse, Partner in a Civil Union and/or Dependent Child are eligible for survivor benefits under the SWDD Plan. Monthly pension benefits from the FPPA Defined Benefit System are forfeited if SWDD benefits are received; or

(b) If no survivor benefits are paid under the SWDD Plan, the Designated Beneficiary shall be paid the greater of 1) a refund of the Member's contributions plus five (5) percent as interest or 2) survivor benefits under Rule 407(1)(b) 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 the Designated Beneficiary 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 Rule 407(1)(b) and is living when the Member would have been eligible to receive a Vested benefit, the designated beneficiary shall be paid the Rule 407(1)(b) benefit.

(III) If the Designated Beneficiary elects survivor benefits under Rule 407(1)(b) and dies prior to receipt of benefits under Rule 407(1)(b) , the Member's contributions plus five (5) percent 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 five (5) percent as interest shall be paid to the Designated Beneficiary's estate.

(c) If no survivor benefits are paid under the SWDD 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 SWDD Plan and if the Member contributions are not otherwise distributed under this Rule 416(2) then the Member contributions plus five (5) percent 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 (5) years required for vesting even in the event service credit is not earned during the military Leave of Absence.

(3) Active or Inactive Member Who is Eligible for Normal or Early Retirement Benefits and Dies Before Meeting the Contingencies in C.R.S. § 31-31.5-406(1) or Rule 407.

(a)(I) A Member is considered to have retired the day before the Member's death and to have elected the benefit option under Rule 407(1)(b) on behalf of the Member's spouse or Partner in a Civil Union, or, if no spouse or Partner in a Civil Union, on behalf of the Member's 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 SWDD Plan if the Member is covered under the SWDD Plan in lieu of receiving a monthly pension Benefit from the FPPA Defined Benefit System; 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 the benefit option under Rule 407(1)(b) on behalf of the Designated Beneficiary; or

(c) If there is no Designated Beneficiary, the Member's contributions plus five (5) percent as interest shall be paid to the Member's estate.

(d) If the survivor dies prior to receipt of benefits under the benefit option under Rule 407(1)(b), the Member's accumulated contributions at the time of death plus five (5) percent 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 five (5) percent as interest shall be paid to the survivor's estate.

(4) Active or Inactive Member Who is Eligible for Normal or Early Retirement Benefits and Dies After Meeting the Contingencies Under Rule 416(3)(a)(1).

(a)(I) If the Member has elected a beneficiary and made an election under Rule 407 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 five (5) percent as interest shall be paid to the survivor's estate.

(b) If the Member has not elected a beneficiary and made an election under Rule 407 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 five (5) percent as interest shall be paid to the Member's estate.

(5) Active Member Dies While Participating in the Deferred Retirement Option Plan (DROP)

(a)(I) If the Member participates in DROP based on a Normal Retirement, a Designated Beneficiary will be paid a benefit if a payment option was elected under the Statewide Retirement 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 SWDD Plan subject to offsets for the Employer Excess Contribution Account and the DROP account balances. The Employer/Member Funded Separate Retirement Excess Contributions Account balances of the Money Purchase Component of the Statewide Retirement Plan for a Member in the Statewide Retirement Plan shall not be used to offset a supplemental death benefit under the SWDD Plan.

(II) If the surviving Spouse, Partner in a Civil Union and/or Dependent Child are eligible for supplemental death benefits under the SWDD 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 SWDD 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 SWDD 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 surviving Spouse, Partner in a Civil Union or Dependent Child may elect to be paid survivor benefits under the SWDD Plan, subject to offsets for the Employer Excess Contribution Account 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 Statewide Retirement 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 SWDD 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:

(A) In lump sum distribution prior to December 31 of the year in which the Member would have attained the age of 72 (or age 70 ½ if the Member was born before July 1, 1949); or

(B) In periodic payments beginning no later than December 31 of the year in which the Member would have attained the age of 72 (or age 70 1/2 if the Member was born before July 1, 1949); or

(C) For Members who will turn age 72 after 2022 and age 73 before 2033, the applicable age is age 73. For Members who will turn age 74 after 2032, the applicable age is age 75.

(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:

(A) In a lump sum payment to be made no later than December 31 of the fifth anniversary of the Member's death; or

(B) 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.

**417. Refund Upon Death In-Service.** In the event a Member who is covered by the Plan dies while in active service, the deceased Member's Lifetime Benefit Component Contributions may be refunded to the Member's Designated Beneficiary or, if none, the Member's estate if:

(1) The Member is not eligible for Normal Retirement benefits;

(2) The Member leaves no surviving Spouse, Partner in a Civil Union and/or Dependent Children who are eligible for survivor's benefits under the Statewide Death and Disability Plan.

**418. Refund Upon Death of Inactive Member.** If a Member dies after they have terminated service, does not have at least five (5) Years of Service Credit and has not yet received a refund, the Plan Administrator shall refund the Member's Lifetime Benefit Component Contributions to

the Member's Designated Beneficiary; if no Designated Beneficiary, to the surviving Spouse or Partner in a Civil Union; if no surviving Designated Beneficiary, Spouse, or Partner in a Civil Union, to the Dependent Children; or, where there is no Designated Beneficiary, surviving Spouse, Partner in a Civil Union, or Dependent Children, to the deceased Member's estate.

**419. Calculation of Refund Amount.** The amounts that will be refunded under this Part equal the total amount of Lifetime Benefit Contributions plus five (5) percent of that total.

**420. Transfer of Refund to Money Purchase Accounts.** A Member or the Member's Designated Beneficiary, surviving Spouse or Partner in a Civil Union, or Dependent Child who is entitled to receive a refund of Member Lifetime Benefit Component Contributions may elect to have that amount credited to the Member Account in the Money Purchase Component. Upon such amount being credited, the Member or the Member's Designated Beneficiary, surviving Spouse or Partner in a Civil Union, or Dependent Children, as applicable, are treated as having taken a refund from the Lifetime Benefit Component for all purposes.

## PART V - MONEY PURCHASE COMPONENT OF THE STATEWIDE RETIREMENT PLAN

**501. Applicability.** This Part applies to Members of the Statewide Retirement Plan who have an account in the Money Purchase Component.

**502. The Self-Directed Plans Committee (SDPC).** The SDPC is responsible for recommending and demonstrating compliance with the policies and objectives set forth in the Fire and Police Members' Self-Directed Investment Fund (Fund) and self-directed plans' governing documents and by the Board; recommending a budget of revenue, expenses, and administrative fees on an annual basis; evaluating and recommending any service providers including the Fund custodian/ recordkeeper and any consultants; and recommending the Fund structure with respect to the investment options available to participants. While the Board approves the Fund structure, the Board has delegated responsibility to the SDPC for selecting, monitoring and terminating investment fund options. The SDPC is responsible for reviewing information provided by the Fund's service providers, consultant and fund managers and to take actions or conduct investigations that are deemed appropriate. The SDPC is responsible for communicating Fund implementation details to the Board on a regular basis. The SDPC members are fiduciaries and, collectively, are accountable to the Board. Standing members of the SDPC will include FPPA's Executive Director, Chief Investment Officer, Chief Operations Officer and Chief Benefits Officer, or their delegates. The Executive Director may appoint other FPPA staff to the SDPC. The SDPC will meet as needed but at a minimum on a quarterly basis. Minutes of the SDPC will be maintained and distributed to the Board. The SDPC will operate and make decisions by consensus or majority vote of the SDPC voting members.

**503. Individual Accounts.** Individual Accounts means Accounts as defined in Rule 101(5). The maintenance of individual accounts is only for accounting purposes, and a segregation of the assets of the Trust Fund to each account shall not be required. Distribution and withdrawals made from an account shall be charged to the Account(s) as of the date payment is made.

**504. Account Adjustments.** The Accounts of Members, Inactive Members, Designated Beneficiaries, Surviving Spouse, Partner in a Civil Union, and Dependent Children shall be adjusted in accordance with the following:

(1) 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.

(2) Contributions shall be allocated to the appropriate Account of each eligible Member not less frequently than monthly, according to the amount that is actually contributed on behalf of each Member.

(3) The costs of administrative services (including record keeping, legal, administrative, etc.) of the Money Purchase Component will be covered by forfeitures, penalties received, settlement proceeds, and other sources of revenue received. Notwithstanding the foregoing, any revenue credits derived from the investments offered by the Plan may instead be distributed to participants. When the expense of administrative services exceeds the Plan revenue, the administrative expenses of the Plan may be charged to Members on a periodic basis in the form of an asset-based fee, a flat hard dollar fee, or a combination thereof. The FPPA SDPC will review the administrative expenses on an annual basis and determine the allocation of administrative costs of the Plan, if any to participants.

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.

**505. Investments.**

(1) The SDPC is authorized to offer to each Member of the Plan various Investment Options for the Member's Accounts, including at least three (3) alternatives, each of which is diversified in itself, that allow a Member a broad range of investments and a meaningful choice between risk and return in the investment of the Member's Aggregate Account.

(2) One hundred (100%) of each Aggregate Account may be invested as directed by the Member in any one (1) or a combination of the Investment Options. If a Member or Designated Beneficiary does not have a valid investment election on file for any portion of the amount in that Member's Account, that portion of the Member's Accounts shall be invested in the Investment Option selected by the Board as the default option(s). In such event, the Member or Designated Beneficiary shall be deemed to have directed that Investment Option for investment of such portion of the Member's Accounts. The SDPC shall establish one or more default options based upon various factors, including but not limited to, market risk, stability, and rate of return. FPPA shall have no liability for any loss sustained by a Member or Designated Beneficiary whose Accounts in whole or in part are invested in the default option(s).

(3) Members may redirect the investment of the Member's Aggregate Account at any time and may reallocate monies in existing funds as may be allowed by the Plan Administrator. The Board or Plan Administrator (or its designee) may also bring a suit or take such other action as it deems appropriate in the case of questions involving investment directions.

(4) Subject to terms and conditions imposed by the Recordkeeper, Members may engage a third party investment advisor (Advisor) and may grant the Advisor limited trading authorization on the Member’s Accounts. An Advisor shall be in the business of providing investment services. A Member may authorize the payment of the Advisor’s reasonable fees from the Member’s Accounts.

**506. Statements of Accounts to Members.** A written report of the status of each Member's Accounts shall be furnished by the Plan Administrator within thirty (30) days after the end of each Plan quarter. All reports to Members shall be based on the fair market value of investments credited to their Accounts as of the reporting dates. Member reports shall be deemed to have been accepted by the Member as correct unless written notice to the contrary is received by the Plan Administrator, as appropriate, within ninety (90) days (or such longer period as determined by the Plan Administrator) after the mailing or distribution of a report to the Member.

**507. Year End Reports.** Within ninety (90) days after the end of each Plan Year, a written report shall be prepared and maintained on file by the Plan Administrator showing the assets held under the Plan, a schedule of all receipts and disbursements, and all material transactions of the Plan during the preceding year. This report shall be in a form and shall contain other information as

the Plan Administrator requires. The report shall also contain such information as is necessary to enable the Board to prepare their accounting due under the Trust Fund.

**508. Valuation.** The Plan Administrator (or its designee) shall value the assets in the Accounts each business day based on acceptable industry practices. All daily transactions shall be based on that day's closing market values. The value of the Member's Accounts shall be adjusted in accordance with the daily values.

**509. Deposits.** In all cases, deposits of contributions shall be treated as actually made only as of the date the contributions are accepted as in good order by the Plan Administrator.

**510. Vesting for Money Purchase Component Accounts.**

(1) A Member shall be one hundred percent (100%) vested in the Member Accounts.

(2) Employer contributions that are credited to the Employer Accounts, the Employer Transfer Account, the Employer Excess Contribution Account, the Employer/Member Funded Separate Retirement Account, and the Employer Voluntary Account are subject to the following vesting rules:

(a)(I) A Member shall be 100% vested once the Member attains Normal Retirement Age (if employed by the Employer on or after that date).

(II) A Member who has not attained Normal Retirement Age as specified in paragraph (2)(a)(I) above, is subject to the following vesting rules:

Employer Accounts Vesting Schedule

| Years of Service | Vested Percentage |
|---|---|
| Less than 1 | 0% |
| 1 but less than 2 | 20% |
| 2 but less than 3 | 40% |
| 3 but less than 4 | 60% |
| 4 but less than 5 | 80% |
| 5 or more | 100% |

(b) For purposes of this Vesting Schedule, Years of Service includes Years of Service with the Member's Employer prior to the Member's participation in this Plan and all other Years of Service earned under the Money Purchase Component of the Statewide Retirement Plan for which no distribution has been made.

(c) In the event of Permanent Occupational or Total Disability retirement pursuant to C.R.S. §§ 31-31-804 and 31-31-805 or death as an active Member, a Member shall be 100% vested in all Member and Employer Accounts.

(d) Upon distribution, the portion of a Member's Employer Account, the Employer Transfer Account, and the portion of Employer Account that is not vested shall be treated as a forfeiture.

(e) Years of Service in the Money Purchase Component for purposes of this rule cannot be purchased by the Member or the Employer.

(f) A Member who is restored to active service after a disability ceases to exist pursuant to C.R.S. § 31-31-803 will receive credit for Years of Service in the Money Purchase Component with the Employer prior to the disability as well as time while out on disability. However, a

Member who only participates in the Money Purchase Component does not receive vesting credit for those Years of Service Credit for purposes of the defined benefit pensions.

**511. Types of Distributions**.

(1) Upon becoming eligible for distribution and upon approval of the Plan Administrator, a Member, or the Designated Beneficiary in the event of the death of the Member before distribution of the Member's Account, may elect to receive the balance of the Member's Account in one of the methods authorized by this Part. At that time, the Member shall receive the "vested percentage" of the Employer Accounts. The Employer Account funds forfeited by Members who are less than one hundred percent (100%) vested shall constitute Forfeitures and shall be reserved in a forfeiture account to pay the administrative expenses of the Plan. Forfeitures may be carried forward from one plan year to the next for up to five (5) years. After five (5) years, Forfeitures not used to pay the administrative expenses of the Plan must be used to reduce the Employer's required contributions to the Plan. A Member may elect to defer payment within the parameters of this Part V.

(2) A Member who terminates employment and has withdrawn the Member Lifetime Benefit Contributions is not required to withdraw Member's Accounts in the Money Purchase Component, which shall be maintained as provided in Part IV until the assets of the Accounts are distributed.

(3) The Member or Designated Beneficiary may choose a lump sum payment of all or a portion of the Member's Accounts.

(4) The Member or Designated Beneficiary may elect to have the value of all or a portion of Member's Accounts used to purchase an annuity contract, with a term and in a form as the Member elects. If the Member has elected distribution in the form of an annuity, any benefit payable as a result of Member's death shall be determined solely under the terms of the annuity contract.

**512. Conversion to Monthly Lifetime Benefits.**

(1) A Member who is eligible for retirement may elect to transfer all or part of Member's Aggregate Account balance within the Money Purchase Component and/or from Member's account balance within the DROP to the Defined Benefit Component to convert to a monthly benefit. Funds may not be transferred from outside the Statewide Retirement Plan to purchase a monthly benefit. Funds of Inactive Members not eligible for retirement and retired Members, or their beneficiaries, may not be used to purchase a monthly lifetime benefit. Only a Member eligible for retirement may convert these accounts or account balances to a monthly lifetime benefit.

(2) The funds transferred to the Defined Benefit Component are to be considered Member Defined Benefit Contributions.

(3) At retirement or separation of service, which ever comes later, and if a Member has reached age 55, a Member may make a one-time, irrevocable election to convert all or a portion of the DROP or Money Purchase Component of the Statewide Retirement Plan account to a monthly lifetime benefit. The Member must make the irrevocable election within ninety (90) days of retirement or separation of service. The conversion must be in one lump sum, which must be initiated by the Member prior to the receipt of benefits from the Defined Benefit Component. The Member shall designate the entire account balance or a flat dollar amount for conversion.

