

**ATTACHMENT F**  
**GENERAL MUNICIPAL LAW – SERVICE AWARD STATUTES**  
**ARTICLE 11-A, 11-AAA, 11-AAA**  
**AND**  
**RULES AND REGULATIONS**  
**NYCRR PART 150, PART 152, PART 154, PART 155**

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**GENERAL MUNICIPAL LAW**

**ARTICLE 11-A. SERVICE AWARD PROGRAMS**

**NY CLS Gen Mun Article 11-A Note (2012)**

Gen Mun Article 11-A Note

**HISTORY:** Add, L 1988, ch 775, § 1, eff Sept 1, 1989.

**NY CLS Gen Mun § 214 (2012)**

**§ 214. Purpose**

1. It is hereby declared that this article is intended to effectuate the objects and purposes of section eighteen of article one of the constitution and that the relationship between the political subdivision liable for payments of service awards under this article and a volunteer firefighter entitled to such payments is that of employer and employee within the meaning of such provision of the constitution. In no event shall the receipt of a service award under the provisions of this article be deemed to constitute membership in any pension or retirement system of the state or of a civil division thereon within the purview of section seven of article five of the constitution.

2. It is hereby further declared that this article is also intended to provide service awards for volunteer firefighters of incorporated fire companies or departments [fig 1] which are not otherwise part of a political subdivision of this state and who do not fall within the purview of subdivision one of this section.

**HISTORY:**

Add, L 1988, ch 775, § 1, eff Sept 1, 1989.

Sub 2, amd, L 1995, ch 550, § 1, eff Aug 8, 1995.

The 1995 act deleted at fig 1 "located in fire protection districts and"

**NOTES:**

NYCRR References:

Department of audit and control: state-administered defined contribution service award programs for volunteer firefighters. 2 NYCRR §§ 154.1 et seq

Department of audit and control: state-administered defined benefit service award programs for volunteer firefighters. 2 NYCRR §§ 155.1 et seq

Research References & Practice Aids:

*27 NY Jur 2d Counties, Towns, and Municipal Corporations* §§ 1188, 1189

**NY CLS Gen Mun § 215 (2012)**

**§ 215. Definitions**

As used in this article:

1. "Active volunteer firefighter" means a person who has been approved by the authorities in control of a duly organized volunteer fire company or volunteer fire department as an active volunteer firefighter of such fire company or department and who is faithfully and actually performing service in the protection of life and property from fire or other emergency, accident or calamity in connection with which the services of such fire company or fire department are required.

2. "Defined benefit plan" means any service award program that provides to eligible volunteer firefighters, a benefit that is definitely determinable under the program without reference to the amount contributed to the program on the participant's behalf or to any income, expenses, gains or losses or forfeitures of other participants under the program.

3. "Defined contribution plan" means any service award program that provides to eligible volunteer firefighters a benefit as the result of definite and determinable contributions under the program, and without reference to any income, expense, gains or losses or forfeitures of other participants under the program.
4. "Entitlement age" means the age designated by the sponsor at which a program participant is entitled to begin receiving an unreduced service award. In no event shall the entitlement age under a program be earlier than age fifty-five nor later than the age at which the participant can receive an unreduced benefit under Title II of the Social Security Act (Public Law 74-271 U.S.C. 306 et seq.). No service award program may provide for the payment of benefits (except in the case of death or disability) before age fifty-five.
5. "Fiduciary" means any person who exercises discretionary authority or control with respect to the administration of the program or the management or disposition of program assets or who renders investment advice for a fee to the program.
- 5-a. "Fire service area" means a portion of a village that receives fire protection from a special fire department pursuant to a contract with the governing board of the village when the cost of the contract is charged to such area of the village.
6. "Nonforfeitable" means the unconditional and legally enforceable right to receive benefits attributable to service as an active volunteer firefighter under the program that will begin at the entitlement age specified in the program.
7. "Participant" means an active volunteer firefighter who is eligible for a benefit under a service award program.
- 7-a. "Political subdivision" means a county, city, town, town on behalf of a fire protection district, village, village on behalf of fire service area or fire district.
8. "Service award" means the benefit payable to a participant in a service award program.
9. "Service award program" or "program" means a defined benefit plan or defined contribution plan established or maintained under this article to provide service awards for active volunteer firefighters, pursuant to the benefit options specified by the sponsoring organization.
- 9-a. "Special fire company or department" means a fire company or department for which a service award program cannot be established pursuant to subdivision one or two of section two hundred sixteen of this article which provides fire protection services to two or more political subdivisions under contracts with the governing boards thereof.
10. "Sponsor" or "sponsoring organization" means [fig 1] a political subdivision which has established or jointly established a service award program, a volunteer fire company or department, or any other entity responsible for fire protection.
11. "Year of firefighting service" means a twelve month period during which an active volunteer firefighter participates in the fire service and satisfies the minimum requirements of participation established by the sponsoring organization maintaining the program which shall be applied on a consistent and uniform basis, subject to the minimum standards established by the sponsoring organization.
12. "Elected or appointed position" means line officers, department or company officers and president, vice president, treasurer and secretary of a fire company or department.
13. "Administrator" or "plan administrator" means the state comptroller, or an administrative service agency or financial organization selected by the state comptroller to perform all or a portion of the functions required to administer service award programs.
14. "Administrative service agency" means an organization duly authorized to do business in the state and which is qualified to administer and maintain records and accounts of plans which meet the requirements for qualification under the internal revenue code and governmental plans.
15. "Financial organization" means an organization duly authorized to do business in the state and which is (i) registered as an investment adviser under the Investment Advisers Act of 1940, as such provisions may be amended from time to time; (ii) licensed or chartered by the state [fig 1] department of financial services; (iii) licensed or chartered by the state [fig 2] department of financial services; (iv) chartered by an agency of the federal government; or (v) subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.



## HISTORY:

Add, L 1988, ch 775, § 1, eff Sept 1, 1989; amd, L 1995, ch 550, §§ 2, 3, eff Aug 8, 1995, L 2006, ch 714, § 1, eff June 1, 2007 (see 2006 note below), L 2011, ch 62, § 104 (Part A), eff Oct 3, 2011.

## NOTES:

### Editor's Notes

Laws 2006, ch 714, § 13, eff June 1, 2007, provides as follows:

§ 13. This act shall take effect June 1, 2007, provided, however, that effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date are authorized and directed to be made and completed by the state comptroller on or before such effective date.

**2011.** Chapter 62, § 104 (Part A) amended:

Sub 15 at fig 1 by substituting "department of financial services" for "insurance department" and at fig 2 "by substituting "department of financial services" for "banking department".

**2006.** Chapter 714, § 1 amended:

By adding sub 13.

By adding sub 14.

**1995.** Chapter 550, § 2 amended:

By adding sub 5-a.

By adding sub 7-a.

By adding sub 9-a.

**1995.** Chapter 550, § 3 amended:

Sub 10 by deleting at fig 1 "any fire district, fire protection district, volunteer fire company, village, town or city or other entity responsible for fire protection, having a volunteer fire department" and adding the matter in italics.