(4) Once the Member's monthly payment amount is calculated, it will be considered to be a portion of the Member's pension under Rule 407. The Member may elect one of the payment options offered under Rule 407 of the Plan.

(5) As part of the pension, the converted monthly benefit may be adjusted pursuant to C.R.S. § 31-31.5-410.

(6) Once the monthly benefit is converted, the Member may not convert back to a lump sum payout.

(7) 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.

**513. Periodic Payments**. The Member may elect to have all or a portion of the Member's Accounts distributed in substantially equal monthly payments over a period not to exceed the joint life expectancy of the Member and a Spouse, if the Spouse is the sole beneficiary, or until the Accounts are exhausted. If the Member dies prior to the Member's required beginning date, the Designated Beneficiary may elect to have all or a portion of the Member's individual account distributed in substantially equal monthly payments over a period not to exceed the life expectancy of the Designated Beneficiary. This maximum period shall be determined under the applicable IRS tables at the time the initial monthly installment payment becomes payable.

**514. Taxability of Distributions**. All distributions will be made in compliance with the Code, including any allowed tax-free payments due to on-duty death or disability status under IRC 104(a).

**515. Timing of Distributions**. Final distributions will not be made until contributions and allocations have been made to the Member's Accounts and in accordance with the IRS notice and withholding requirements. This period shall not exceed ninety (90) days after receipt of all necessary forms, allocations, and Plan Administrator approval.

**516. Distributions Upon Death**.

(1) Each Member from time to time may designate any person or persons (who may be designated contingently or successively and who may be an entity other than a natural person) as the Member's beneficiary or beneficiaries to whom Plan benefits are paid if the Member dies before receipt of all such benefits. Each beneficiary designation shall be in the form prescribed by the Plan Administrator, and will be effective only when filed with the Plan Administrator during the Member's lifetime. Each Designated Beneficiary designation filed with the Plan Administrator will cancel all Designated Beneficiary designations previously filed with the Plan Administrator.

(2) Upon the death of the Member, the Designated Beneficiary may elect to allocate the investment of the Member's Accounts as provided for in Part IV. If no notice of reallocation is received, the Member's Accounts will remain invested as previously allocated during the Member's lifetime.

**517. Deferral of Distribution.** An Inactive Member may elect to defer receipt of all or part of the Member's Account. Such Inactive Member shall receive allocations until the balance of the Inactive Member's Accounts has been distributed. An Inactive Member may make application for distribution of the Member's Accounts in accordance with the procedures contained in this Part.

**518. Claims After Distribution.** Upon distribution of all or any part of a Member's Account, the Member or Designated Beneficiary shall have no further claim to benefits from the Plan for that portion of the Member's Account distributed.

**519. In-Service Plan-to-Plan Transfers**. Notwithstanding any other Plan provision, distribution of amounts in a Member's Rollover Account may be transferred prior to a separation from service to an Eligible Retirement Plan within the meaning of Code § 402(c) of which the Member is a Member if the plan receiving such amounts provides for their acceptance.

**520. Eligible Rollover Distributions From This Plan.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Part, 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.

**521. Distribution of De Minimis Accounts.** 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.

**522. Minimum Distribution Rules for Members**. Notwithstanding any provision of this Plan to the contrary, any distribution under the Plan shall be made in accordance with a reasonable and good faith interpretation of Code Section 401(a)(9) and the regulations established thereunder as they are amended and shall comply with the following rules:

(1) To the extent required by Code Section 401(a)(9) and the regulations promulgated thereunder, payment of the benefits of a Member shall begin no later than the "required beginning date." For Members turning age 72 before 2023, "required beginning date" means April 1 of the calendar year following the later of (i) the calendar year in which the Member reaches age seventy-two (72) (or age 70 ½ if the Member was born before July 1, 1949), or (ii) the calendar year in which the employee retires. For Members who will turn age 72 after 2022 and age 73 before 2033, the applicable age is age 73. For Members who will turn age 74 after 2032, the applicable age is age 75.

(2) No payment option may be selected by a Member unless the amounts payable to the Member are expected to be at least equal to the minimum distribution required under Code Section 401(a)(9).

(3) The amounts payable must satisfy the minimum distribution incidental benefit requirements of Code Section 401(a)(9)(G).

(4) Distributions in the event of a Member's death are subject to the minimum distribution rules of Code Section 401(a)(9) and the regulations thereunder.

**523. Minimum Distribution Rules for Beneficiaries**. In the event of the Member's death, any remaining benefit shall be distributed according to the following subject to compliance with Code Section 401(a)(9) and regulations thereunder.

(1) If the Member had begun receiving periodic payments from the Plan that were not annuitized, the balance of the Accounts shall be paid to the Designated Beneficiary at least as rapidly as under the periodic payments selected by the Member.

(2) If the Member had begun receiving payments in the form of a pension or annuity, the Designated Beneficiary shall be bound by all restrictions applicable to the pension or annuity, and the form of payment selected thereunder, and remaining payments, if any, shall be paid to the Designated Beneficiary in the same manner.

(3) If the Member dies before distributions have commenced, and has turned age 72 before 2023, a Spouse Designated Beneficiary may delay the commencement of benefits until December 31 of the year the Member would have attained age 72 (or age 70 ½ if the Member was born before July 1, 1949) and may elect to receive payments at such time over the Spouse's life expectancy, subject to the payment options available. For Members who would have attained the age 72 after 2022 and age 73 before 2033, the Spouse Designated Beneficiary may delay the commencement of benefits until December 31 of the calendar year the Member would have

attained age 73. For Members who would have attained age 74 after 2032, the Spouse Designated Beneficiary may delay the commencement of benefits until December 31 of the calendar year the Member would have attained the age of 75.

(4) If the Member dies before distributions have commenced, a Designated Beneficiary other than a surviving Spouse may take a lump sum or a periodic payment, subject to the distribution options available. In the case of a lump sum distribution, payment must be made no later than December 31 of the calendar year containing the fifth anniversary of the Member's death. In the case of a periodic distribution, payment must commence no later than December 31 of the year following the year of the Member's death, and in no event be payable over a period longer than the Designated Beneficiary's life expectancy at the time the distribution commences.

(5) If the Member has not designated a 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 or any person claiming to be the successor of the deceased Member who presents an affidavit pursuant to C.R.S. § 15-12-1201, et seq.

(6) Notwithstanding the foregoing, any payment to an estate shall be made in a lump sum.

(7) Unclaimed Accounts or Interests. If the account or interest of any Member 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 and are subject to Rule 1902.

**524. No Plan Loans**. Loans to Members shall not be permitted.

**525. In-Service Distributions**. To the extent allowed under the federal "Internal Revenue Code of 1986", as amended, the Board may, but is not required to, provide by these rules for loans or disaster distributions to Members and for in-service distributions.

## PART VI - MODIFICATION AND AMENDMENT OF THE PLAN

**601. Procedures for modification of the Plan by the Board that requires an election pursuant to C.R.S. § 31-31.5-601.**

(1) Whenever the Board proposes a modification to the Statewide Retirement Plan which requires a vote of the Members and Employers, FPPA shall provide to each Employer employing active Members covered by the 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, (Items (a) and (b) shall collectively be called the Required Information); and

(c) A Member election ballot.

(2) Only those Members in a component of the Plan that is affected by the proposed amendment shall be eligible to vote on the amendment.

(3) In addition to the Member information in subparagraph (1), FPPA shall provide the following information to each Employer:

(a) A list of the active Members of the affected component of the Plan employed by the Employer as reflected in FPPA records; and

(b) One Employer election ballot or, if the Employer employs both fire and police Members of the Plan, two Employer election ballots.

(4) FPPA will forward the Required Information, the list of active Members, and the Employer ballot by certified mail, hand-delivery, or electronically with the consent of the Employer 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 other than by certified mail, the Employer shall provide FPPA with a written receipt for such information.

(5) The following procedures shall govern the Member election:

(a) Within fifteen (15) days of the date of mailing or e-mailing of the Required Information, the Employer shall provide a copy of the required information to each active Member of the Plan;

(b) The Member election may commence at any time following the Employer's receipt of the Required Information and shall conclude no later than the 30th 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 consistent 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 Plan Members participating in the affected component not reflected in FPPA's roster who were hired prior to the conclusion of the voting;

(e) Within sixty (60) days from the date of FPPA's mailing or e-mailing election information to the Employer, an authorized representative of the Employer must certify the results of the Member election, including:

(I) The vote count for and against the proposed modification;

(II) The roster of those Members receiving ballots and a list of those Members who actually submitted ballots;

(III) A statement that, to the best of the Employer's knowledge, all eligible Members timely received the Required Information; and

(IV) The election was conducted in a fair and impartial manner.

(6) 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 attach to the ballot a copy of the motion, resolution or other action evidencing the governing body's decision.

(7) Within ninety (90) days from the date of FPPA's mailing or emailing to Employers, the Executive Director for FPPA shall certify the results of the Member and Employer elections to the Board. If at least sixty-five (65) percent of the active Members who vote and more than fifty (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.

(8) Each Employer shall retain all Member ballots actually voted for a period of six (6) months and shall make such ballots available for inspection by FPPA upon its request.

**602. Amendment to the Plan Without an Election.**

(1) The Board has been granted the authority to modify, alter or amend the Plan provisions pursuant to C.R.S. 31-31-204(2.5) as amended without an election of the active members in order to administer benefits under the Plan consistently and uniformly across the Defined Benefit System in a manner that does not result in an actuarial cost to the Plan.

(2) No amendment may increase the Employer contribution rate above the rates specified in C.R.S. §§ 31-31.5-301, 302, 303 and 304.

(3) No amendment shall have the effect of:

(a) diverting for the benefit of any persons, other than Members or their Beneficiaries, amounts attributable to contributions by an Employer;

(b) decreasing the nonforfeitable percentage or amount in any Member's Accounts; or

(c) changing the vesting schedule set forth in Rule 510, with respect to any Member with five (5) or more Years of Service.

(4) If the Plan is amended or modified, the Plan Administrator shall nonetheless be responsible for the supervision and the payment of benefits resulting from amounts contributed prior to the amendment or modifications in accordance with this Part.

(5) 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 nonforfeitable to the extent funded and to the extent required by federal law.

**603. Amendment for Qualification of Plan.** It is the intent of the Board that the Statewide Retirement Plan shall be and remain qualified for tax purposes under the Code. The Board may make any modifications, alterations, or amendments to the Plan necessary to obtain and retain approval of the Secretary of the Treasury or the Secretary's delegate as may be necessary to establish and maintain the status of the Statewide Retirement Plan as qualified under the provisions of the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. Any modification, alteration, or amendment of the Plan, made in accordance with this rule, may be made retroactively, if necessary or appropriate. The Board and all Employers, employees, Members, Designated Beneficiaries, and all others having any interest under the Plan shall be bound thereby.

## PART VII - EMPLOYER REENTRY AND AFFILIATION

**701. Full Employer Reentry**. (1) Any Employer exempt from Social Security that has previously participated in FPPA and who is in a local money purchase plan, may irrevocably elect to cover police officers and/or firefighters under the Statewide Retirement Plan, in accordance with this Rule 701.

(2) Any Employer desiring to reenter under this ~~r~~Rule 701 shall file a Resolution with FPPA, adopted by the governing body of the Employer, stating the Employer's intent to cover the Members under either the Defined Benefit Component or the Hybrid Component of the

Statewide Retirement Plan. If reentry occurs under this rule, all new Members hired on or after the effective date of reentry, or an earlier date as agreed upon by FPPA, shall participate in the component of the Statewide Retirement Plan selected by the Employer. Existing Members hired before the effective date of reentry shall elect to participate in the available component(s), chosen by the reentering employer, or to participate in the Money Purchase Component. This choice is a one-time irrevocable choice. If a choice is not made, the Member will automatically default into the Money Purchase Component only. In the case of a Full Employer Reentry, the Members will no longer be allowed to participate in the Employer's local plan. In addition to the resolution, a vote is required and must pass by at least sixty-five (65) percent of the Members who vote in order to reenter, as outlined in this Rule. The Resolution shall contain the following:

(a) A request for the Effective Date of coverage, which shall be the first day of the Employer's pay period, otherwise known as the payroll period beginning date.

(b) The Member and the Employer contribution rates including the Continuing Rates of Contributions proposed under the selected plan component and how the contributions shall be split between the Employer and the Member.

(c) The Employer's election as to whether to cover Members hired on or after the effective date or an earlier date as agreed upon in the Defined Benefit Component or the Hybrid Component.

(d) A statement that required Member contributions shall be at the same rate as its local money purchase plan; or if the required Member contributions in its local money purchase plan are at a greater rate than in the Statewide Retirement Plan, then the difference between the required Member contributions for its local money purchase plan and the Statewide Retirement Plan must be made on a post-tax basis.

(e) A statement that Members are fully vested in all balances in the local money purchase plan and that all local money purchase plan balances shall be transferred to the money purchase component of the Statewide Retirement Plan.

(f) An acknowledgement that election for coverage under the Statewide Retirement Plan is irrevocable.

(g) For a fire district, fire authority, or county improvement district, a statement as to whether clerical and other support personnel shall participate in the Plan. The Employer shall designate in which component of the plan, not including the Money Purchase Only Component, said support personnel shall participate, which may be different than the component for personnel directly involved in fire protection.

(h) Who will pay the continuing rate of contribution as outlined in Rule 704. The Employer shall select from one of the following options:

(I) Employer paid; or

(II) Member paid; or

(III) Employer and Member paid, with the Employer and Member sharing the cost of the continuing rate of contribution equally.

(i) The Resolution must be filed with FPPA no less than six (6) months prior to the proposed Effective Date, unless a shorter waiting period is requested and approved by the FPPA.

(3) The Employer shall prepare a disclosure statement which compares the main provisions of its local money purchase plan and the selected Component(s) of the Statewide Retirement Plan, as

applicable. The disclosure statement shall be submitted to FPPA for its approval. Once approved, the Employer shall provide a copy of the disclosure statement to each Member eligible to vote in the election at least ten (10) days prior to the date the Employer has set for the Member election.

(4) All Members who are employed on the date or dates of the election and are participating in the Employer's local money purchase plan are eligible to vote. If an Employer has more than one (1) money purchase plan, a separate election must be held with respect to each plan.

(5) All Members voting in the election shall sign a register of voters at the time they receive their ballots.

(6) At the election, 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.

(7) After everyone eligible to vote has had an opportunity to cast their ballots, the election shall be closed, but in no event shall the election be conducted for more than five (5) consecutive days.

(8) 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. This certification must be filed with FPPA prior to the Effective Date of Reentry.

(9) 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, the ballots of each group shall be counted separately.

(10) If the above procedures have been completed and if sixty-five percent (65%) of the Members who vote in each voting group approve coverage under the Statewide Retirement Plan and applicable component, such coverage shall be considered approved, subject to compliance with the other requirements of this Rule.

(11) A Member who is on leave with or without pay shall be treated as an active Member for purposes of this Rule. A Member who is on military leave at the time of the deadline for the individual plan election and who does not make a timely election shall have ninety (90) days from the date the Member returns to work with the employer to make the election.

(12) Nothing contained in this rule shall be construed to waive or invalidate the requirement for an election of Members that may be required by a local plan document, trust agreement, or labor agreement. Such an election shall be conducted locally pursuant to the requirements established by the local plan.

(13) On the Effective Date of coverage or on such date as mutually agreed upon by the Employer and FPPA, the Employer shall transfer the assets of its Local Money Purchase Plan to FPPA, together with such records regarding the benefits of retired Members and accounts of active and

Inactive Members, as FPPA may require in order to properly commence covering the Members under the Statewide Retirement Plan.

(14) Any inactive or retired Member or beneficiary of a Member, of a Local Money Purchase Plan whose former Employer has affiliated with the Statewide Retirement Plan may transfer their account to the Money Purchase Component of the Statewide Retirement Plan after the effective date of the former Employer's affiliation. Inactive or retired Members, or their beneficiaries, may not purchase service credit or a monthly lifetime benefit in the Statewide Retirement Plan.

**702. Partial reentry.** (1) In lieu of an election to obtain the approval by at least sixty-five percent (65%) of the Members who vote as required in Rule 701, and when the local plan allows for the individual self-direction of each Member's account, the Employer may offer each active local plan Member the option to remain in the Local Money Purchase Plan or to discontinue participation in the Local Money Purchase Plan to participate in the Defined Benefit Component, the Hybrid Component, or the Money Purchase Component of the Statewide Retirement Plan. This choice is a one-time irrevocable choice. If a choice is not made, the Member will automatically default into the Money Purchase Component only. Any Employer desiring to reenter under this ~~r~~Rule 702 shall file a Resolution with FPPA, adopted by the governing body of the Employer, stating the Employer's intent of whether to join the Defined Benefit Component or the Hybrid Component of the Statewide Retirement Plan. If reentry occurs under this rule, all new Members hired on or after the effective date of reentry or an earlier date as agreed upon by FPPA, shall participate in the component of the Statewide Retirement Plan selected by the Employer. The Resolution shall contain the following:

(a) A request for the Effective Date of coverage, which shall be the first day of the Employer's pay period, otherwise known as the payroll period beginning date.

(b) The Member and the Employer contribution rates including the Continuing Rates of Contributions proposed under the selected plan component and how the contributions shall be split between the Employer and the Member.

(c) The Employer's election as to whether to cover Members hired on or after the effective date, or an earlier date as agreed upon, in the Defined Benefit Component or the Hybrid Component.

(d) A statement that required Member contributions shall be at the same rate as its local money purchase plan; or if the required Member contributions in its local money purchase plan are at a greater rate than in the Statewide Retirement Plan, then the difference between the required Member contributions for its local money purchase plan and the Statewide Retirement Plan must be made on a post-tax basis.

(e) A statement that Members are fully vested in all balances in the local money purchase plan.

(f) An acknowledgement that election for coverage under the Statewide Retirement Plan is irrevocable.

(g) For a fire district, fire authority, or county improvement district, a statement as to whether clerical and other support personnel shall participate in the Plan. The Employer shall designate in which component of the plan, not including the Money Purchase Only Component, said support personnel shall participate, which may be different than the component for personnel directly involved in fire protection.

(h) Who will pay the continuing rate of contribution as outline in Rule 704. The Employer shall select from one of the following options:

(I) Employer paid; or

(II) Member paid; or

(III) Employer and Member paid, with the Employer and Member sharing the cost of the continuing rate of contribution equally.

(2) The Resolution must be filed with FPPA no less than six (6) months prior to the proposed Effective Date, unless a shorter waiting period is requested and approved by the Board.

(3) A Member who is on leave with or without pay shall be treated as an active Member for purposes of this Rule. A Member who is on military leave at the time of the deadline for the individual plan election and who does not make a timely election shall have ninety (90) days from the date the Member returns to work with the employer to make the election.

(4) Nothing contained in this rule shall be construed to waive or invalidate the requirement for an election of Members that may be required by a local plan document, trust agreement, or labor agreement. Such an election shall be conducted locally pursuant to the requirements established by the local plan.

(5) On the Effective Date of coverage or on such date as mutually agreed upon by the Employer and FPPA, the Employer shall transfer the assets of its Local Money Purchase Plan to FPPA for members of the Local Money Purchase plan who chose to join the Statewide Retirement Plan.

(6) Any inactive or retired Member or beneficiary of a Member, of a Local Money Purchase Plan whose former Employer has affiliated with the Statewide Retirement Plan may transfer their account to the Money Purchase Component of the Statewide Retirement Plan after the effective date of the former Employer's affiliation. Inactive or retired Members, or their beneficiaries, may not purchase service credit or a lifetime benefit in the Statewide Retirement Plan.

**703. Affiliation.** (1) Any sheriff's office exempt from Social Security or any Employer that covers members under the federal "Social Security Act", as amended, or any county that covers salaried employees under the federal "Social Security Act", as amended, whose duties are peace officers or firefighters as certified by the county may elect coverage under the Social Security Supplemental Component, the Hybrid Component, or the Defined Benefit Component. Participation in the Social Security Component means that there can be no coverage under the Statewide Death and Disability Plan.

(2) Unless otherwise provided for in this Rule 703, the process and rules outlined in the Rule 701 for full reentry or 702 for partial reentry shall apply to affiliation by social security employers.

(3) If an affiliating department has voted to disaffiliate from their local retirement plan, the affiliating department is not required to conduct an election as described in Rule 701.

**704. Continuing Rates of Contribution for Reentry and Affiliating Departments.** The additional continuing rates of contribution paid by Members and Employers of departments reentering or affiliating with the Statewide Retirement Plan are established by resolution and approved by the Board at the time of reentry or affiliation. It is a local decision as to what portion of the continuing rate of contribution is paid by the Member and the Employer. The continuing rate of contribution is in addition to the required Member and Employer contribution rates as established in Rules 402 and 403. It shall be locally decided during the affiliation process whether the continuing rate of contribution shall be made by the Member or the Employer or split equally between the Member and the Employer.

(1) (a) The departments which joined the plan prior to January 1, 2021 contributed an additional 4.0 percent for the continuing rate of contribution for active Members on the affiliation date. Effective January 1, 2021, a fixed 0.2 percent continuing rate of contribution was assessed to fund the predecessor Statewide Defined Benefit Plan from said departments. Said departments will continue to make the continuing rate of contribution at 4.0 percent unless a department elects to modify the contribution pursuant to subparagraph (b) below. Beginning in January 2021, the contributions in excess of 0.2 percent were allocated to the Members' Money Purchase Component accounts, which on and after January 1, 2023 is the Statewide Retirement Plan Money Purchase Component.

(b) Departments that joined a Predecessor Plan prior to January 1, 2021, and who are subject to the continuing rate of contribution at 4.0 percent, may lower its continuing rate of contribution to a rate not less than 0.2 percent by mutual agreement of the Employer and Members of the department. The Employer shall file a resolution with FPPA indicating such agreement. Said agreement may be established through an election, collective bargaining, or such other manner as is customary for the department.

(2) Departments joining the Defined Benefit Component or the Hybrid Component, or the Predecessor Plans, on or after January 1, 2021, shall pay a fixed 1.9 percent continuing rate of contribution for current Members who are active on the reentry or affiliation date. Said departments without Statewide Death and Disability Plan coverage will pay an all-inclusive continuing rate of contribution of 3.5 percent for current active Members as of the effective date of coverage. No additional continuing rate of contribution is required for Members hired after the reentry or affiliation date if the Employer is affiliated with the Statewide Death and Disability Plan. Said departments without coverage in the Statewide Death and Disability Plan shall pay 1.6 percent for Members hired after the reentry or affiliation date. The continuing rate of contribution can be made by the Member, the Employer, or split equally between the Member and the Employer.

(3) Current active Members of departments that participated in the predecessor Statewide Defined Benefit Plan - Social Security Supplemental Component as of January 1, 2021 and subsequently joined the Statewide Defined Benefit Plan shall not pay a continuing rate of contribution regardless of whether the department participates in the Statewide Death and Disability Plan. Members of such a department that do not participate in the Statewide Death and Disability Plan hired after the date the department changes plan components shall pay a continuing contribution rate of 1.6 percent.

(4) Social Security departments completing the affiliation process into the predecessor Statewide Defined Benefit Plan - Social Security Supplemental Component on or after January 1, 2021, or the Statewide Retirement Plan after January 1, 2023, shall pay an all- inclusive continuing rate of contribution of 1.90 percent for Members who are active on the affiliation date, and 0.8 percent for Members hired after the affiliation date.

(5) After two years from the date of reentry or affiliation with the Predecessor Plan, or the Statewide Retirement Plan after January 1, 2023, the Board may reassess the continuing rate of contribution through completion of an actuarial valuation. The actuarial valuation will be completed as of January 1 the year following the second anniversary of the date of reentry or affiliation. If the rate is in excess of what is required to pay the cost of benefits based on the advice of an actuary, then the Board may reduce the continuing rate of contribution effective the subsequent January 1. The Employer and Members of the department shall by mutual agreement determine whether to reduce the original total contribution rate. If the original contribution rate is maintained, the excess contributions shall be deposited in the Money Purchase Component. The Employer shall file a resolution with FPPA indicating such agreement. Said agreement may be established through an election, collective bargaining, or such other manner as is customary for the department.

**705. Contributions to Money Purchase Component for reentry on or after January 1, 2023.** For Members of reentry departments on or after January 1, 2023 who participate in the Money Purchase Component, the contributions from the Employer and the Member must be a minimum of nine (9) percent each.

**706. No Opt-Out**. An Employer who is permitted by the Board to participate in the Statewide Retirement Plan shall not be permitted to opt out of the Statewide Retirement Plan later.

**707. Contents of Application: Local Money Purchase Plan and Social Security Plan.** The application for coverage under the Statewide Retirement Plan filed by an Employer who administers a Local Money Purchase Plan or is required to participate in Social Security Plan and administers a Local Money Purchase Plan shall include the Employer's certification to the Board:

(1) That an Employer's Local Money Purchase Plan meets the qualification requirements of Code Section 401(a);

(2) That, in connection with the Employer's Resolution, the Employer's governing body has adopted a Resolution to either (i) freeze or (ii) completely or partially terminate the Local Money Purchase Plan in accordance with the terms of that plan. If the Employer resolves to completely or partially terminate the plan, the Employer must provide that:

(a) The termination Resolution does not adversely affect the qualified status of the Local Money Purchase Plan; and

(b) The rights of all Members in the Local Money Purchase Plan who are affected by the termination of the Local Money Purchase Plan to benefits accrued to the date of termination are nonforfeitable;

(3) That all active Members in the Local Money Purchase Plan who are included in the Employer's application for coverage under the Statewide Retirement Plan as of the Effective Date shall become Members in the Statewide Retirement Plan, as provided in Part III;

(4) Whether the Employer will transfer or cause to be transferred to the Statewide Retirement Plan all or a portion of the assets of the Local Money Purchase Plan that are attributable to the accrued benefits of the transferred Members, pursuant to the procedure established by the Board;

(5) That all Employer and Member contributions required to be made to the Local Money Purchase Plan as of the date of termination or freeze have been paid;

(6) That Members in the Local Money Purchase Plan shall not incur a reduction in their account balances in their Local Money Purchase Plan, determined as of the Effective Date, as a result of their transfer to the Statewide Retirement Plan. For vesting purposes with regard to the Local Money Purchase Plan account balances and with regard to the Money Purchase Component of the Statewide Retirement Plan, years of service in the Local Money Purchase Plan shall be combined with Years of Service in the Money Purchase Component of the Statewide Retirement Plan. For vesting purposes with regard to the Defined Benefit Component or Hybrid Component of the Statewide Retirement Plan, Years of Service Credit shall be based upon service credit either earned or purchased while in the Statewide Retirement Plan;

(7) That the Employer agrees to participate in the Statewide Retirement Plan and to be bound by the terms of the Statewide Retirement Plan and the decisions and actions of the Board with respect to the Statewide Retirement Plan.

## PART VIII – INTERNAL REVENUE CODE LIMITATIONS ON CONTRIBUTIONS AND BENEFITS

**801. Applicability.** Notwithstanding any provision of the Statewide Retirement Plan to the contrary, the Plan shall be administered so as to comply with Code Sections 401(a) and 415 as provided in this Part. For purposes of this Part and subject to Code Section 415(f), all defined contribution plans of each Employer covering a Member are to be treated as a single defined contribution plan, and all defined benefit plans covering a Member are to be treated as a single defined benefit plan.

**802. Employer Responsibility for Contribution Limits**. The Employer must monitor contributions to the Statewide Retirement Plan on behalf of a Member of the Plan and any other 401(a) plan maintained by the Employer to determine compliance with this Part. The Employer must cease contributions to avoid exceeding the limits as defined in Code Section 415(c) and as modified in Code Sections 415(l)(1) and 419A(d)(2) or a dollar amount established in Code Section 415(b)(1)(A), which is adjusted for inflation based on Section 215(i)(2)(A) of the Social Security Act, and must notify the Plan Administrator if excess annual additions are made.

**803. Limitation Under Code Section 401(a)(17).** Notwithstanding anything contained in these Rules and Regulations, the annual compensation of each Member taken into account in determining allocations or benefits for any Plan Year shall not exceed the limits under Code Section 401(a)(17)(B), as adjusted for cost-of-living increases. in accordance with Code Section 401(a)(17)(B). Annual compensation means compensation during the Plan Year or such other consecutive twelve (12) month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

**804. IRC 415(m) Excess Benefit Arrangement.**

(1) Effective January 1, 2023, pursuant to FPPA's authority under C.R.S. §§31-31-202 and 31-31-204, FPPA hereby establishes the Fire and Police Pension Association of Colorado 415(m) Excess Benefit Arrangement ("Arrangement"), as a portion of the FPPA Defined Benefit System solely to the extent required under, and within the meaning of Code Section 415(m)(3).

(2) The Arrangement is intended to be a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m)(3). Code Sections 83, 402(b), 409A, 457(a), and 457(f)(1) shall not apply to the Arrangement. The sole purpose of the Arrangement is to provide for the part of an Eligible Member's Retirement Benefit that would otherwise have been payable from the Defined Benefit System absent the limitations of Code Section 415(b). FPPA may not hold any assets or income under the Arrangement in trust for the exclusive benefit of Eligible Members.

**804.1. Construction and Governing Law.**

(1) In resolving any conflict between provisions of the Arrangement and in resolving any other uncertainty as to the meaning or intention of any provision of the Arrangement, the interpretation that causes:

(a) the Arrangement to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m);

(b) any grantor trust established to be exempt from tax under Code Sections 115 and 415(m); and

(c) the Arrangement to comply with all applicable requirements of the Code, shall prevail over any different interpretation.

(2) Whenever any actuarial present value or actuarial equivalency is to be determined under the Arrangement to establish a benefit, it will be based on the actuarial assumptions approved by the Board pursuant to C.R.S. § 31-31-202(1).

**804.2. Definitions. For purposes of the Excess Benefit Arrangement, the following definitions shall apply:**

(1) "Administrator" means the Fire and Police Pension Association of Colorado ("FPPA").

(2) "Arrangement" means this Fire and Police Pension Association of Colorado 415(m) Excess Benefit Arrangement, as amended from time to time.

(3) "Excess Benefit" means the portion of the Eligible Member's Retirement Benefit equal to the difference between the amount of the Eligible Member's Retirement Benefit and the amount that would have been payable to an Eligible Member in the Plan Year if not for the reduction due to the application of Code Section 415(b).

(4) "Plan Year" means the calendar year for the purposes of this Arrangement.

(5) "Retirement Benefit" means the amount of a retirement benefit payable to an Eligible Member under the terms of the FPPA Defined Benefit System.

(6) "Excess Benefit Trust Fund" means the excess benefit trust fund established under this Arrangement.

(7) "Trustees" mean the members of the Board.