### NYCRR References:

Department of audit and control: state-administered defined contribution service award programs for volunteer firefighters. 2 NYCRR §§ 154.1 et seq

Department of audit and control: state-administered defined benefit service award programs for volunteer firefighters. 2 NYCRR §§ 155.1 et seq

### Federal References:

The Investment Advisers Act of 1940, cited in statutory text, appears as 15 USCS §§ 80b-1 et seq

### Research References & Practice Aids:

27 NY Jur 2d Counties, Towns, and Municipal Corporations §§ 1188, 1189

### Case Notes:

While N.Y. Gen. Mun. Law § 215(4) required an eligibility age for length of service award programs (LOSAPs) for volunteer firefighters, it did not require that volunteer firefighters, who reached the eligibility age, could not continue to earn firefighting service; thus, a village was not constrained by § 215(4) to either adopt a LOSAP that did not provide benefits to firefighters age 54 or older, or adopt no LOSAP at all, and compliance with § 215(4) did not provide a defense to allegations by the Equal Employment Opportunity Commission that the village discriminated against volunteer firefighters based on their age, in violation of the Age Discrimination in Employment Law, 29 U.S.C.S. § 621 et seq. *EEOC v Inc. Vill. of Valley Stream* (2008, ED NY) 535 F Supp 2d 323, 102 BNA FEP Cas 1707.

Joint fire district may establish service award program for volunteer firefighters of joint fire district fire department, but service award program may not provide prior service credit for activities performed under auspices of village fire department. 2000 Op St Compt No. 2000-18.

When village that has established service award program is included within joint fire district, village lacks authority to transfer its fiscal and administrative responsibilities for program to joint fire district. 2000 Op St Compt No. 2000-18.

Service award program may provide for participant to earn service credit after attaining program's entitlement age, subject to 40-year maximum provided for in CLS Gen Mun Law Art 11-A; to implement such feature, program may allow participant to waive voluntarily right to begin receiving his or her service award on reaching entitlement age in order to continue to earn credit after entitlement age, but program should not be structured so as to allow participant to begin receiving payment of his or her service award at program's entitlement age and to continue to earn service credit while receiving such payment. 2002 Op St Compt No. 2002-2.

Municipality may define "enrolled member" for purposes of volunteer firefighters and ambulance workers exemption available to members who have served for 5 years and continue to so serve (CLS *RPTL* § 466-g(2), added L 2005 ch 419) as one who is eligible under municipality's length of service award program (LOSAP). 11 Op. Counsel SBRPS No. 82.

## **NY CLS Gen Mun § 216 (2012)**

### **§ 216. Authorization to establish service award programs for volunteer firefighters of political subdivisions of the state and for volunteer firefighters other than of political subdivisions of the state**

1. a. [fig 1] A service award program may be adopted only by resolution of the governing board of a political subdivision, receiving the affirmative vote of at least sixty percent of the governing board of the political subdivision having control of the fire departments and fire companies, [fig 2] and the approval of a mandatory referendum authorizing the adopting of the program by the eligible voters within such political subdivision [fig 3] .

b. The resolution authorizing the adoption of a service award program shall state:

- (i) the name of each fire company having volunteer firefighters who are potential participants in the program;
- (ii) whether the program will be administered by the political subdivision or the state;
- (iii) the entitlement age under the program;
- (iv) the estimated annual cost of program, including the estimated annual administration fee;
- (v) the number of years of fire service required to obtain a nonforfeitable right to a service award;
- (vi) the activities for which points shall be granted toward a year of fire service;
- (vii) the amount of the contribution to the program to be made on behalf of each participant credited with a year of fire service;
- (viii) the extent to which the program provides for contributions for fire service rendered by a participant during one or more of the five calendar years immediately preceding the adoption of the program;
- (ix) in the case of a service award program which provides for contributions for fire service rendered by a participant during one or more of the five calendar years immediately preceding the adoption of the program, the timing and method of financing such contributions;
- (x) the date as of which the program shall take effect; in the case of a service award program to take effect on a day other than the first day of January, whether points toward a year of fire service shall be granted for activities performed prior to the effective date of the program and on or after the immediately preceding first day of January; and
- (xi) the date on which the proposition authorizing the adoption of the program shall be submitted to referendum.

2. Upon the affirmative vote of at least sixty percent of the governing board of the political subdivision, which political subdivision has contracted with volunteer fire departments or fire companies located in a fire protection district of such political subdivision, there shall be held a mandatory referendum of the eligible voters residing within such fire protection districts to determine whether such governing board shall establish a service award program for the volunteer firefighters of such volunteer fire departments or fire companies.

3. (a) The referendum described in subdivision one or two of this section shall state the type of service award program selected, whether a defined contribution program described in section two hundred eighteen or a defined benefit program described in section two hundred nineteen of this article.

(b) The referendum described in subdivision one or two of this section shall state the estimated annual cost of the service award program, including the estimated annual administration fee, the projected monthly award to be paid to eligible volunteer firefighters and the estimated annual cost per covered participant.

(c) The referendum described in subdivision one or two of this section shall state whether the service award program will be administered by the political subdivision or the state of New York.

(d) Payments under the service award program if adopted, shall not impair any rights of the volunteer firefighters under the volunteer firefighters' benefit law or any other law.

(e) Except as otherwise provided in this paragraph once a service award program has been established, it may be abolished or amended in the same manner as it was created in accordance with the provisions of this article by following the procedures set forth in subdivision one or two of this section. The point system adopted by the governing board of the sponsor of a service award program pursuant to subdivision (c) of section two hundred seventeen of this article may be amended by the affirmative vote of at least sixty percent of such governing board, without referendum, provided, that, consistent with the provisions of subdivision (c) of section two hundred seventeen, the only effect of the amendment is to decrease the number of points granted for the performance of an activity, increase the amount of an activity required to earn the points granted for the performance of the activity, or both. Any amendment to a service award program shall only take effect as of the first day of January next succeeding completion of the proceedings required for adoption of the amendment and shall only apply prospectively.

4. Within thirty days of voter approval of the referendum described in subdivisions one and two of this section, the governing board of the political subdivision shall notify the state comptroller of the adoption of the service award program [fig 1] , whether such service award program will be a defined contribution plan or a defined benefit plan, and whether the plan will be administered by the political subdivision or the state of New York.

5. Notwithstanding any inconsistent provision of law, no member of the governing board of a political subdivision of the state is prohibited by virtue of being a member of a volunteer fire company or department from voting upon a resolution authorizing a referendum on the establishment of a service award program if more than forty percent of the governing board would otherwise be prohibited from voting upon such resolution. Any member of such governing board voting upon such a resolution who serves as a member of a volunteer fire company or department shall publicly disclose in writing to the governing board such status. Such written disclosure shall be part of and set forth in the official record of the proceedings of such governing board.

#### **HISTORY:**

Add, L 1988, ch 775, § 1, eff Sept 1, 1989; amd, L 2006, ch 714, § 2, eff June 1, 2007 (see 2006 note below).

Sub 1, par a, formerly entire sub 1, amd, L 1995, ch 550, § 4, eff Aug 8, 1995; so designated sub 1, par a and amd, L 2006, ch 714, § 2, eff June 1, 2007 (see 2006 note below).

The 2006 act deleted at fig 1 "Upon", at fig 2 "there shall be held a mandatory referendum of" and at fig 3 "to determine whether such governing board shall establish a service award program for the volunteer firefighters of such political subdivision"

Sub 1, par b, add, L 2006, ch 714, § 2, eff June 1, 2007 (see 2006 note below).

Sub 2, amd, L 1995, ch 550, § 4, eff Aug 8, 1995.

Sub 3, par (c), add, L 2006, ch 714, § 2, eff June 1, 2007 (see 2006 note below).

Former sub 3, par (c), redesignated sub 3, par (d), L 2006, ch 714, § 2, eff June 1, 2007 (see 2006 note below).

Sub 3, par (d), formerly sub 3, par (c), so designated sub 3, par (d), L 2006, ch 714, § 2, eff June 1, 2007 (see 2006 note below).

Former sub 3, par (d), redesignated sub 3, par (e), L 2006, ch 714, § 2, eff June 1, 2007 (see 2006 note below).

Sub 3, par (e), formerly sub 3, par (d), amd, L 2002, ch 469, § 1, eff Aug 20, 2002; so designated sub 3, par (e), L 2006, ch 714, § 2, eff June 1, 2007 (see 2006 note below).

Sub 4, add, L 2004, ch 452, § 5, eff Sept 14, 2004 (see 2004 note below); amd, L 2006, ch 714, § 2, eff June 1, 2007 (see 2006 note below).

The 2006 act deleted at fig 1 "and"

Former sub 4, redesignated sub 5, L 2004, ch 452, § 5, eff Sept 14, 2004 (see 2004 note below).

Sub 5, formerly sub 4, add, L 1993, ch 626, § 1, eff Aug 4, 1993; so designated sub 5, L 2004, ch 452, § 5, eff Sept 14, 2004 (see 2004 note below).

## NOTES:

### Editor's Notes

Laws 2004, ch 452, § 8, eff Sept 14, 2004, provides as follows:

§ 8. This act shall take effect immediately; provided, however, any change or amendment to a service award program made by this act shall only take effect as of the first of January next succeeding completion of the proceedings required for adoption of the change or amendment, and shall only apply prospectively; and provided further that the governing board of any political subdivision with an existing service award program authorized by *section 216 or 216-a of the general municipal law* shall have 180 days from the effective date of this act to notify the state comptroller of the existence of such service award program and whether such service award program is a defined contribution plan or a defined benefit plan.

Laws 2006, ch 714, § 13, eff June 1, 2007, provides as follows:

§ 13. This act shall take effect June 1, 2007, provided, however, that effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date are authorized and directed to be made and completed by the state comptroller on or before such effective date.

### New York References:

Requirements and benefits under a defined benefit plan service award program, § 219

### NYCRR References:

Department of audit and control: state-administered defined contribution service award programs for volunteer firefighters. 2 NYCRR §§ 154.1 et seq

Department of audit and control: state-administered defined benefit service award programs for volunteer firefighters. 2 NYCRR §§ 155.1 et seq

### Research References & Practice Aids:

27 NY Jur 2d *Counties, Towns, and Municipal Corporations* §§ 1188, 1189

### Case Notes:

New York State Conference of Mayors and Other Municipal Officials (NYCOM), as unincorporated voluntary association whose membership consisted of most of New York's cities and villages, lacked standing to bring declaratory judgment action challenging constitutionality of CLS Gen Mun Art 11-A, which authorizes municipalities to provide their volunteer firefighters with certain financial incentives in form of service award programs, since NYCOM members, as political subdivisions, could not themselves raise constitutional challenges to act of state legislature. *Caruso v State* (1992, 3d Dept) 188 AD2d 874, 591 NYS2d 614.

New York State Conference of Mayors and Other Municipal Officials (NYCOM), as unincorporated voluntary association whose membership consisted of most of New York's cities and villages, lacked standing to bring declaratory judgment action challenging constitutionality of CLS Gen Mun Art 11-A, which authorizes municipalities to provide their volunteer firefighters with certain financial incentives in form of service award programs, on ground that it permits creation of unauthorized local pension in violation of CLS *Retire & S S* § 113, since NYCOM failed to demonstrate that any of its members had adopted award program and thereby suffered injury in fact or aggrievement. *Caruso v State* (1992, 3d Dept) 188 AD2d 874, 591 NYS2d 614.

Members of boards of fire commissioners who are volunteer firefighters may participate in voting on whether to submit a service award program to the voters for approval. 1991 NY Ops Atty Gen I 91-70.

Town board is not required to conduct mandatory referendum on proposal to establish service award program selected by fire company located within fire protection district in town, unless proposal has been approved by vote of at least 60 percent of town board. 1993 Op St Compt No. 93-18.

There is no authority for village to transfer its responsibilities in connection with service award program to fire company. 1994 Op St Compt No. 94-32.

Village is required to continue service award program established for village fire department in event that fire department ceases to provide service under contract to area outside village; dissolution of village fire department for which service award program has been established would preclude former members of department from earning service credit under program on basis of activities performed after dissolution. 1994 Op St Compt No. 94-32.

Joint fire district may establish service award program for volunteer firefighters of joint fire district fire department, but service award program may not provide prior service credit for activities performed under auspices of village fire department. 2000 Op St Compt No. 2000-18.

When village that has established service award program is included within joint fire district, village lacks authority to transfer its fiscal and administrative responsibilities for program to joint fire district. 2000 Op St Compt No. 2000-18.

When establishing service award program for volunteer firefighters, if program is to provide credit for up to 5 years of firefighting service rendered prior to establishment of program, proposition authorizing establishment of program must state, in addition to certain other information, extent to which prior service credit will be provided; however, there is no requirement that proposition contain statement of maximum service credit that may be turned under program, program's entitlement age, or coverage and amount of any life insurance utilized in program. 2002 Op St Compt No. 2002-1.

Amendments to service award program for volunteer firefighters are subject to mandatory referendum, regardless of effect of amendment on cost of program. 2002 Op St Compt No. 2002-1.

A mandatory referendum to establish a service award program for volunteer firefighters of a fire district, pursuant to CLS *Gen Mun Law* § 216, may be conducted at a special election or at the fire district's annual election, pursuant to CLS *Town Law* § 179, but in either case, board of fire commissioners is not required to hold public hearing before establishment of service award program. Ops St Compt 89-41.

Trustees of a village who are also volunteer firefighters must recuse themselves from acting with respect to the establishment of a service award program for volunteer firefighters and with respect to the funding of the fire department. 1991 NY Ops Atty Gen I 91-21.