**804.3. Participation**. Subject to this Rule 804.3 of this Arrangement, an Eligible Member is eligible to participate in this Arrangement for any Plan Year, or portion of a Plan Year, during which the Eligible Member is entitled to receive a Retirement Benefit, but the Retirement Benefit is required to be reduced due to the application of the maximum benefit provisions of Code Section 415(b). Such Eligible Member may be eligible for a benefit as determined under this Arrangement. FPPA will determine for each Plan Year which Eligible Members are covered by the Arrangement. Eligibility for participation shall begin each Plan Year once an Eligible Member is entitled to receive a Retirement Benefit that is required to be reduced due to the application of the maximum benefit provisions of Code Section 415(b).

**804.4. Cessation of Participation.** Eligibility to participate in the Arrangement ends each Plan Year once in any month in which the Eligible Member's benefit is not limited by Code Section 415(b), or all Retirement Benefits have ended. Cessation also occurs if FPPA terminates this Arrangement.

**804.5. Benefit Amount.** An Eligible Member shall receive a portion of the Eligible Member's Retirement Benefit equal to the difference between the amount of the Eligible Member's Retirement Benefit and the amount that would have been payable to an Eligible Member in the Plan Year not for the reduction due to the application of Code Section 415(b). An Excess Benefit under this Arrangement shall be paid only if and to the extent an Eligible Member is receiving a Retirement Benefit.

**804.6. Benefit Limit.** The benefit payable under the Arrangement is limited to the amount that, if combined with the Eligible Member's Retirement Benefit, does not exceed the amount that would have been payable to the Eligible Member from the Defined Benefit System that month if not for the reduction due to the application of the Code Section 415(b), as adjusted in accordance with Code Section 415(d)(1)(A).

**804.7. Time for Payment; Form of Benefit**. FPPA will compute and pay an Excess Benefit in the same form, at the same time, and to the same person as the Retirement Benefit. The Excess Benefit shall be paid commencing during or with the month in which all monthly payments of the Retirement Benefit (as limited by Code § 415(b)) have been paid, and such Excess Benefit shall be paid to the end of the Plan Year.

**804.8. No Election.** An Eligible Member shall not elect, whether directly or indirectly, to defer the receipt of any part of the payment due under the Arrangement.

**804.9. Funding.** The Arrangement is, and will remain, unfunded within the meaning of federal tax laws, and the rights, if any, of any Eligible Member to any benefits under the Arrangement are limited to those specified in the Arrangement.

**804.10. Contributions.**

(1) FPPA will determine the amount necessary to pay Excess Benefits for each calendar year. The required contribution is the aggregate of Excess Benefits payable to all Eligible Members for the calendar year.

(2) Each payment of contributions by an Employer that would otherwise be required under the terms of the Defined Benefit System will be reduced by the amount necessary to pay Excess Benefits, and these contributions will be deposited in the Excess Benefit Trust Fund. This will apply to the Employer for which the Eligible Member was employed immediately prior to retirement unless such employer does not have contributions coming into the Defined Benefit System to cover the monthly Excess Benefit. In this instance FPPA has the authority to apply this process to another Employer in the Defined Benefit System.

(3) The Employer contributions required under the Arrangement in order to pay the maximum benefits permitted but for the application of Code Section 415(b) will be divided into those contributions required to pay Excess Benefits, and those contributions paid into and accumulated in the FPPA Defined Benefit System.

(4) Under no circumstances may Employer contributions to fund Excess Benefits be credited to or commingled with contributions paid into and accumulated in the FPPA Defined Benefit System.

(5) Amounts deducted from Employer contributions per this rule and deposited into the Excess Benefit Trust Fund do not increase the amount of Employer contributions required under the FPPA Defined Benefit System. Any contributions not used to pay Excess Benefits for a current calendar year, together with any income accruing to the Excess Benefit Trust Fund, will be used, as determined by FPPA, to pay the administrative expenses of the Arrangement for the calendar year. Any contributions not used to pay Excess Benefits for the current calendar year that remain after paying administrative expenses will be used to fund administrative expenses or benefits for the Employer's Eligible Members in future calendar years.

(6) FPPA will account separately for the amounts FPPA determines to be necessary to provide Excess Benefits for each Employer and its respective Eligible Member(s). However, this separate accounting does not constitute setting aside these amounts for the benefit of the Employer or its Eligible Member(s). Excess Benefits under the Arrangement will be paid from the Excess Benefit Trust Fund.

(7) Any consultant or outside auditor, attorney, or actuary performing services for FPPA may also perform services for the Arrangement. Any fees attributable to services performed with respect to the Arrangement may be payable from the Trust Fund.

**804.11. Establishment of Excess Benefit Trust Fund**. The Excess Benefit Trust Fund is established as a valid trust under the laws of the State, separate from the Defined Benefit

System, to hold contributions of the Employers. Contributions to this Trust Fund will be held separate and apart from the funds comprising the Defined Benefit System and may not be commingled with assets of the Defined Benefit System and must be accounted for separately.

**804.12. Trust Fund Purpose.** The Excess Benefit Trust Fund is maintained solely to provide certain benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m) and to pay reasonable and necessary administrative expenses of the Arrangement.

**804.13. Grantor Trust.** The Excess Benefit Trust Fund is intended to be a grantor trust, of which the Employer is the grantor, within the meaning of Code Sections 671 through 679, and shall be construed accordingly. This provision may not be construed to create an irrevocable trust of any kind.

**804.14. Investments.** FPPA may, if it is determined advisable, hold assets of the Excess Benefit Trust Fund uninvested for making distributions under the Arrangement or may invest assets of the Arrangement as otherwise permitted by law.

**804.15. Excess Benefit Trust Fund Assets.** Any assets held under the Arrangement to assist in meeting the Employer's obligations under the Arrangement, including all amounts of Employer contributions made under the Arrangement, all property and rights acquired or purchased with these amounts, and all income attributable to these amounts, will be held separate and apart from other funds of the Employer and will be used exclusively for the uses and purposes of the Employer's Eligible Member(s) and general creditors as set forth in the Arrangement. Eligible Members have no preferred claim, or any beneficial interest in, any assets of the Excess Benefit Trust Fund. Any rights created under the Arrangement are unsecured contractual rights of Eligible Members against the Employer. Any assets held by the Excess Benefit Trust Fund are subject to the claims of the Employer's general creditors under federal and state law in the event of the Employer's insolvency.

**804.16. Excess Benefit Trust Fund Income.** Income accruing to the Excess Benefit Trust Fund constitutes income derived from the exercise of an essential governmental function upon which the Excess Benefit Trust Fund is exempt from tax under Code Sections 115 and 415(m)(1).

**804.17. Administrative Authority.** FPPA shall have the authority to control and manage the operation and administration of this Arrangement and shall have the same rights, duties, and responsibilities respecting the Arrangement as they have with respect to the FPPA Defined Benefit System.

**804.18. Powers and Duties.** FPPA shall, as necessary and appropriate, take the following actions: Establish procedures to administer the Arrangement consistent with the Arrangement and the Code, and to amend or rescind any of these procedures; Determine, consistent with the Arrangement, applicable law, rules or regulations, all questions of law or fact that may arise as to adoption of this Arrangement by an Employer, eligibility for participation, eligibility for distribution of benefits, and the status of any person claiming benefits under the Arrangement; Make payments from the Excess Benefit Trust Fund to Eligible Members pursuant to the Arrangement; Contract with a third party to perform designated administrative services under the Arrangement; Construe and interpret the Arrangement as to administrative issues and to correct any defect, supply any omission, or reconcile any inconsistency in the Arrangement, subject to and consistent with the Code; and seek appropriate rulings from the IRS with regard to the status of the Arrangement under the Code.

The rights of Eligible Members to a benefit, and the benefit itself, payable under the Arrangement are exempt from any state, county, municipal, or other local tax, and may not be subject to execution, garnishment, attachment, operation of bankruptcy or insolvency laws, or

any other process of law whatsoever, and are unassignable and nontransferable, except as in the same manner as the Retirement Benefit.

**804.19. Conflicts.** In resolving any conflict between provisions of the Arrangement, and in resolving any other uncertainty as to the meaning or intention of any provision of the Arrangement, the prevailing interpretation will be the one that causes: the Arrangement to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the Excess Benefit Trust Fund to be exempt from tax under Code Sections 115 and 415(m); the Arrangement and FPPA to comply with all applicable requirements of the Code; and the Arrangement and FPPA to comply with all applicable State laws.

**804.20. Limitation on Rights.** Neither the establishment or maintenance of the Arrangement, nor any amendment to the Arrangement, nor any act or omission under the Arrangement (or resulting from the operation of the Arrangement) may be construed: As conferring upon any Eligible Member or any other person a right or claim against the Board, FPPA, or any Employer, except to the extent that the right or claim is specifically expressed and provided in the Arrangement; as creating any responsibility or liability of any Employer for the validity or effect of the Arrangement; as a contract between any Employer and any Eligible Member or other person; as being consideration for, or an inducement or condition of, employment of any Eligible Member or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of any Employer or any Eligible Member or other person to continue or terminate the employment relationship at any time; or as giving any Eligible Member the right to be retained in the Employer's service or to interfere with the Employer's right to discharge any Eligible Member or other person at any time.

**804.21. Erroneous Payments.** Any benefit payment that should not have been made, according to the terms of the Arrangement and the benefits provided hereunder, may be recovered as provided under the terms of the FPPA Defined Benefit System and State law. If in doubt concerning the correctness of any action in making a payment of a benefit under the Arrangement, the payment may be suspended until verification as to the correctness of the payment or the person to receive the payment.

**804.22. Release.** Any payment to any Eligible Member shall, to the extent paid, be in full satisfaction of the Eligible Member's claim being paid and may be conditioned on the delivery by the Eligible Member of the duly executed receipt and release in a form determined by the FPPA.

**804.23. Reservation of Power to Change.** The Board reserves the right to at any time and, from time to time, to modify or amend, in whole or in part, any or all of the provisions of the Arrangement. No member of the FPPA Defined Benefit System and no beneficiary of a member acquires any vested right to a payment under this Arrangement.

**804.24. Severability.** If any provision of the Arrangement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Arrangement will continue to be fully effective.

**804.25. Governing Law.** The laws of the State of Colorado shall apply in determining the construction and validity of this Arrangement.

**804.26. Necessary Parties to Disputes.** Necessary parties to any accounting, litigation or other proceedings relating to this arrangement shall include only the Administrator. The settlement or judgment in any such case in which the Administrator is duly served shall be binding upon all affected Eligible Members in this Arrangement, their beneficiaries, estates and upon all persons claiming by, through or under them.

**804.27. Liability.** The Board, Trustees or Administrator shall not incur any liability in acting upon any notice, request, signed letter, or other paper, document or electronic transmission believed

by the Board, Trustees or Administrator to be genuine or to be executed or sent by an authorized person.

## PART IX - TRANSFERS AND SERVICE PURCHASES

### 901. Transfers.

(1) Transfers into the Plan

(a) An active Member with an Employer that is affiliating with the Statewide Retirement Plan shall complete a trustee-to-trustee transfer in order to transfer Member's assets from Member's predecessor Local Money Purchase Plan to the appropriate Transfer Account within the Money Purchase Component, as applicable. The Member may also elect to use the vested proceeds from Member's Local Money Purchase Plan to purchase additional Years of Service Credit towards the accrual of a defined benefit under the Statewide Retirement Plan.

(b) Subject to any limitations in this Part, 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 Money Purchase 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.

(c) Such a Member described in subparagraph (a) whose Employer has not terminated the Local Money Purchase Plan may make the transfers under this Rule after the Employer's Effective Date.

(d) Notwithstanding Rule 524, assets in the form of a loan to a Member may be transferred into the Money Purchase Component of the Plan from a Local Money Purchase Plan upon the approval of such transfer by the Board. The Board may establish such policies, procedures, and requirements as it deems necessary for the consideration and transfer of such assets and as required to maintain the qualified plan status of the Plan under the Internal Revenue Code.

(2) A Member with an established account may transfer eligible retirement funds into their Fire & Police Members' Self-Directed Investment Fund account through a plan-to-plan transfer.

### 902. Service Purchases.

(1) This Rule applies to the Lifetime Benefit Components.

(2) A Member shall be granted service credit upon the qualified plan-to-plan transfer of funds from an Eligible Retirement Plan for other public employment within the United States, as may be allowed under rules adopted by the Board, subject to all of the following conditions:

(a) The Member has at least one (1) year of service credit covered by the Plan.

(b) The Member provides documentation that the benefits in the eligible transferor plan were earned based on public employment.

(c) The Member verifies that the Member will not receive a benefit from any retirement plan covering such employment and that the service credit to be granted has not vested with that plan, except to the extent otherwise required by federal law.

(d) The Member pays or transfers to the Trust Fund, at the time and in the manner prescribed by the Board, the cost of the service credit. The Member shall be awarded service credit in an amount determined by actuarial calculation.

(e) "Other public employment" shall mean service or employment that is (i) service as an employee of the federal, state, or local government, (ii) service as an employee of a secondary or elementary education organization, or (iii) service as an employee of an association of government employees. Other public employment includes employment for which a Member earned service credit under the Statewide Retirement Plan, the predecessor Statewide Defined Benefit Plan, or the predecessor Statewide Hybrid Plan, and for which the Member received a refund of contributions.

(f) In order to reinstate refunded service credit a Member must complete the reinstatement prior to purchasing additional service credit. If a Member purchases service credit prior to returning a refund of contributions, the Member shall not be allowed to acquire additional service credit by returning the refunded contributions. For an amount which is equal to the actuarial cost of such service, the Member may purchase credit for the period of service for which the Member received a refund of contributions.

(3) A Member may purchase up to five (5) Years of Service Credit for periods of active duty in the uniformed services of the United States, subject to all of the following conditions:

(a) The Member has at least one (1) year of service credit covered by the Plan.

(b) The Member provides documentation of the dates of service in the uniformed services of the United States and that the Member was honorably discharged from such service.

(c) The Member provides certification from the Employer that the service is not intervening service covered by the federal "Uniformed Services Employment and Reemployment Rights Act of 1994", chapter 43 of title 38, U.S.C., as amended.

(d) The Member verifies that the Member will not receive a benefit from any retirement plan covering such service and that the service credit to be purchased has not vested with that plan, except to the extent otherwise required by federal law.

(e) The Member pays or transfers to the Trust Fund, at the time and in the manner prescribed by the Board, the cost of the service credit purchased, such cost to be calculated by the Board on an actuarially equivalent basis.

(4) A Member may be granted up to five (5) Years of Service Credit upon the qualified rollover of distributions from an Eligible Retirement Plan, for employment with any private employer in the United States, as may be allowed under rules adopted by the Board, subject to all of the following conditions:

(a) The Member has earned at least five (5) years of service credit covered by the Plan.

(b) The Member provides documentation of the dates of employment not covered by the System and a record of the salary received.

(c) The Member verifies that the Member will not receive a benefit from any retirement plan covering such employment and that the service credit to be granted has not vested with that plan, except to the extent otherwise required by federal law.

(d) The Member pays or transfers to the Trust Fund, at the time and in the manner prescribed by the Board, the cost of the service credit, such cost to be calculated by the Board on an actuarially equivalent basis.

(e) Employment with a private employer shall mean "nonqualified service" under Code Section 415(n)(3)(C), which includes any service or employment not meeting the definition of "other public employment" except military service.

(5) An application to purchase service credit shall be filed with the Plan Administrator on the Applicable Form. The Member has the burden of providing the information and supporting documentation necessary to satisfy the requirements of the Board.

(6) The Member shall purchase service credit by contributing to the Trust Fund, 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 Plan Administrator 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 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. FPPA may grant an extension to the 60-day funding period upon request with good cause shown.