## **NY CLS Gen Mun § 216-a (2012)**

### **§ 216-a. Authorization to establish service award programs for special fire companies and departments**

1. The political subdivisions which contract to receive fire protection services from a special fire company or department may jointly establish a service award program for the volunteer firefighters of such special fire company or department, provided, however, that no such service award program shall be established unless each and every political subdivision which contracts to receive fire protection services from the special fire company or department joins in establishing the program.

2. A service award program for the volunteer firefighters of a special fire company or department shall be jointly established by the political subdivisions which contract to receive fire protection services from such fire company or department only if:

(a) the governing board of each and every such political subdivision approves an agreement to jointly sponsor the program by an affirmative vote of at least sixty percent of the governing board; and

(b) the eligible voters of each and every such political subdivision separately approve a proposition authorizing their political subdivision to jointly sponsor the program to be administered by the political subdivision or the state of New York.

3. An agreement between or among political subdivisions to jointly sponsor a service award program for a special fire company or department may contain any provision which could be included in an agreement entered into pursuant to article five-G of this chapter and shall contain provisions specifying the following:

(a) the manner in which the several political subdivisions shall exercise and perform the powers and duties that are conferred by other sections of this article on the governing board of a single political subdivision that individually establishes and sponsors a service award program;

(b) the effect of the addition of other political subdivisions as parties to the agreement;

(c) the effect of the withdrawal of political subdivisions from the agreement;

- (d) the entitlement age under the program;
  - (e) the age and length of service requirements to participate in the service award program;
  - (f) the number of years of firefighting service required to obtain a nonforfeitable right to a service award;
  - (g) the activities for which points will be granted toward a year of firefighting service;
  - (h) the extent to which the program provides credit for years of firefighting service rendered during one or more of the five calendar years immediately preceding the establishment of the program;
  - (i) in the case of a defined contribution plan,
    - (i) the amount of the contribution to be made on behalf of each participant credited with a year of firefighting service, and
    - (ii) the amount of any additional disability or death benefit;
  - (j) in the case of a defined benefit plan,
    - (i) the amount of the monthly payment to be made to each participant for each year of firefighting service credited to the participant, and
    - (ii) if the plan is to provide for payment of benefits prior to the tenth anniversary of the establishment of the plan, the date on which the plan is to provide for the payment of benefits;
  - (k) the date as of which the service award program shall take effect which shall be either the first day of January next succeeding the date of the last voter approval required to establish the program or, if sufficient funds are or will be available to each political subdivision to fund the program, the first day of January next preceding such last voter approval; and
  - (l) whether the service award program is to be administered by the political subdivision or the state of New York; and
  - (m) any other provisions as may be necessary for the implementation, operation, administration and funding of the program.
4. A proposition authorizing a political subdivision to jointly sponsor a service award program for the volunteer firefighters of a special fire company or department shall be submitted to referendum not less than thirty days and not more than ninety days after the governing board votes to approve the agreement to jointly sponsor the program. Notice of the referendum shall be published at least once, not less than fourteen days prior to the date of the referendum, in the official newspaper of the political subdivision or, if the political subdivision does not have an official newspaper, in one or more newspapers having general circulation in the political subdivision. The referendum shall be conducted in the same manner as other referenda held by the political subdivision and the cost thereof shall be charged to the political subdivision.
5. A proposition authorizing a political subdivision to jointly sponsor a service award program for the volunteer firefighters of a special fire company or department shall state:
- (a) whether the service award program to be established is a defined contribution plan or a defined benefit plan;
  - (b) whether the service award program is to be administered by the political subdivision or the state of New York;
  - (c) the estimated annual cost of the service award program, including the estimated annual administration fee, and the estimated annual cost per participant, for all the political subdivisions establishing the program and for the political subdivision submitting the proposition to referendum;
  - (d) the extent to which the program provides credit for years of firefighting service rendered during one or more of the five calendar years immediately preceding the establishment of the program;
  - (e) in the case of a defined contribution plan, the amount of any additional disability or death benefit; and
  - (f) in the case of a defined benefit plan,
    - (i) the projected monthly award to be paid to participants, and
    - (ii) if the plan is to provide for the payment of benefits prior to the tenth anniversary of the establishment of the plan, the date on which payment of benefits shall begin.

6. Upon the last voter approval required to jointly establish a service award program for the volunteer firefighters of a special fire company or department, the agreement to jointly sponsor the service award program shall take effect and the program shall take effect as set forth in the agreement.

7. Within thirty days after the last voter approval required to jointly establish a service award program for the volunteer firefighters of a special fire company or department, the governing boards of the political subdivisions which established the program shall notify the state comptroller of the adoption of the service award program and whether such service award program will be a defined contribution plan or a defined benefit plan, and whether the plan will be administered by the political subdivision or the state of New York.

8. Within sixty days after the last voter approval required to jointly establish a service award program for the volunteer firefighters of a special fire company or department, the governing boards of the political subdivisions which established the program shall jointly adopt a program document. The program document shall be consistent with the provisions of this article and the agreement to jointly sponsor the service award program, as amended, and shall set forth the obligations and rights of the sponsors, the special fire company or department, and the volunteer firefighters for whom the program is established, and establish standards and procedures for the administration of the program provided, however, that in the case of a state-administered program the procedures for administration shall be consistent with the rules and regulations governing the state program.

9. Except as otherwise provided in this subdivision, any provision of an agreement to jointly sponsor a service award program for the volunteer firefighters of a special fire company or department may be amended upon the affirmative vote of at least sixty percent of the governing board of each political subdivision which is a party to the agreement without referendum. Amendments to the provisions of the agreement required by paragraphs (h), (i) and (j) of subdivision three of this section shall only be made upon the affirmative vote of at least sixty percent of the governing board of each such political subdivision, subject to a mandatory referendum of the eligible voters within each such political subdivision.

10. In the event that the governing board of a political subdivision which is a party to an agreement to jointly sponsor a service award program for the volunteer firefighters of a special fire company or department ceases to contract to receive fire protection services from the special fire company or department, the political subdivision shall cease to be a sponsor of the service award program and shall be deemed to have withdrawn from the agreement in accordance with the terms of the agreement without further action by the governing board or voters of any political subdivision.

11. A service award program for the volunteer firefighters of a special fire company or department shall remain in effect until terminated by the political subdivisions which are parties to the agreement to jointly sponsor the program. The service award program shall be terminated only if:

(a) the governing board of each and every such political subdivision approves a resolution to terminate the program by an affirmative vote of at least sixty percent of the governing board; and

(b) the eligible voters of each and every such political subdivision separately approve a proposition to terminate the program.

#### **HISTORY:**

Add, L 1995, ch 550, § 5, eff Aug 8, 1995.

Sub 2, par (b), amd, L 2006, ch 714, § 3, eff June 1, 2007 (see 2006 note below).

Sub 3, par (l), add, L 2006, ch 714, § 4, eff June 1, 2007 (see 2006 note below).

Former sub 3, par (l), redesignated sub 3, par (m), L 2006, ch 714, § 4, eff June 1, 2007 (see 2006 note below).