(7) No service credit may be purchased for:

(a) 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;

(b) public or private employment concurrent with full-time FPPA- covered employment;

(c) employment by a foreign government or by any foreign employer; or

(d) any period of employment for which no pay was received.

(8) For purchases of permissive service credit under this rule, the Plan Administrator shall accept eligible rollover distributions, trustee-to-trustee transfers under Code Section 457(e)(17) and Code Section 403(b)(13) and after-tax lump sum payments.

(9) Amounts in the Employer Transfer Account, Member Transfer Account, and the Member Rollover Account in the Money Purchase Component may be used to purchase service under this Section.

(10) Funds associated with Employer or Member Excess Contribution Accounts cannot be used to purchase service credit.

## PART X - FAMILY LAW ORDERS – STATEWIDE RETIREMENT PLAN

**1001. Applicability**. This Part applies to the Statewide Retirement Plan. The Board shall recognize and implement domestic relations orders that applied to Predecessor Plans, subject to Code Section 414(p) (as applicable to governmental plans), and the following rules.

**1002. Definitions**. A "domestic relations order" means a judgment, decree or order issued by a court of competent jurisdiction in this state relating to a dissolution of marriage or Civil Union, legal separation or declaration of invalidity action, which complies with C.R.S. § 14-10-113, as amended.

**1003. Applicability**. The Board shall recognize 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 shall approve a standardized form of agreement which must be used by the parties in this regard. The General Counsel shall provide a standardized form of agreement which must be used by the parties. The Board shall also approve a standard judicial "order," which incorporates and approves the terms of the written agreement. 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 C.R.S. § 14-10-113.

**1004. Domestic Relations Orders**. Any written agreement concerning the division of benefits in a retirement plan administered by FPPA shall be submitted to FPPA within ninety (90) days of the later of the final order or entry of the permanent orders of the division of benefits in a retirement plan administered by FPPA in the proceeding for the dissolution of marriage or 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 thirty (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.

(1) 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.

(2) FPPA permits (and State law requires) cost of living adjustments to the alternate payee's share of a Member's defined benefit at the same time and in the same manner as any cost of living adjustments applied to the Member's distribution.

(3)(a) If the Member has not selected a payment option 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 payment option pursuant to Rule 407(1)(a) prior to any reduction made under a payment option pursuant to Rule 407. The actuarial equivalent of the alternate payee's portion of the defined benefit under the Statewide Retirement Plan or Statewide Death and Disability Plan shall be paid out over the lifetime of the alternate payee. If the Member dies prior to entering DROP or separation from service, no payments shall be due to the alternate payee. 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 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.

(b) If the Member is retired 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 calculation made under a payment option under Rule 407. If the Member predeceases the alternate payee, the alternate payee's monthly benefit shall terminate upon the Member's death. In the event the alternate payee predeceases 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.

(c) 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 1709 within thirty (30) days of FPPA providing the notice of the calculation.

(4) In recognition of the fact that disability benefits under the Statewide Death and Disability Plan are paid in lieu of defined benefits under the Statewide Retirement Plan, 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)(i) For DROs that are effective prior to January 1, 2023, 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 Statewide Retirement Plan, 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 fifty-five (55). 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 fifty-five (55) 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 calculations for payment 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.

(ii) For DROS that are effective on or after January 1, 2023, 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 Statewide Retirement Plan, 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 Normal Retirement Age or when they would have reached eligibility for Normal Retirement. 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 Normal Retirement Age or when they would have reached eligibility for Normal Retirement 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 calculations for payment 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 the Member dies prior to the first payment of benefits, no payments shall be due to the alternate payee. In the event the alternate payee dies before the Member, the alternate payee's portion of the monthly benefit shall cease.

(c) If the domestic relations order divides an Employer Funded Separate Retirement 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 Employer Funded Separate Retirement Account, shall not be divided.

**1005. Disbursements from the Money Purchase Component to Alternate Payees**. Any disbursements made to alternate payees under domestic relations orders shall be made within one hundred-twenty (120) days of receipt of the domestic relations order by FPPA. If a Member's Aggregate Account contains an Employer Funded Separate Retirement Account which is subject to a domestic relations order (DRO) prior to January 1, 2021, any division of property from the Member's Employer Funded Separate Retirement Account shall be distributed from the balance transferred to the Money Purchase Component, subject to subsequent gains and losses. An alternate payee must withdraw the alternate payee's share of all funds from a Member's

Accounts either as a fixed lump sum or as a percentage of the Member's Accounts as of a date certain. A distribution to a former Spouse or Partner in a Civil Union pursuant to a domestic relations order is a distribution to the Member for the purposes of C.R.S. § 31-31-812.

**1006. DRO Approved in a Predecessor Plan.** When a DRO has been approved in a Predecessor Plan that DRO shall apply to the corresponding component(s) in the Statewide Retirement Plan.

**1007. Suspension of Benefits when Returning to Active Service.** In accordance with Rule 205, if a retired Member's defined benefit payments are suspended when returning to active service, defined benefit payments to the alternate payee shall be suspended during the reemployment period, except for benefits paid under Rule 1004(3)(a), and adjustments may be made to recoup any overpayment of benefits made during the reemployment period.

## PART XI - ELIGIBLE ROLLOVER DISTRIBUTIONS TO THE STATEWIDE RETIREMENT PLAN

**1101. Eligible Rollover Distributions to This Plan**. Subject to any limitations in this Part, 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. If directed to the Money Purchase Component by the Member, an Eligible Rollover Distribution shall be credited to the Member's Rollover Account.

## PART XII - ADMINISTRATION OF PLANS

**1201. Board Procedures.** The Board shall operate in the manner set forth in the Board Governance Manual.

**1202. Rulemaking by the Board.**

(1) Notice of proposed rulemaking shall be given in the following manner:

(a) The notice shall state the time, place, and nature of public rulemaking proceedings which shall not be held less than twenty (20) days after the publication of such notice;

(b) The notice shall contain the authority under which the rule is proposed, a description of the subjects and issues involved; and the location of the proposed rules;

(c) Notice shall be published by emailing 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.

(2) 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 (5) 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.

(a) 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.

(b) A temporary or emergency rule may be adopted without compliance with the procedures prescribed in Rule 1202(2) and with less than the twenty (20) days' notice prescribed in Rule 1202(1) (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 Rule 1202 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 (3) months from the adoption thereof, unless made permanent by compliance with Rules 1202(1) and 1202(2).

(c) 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 rulemaking 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.

(d) 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 rulemaking 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.

(e) Upon adoption by the Board of all new rules, amendments to rules and repeals of rules, notice of such action shall be in the same manner as provided in Rule 1202(1).

(f) Unless they are temporary or emergency measures, adopted pursuant to Rule 1202(2)(b), all rules, amendments and repeals shall be effective on the date of mailing of the appropriate notice, as set forth in Rule 1202(2)(e).

(g) 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.

**1203. Availability of Records.**

(1) 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, C.R.S. § 24-72-201 et seq.

(2) For purposes of C.R.S. § 24-72-204, as amended, all documents, without regard to the form of transmission, received from or sent to third-party 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.

(3) 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.

(4) Notwithstanding any other provision of this rule, FPPA shall release information on disability benefit awards to Pinnacol Assurance or any qualified insurer, upon request, in order to assist in implementing any statutorily required offsets against workers' compensation awards granted to disabled Members.

(5) Reporting Under Investment Disclosure Requirements. In order to comply with C.R.S. § 31-31-302(8)(d), FPPA shall publish and make available for the public on an annual basis the name of each investment vehicle in which the association directly invests, the aggregate amount of money invested in the investment vehicle 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.

**1204. Investment Options for DROP - Old Hire Plans - Self-Directed Investment Fund.**

(1) FPPA's recordkeeper shall keep an accurate account of each such individual old hire fund. In addition, FPPA's recordkeeper shall keep an accurate account of each Member's self-directed 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.

(2) In allowing a Member to exercise self-direction of the Member's account, 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.

(3) 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 DROP account between investment alternatives, and such other matters as may be necessary to its administration and management of the fund.

(4) The FPPA Board shall be the trustee of the Fire and Police Members' Self-Directed Investment Fund subject to the Members' allocation of monies 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.

(5) The FPPA Board shall designate one (1) or more financial institutions as custodians of the fund. All monies 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.

(6) 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.

(7) 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.

(8) 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, settlement proceeds, and other sources of revenue received. Notwithstanding the foregoing, any revenue credits derived from the investments offered by the Plan may instead be distributed to participants. 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.

(d) 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.

(9) Subject to any limitations in this Part, a Member with an established account 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.

**1205. Overpayment and Underpayment of Benefits and Fraud.**

(1) 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. FPPA 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.

(2) If FPPA determines that an underpayment of benefits has been made to a Member or beneficiary, payment to the Member or beneficiary shall be made for the underpaid amount. A Member or beneficiary may appeal a staff determination of the underpayment of benefits pursuant to Rule 1709.

(3) (a) If FPPA discovers an overpayment of benefits due to an error or mistake for any plan administered by the FPPA, a determination shall be made 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.

(b) FPPA 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 DROP Plan account balance or a Money Purchase Component balance. The procedure 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 1709.

(4) (a) If FPPA determines that a Member or beneficiary is ineligible for a benefit previously awarded, FPPA shall give notice to the Member of the determination of ineligibility. If there has been an overpayment of benefits, FPPA shall also demand repayment for overpaid benefits made within the last five (5) years. If the Member objects to the determination or the repayment, the Member may appeal pursuant to Rule 1709.

(b) 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.

(c) FPPA 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.

(5) (a) If FPPA 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, FPPA 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 1709.

(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.

(6) The standard for review of an appeal to a determination made pursuant to this Rule 1205 shall be based on a preponderance of the evidence.

(7) (a) When an overpayment of benefits is due to the death of a Member or beneficiary, and the overpayment has not been repaid to FPPA within 90 days of the date of death, FPPA shall charge interest on any overpaid amount at FPPA's actuarial rate of return.

(b) When an overpayment of benefits is due to fraud as stated in paragraph (5) of this Rule, FPPA shall charge interest on any overpaid amount at FPPA's actuarial rate of return.

**1206. Administrative Pension Approvals and Overpayment Recoveries.**

(1) The Executive Director and the Chief Benefits Officer (CBO), or a designee of either one, shall have the authority to approve the following applications and certifications on behalf of the Board:

(a) Applications for retirement from the FPPA Defined Benefit System;

(b) Applications for refund of contributions from the FPPA Defined Benefit System, including expedited applications;

(c) Applications for distributions from the Statewide Money Purchase Plan and the Statewide Retirement Plan – Money Purchase Component.

(2) 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 CBO's decision shall be processed pursuant to Rule 1710;

(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.

**1207. Distributions to Members and Beneficiaries.**

(1) To the fullest extent allowed under federal law, any Distributee, under any plan administered by FPPA, shall be allowed to transfer, or rollover, any Eligible Rollover Distribution from an

account administered by FPPA to any other qualified plan or to a properly qualified inherited IRA account.

(2) Under the Statewide Retirement Plan 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.

(3) 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.

(4) Under any plan administered by FPPA, if FPPA staff is unable to make any payment due to any person because FPPA staff cannot ascertain the identity or whereabouts of such person after making such written or telephonic inquiries as in the sole discretion of FPPA Staff is deemed reasonable, and within seven (7) years after such payment was due, FPPA may suspend all further payments to such person until the identity or whereabouts of the person is known. FPPA shall declare such payment, and all remaining payments due such person, to be forfeited as of the expiration of such seven (7) year period. However, such forfeited amounts shall be reinstated to the Member or beneficiary once such person makes the person's whereabouts known to FPPA.

**1208. Payment of Benefits.** If in doubt as to the correctness of its action in making a payment of a benefit, the Board, Plan Administrator, or Recordkeeper (as appropriate) may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment. In addition, such person or entity may file, in any state court of competent jurisdiction, a suit, in such form as it considers appropriate, for legal determination of the benefits to be paid or the persons to receive them. Such person or entity shall comply with the final order of the court in any such suit and the Members, Designated Beneficiaries, Employers, Plan Administrator, and Recordkeeper shall be bound thereby insofar as such order affects the benefits payable under the Defined Benefit System or the method or manner of payment.

**1209. Payment of Expenses for Self-Directed Plans**. Except as otherwise provided in these Rules and Regulations, the costs of administrative services (including record keeping, legal, administrative, etc.) will be covered by Forfeitures, penalties received, settlement proceeds, and other sources of revenue received. Notwithstanding the foregoing, any revenue credits derived from the investments offered by the Plan may instead be distributed to participants. 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. Forfeitures arising from severance of employment, death, or any other reason shall not be applied to increase the benefits any Member would otherwise receive.

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.

**1210. Plan Termination.** If the 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.

## PART XIII - PENSION PROTECTION ACT OF 2006

**1301. Applicability.** This Part applies to the Members of the Defined Benefit System, affiliated old hire and affiliated volunteer firefighter plans and the Statewide Death and Disability Plan who qualify as eligible public safety officers under the Pension Protection Act of 2006. This Rule 1301 does not apply to any self-directed assets held by FPPA's recordkeeper.

(1) Payment of Distributions for Health Insurance Premiums

(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 $3,000 exclusion from federal taxable gross income on an annual basis to the extent allowed by Section 402(l) of the Internal Revenue Code, or such other amount allowed thereunder, 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 $3,000 exclusion from federal taxable gross income on an annual basis to the extent allowed by Section 402(l) of the Internal Revenue Code, or such other amount allowed thereunder. The FPPA staff may adopt procedures, forms, and requirements as necessary to ensure compliance with the applicable laws.

(2) It shall ultimately be the Member's responsibility to determine eligibility for the health insurance exclusion under Section 402(l) of the Internal Revenue Code.

(3) The Member's monthly benefit must be equal to or greater than the monthly health insurance premium to be paid.

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

## PART XIV - COMPLIANCE WITH THE INTERNAL REVENUE CODE

**1401. Internal Revenue Code.** The Statewide Retirement 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 Retirement Plan is subject to the provisions of this Part XIV notwithstanding any other provisions, statutes or rules applicable to the Plan.

**1402. Distributions.** The Board shall distribute the corpus and income of the pension plan to Members and their beneficiaries in accordance with this Part XIV and the Statutes and rules adopted by the Board. Notwithstanding the other provisions of the Statewide Retirement 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.

**1403. Exclusive Benefit.** No part of the corpus or income of the 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 Part 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 Fire and Police Member's Benefit Investment Fund and the Fire and Police Member's Self-Directed Fund must not revert, and no contributions shall be permitted to be returned, to the Employers, except as permitted by Revenue Ruling 91-4.

**1404. Forfeitures.** 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 the Plan.

**1405. Plan Termination.** If the Plan is terminated, or if all contributions to the 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.

**1406. Section 401(a) Requirements.** All benefits paid from the pension plan shall be distributed in accordance with the requirements of Section 401(a) 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.

## PART XV - NONASSIGNABILITY

**1501. Funds Not Subject to Legal Process.** (1) For purposes of C.R.S. § 31-31-203, a party asserting that funds created pursuant to Article 31 or Article 31.5 should be assignable in equity or be subject to execution, levy, attachment, garnishment, bankruptcy proceedings, or other legal process, because there is a judgment for a willful and intentional violation of fiduciary duties pursuant to Article 31, has the burden to prove that such a violation of fiduciary duties resulted in a direct financial gain for the offender or related party unless such a determination is set forth in the underlying judgement.

(2) Direct financial gain means a monetary payment that would not have been received but for the willful and intentional violation of fiduciary duty. Direct financial gain shall not include the receipt of a benefit that such person or related party receives as a retiree or beneficiary of the Association as dictated by the statutory provisions of the Association.