Sub 3, par (m), formerly sub 3, par (l), so designated sub 3, par (m), L 2006, ch 714, § 4, eff June 1, 2007 (see 2006 note below).

Sub 5, par (b), add, L 2006, ch 714, § 4, eff June 1, 2007 (see 2006 note below).

Former sub 5, par (b), redesignated sub 5, par (c), L 2006, ch 714, § 5, eff June 1, 2007 (see 2006 note below).

Sub 5, par (c), formerly sub 5, par (b), so designated sub 5, par (c), L 2006, ch 714, § 5, eff June 1, 2007 (see 2006 note below).

Former sub 5, par (c), redesignated sub 5, par (d), L 2006, ch 714, § 5, eff June 1, 2007 (see 2006 note below).

Sub 5, par (d), formerly sub 5, par (c), so designated sub 5, par (d), L 2006, ch 714, § 5, eff June 1, 2007 (see 2006 note below).

Former sub 5, par (d), redesignated sub 5, par (e), L 2006, ch 714, § 5, eff June 1, 2007 (see 2006 note below).

Sub 5, par (e), formerly sub 5, par (d), so designated sub 5, par (e), L 2006, ch 714, § 5, eff June 1, 2007 (see 2006 note below).

Former sub 5, par (e), redesignated sub 5, par (f), L 2006, ch 714, § 5, eff June 1, 2007 (see 2006 note below).

Sub 5, par (f), formerly sub 5, par (e), so designated sub 5, par (f), L 2006, ch 714, § 5, eff June 1, 2007 (see 2006 note below).

Sub 7, add, L 2004, ch 452, § 6, eff Sept 14, 2004 (see 2004 note below); amd, L 2006, ch 714, § 6, eff June 1, 2007 (see 2006 note below).

Former sub 7, redesignated sub 8, L 2004, ch 452, § 6, eff Sept 14, 2004 (see 2004 note below).

Sub 8, formerly sub 7, so designated sub 8, L 2004, ch 452, § 6, eff Sept 14, 2004 (see 2004 note below); amd, L 2006, ch 714, § 7, eff June 1, 2007 (see 2006 note below).

Former sub 8, redesignated sub 9, L 2004, ch 452, § 6, eff Sept 14, 2004 (see 2004 note below).

Sub 9, formerly sub 8, so designated sub 9, L 2004, ch 452, § 6, eff Sept 14, 2004 (see 2004 note below).

Former sub 9, redesignated sub 10, L 2004, ch 452, § 6, eff Sept 14, 2004 (see 2004 note below).

Sub 10, formerly sub 9, so designated sub 10, L 2004, ch 452, § 6, eff Sept 14, 2004 (see 2004 note below).

Former sub 10, redesignated sub 11, L 2004, ch 452, § 6, eff Sept 14, 2004 (see 2004 note below).

Sub 11, formerly sub 10, so designated sub 11, L 2004, ch 452, § 6, eff Sept 14, 2004 (see 2004 note below).

## **NOTES:**

### **Editor's Notes**

Laws 2004, ch 452, § 8, eff Sept 14, 2004, provides as follows:

§ 8. This act shall take effect immediately; provided, however, any change or amendment to a service award program made by this act shall only take effect as of the first of January next succeeding completion of the proceedings required for adoption of the change or amendment, and shall only apply prospectively; and provided further that the governing board of any political subdivision with an existing service award program authorized by *section 216 or 216-a of the general municipal law* shall have 180 days from the effective date of this act to notify the state comptroller of the existence of such service award program and whether such service award program is a defined contribution plan or a defined benefit plan.

Laws 2006, ch 714, § 13, eff June 1, 2007, provides as follows:

§ 13. This act shall take effect June 1, 2007, provided, however, that effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date are authorized and directed to be made and completed by the state comptroller on or before such effective date.

### **NYCRR References:**

Department of audit and control: state-administered defined contribution service award programs for volunteer firefighters. 2 NYCRR §§ 154.1 et seq

Department of audit and control: state-administered defined benefit service award programs for volunteer firefighters. 2 NYCRR §§ 155.1 et seq

## **NY CLS Gen Mun § 216-b (2012)**

### **§ 216-b. Continuation of service award programs**

1. (a) In the event that a town establishes a service award program for the volunteer firefighters of a fire company located within a fire protection district and, subsequently, the fire protection district is dissolved and the entire area thereof is included in or added to a fire district established pursuant to article eleven of the town law, and the fire



district neither has established a service award program nor includes the area of any other jurisdiction which has established a service award program, the service award program established by the town shall be continued as provided in this subdivision.

(b) Except as otherwise provided in this subdivision, as of the date of completion of the proceedings described in paragraph (a) of this subdivision or, in the case of a newly established fire district, as of the date of the first organization meeting of the board of fire commissioners, the town shall have no further responsibility for administering or funding the service award program and the fire district shall assume responsibility for those functions. As of that date, the fire district shall succeed the town as the sponsor of the service award program and the board of fire commissioners shall exercise and perform all of the powers and duties of the sponsor of the program under this article and under any agreements or contracts entered into by the town pursuant thereto in furtherance of its powers and duties as sponsor of the program, including but not limited to the program trust agreement and any contracts relating to the custody, control, investment, or disbursement of program assets. The fire district shall be responsible for funding any unfunded liability of the sponsor of the program existing as of the date the fire district succeeds the town as sponsor of the program.

(c) Upon the fire district's succeeding the town as sponsor of the service award program, the town shall retain responsibility for administering the assets of the program until discharged from such responsibility as provided in this subdivision. Except for those records required for the continued administration of program assets, the town shall turn over immediately to the fire district all records maintained by the town as sponsor of the program.

(d) Within sixty days after the date on which the fire district succeeds the town as sponsor of the service award program, the board of fire commissioners of the fire district shall develop a plan for the continued administration of program assets. Subject to the provisions of the program trust agreement and any contracts entered into by the town in furtherance of its powers and duties as sponsor of the program, such plan may provide for the custody, control, transfer, investment, or disbursement of program assets. Such plan, however, shall provide for the replacement of any individual serving in his or her official capacity as a town officer or employee as trustee or in any other position involving the administration of program assets. In developing such plan, the board of fire commissioners may request from the town information concerning the town's administration of program assets, and the town shall provide promptly such information as the board may reasonably request. Upon completion of the plan, the board of fire commissioners shall submit to the supervisor of the town a copy of the plan and a list of actions required to be taken by the town for implementation of the plan, including but not limited to execution of documents and the transfer of assets. Immediately after receiving such plan and list, the supervisor shall cause the actions on the list to be taken. Upon completion of the actions on the list and submission to the board of fire commissioners of all town records relating to the administration of program assets, the town shall be discharged from any further responsibility for administering the assets of the program. In the event that the board of fire commissioners fails to submit to the supervisor such plan and list within sixty days after the date on which the fire district succeeds the town as sponsor of the program, the supervisor may submit to the board of fire commissioners all town records relating to the administration of program assets, and upon such submission the town shall be discharged from any further responsibility for administering the assets of the program, and the board of fire commissioners shall assume responsibility for administering the assets of the program.

(e) The participants in the service award program as of the date that the fire district succeeds the town as sponsor of the program shall retain all point totals, service credit, contributions, and benefits earned prior to that date, irrespective of whether or not a participant has acquired a nonforfeitable right to a percentage of a service award on or before such date; provided, however, that nothing in this subdivision shall be construed as modifying or eliminating any requirement that a participant obtain a nonforfeitable right to a percentage of a service award in accordance with the provisions of the program. Any other active volunteer firefighters of the fire district fire department shall be eligible to participate in the service award program. Such active volunteer firefighters shall earn credit for years of firefighting service commencing with the calendar year in which the fire district succeeds the town as sponsor of the program, based on activities performed on or after the date that the fire district succeeds the town as sponsor.

(f) Except as provided in this subdivision, the service award program shall continue to be governed by the provisions of this article.

2. (a) In the event that either a town establishes a service award program for the volunteer firefighters of a fire company located within a fire protection district or a village establishes a service award program for the volunteer firefighters of the village fire department or a fire district establishes a service award program for the volunteer firefighters of the fire district fire department and, subsequently, the entire area of the fire protection district, village, or fire district is included in or added to a joint fire district established pursuant to article eleven-A of the

town law and article twenty-two-A of the village law, and the joint fire district neither has established a service award program nor includes the area of any other jurisdiction which has established a service award program, the service award program established by the town, village, or fire district shall be continued as provided in this subdivision.

(b) Except as otherwise provided in this subdivision, as of the date of completion of the proceedings described in paragraph (a) of this subdivision or, in the case of a newly established joint fire district, as of the date of the first organization meeting of the board of fire commissioners of the joint fire district, the town, village, or fire district which established the service award program shall have no further responsibility for administering or funding the program and the joint fire district shall assume responsibility for those functions. As of that date, the joint fire district shall succeed the town, village, or fire district as the sponsor of the service award program, and the board of fire commissioners of the joint fire district shall exercise and perform all of the powers and duties of the sponsor of the program under this article and under any agreements entered into by the town, village, or fire district pursuant thereto in furtherance of its powers and duties as sponsor of the program, including but not limited to the program trust agreement and any contracts relating to the custody, control, investment, or disbursement of program assets. The joint fire district shall be responsible for funding any unfunded liability of the sponsor of the program existing as of the date that the joint fire district succeeds the town, village, or fire district as sponsor of the program.

(c) Upon the joint fire district's succeeding the town, village, or fire district which established the service award program as sponsor of the program, the town, village, or fire district shall retain responsibility for administering the assets of the program until discharged from such responsibility as provided in this subdivision. Except for those records required for the continued administration of program assets, the town, village, or fire district shall turn over immediately to the joint fire district all records it maintained as sponsor of the program.

(d) Within sixty days after the date on which the joint fire district succeeds the town, village, or fire district which established the service award program as sponsor of the program, the board of fire commissioners of the joint fire district shall develop a plan for the continued administration of program assets. Subject to the provisions of the program trust agreement and any contracts entered into by the town, village, or fire district in furtherance of its powers and duties as sponsor of the program, such plan may provide for the custody, control, transfer, investment, or disbursement of program assets. Such plan, however, shall provide for the replacement of any individual serving in his or her official capacity as a town, village, or fire district officer or employee as trustee or in any other position involving the administration of program assets. In developing such plan, the board of fire commissioners may request from the town, village, or fire district information concerning the town, village, or fire district's administration of program assets, and the town, village, or fire district shall provide promptly such information as the board may reasonably request. Upon completion of the plan, the board of fire commissioners shall submit to the supervisor of the town, the mayor of the village, or the chairperson of the board of fire commissioners of the fire district a copy of the plan and a list of actions required to be taken by the town, village, or fire district for implementation of the plan, including but not limited to execution of documents and the transfer of assets. Immediately after receiving such plan and list, the supervisor, mayor, or chairperson of the board of fire commissioners shall cause the actions on the list to be taken. Upon completion of the actions on the list and submission to the board of fire commissioners of the joint fire district of all town, village, or fire district records relating to the administration of program assets, the town, village, or fire district shall be discharged from any further responsibility for administering the assets of the program. In the event that the board of fire commissioners of the joint fire district fails to submit such plan and list within sixty days after the date on which the joint fire district succeeds the town, village, or fire district as sponsor of the program, the supervisor, mayor, or chairperson of the board of fire commissioners may submit to the board of fire commissioners of the joint fire district all town, village, or fire district records relating to the administration of program assets and upon such submission the town, village, or fire district shall be discharged from any further responsibility for administering the assets of the program, and the board of fire commissioners of the joint fire district shall assume responsibility for administering the assets of the program.

(e) The participants in the service award program as of the date that the joint fire district succeeds the town, village or fire district which established the service award program as sponsor of the program shall maintain all point totals, service credit, contributions, and benefits earned prior to that date, irrespective of whether or not a participant has acquired a nonforfeitable right to a percentage of a service award on or before such date; provided, however, that nothing in this subdivision shall be construed as modifying or eliminating any requirement that a participant obtain a nonforfeitable right to a percentage of a service award in accordance with the provisions of the program. Any other active volunteer firefighters of the joint fire district fire department shall be eligible to participate in the service award program. Such active volunteer firefighters shall earn credit for years of

firefighting service commencing with the calendar year in which such proceedings are completed, based on activities performed on or after the date of completion of such proceedings.

(f) Except as provided in this subdivision, the service award program shall continue to be governed by the provisions of this article.

#### **HISTORY:**

Add, L 2004, ch 631, § 1, eff April 24, 2005.

#### **NOTES:**

NYCRR References:

Department of audit and control: state-administered defined contribution service award programs for volunteer firefighters. 2 NYCRR §§ 154.1 et seq

Department of audit and control: state-administered defined benefit service award programs for volunteer firefighters. 2 NYCRR §§ 155.1 et seq

#### **NY CLS Gen Mun § 216-c (2012)**

##### **§ 216-c. State administration of service award programs**

1. On or before the fifteenth day of November, two thousand eight and of each succeeding calendar year, the administrator shall determine the amount that each participating program sponsor is required to pay for the state-administered service award programs. The administrator shall submit to the fiscal officer of each political subdivision a statement of the amount so payable. Such amount shall consist of the amount deemed necessary to provide for payment in full of all estimated obligations of the current fiscal year of the fire service awards program and any additional obligations, plus interest on such amount, for fiscal years proceeding the current fiscal year. If, as a result of the amount determined to be paid for any fiscal year, a participating program sponsor over-paid its actual obligation for that year, the amount to be determined by the administrator for the next succeeding November fifteenth shall reflect the amount of the over payment, plus interest, as a reduction in the amount otherwise required to be paid by such participant political subdivision.