## PART XVI - DISABILITY RETIREMENT AND SURVIVOR BENEFITS

**1601. Applicability.** This Part applies to the Statewide Death and Disability Plan under C.R.S. § 31-31-801, et seq., as amended.

**1602. Total Disability retirement.** (1) Pursuant to C.R.S. §§ 31-31-804 and 31-31-806, a Member eligible for the normal annual disability retirement benefit for total disability may elect to receive one of the following disability benefit options in lieu of the normal annual disability benefit:

(a) Option 1. A reduced annual disability benefit payable to the Member and, upon the Member's death, all of such reduced annual disability benefit to be paid to the Member's Designated Beneficiary for life;

(b) Option 2. A reduced annual disability benefit payable to the Member and, upon the Member's death, one-half of such reduced annual disability benefit to be paid to the Member's Designated Beneficiary for life; or

(c) Option 3. A reduced annual disability benefit payable to the Member and, upon the Member's death, all of such reduced annual disability benefit to be paid to the Member's surviving spouse and Dependent Children, if any, until the death of the surviving spouse, the death of any adult Dependent Child found to be incapacitated, or until the youngest child, regardless of marital status, reaches twenty-three years of age, whichever is later.

(2) A Member shall be deemed to have elected option 3 as specified in subparagraph (1)(c) of this Rule if the Member is eligible for a benefit for total disability under paragraph (1) of this Rule, is survived by a spouse or Dependent Child, and dies before making an election allowed under this Rule.

**1603. Permanent occupational disability benefit.** (1) Pursuant to C.R.S. §§ 31-31-805 and 31-31-806, a Member eligible for the normal annual disability retirement benefit for a permanent occupational disability benefit may elect to receive one of the following disability benefit options in lieu of the normal annual disability benefit:

(a) Option 1. A reduced annual disability benefit payable to the Member and, upon the Member's death, all of such reduced annual disability benefit to be paid to the Member's Designated Beneficiary for life;

(b) Option 2. A reduced annual disability benefit payable to the Member and, upon the Member's death, one-half of such reduced annual disability benefit to be paid to the member's Designated Beneficiary for life; or

(c) Option 3. A reduced annual disability benefit payable to the Member and, upon the Member's death, all of such reduced annual disability benefit to be paid to the Member's surviving spouse and Dependent Children, if any, until the death of the surviving spouse, the death of any adult Dependent Child found to be incapacitated, or until the youngest child, regardless of marital status, reaches twenty-three years of age, whichever is later.

(2) A Member shall be deemed to have elected option 3 as specified in subparagraph (1)(c) of this Rule if the Member is awarded a permanent occupational disability under paragraph (1) of this Rule, is survived by a spouse or Dependent Child, and dies before making an election allowed under this Rule.

**1604. Leaves of Absence or Modified Duty.**

(1) 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 Member receives compensation in an amount equal to or less than the Member's regular salary and which lasts for a period of up to one (1) month; and

(b) Absences during which the Member does not receive compensation for one (1) month or more but less than two (2) years but during which the Member has not been terminated from employment (defined herein as a “Leave of Absence”).

(2) 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 the Member's regular salary and which lasts for a period of up to one (1) month and if the Member has not been terminated from employment.

(b) A Member shall 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 and FPPA shall receive the 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.

(3) An absence attributable to a work stoppage in which the Member 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.

(4) 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. 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 (5) years. Any benefits payable under the Statewide Death and Disability Plan shall be offset by any Death or Disability benefits received from the military.

(5) For Members who go on modified duty due to a health condition and have their salary reduced, FPPA shall receive regular contributions at the established contribution rate multiplied by the Member's Base Salary immediately prior to the beginning of the modified duty.

**1605. Marital Status, Civil Union Status and Dependent Children**

(1) 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. A common law marriage is established by the mutual consent or agreement of the couple to enter a marital relationship - that is, to share a life together as spouses in a committed, intimate relationship of mutual support and mutual obligation, followed by conduct manifesting that mutual agreement. In assessing whether a common law marriage has been established, weight should be given to evidence reflecting a couple's express agreement to marry, such as an affidavit of common law marriage. In the absence of an express agreement, the parties' agreement to enter a marital relationship may be inferred from their conduct. When examining the parties' conduct, relevant factors as evidence of a common law marriage may include, but shall not be limited to, evidence of cohabitation, reputation in the community as spouses, joint credit, joint checking or savings accounts, joint purchase and ownership of property, joint tax returns, or the use of one spouse's surname by the other or by the children raised by the parties, leases in both parties' names, joint bills or other payment records, evidence of joint estate planning, beneficiary and emergency contact designations, or other symbols of commitment, such as ceremonies, anniversaries, cards, gifts, and the couple's references to or labels for one another. These factors must be assessed in context, and the inferences to be drawn from the parties' conduct may vary depending upon the circumstances. There is no single form that any such evidence must take. Any form of evidence that openly manifests the intention of the parties that their relationship is that of a married couple will provide the requisite proof from which the existence of their mutual understanding can be inferred. 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.

(2) 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 subparagraph (1) of this rule, either shall be made by the staff reviewing the application or shall be referred to the Death and Disability Review Committee ("DDRC") established under Rule 1609. An appeal of the initial determination may be made by requesting an evidentiary hearing before a Hearing Officer pursuant to Rule 1609(2) within 30 days of issuance of the initial determination.

(3) For purposes of calculating disability benefits or eligibility for survivor benefits, the term Dependent Child as defined in C.R.S. § 31-31-802(2), as amended, and Rule 101(18) 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 C.R.S. § 31-31- 801(2), as amended, and Rule 101(18) of these Rules.

(4) 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.

(5) 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.

(6) 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 DDRC. A review of the initial determination may be made by requesting an evidentiary hearing before a hearing officer pursuant to Rule 1708 within thirty (30) days of issuance of the initial determination.

(7) Mental or physical incapacity of any Dependent Child ~~shall~~may be initially determined at the time of the award of disability or survivor benefits, but that mental or physical incapacity shall be diagnosed prior to the age of 23. Subsequent review and consideration of the continuing status of the child initially found to be incapacitated may be required as a condition of approval.

(8) 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 (10) percent of the annual Base Salary, as provided under C.R.S. § 31-31-808(2)(a). For purposes of this determination, staff will also consider the amount paid to the former Spouse per domestic relations order or other court order.

(9) Regarding Payment Option 3 Disability Survivors' Benefits under Rule 1602 (1)(c) and Rule 1603(1)(c):

(a) If the spouse or Partner in a Civil Union and one (1) or more dependent children do not live in the same household, one-half (½) of the benefit shall be paid to the spouse or Partner in a Civil Union and the other one-half (½) 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 (1) or (2) of this rule, the surviving spouse or Partner in a Civil Union shall receive the entire benefit.

(c) Spouse for the purposes of payment option 3 means the Member's spouse at the time the first benefit payment is negotiated. If the spouse joint annuitant is either removed by the Member through divorce or dies, the Member is not permitted to add a subsequent spouse. The Member shall direct FPPA to remove a spouse joint annuitant due to a change in marital status.

**1606. Reduction of Disability and Survivor Benefits**

(1) 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.

(2) In the event where a Member is participating in a Deferred Retirement Option Plan (DROP) 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 DROP 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 DROP account.

(3) (a) 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 one or more of the following, shall be subject to offset pursuant to this Part 16;

(I) a money purchase account (net of affiliation SWDD continuing rates of contribution);

(II) a separate retirement account (but not that portion of the balance established in a Member's Employer Funded Separate Retirement Account) in the Member and Employer Statewide Defined Benefit Excess Contribution Account balances of the Money Purchase Component of the Statewide Retirement Plan);

(III) a DROP account;

(IV) social security, as in the case of Social Security Component benefits, or which is or was the Member's primary pension; or

(V) 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 Retirement Plan.

(b) Within this Rule 1606, a balance contained in the accounts referenced in subparagraphs (I), (II), and (III), above, will collectively be called a money purchase balance.

(4) The calculation of the defined benefit offset to a death and disability benefit or survivor's benefit shall be reduced by the amount of the defined benefit before any benefit adjustments.

(5) The calculation of the money purchase 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;

(6) The first three factors are combined to calculate an annuity factor which is divided into the money purchase balance. This calculation determines the amount of monthly payment a Member could afford to pay from the money purchase account on a monthly basis over the expected lifetime. This amount is then subtracted from the monthly death or disability benefit. The resulting amount shall be paid to the Member or survivor.

(7) The actuarially equivalent value of an amount previously withdrawn from the plan, as required to be added to the money purchase balance in Rule 1606(5)(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 Long-Term Pool for the years included in the time period, less one (1) percent.

(8) Rounding to whole months may be used in creating calculations under this Rule.

**1607. General Rules Governing the Processing of Disability Retirement Applications.**

(1) 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 C.R.S. § 31-30.5-701 et seq., as amended.

(2) The Member is disabled when, as a reasonable person, the Member should recognize the nature, seriousness and probable compensable character of the injury.

(3) An applicant for disability retirement is encouraged to file the application prior to termination of employment.

(4) FPPA will accept applications within 365 days from the date certified by the Employer to be the applicant's last day on the payroll, provided that:

(a) Said Member has not received a refund;

(b) Said Member has not reached eligibility for a Normal retirement based upon age and service, with service aggregated from more than one (1) component in the Statewide Retirement Plan;

(c) Said Member can demonstrate that the disability existed during the period of coverage under the Statewide Death and Disability Plan;

(d) The Member has not elected to take a Delayed, Vested, or Early retirement, unless participating in DROP under Early or Vested retirement, in which case FPPA will accept applications within 365 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.

(5) 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.

(6) Records, reports and other information submitted under Rule 1607(5) shall be retained by FPPA, placed in the appropriate file covering the applicant for disability retirement, and treated as confidential, although the affected Member shall receive a copy and shall have the right to inspect said information.

(7) An application for disability must be completed within ninety (90) days from the date FPPA first receives any part of the application packet required by FPPA. If not completed within ninety (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.

(8) Once a complete application for disability benefits has been received by FPPA, the DDRC shall, in consultation with its Medical Advisor, appoint physician(s) 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 1607(1), and shall proceed as follows:

(a) If FPPA determines that it has jurisdiction it shall, in consultation with its Medical Advisor, appoint physician(s) to examine the applicant.

(b) If the FPPA is unable to determine that it has jurisdiction, it shall proceed in accordance with subparagraph (1) of this rule.

(c) If the FPPA determines it does not have jurisdiction, it shall notify the applicant and the Local Pension Authority of its decision. It shall further inform both the applicant and the Local Pension Authority that either party may file a request for redetermination of the jurisdictional question within thirty (30) days of the mailing of the Notice of Determination of lack of jurisdiction. If either party files such a request, then the matter shall proceed as provided in Rule 1702.

(9) A Member applying for disability benefits may refuse to undergo an invasive test during examination by the appointed physician(s). If, however, the physician(s) cannot determine that a disability exists without performing the invasive test, then the Disability benefits cannot be awarded.

(10) Once the examination required under Rule 1607(8) has been completed, the appointed physician(s) shall submit findings and conclusions to the Medical Advisor for review. On the basis of the findings and conclusions, the Medical Advisor may make a recommendation regarding future reexaminations and treatment plans in the event the Member is granted Disability benefits.

(11) The applicant and the applicant's 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.

(12) Prior to the release of medical information and reports to the attorney for the applicant, the applicant or their attorney shall file a written release signed by the applicant, verified by a Notary Public or other officer entitled to administer oaths, authorizing FPPA to provide such medical information to the attorney.

(13) 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 unpaid Leave of Absence over one hundred eighty (180) days for a Member who is still considered an employee, or a Member who applies for disability retirement benefits beyond one hundred eighty (180) days after the last day on payroll for a Member who has terminated service. 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 Statewide Death and Disability Plan will accrue from the date the Member's short-term Disability benefits are discontinued.

(14) 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.

(15) The disability benefit will be calculated based on the Member's Base Salary immediately prior to the date of disability, pursuant to C.R.S. §§ 31-31-804(2), 31-31-805(2), 31-31-807(2), and 31-31-808(2). 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.

(16) A Member who has been granted a Disability retirement must elect a payment option, as provided by Rules 1602 and 1603 and C.R.S. § 31-31-806, within ninety (90) days after the date of the FPPA decision letter granting the Disability retirement. Any Member who does not elect a payment option within ninety (90) days after the date of the FPPA decision letter will have their 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 Rule 1602(1)(b) and (1)(c) and designates a new beneficiary, the benefit calculated under the payment option originally selected shall be recalculated using the life expectancy of both the Member and the 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.

(17) In the event of a disability application by a Member with two (2) 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 (1) but not both jobs. A Member may have a pre-existing condition that prevents a disability benefit for one (1) job but not the other job. If a Member is determined disabled with regard to both jobs, then a single disability benefit is awarded based on the combined salaries of the two (2) jobs, unless there is a disqualification due to a pre-existing condition.

(18) 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 (1) of the payment options pursuant to Rule 1602 or 1603, whichever is applicable, within one hundred eighty (180) 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 (180) 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 annuity 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.

**1608. General Rules Governing Survivor Benefit Matters**

(1) 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 C.R.S. § 31-31-815, 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.

(2) FPPA will not consider applications for survivor benefits if the Member was otherwise eligible for a retirement pension pursuant to C.R.S. § 31-31-815(1)(a)(I) and (II).

(3) In the event that a Member dies and the Member's survivor becomes eligible for supplemental death benefits pursuant to C.R.S. § 31-31-816(2), 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 DROP 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.

(4) 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 C.R.S. §§ 31-31-815 and 31-31-816, as amended.

**1609. Administrative Review**

(1) The Board hereby establishes the Death and Disability Review Committee, which shall include the Chief Benefits Officer (CBO), or the CBO's designee, and two additional voting members appointed by the ~~Chief Benefits Officer ("CBO")~~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 1703(4) and 1704(2)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.

(2) Actions taken by the DDRC are subject to the following requirements:

(a) Actions and determinations shall otherwise meet all criteria established under Colorado 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 1708. The appeal shall be made in writing, shall state the basis for the appeal, and shall be filed within thirty (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.

**1610. Election of Alternate Benefits**

(1) A Member who is found to have a Permanent Occupational Disability and who is within five (5) 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.

(2) 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.

(3) 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 retirement plan the amount of Member and Employer contributions, of not more than sixteen (16) 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 (16) percent of the Member's monthly Base Salary transferred to the Statewide Money Purchase Plan, the Money Purchase Component of the Statewide Retirement 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 (16) percent which would normally have been contributed to the Member's 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 Occupational Disability but instead elects a retirement from the Statewide Money Purchase Plan, the Money Purchase Component of the Statewide Retirement Plan, or a local money purchase plan, shall receive a distribution of the amount of Member and Employer contributions of not more than sixteen (16) 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.

(4) A Member retired for Disability may elect to terminate the Disability benefits and shall receive the Member's Vested retirement pension under the applicable plan, payable at Normal Retirement Age.

**1611. Payment of Premiums After Reaching Age and Service or Entry into DROP**

(1) A Member having reached eligibility for Normal retirement with the service earned under a defined benefit plan, without aggregating service between plans, or age 55 or older with 25 years of service under a Money Purchase Plan, or an alternative plan elected by a chief, or has entered DROP, 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 C.R.S. § 31-31-816(2).

(2) Statewide Death and Disability Plan contributions for a Member required to be made pursuant to C.R.S. § 31-31-819(4), shall not be required once the Member becomes ineligible for benefits under Rule 1611(1).

(3) Contributions are required on all employment that qualifies for participation in the Statewide Death and Disability Plan, including situations were a member works for two (2) Employers concurrently. However, if a Member becomes ineligible for coverage based on employment with one (1) Employer, then the Member is ineligible for coverage under the other Employer.