2. State-administered service award programs may be centrally administered by the state comptroller, or the comptroller may enter into one or more of the following contracts:

(a) a contract with an administrative service agency or financial organization to serve as program administrator and to perform all or any portion of the functions required to establish and administer such programs including, but not limited to, preparation of a plan document, record keeping, reporting, payment of service awards, and having custody of program moneys and assets;

(b) contracts with one or more financial organizations to invest program moneys; or

(c) a contract with an actuary for the performance of all actuarial calculations required by the program.

If the comptroller contracts for the performance of any function as provided in this subdivision, the comptroller shall be liable only for the exercise of due care in the selection of the administrative service agency, financial organization or actuary performing the function.

3. The state comptroller shall promulgate rules and regulations, as appropriate, for the service award programs. Such rules shall include, but not be limited to, standards for the selection of service providers, the method and timing of the payments required to be made by the sponsor, reporting requirements, matters relating to the preparation of a plan document, application procedures for transfer into the state-administered program, and any other matter relating to the service award programs.

4. (a) The state comptroller, or an administrative service agency or financial organization serving as program administrator, shall prepare and may amend a single plan document setting forth the obligations of sponsors, the rights of the volunteer firefighters, and standards and procedures for the administration of all state-administered service award programs. The plan document and any amendments thereto shall be consistent with the provisions of this article, the rules and regulations promulgated by the comptroller and any amendments thereto. If the plan document or any amendment thereto is prepared by an administrative service agency or financial organization, it shall not take effect until approved by the comptroller.

(b) The program administrator shall cause a summary of the plan document to be provided to each participant within six months from the date that program participation commences. The program administrator shall also cause a summary of any material amendment of the plan document to be provided to each participant within six months of the date the amendment takes effect.

(c) The plan document and the summary of the plan document shall be made available for public inspection and copying.

5. All program assets shall be held in trust for the exclusive purpose of providing service awards to participants and their beneficiaries or for the purpose of defraying the reasonable expenses of the operation and administration of the program. The trust shall be established and may be amended by the state comptroller. The comptroller may designate himself or herself, an administrative service agency, or a financial organization as trustee, and may substitute trustees. If the service award programs and the trust are not tax qualified within the meaning of *sections 401 and 501 of the Internal Revenue Code of 1954* (68A Stat. 3.26 U.S.C. 401 and 501), the trust may provide that assets apportioned to an individual sponsor may be subject to the claims of general creditors, if any, of the sponsor or may contain such other terms and provisions as are necessary to ensure that participation in a service award program does not result in taxable income under any provision of the Internal Revenue Code of 1986, as amended.

6. There is hereby established in the custody of the state comptroller a special fund to be known as the volunteer firefighter service award fund. Such fund shall consist of any money of service award programs held by the comptroller. Moneys may be paid from such fund without an appropriation by law. All payments from such fund shall be made only in accordance with the provisions of this article, the rules and regulations promulgated thereto and the plan document.

7. The moneys held for the sponsor of each service award program shall be accounted for separately. The administrator shall cause a statement of contributions to be provided to sponsors at least once annually.

8. The administrator and every fiduciary of a service award program shall be required to act solely in the interest of the program's participants and beneficiaries. Notwithstanding the provisions of any general or special law restricting the power or duty of the state comptroller to invest moneys belonging to a fund which the comptroller is authorized to invest, a fiduciary may accept, hold, invest in and retain any investment if purchased or retained with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aim.

9. (a) All contracts or agreements with an administrative service agency, financial organization or actuary shall be awarded only after receiving competitive proposals. In addition to other statutory requirements, the state comptroller shall cause to be published in the state register and in the official newspaper or newspapers, if any, or otherwise in an appropriate newspaper designated for such purposes, at least sixty days prior to the date on which the contract or agreement will be awarded and shall request proposals within thirty days of publications.

(b) All contracts and agreements entered into with an administrative service agency, financial organization or actuary shall be in writing, shall not exceed five years in duration, and shall impose no penalties or surrender charges for the transfer of assets or responsibilities on termination of the contract or agreement. Such contracts and agreements shall be available for public inspection and copying.

#### **HISTORY:**

Add, L 2006, ch 714, § 8, eff June 1, 2007 (see 2006 note below).

#### **NOTES:**

Editor's Notes

Laws 2006, ch 714, § 13, eff June 1, 2007, provides as follows:

§ 13. This act shall take effect June 1, 2007, provided, however, that effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date are authorized and directed to be made and completed by the state comptroller on or before such effective date.

NYCRR References:

Department of audit and control: state-administered defined contribution service award programs for volunteer firefighters. 2 NYCRR §§ 154.1 et seq

## NY CLS Gen Mun § 217 (2012)

### § 217. General requirements of a service award program

No volunteer fire department, volunteer fire company, fire district, fire protection district, village, town or city, shall be required under this article to provide service award benefits for its active volunteer firefighters. Any service awards provided to an active volunteer firefighter under this article shall be governed by the provisions of section two hundred eighteen in the case of defined contribution plans, section two hundred nineteen in the case of defined benefit plans and in either case by the provisions of sections two hundred fourteen, two hundred fifteen, two hundred sixteen and two hundred nineteen-a of this article. No service award program may be provided under this article unless the following requirements are met:

(a) An active volunteer firefighter must be eligible to participate in any service award program provided under this article if the active volunteer firefighter has reached the age of eighteen and has completed at least one year of firefighting service. The sponsor of the service award program may impose younger age or shorter length of service requirements for participation in the service award program.

(b) A participant shall have a nonforfeitable right to a percentage of a service award that is not less than the percentage determined under the following table:

Years of Firefighting Service	Nonforfeitable Percentage
Less than 5	0
5 or more	100

Notwithstanding the preceding table, a participant shall have a one hundred percent nonforfeitable right to his service award upon his attainment of the entitlement age under the program. Each sponsor may establish a percentage table that provides for a faster rate of becoming nonforfeitable. Any amounts attributable to forfeiture of a participant's service award shall be used to reduce contributions for other service award program participants and shall not in any case be used to increase benefits for other participants. The preceding shall not preclude amendment of a service award program to provide for an increase in benefits.

(c) A year of firefighting service shall be credited under a service award program for each calendar year after establishment of the program in which an active volunteer firefighter accumulates at least fifty points. Points shall be granted in accordance with a system adopted by the program sponsor. Such system shall provide that points shall be granted for activities designated by the program sponsor, which activities shall be selected from the following:

(i) Training courses -- twenty-five points maximum.

(A) Courses under twenty hours duration -- one point per hour, with a maximum of five points.

(B) Courses of twenty to forty-five hours duration -- one point per hour for each hour over initial twenty hours, with a maximum of ten points.

(C) Courses over forty-five hours to one hundred hours duration -- fifteen points per course.

(D) Courses over one hundred hours duration -- twenty-five points per course.

(ii) Drills--twenty points maximum. One point per drill (minimum two hour drill).

(iii) Sleep-in or stand-by--twenty points maximum.

(A) Sleep-in-one point each full night.

(B) Stand-by--one point each. A stand-by is defined as line of duty activity of the volunteer fire company, lasting for four hours, not falling under one of the other categories.

(iv) Elected or appointed position (see definition)--twenty-five points maximum.