**1612. Eligibility Verification, Benefit Suspension and Discontinuation**

(1) 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 1612.

(2) Benefits shall be suspended after the FPPA has sent three (3) 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 the first of the month following when the Member or beneficiary has complied with the requirement of filing the required information. Suspended benefit payments following 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.

(3) For the third notice, the CBO shall issue a notice demanding compliance. If the Member fails to comply after such notice and after a two-year (2) period of non-compliance from the original deadline for receipt of the required information, the DDRC shall consider terminating the Member's benefits.

(4) A Member may appeal a determination made under this Rule pursuant to Rule 1709.

**1613. Transfer or Distribution of Missed Pension Contributions from the Statewide Death and Disability Plan upon Cessation of Temporary Occupational Disability**

(1) 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 Retirement 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 of not more than sixteen (16) 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 Retirement Plan, or a Local Money Purchase Plan, the Statewide Death and Disability Plan shall transfer the amount of not more than sixteen (16) 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 (16) 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. Funds not accepted by the Member's retirement plan shall be distributed to the Member.

(2) 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 Retirement 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 of not more than sixteen (16) 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 Retirement 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 not more than sixteen (16) 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 (16) 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.

(c) If the Member's normal retirement plan is the Statewide Retirement Plan, the Money Purchase Component of the Statewide Retirement Plan, the Colorado Springs New Hire Pension Plan (Police or Fire Components), or a Local Money Purchase Plan, 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 Member may retire under the Member's normal retirement plan. The Member's Normal retirement benefit will become payable effective the first (1st) day of the month following that date on which the Member attains the required age and service for a Normal retirement and the disability benefit will be discontinued.

## PART XVII - PROCEEDINGS AND HEARINGS

**1701. Procedures for Hearings.** The following provisions shall apply to all hearings before the Hearing Officer except as otherwise specifically provided:

(1) The applicant, Employer and Local Pension Authority, as applicable, may be represented by an attorney at their own expense;

(2) The Hearing Officer shall rule on all questions of law that arise during the hearing. The General Counsel, or designee, may advise the Hearing Officer on legal matters;

(3) The Medical Advisor shall advise the Hearing Officer on medical matters, and shall not be considered a witness, but a confidential advisor;

(4) 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?";

(5) 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;

(6) The Colorado Rules of Evidence shall be followed to the extent practicable;

(7) 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 thirty (30) days, may be allowed for filing of written arguments. If more than one (1) party is to file a written argument, the filing deadline dates shall be the same;

(8) After the presentation of evidence is concluded, the Hearing Officer may, before issuance of the recommendation, order the submission of evidence reopened, with such limitations and instructions as the Hearing Officer desires;

(9) All hearings shall be recorded, and such recordings shall be made available to the Hearing Officer, Member or Member's 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 the recommendation shall not be available for inspection and copying except to the applicant or the applicant's attorney as provided by Rules 1607(11) and 1607(12).

(10) 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.

(11) Evidentiary hearings before a Hearing Officer shall be a new consideration of an initial disability or staff determination, including both questions of fact and issues of law, without deference to the previous determination.

**1702. Jurisdictional Hearings.**

(1) In the event that the DDRC has declined jurisdiction under Rule 1607(8), 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 one hundred twenty (120) days from the receipt of the request. 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 (1) year from the date of the DDRC's initial determination.

(2) 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.

(3) The party requesting the redetermination of jurisdiction shall have the burden of proof and shall proceed with that party's 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.

(4) If both parties request redetermination, then the applicant shall proceed first and the Local Pension Authority second.

(5) At the conclusion of the evidence offered by the parties, any other witness(es) 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 1710 subject to review by the Executive Director ~~or the Board~~.

(6) If the Executive Director 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.

(7) If an initial denial of jurisdiction is reversed, then the application shall proceed in accordance with Rule 1607(8)(a).

**1703. Initial Disability Proceedings.**

(1) In the event the DDRC has accepted jurisdiction under the provisions of Rule 1607(8) it shall, upon receipt of the reports of the appointed physician(s) and the Medical Advisor, determine disability. If it declines jurisdiction, then the matter shall proceed as set forth in Rule 1702 of these Rules.

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

(3) 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.

(4) 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 appointed physician(s), 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.

(5) 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:

(a) An “injury received while performing official duties” means an injury occurring:

(I) during a scheduled shift of the Member; or

(II) while the Member is otherwise performing official duties for the Employer; or

(III) while the Member is performing official duties in the employ of a third party and the employment is authorized by the Member's Employer.

(b) 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.

(c) 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.

(d) 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.

(6) 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 C.R.S. § 8-40-201(17), 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 physician(s) appointed by FPPA to examine the Member; and

(e) Testimony or written statements from the Member or other persons.

(7) Death or disability of a firefighter caused by cancer of the brain, skin, digestive system, hematological system, or genitourinary system shall be presumed to be on duty if, at the time of becoming a firefighter, the firefighter underwent a physical examination that failed to reveal substantial evidence of such condition or impairment of health that preexisted employment as a firefighter. This presumption may be rebutted if there is evidence of another cause of disability or if the condition was not due to being a firefighter.

(8) 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 appointed physician(s) and advice from the Medical Advisor.

(9) In all cases under this Rule 1703 the DDRC shall issue a written determination. FPPA shall provide the applicant a copy of the DDRC’s written determination.

(10) 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 thirty (30) days from the date of notice of the DDRC’s determination.

**1704. Initial Survivor Benefit Proceedings.**

(1) 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.

(2) 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 1703(5). 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; 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.

(3) 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 thirty (30) days from the date of providing the Member the DDRC's determination.

**1705. Change in Status From Total to Permanent Occupational Disability.**

(1) When the DDRC 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 DDRC may direct an investigation to consider a change in the Member's status from Total to Permanent Occupational Disability.

(2) For purposes of determining whether a Member retired for Total Disability who is employed during any period of the Member's retirement should have the 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.

(3) In determining whether work performed by a Member constitutes substantial gainful activity, the DDRC may consider the following criteria:

(a) The nature of the work performed, including whether the Member's duties require the use of the Member's experience, skills, abilities, supervision and management, or contribute substantially to the operation of a business or enterprise.

(b) How well the Member performs the 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.

(4) FPPA will require that members who receive benefits under the SWDD plan submit a 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. For members who are on total disability prior to January 1, 2026, 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 $47,000 per year, indexed annually at the CPI-W. For Members who are on total disability on or after January 1, 2026, 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 are less than twenty (20) percent of the Members' pre-disability ~~earnings~~Base Salary as defined in Rule 101(8), indexed annually at the CPI-W. This is in addition to the factors that the DDRC will look at in Rule 1705(3).

(5) In calculating earnings as provided in Rule 1705(4) FPPA will subtract the reasonable costs to the Member of certain items and services which, because of the Member's impairment, the Member needs and uses to enable work. The FPPA shall use the pertinent rules adopted by the Social Security Administration in determining the conditions for deducting impairment related work expenses.

(6) Upon conclusion of the investigation, the Member shall be notified in writing of the determination. The retired Member shall be provided with copies of any medical reports issued by physicians who have examined the Member and the Member shall be advised of any other evidence of ability to engage in substantial gainful activity. If the determination is that the Member's status should be changed from Total Disability to Occupational Disability, the Member may file a written request for an evidentiary hearing pursuant to Rule 1709. Such request must be filed within thirty (30) days of providing the Member the initial determination.

(7) 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 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 1205.

**1706. Change in Status From Occupational to Total Disability and From Temporary Occupational to Permanent Occupational or Total Disability.**

(1) A Member retired for a Permanent Occupational Disability may apply to have the status changed to Total Disability anytime within five (5) years from the date of original disablement, the day after the last day on the payroll, or from the date of the change in disability status to Permanent Occupational Disability. 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- (5) 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. The application must be completed within ninety (90) days from the date FPPA first receives any part of the application packet required by FPPA. If the application is not completed within ninety (90) days, or before the expiration of the five- (5) year period, FPPA will treat the application as having been withdrawn.

(2) A Member retired for a Temporary Occupational Disability may apply to have the status changed to Permanent Occupational Disability or Total Disability within five (5) years from the date of original disablement or 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 one hundred eighty (180) days prior to the expiration of the five- (5) 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. The application must be completed within ninety (90) days from the date FPPA first receives any part of the application packet required by FPPA. If the application is not completed within ninety (90) days, or one hundred eighty (180) days before the expiration of the five- (5) year period, FPPA will treat the application as having been withdrawn.

(3) If a Member requests re-examination in order to find that a disability ceases to exist and the Medical Advisor finds there are reasonable grounds for re-examination, the process will continue per Rule 1706(4). If the Medical Advisor finds there are no reasonable grounds for re-examination, the matter will be referred to the DDRC per Rule 1706(5).

(4) The Medical Advisor will review the application and supporting documentation and advise staff on whether reasonable grounds exist for a reexamination.

(5) If the Medical Advisor does not find reasonable grounds for reexamination, the matter shall be referred to the DDRC for determination. 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 1709. Such request must be filed within thirty (30) days from the date of providing the Member the DDRC's determination.

(6) If the DDRC or the Medical Advisor determines there are reasonable grounds for reexamination, the Medical Advisor shall appoint one (1) or more physicians to examine the Member. The physician(s) shall submit report(s) to the DDRC on the Member's disability status and, following submission of the report(s), 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 appointed physician(s) and declare the Member Permanently Occupationally Disabled or Totally Disabled.

(7) The DDRC shall notify the Member of its determination in writing along with copies of the medical report(s) submitted by the appointed physician(s). 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 thirty (30) days from the date of providing the Member the DDRC's determination.

(8) If the Member's disability status is changed from Permanent Occupational Disability to Total Disability or Temporary Occupational Disability status is changed to Permanent Occupational Disability or Total Disability, the new benefit shall become effective on the first (1st) day of the month following that date on which the determination of change in status becomes final. The Member shall elect one (1) of the payment options available under Rule 1602, as amended, in writing, on the form prescribed by FPPA. The Member's election shall be made within ninety (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 ninety (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 ninety (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 Rule 1602, 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 Rule 1602, as amended.

(9) A change in a Member's disability status shall be effective upon final approval. The benefit amount shall change effective on the first (1st) day of the month following approval.

**1707. Discontinuance of Disability Benefits.**

(1) Discontinuance Upon Reemployment

(a) 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. If a Member is employed or reemployed either full-time or part-time in a position directly involved with the provision of police or fire protection in which the Member is capable of meeting the physical requirements of the position, the benefit provided to the Member may be discontinued after a review by the DDRC under Part XVI of these Rules and Regulations.

(b) 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 this Rule 1707(1) and C.R.S. § 31-31-814, as amended. The CBO will base the 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:

(I) Whether the position includes authority to make investigative stops and arrests.

(II) 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.

(III) Whether the position requires that the individual be certified by a local, state, federal, international or foreign law enforcement or fire safety authority.

(IV) Whether the position requires that the individual respond to or investigate crime or fire scenes.

(V) Whether the position involves other duties or qualifications normally required of law enforcement officers or firefighters.

(VI) Whether the position is clerical in nature or primarily involved with the provision of services which are auxiliary to police or fire protection.

(c) 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 1707(1) and § 31-31-814, C.R.S., as amended. Generally, such positions may include the following:

(I) Secretarial and other office support positions;

(II) Civilian positions within law enforcement agencies and fire departments which provide only technical support services such as crime analysis, code enforcement, dispatch, etc.;

(III) Technical consultants to law enforcement agencies and fire departments;

(IV) Private security personnel if they are not required to carry a firearm and do not have arrest powers; and

(V) Private investigators.

(d) If, the CBO finds that the position is one directly involved with the provision of police or fire protection, the CBO shall notify the affected Member of the determination in writing. The affected Member may then file a request for an evidentiary hearing within thirty (30) days of providing the Member the notice of the CBO's determination pursuant to Rule 1709.

(2) Discontinuance of Temporary Occupational Disability

(a) 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.

(b) 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 thirty (30) days prior to their compliance review dates. 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.

(c) 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 in writing. The affected Member may then file a request for an evidentiary hearing pursuant to Rule 1709 within thirty (30) days of providing the Member the notice of the DDRC's determination.

(d) 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 in writing. The affected Member may then file a request for an evidentiary hearing pursuant to Rule 1709 within thirty (30) days of providing the Member the notice of the DDRC's determination.

(e) If no evidentiary hearing is timely requested, the Board shall conduct an administrative review of the DDRC's findings and determination in accordance with Rule 1709. After the review, the Board may terminate the benefits or may reverse all or part of the DDRC's findings and determination.

**1708. Evidentiary Hearings on Initial Determinations for Death and Disability.**

(1) Within one hundred twenty (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 (1) year from the date of the initial determination.

(2) 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 1703 and 1704.

(3) At the commencement of the hearing, the Hearing Officer shall state the reasons for the hearing.

(4) 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.

(5) The DDRC may call any witnesses or present any evidence following the applicant's case in chief.

(6) Following the conclusion of the evidence, the Hearing Officer may make the following recommendations:

(a) If the initially appointed physicians have different specialties or areas of expertise, the Hearing Officer may order a reexamination by new physician(s). If the Hearing Officer orders a reexamination, then the case shall proceed in all particulars as a new case under Rule 1607(8).

(b) 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.

(c) In all cases, the decision is final at the time final action is taken pursuant to Rule 1710.

**1709. Evidentiary Hearings on Staff Determinations.**

(1) When these rules provide for an evidentiary hearing pursuant to Rule 1709 or when a determination is made by FPPA staff or the DDRC 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 1709(2).

(2) The person or entity affected may file a request for a hearing on staff's determination within thirty (30) days from the date of providing the person or entity the determination. Such hearing shall be held within one hundred twenty (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 (1) year from the date of staff's determination.

(3) 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 1705, 1706, 1707 and 1206.

(4) 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 provided to the Member.

(5) At the hearing, the person or entity requesting the hearing shall present the person's or entity's evidence, including testimony, in support of the 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.

(6) 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.

(7) 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 1710.

(8) The applicable provisions of Rule 1701 shall apply to proceedings under this Rule 1709.

**1710. Recommendations by a Hearing Officer.**

(1) The hearing shall be promptly set for any matter referred to it for a hearing and FPPA shall notify the Member of the date and time of the hearing. The Member may attend the hearing and may be represented by their 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 (1) 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.

(2) 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.

(3) In making a recommendation on a case referred, the Hearing Officer may consider any relevant evidence.

(4) Within thirty (30) days after any type of evidentiary hearing the Hearing Officer shall file written findings and a recommendation. The Member and FPPA shall be notified of the Hearing Officer's written findings and recommendation and shall have thirty (30) days from the date of FPPA's transmittal 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 in support of the objections. If objections are not timely filed or the objections do not set forth in detail the particular errors and objections, then the Hearing Officer's written findings and recommendation shall be considered uncontested. ~~The Executive Director may affirm an uncontested recommendation of the Hearing Officer without further review by the Board. The Executive Director shall give notice of such affirmation to the affected parties. If the Executive Director affirms the uncontested recommendation of the Hearing Officer, then that decision is final as of the date that the notice of affirmation is provided to the parties and any allowable judicial review may then proceed.~~ The Executive Director shall conduct an administrative appellate review of the Hearing Officer's written findings and recommendation and any timely filed written objections to the recommendation based on the record before the Hearing Officer. The Executive Director may remand a recommendation, in writing, to the Hearing Officer for further consideration and recommendation. The remand may include instructions, including but not limited to considering additional issues, conducting additional proceedings, hearings, and adding the Employer ~~parties~~as a party.

(5) Within thirty (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 and FPPA 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 parties had to object to the original findings and recommendation. ~~If objections are not timely filed, or the objections do not set forth in detail the particular errors and objections, then 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. The Executive Director shall give notice of such affirmation to the affected parties. If the Executive Director affirms the~~

~~uncontested recommendation of the Hearing Officer, then that decision is final as of the date that the notice of affirmation is provided 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.

(6) ~~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 objections to the recommendation, at a regularly scheduled Board meeting. The parties shall be notified of the date the Board will conduct such review.~~

~~(7) At the administrative appellate review, the Board may issue a summary decision affirming the recommendation of the Hearing Officer. Alternatively, the Board~~The Executive Director may affirm the Hearing Officer's Finding and Recommendations, or alternatively may correct, modify or set aside, or remand any finding or 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.

~~(8) 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.~~

(~~9~~7) A copy of the ~~Board's~~Executive Director's ~~final~~ decision shall be sent to the parties. ~~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 1710(7), the decision is final as of the date the Board adopts such written findings. Either~~ The decision shall be the final determination of FPPA and shall be effective the date it is transmitted to the parties. Any party may then proceed with any allowable judicial review.

(~~10~~8) Judicial review ~~made pursuant to this Rule 1710~~ shall be in accordance with Colorado Rules of Civil Procedure 106(a)(4).

**1711. Determination of Employer Liability.**

(1) The DDRC may determine whether there are reasonable grounds to believe that an Employer is liable for payment of disability or survivor benefits.

(2) 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.

(3) At least twenty (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.

(4) 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.

(5) Within thirty (30) days after the evidentiary hearing the Hearing Officer shall file written findings and a recommendation. The Member and the Employer shall be notified of the Hearing Officer's written findings and recommendation and shall have thirty (30) days from the date of providing 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 shall be considered uncontested.

(6) The ~~Board~~Executive Director 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~~.

(7) ~~At the administrative appellate review hearing, the Board may issue a summary decision affirming the recommendation of the Hearing Officer. Alternatively, the Board~~The Executive Director may affirm, or may correct, modify or set aside, or remand any finding or 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.

(8) A copy of the Executive Director's decision shall be sent to the parties. The decision shall be the final determination of FPPA and shall be effective the date it is transmitted to the parties. Any party may then proceed with any allowable judicial review.

(9) Judicial review shall be in accordance with Colorado Rules of Civil Procedure 106(a)(4).

**1712. Reexamination Hearings and Additional Basis for Disability.**

(1) The DDRC shall establish a period for reexamination of all Members awarded Temporary Occupational Disability. Reexamination of Members retired for any type of occupational disability may be ordered as deemed warranted. A member may apply to have their status changed to not disabled. A complete application must be filed with FPPA according to Rule 1706. 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.

(2) The Medical Advisor may schedule a reexamination with a physician. The reexamination shall include a review of compliance with the treatment plan if one was required.

(3) If the physician examining the Member opines that 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, the physician must agree before the DDRC may determine that the Occupational disability ceases to exist.

(4) 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 physician's findings and of the opportunity for an evidentiary hearing pursuant to Rule 1709 upon request of the Employer or

Member. Such request for an evidentiary hearing must be received within thirty (30) days after the date of providing the Employer or Member the determination. The evidentiary hearing shall be scheduled no sooner than thirty (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 DDRC determination shall become final as of the date that the notice of the DDRC's uncontested determination is sent to the parties, and any allowable judicial review may then proceed. If an evidentiary hearing is ~~timely requested, the Board shall conduct an administrative appellate~~conducted and hearing officer's recommendations are issued, subsequent review ~~of the findings and determination of the DDRC~~shall be conducted in accordance with ~~Rules 1710(6) through 1710(9). After the review, the Board may terminate the benefits or may reverse all or part of the findings and determination~~Rule 1709.

(5) If the physician agrees 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 physician 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~~Executive Director. Review of the physicians' findings shall be made pursuant to Rule 1712(3) and 1712(4).

## PART XVIII - AFFILIATED PLANS

**1801. Purpose**. Pursuant to Colorado Revised Statutes ("C.R.S.") § 31-30.5-212(2), as amended from time to time, the Board hereby creates rules 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 Part XVIII notwithstanding any provisions to the contrary of an Old Hire Plan's current plan document (if any). Further, the Board has general rulemaking authority under C.R.S.§ 31-31-202(1)(j), as amended, and specifically for any volunteer firefighter plan affiliated with FPPA under FPPA Rule 1818 (hereinafter referred to as "the pension plan").

**1802. Compliance with Internal Revenue Code § 401(a)(2) for exclusive benefit and non-diversion of pension funds.**

(1) 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.

(2) 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.

**1803. Compliance with Internal Revenue Code §§ 401(a)(7) and 401(a)(8) for vesting and forfeitures.**

(1) A Member shall be 100% vested in the Member's 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 and C.R.S. §31-30-1122. 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 the Member has served for a period of twenty (20) years or such lesser number of years provided under the plan.

(2) A Member shall be 100% vested in the Member's accumulated contributions at all times.

(3) 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.

(4) 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.

**1804. Compliance with Internal Revenue Code § 401(a)(9) for required minimum distributions.** The plan shall pay all benefits in accordance with a reasonable and 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:

(1) Distribution of a Member's benefit must begin by the required beginning date. For Members attaining age 72 before 2023, the required beginning date is the later of April 1 following the calendar year in which the Member attains age 72 (or age 70 ½ if the Member was born before July 1, 1949) or April 1 of the year following the calendar year in which the Member terminates. For Members who would have attained age 72 after 2022 and age 73 before 2033, the required beginning date is no later than April 1 of the calendar year the Member would have attained age 73. For Members who have attained age 74 after 2032, the required beginning date is April 1 of the calendar year following the year the Member would have attained the age of 75. 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)) and C.R.S. § 31-30-1102(1) shall begin distribution of the monthly benefit as required by this regulation.

(2) 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.

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

(4) 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.

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

(a) If the Member's surviving spouse is the sole designated beneficiary, the Member's remaining interest in the plan shall be distributed or begin 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 72 (or age 70 ½ if the Member was born before July 1, 1949), if later, and if the surviving spouse dies before the distribution to the surviving spouse begins, this rule shall be applied as if the surviving spouse were the plan Member; or

(b) 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 shall begin no later than December 31 of the calendar year immediately following the calendar year of the Member's death.

(6) 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)(e), and the minimum distribution incidental benefit rule under Treasury Regulation § 1.401(a)(9)-6, Q&A-2.

(7) 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.

**1805. 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).

**1806. 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.

**1807. 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 rule 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.

(1) "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:

(a) 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;

(b) any distribution to the extent such distribution is required under Internal Revenue Code § 401(a)(9);

(c) 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:

(I) 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;

(II) 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

(III) on or after January 1, 2008, to a Roth IRA described in Internal Revenue Code § 408A; and

(d) 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).

(2) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) an individual retirement account described in Internal Revenue Code § 408(a);

(b) an individual retirement annuity described in Internal Revenue Code § 408(b);

(c) an annuity plan described in Internal Revenue Code § 403(a);

(d) a qualified trust described in Internal Revenue Code § 401(a);

(e) effective January 1, 2002, an annuity contract described in Internal Revenue Code § 403(b);

(f) 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;

(g) effective January 1, 2008, a Roth IRA described in Internal Revenue Code § 408A; or

(h) effective after December 18, 2015, a SIMPLE IRA as described in Section 408(p) of the Internal Revenue Code, provided that the rollover contribution is made after the two-year period beginning on the date the distributee first participated in any qualified salary reduction arrangement maintained by the distributee's employer under Section 408(p)(2) of the Internal revenue Code, as described in Section 72(t)(6) of the Internal Revenue Code.

(3) "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.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

**1808. 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.

**1809. 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 C.R.S. § 31-30-1122 and has not separated from employment at the time of the distribution.

**1810. 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.

**1811. 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.

**1812. 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.

**1813. Compliance with Internal Revenue Code § 415 for limitations on contributions and benefits.**

(1) 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).

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

(a) 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.

(b) 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.

(3) Basic 415(b) Limitation.

(a) 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.

(b) 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.

(4) 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 $66,000 (as adjusted pursuant to Internal Revenue Code § 415(d)) or 100% of the Member's compensation.

(a) 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.

(b) 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.

(c) 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).

(5) 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.

**1814. 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).

**1815. Compliance with Rev. Rules. 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:

(1) 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;

(2) 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);

(3) 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;

(4) the conversion is automatic and the Member has no right to request a cash payment;

(5) 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);

(6) 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).

**1816. Fees and Costs.** On behalf of any Old Hire Plan or other Affiliated Plan, the Board may prepare, process or execute any applications, other forms or filings, and 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 or other Affiliated Plan.

**1817. Idle funds.** On behalf of any Old Hire Plan or other Affiliated Plan, the Board hereby delegates to FPPA Accounting and Legal Staffs the review and approval of resolutions by the governing bodies of municipalities, fire protection districts, or county improvement districts for idle funds distributions, and further delegates to FPPA Staff the determinations that the statutory prerequisites under C.R.S. 31-30.5-209 have been met to distribute the idle funds for an Old Hire Plan established pursuant to C.R.S. 31-30.5-201(2), or other Affiliated Plan.

**1818. Affiliation and Disaffiliation of Volunteer Fire Departments**

(1) 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 defined benefit volunteer pension plan for its volunteer firefighters.

(2) The district must file with FPPA a resolution of intent to affiliate no less than thirty (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 must file their resolution with FPPA no less than thirty (30) days 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 shall require the sale or conversion of certain 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 C.R.S. § 31-31-301, 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.

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

(4) 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 (60) day's written notice to the governing body for failure to fulfill its responsibilities to the pension plan.

(5) 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 sixty (60) days prior to the effective date of disaffiliation, unless a shorter or longer waiting period is approved by the Chief Operations Officer. The effective date of disaffiliation shall be the first of the month following the waiting period;

(b) Within thirty (30) days of 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 (b), "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 Executive Director or Chief Operations Officer; and

(c) The month prior to the effective date through the date of the actual return of monies by FPPA, assets in the volunteer fund will accrue interest based upon the yield rate to maturity of a ninety (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.

(6) 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.

(7) 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 1818(5)(c).

**1819. Approval of Old Hire Plan Modifications.** The Executive Director, Chief Benefits Officer, or Chief Operations Officer may approve the modification of any provision of an old hire plan established pursuant to Article 30.5 of Title 31, C.R.S., made in accordance with C.R.S. § 30-30.5-210.

## PART XIX - MISCELLANEOUS

**1901. Payments to Minors, Protected Persons or Legal Representatives**. If any person entitled to receive any payment hereunder is a minor, a protected person, or a person who has designated an agent under a power of attorney, such payment shall be made to or for the benefit of such minor or person in any of the following ways, as the Board, in its sole discretion, shall determine:

(1) to the legal representative of such person;

(2) directly to such person;

(3) to some near relative of such person;

(4) in such other manner as the Board may deem appropriate under the circumstances. The Board shall not be required to see to the proper application of any such payment made to any person pursuant to the provisions of this rule.

**1902. Disposition of Unclaimed Payments**. If the Board or Plan Administrator is unable to make any payment due under the FPPA Defined Benefit System to any person because the Board or Plan Administrator cannot ascertain the identity or whereabouts of such person after making such written or telephonic inquiries as the Board or Plan Administrator, in its sole discretion, deem reasonable, the Board or Plan Administrator shall suspend all further payments to such person until the identity or whereabouts of such person is known to the Board or Plan Administrator within seven (7) years after such payment was due. The Board or Plan Administrator shall declare such payment, and all remaining payments due such person, to be forfeited as of the expiration of such seven (7) year period. However, such forfeited amounts shall be reinstated to the Member once such person makes their whereabouts known to the Board or Plan Administrator.

**1903. Taxes**. The Board, the Employers and the Plan Administrator do not guarantee that any particular federal or state income, payroll, or other tax consequence will occur because of participation in the Defined Benefit System.

**1904. Conflicts**. In resolving any conflict between provisions of the Defined Benefit System and in resolving any other uncertainty as to the meaning or intention of any provision of the Rules or Regulations or other document, the interpretation that:

(1) causes the Defined Benefit System to constitute a qualified plan under the provisions of Code Sections 401 and 414(d) and the Trust to be exempt from tax under Code Sections 115 and 501;

(2) causes the Defined Benefit System to comply with all applicable requirements of the Code; and

(3) causes the Defined Benefit System to comply with all applicable Colorado statutes and rules, shall prevail over any different interpretation.

**1905. Limitation on Rights**. Neither the establishment or maintenance of the Defined Benefit System, any amendment thereof, nor any act or omission under the Plan (or resulting from the operation of the System) shall be construed:

(1) As giving a Member or Designated Beneficiary any right to, or interest in, any assets of the Trust Fund upon termination of employment or otherwise, except as provided from time to time under the FPPA Defined Benefit System and then only to the extent of the benefits payable under the System to such Member or Designated Beneficiary out of the assets of the Trust Fund;

(2) As creating any responsibility or liability of the Employer for the validity or effect of the Defined Benefit System;

(3) As being consideration for, or an inducement or condition of, employment of any Member or other individual, or as affecting or restricting in any manner or to any extent whatsoever, the rights or obligations of the Employer or any Member or other individual to continue or terminate the employment relationship at any time; or

(4) In any other regard as a contract between the Employer and any Member or other person.

**1906. Limitation on Recovery**. All payments of benefits as provided for in the Defined Benefit System shall be made solely out of the assets of the Trust Fund, and no fiduciary shall be liable therefore in any manner. Members and Designated Beneficiaries may not seek recovery against the Board, Plan Administrator, Employers, or any employee, contractor, or agent of the Board, Plan Administrator, or Employers for any loss sustained by any Member or Designated Beneficiary due to the nonperformance of their duties, negligence, or any other misconduct of the above-named persons. The above-named persons shall not be liable for losses arising from expense charges of any kind or from depreciation or shrinkage in the value of investments made under this Plan. This paragraph shall not, however, excuse fraud or a wrongful taking by any person.

**1907. Erroneous Payments.** If the Board or Plan Administrator make any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Board or Plan Administrator may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Board or Plan Administrator, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Member, the Board or Plan Administrator may deduct it when making any future payments, if any, directly to that Member.

**1908. Release**. Any payment to any Member or Designated Beneficiary shall, to the extent thereof, be in full satisfaction of the claim of such Member or Designated Beneficiary, and the Board or Plan Administrator may condition payment thereof on the delivery by the Member or Designated Beneficiary of a duly executed receipt and release in such form as may be determined by the Board or Plan Administrator.

**1909. Liability**. The Board or Plan Administrator shall not incur any liability in acting upon any notice, request, signed letter, other paper or document, or electronic transmission believed by the Board or Plan Administrator to be genuine or to be executed or sent by an authorized person.

**1910. Governing Laws**. The laws of the State of Colorado shall apply in determining the construction and validity of the Defined Benefit System and these Rules and Regulations, with venue in the Arapahoe County District Court with competent subject matter jurisdiction.

**1911. Necessary Parties to Disputes**. Necessary parties to any accounting, litigation, or other proceedings relating to the Plan shall include only the Board and the Plan Administrator. However, if the Plan Administrator or Board has delegated duties to a Recordkeeper or other party, the Recordkeeper or other party is a necessary party for those duties that have been delegated to the Recordkeeper or other party. The settlement or judgment in any such case in which the Board is duly served shall be binding upon all affected Members in the Defined Benefit System, their Designated Beneficiaries, and estates and upon all persons claiming by, through, or under them.

**1912. Severability**. If any provision of these Rules and Regulations shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Rules and Regulations shall continue to be fully effective.

**1913. Supersession**. The terms of the Rules and Regulations shall supersede any previous agreement between any entities or individuals pertaining to the Statewide Retirement Plan or its Predecessor Plans.