(A) Completion of one year term in an elected or appointed position. If the term of office for a firefighter who has been elected or appointed to a position in a fire company or fire department commences during the month of May,

the participant shall receive credit for the full year notwithstanding the fact that the participant has not completed one year in the elected or appointed position at the end of the calendar year in which he or she was elected or appointed.

(B) An active volunteer firefighter elected to serve as a delegate to a firefighters' convention shall also be eligible to receive one point per meeting.

(v) Attendance at meetings--twenty points maximum. Attendance at any official meetings of the volunteer fire company--one point per meeting.

(vi) Participation in department responses- [fig 1] twenty-five points for responding on the minimum number of calls, as outlined below:

(A) Total number of calls volunteer fire company responds to annually other than emergency rescue and first aid squad calls (ambulance calls)	0	500	1000	1500
	to	to	to	and
	500	1000	1500	up
Minimum number of calls volunteer firefighter must run annually in order to receive twenty-five points credit	10%	7.5%	5%	2.5%
(B) Total number of calls emergency rescue and first aid squad (ambulance)	0	500	1000	1500
	to	to	to	and
	500	1000	1500	up
Minimum number of calls volunteer firefighter must run annually in order to receive twenty-five points credit	10%	7.5%	5%	2.5%

(vii) Miscellaneous activities--maximum fifteen points. Participation in inspections and other activities covered by the volunteer firefighters' benefit law and not otherwise listed--one point per activity.

(viii) In the event that any active volunteer firefighter is either totally and temporarily disabled, or partially and permanently disabled, as certified by the workers' compensation board or other competent authority approved by the sponsor of the service award program, and the disability occurs during the course of service as a volunteer, while actively engaged in providing line of duty services, as defined in subdivision one of section five of the volunteer firefighters' benefit law, the firefighter shall receive five points for each full month of such disability.

(ix) Teaching fire prevention classes--five points maximum. An active volunteer firefighter who at the direction of his company, district or department, and for no remuneration, presents a public education class on fire prevention to a school, not-for-profit corporation, or civic organization organized and existing under the laws of this state or authorized to conduct activities in this state--one point per class.

The program sponsor may designate less than all the activities specified in [fig 1] this subdivision as activities for which points may be earned.

(d) An active volunteer firefighter's service award program may provide for the crediting of years of active firefighting service for periods prior to the establishment of such program to a maximum of five years of active firefighting service per participant but only to the extent authorized pursuant to section two hundred sixteen of this article.

(e) In order to provide credit for service prior to the establishment of the service award program, each sponsor shall review its prior membership rosters to determine the number of years credit for each participant who is entitled to credit. In making the analysis, the standards for active service set forth in subdivision (c) of this section and adopted by the sponsor shall be used. Approval for such prior service shall require certification by the president, secretary and chief of the volunteer fire company. In the event an active volunteer firefighter requests credit for service in more than one volunteer fire company, each such company shall provide a certification for the appropriate number of years.

(f) In computing credit for those active volunteer firefighters who also serve as paid employees within a political subdivision of the state, credit shall not be given for activities performed during the individual's regularly assigned work periods.

(g) An active volunteer firefighter whose name does not appear on the approved certified list or who is denied credit for service prior to the establishment of the service award program shall have the right to appeal within thirty days of posting of the list or within thirty days of denial of past service credit. The appeal shall be in writing and mailed to the clerk or secretary of the governing board of such political subdivision, which shall investigate the appeal. The decision of the authorities in control of each volunteer fire company shall be subject to appropriate judicial review.

(h) An active volunteer firefighter's service award program may designate that benefits thereunder may be paid in the form of a lump sum, a life annuity with or without survivor benefits, period certain annuities, or any other form provided under the program. All forms of benefit payments shall be actuarially equivalent to each other. The sponsor may limit the forms of benefit payment under a service award program or impose conditions concerning the availability of such benefits. Nothing in this subdivision shall require a sponsor of a service award program to purchase annuity contracts from an insurance company.

(i) A participant whose volunteer fire service is interrupted by full-time extended obligatory military service or by a single voluntary enlistment not to exceed four years in the armed forces of the United States shall be considered on military leave. During such period of military leave, the participant shall receive active volunteer service credit of fifty points for each full year, prorated for service of less than a year.

(j) All program assets shall be held in trust for the exclusive purpose of providing benefits to participants and their beneficiaries or for the purpose of defraying the reasonable expenses of the operation and administration of the program. If the service award program and the related trust are not tax qualified within the meaning of *sections 401 and 501 of the Internal Revenue Code of 1954* (68A Stat 3, 26 U.S.C. 401 and 501), the trust referred to in this subdivision may provide that the assets held thereunder may be subject to the claims of general creditors, if any, of the sponsor or may contain such other terms and provisions as are necessary to insure that the participation by an active volunteer firefighter in the service award program does not result in taxable income to such volunteer firefighter under any provision of the Internal Revenue Code of 1986, as amended.

(k) Every fiduciary of a service award program will be required to act solely in the interest of the program's participants and beneficiaries. Subject only to the provisions of the program document, a fiduciary may accept, hold, invest in and retain any investment if purchased or retained in the exercise of the degree of judgment and care, under the circumstances then prevailing, which persons of prudence and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to permanent disposition of their funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.

(l) No service award provided under the program may be assigned or alienated except to provide for the legally obligated support of minor children or spouse.

(m) A participant who is convicted of the crime of arson in any degree as defined in the penal law shall not be eligible to receive benefits from a service award program and shall forfeit any and all rights he or she may have had to past or future benefits pursuant to a service award program.

(n) An active volunteer firefighters' service award program may provide for the crediting of years of active firefighting service for periods after an active volunteer firefighter has reached the entitlement age and is receiving a service award.

(o) In the case of a state-administered service award program, the state comptroller may promulgate rules and regulations prescribing procedures and forms for the compilation and maintenance of records of the points accumulated by each volunteer firefighter. Each fire company participating in the state-administered program shall compile and maintain such records in the manner prescribed.

#### **HISTORY:**

Add, L 1988, ch 775, § 1, eff Sept 1, 1989.

Sub (c), par (i), amd, L 2003, ch 514, § 1, eff Sept 17, 2003.

Sub (c), par (i), subpar (C), amd, L 2003, ch 514, § 1, eff Sept 17, 2003.

Sub (c), par (i), subpar (D), add, L 2003, ch 514, § 1, eff Sept 17, 2003.

Sub (c), par (iv), subpar (A), amd, L 1995, ch 199, § 1, eff Sept 1, 1995.

Sub (c), par (vi), opening par, amd, L 1993, ch 44, § 1, eff May 21, 1993.

The 1993 act deleted at fig 1 "fifteen"

Sub (c), par (vi), subpar (A), amd, L 1993, ch 44, § 1, eff May 21, 1993.

The 1993 act deleted at fig 1 "fifteen"

Sub (c), par (vi), subpar (B), amd, L 1993, ch 44, § 1, eff May 21, 1993.

The 1993 act deleted at fig 1 "fifteen"

Sub (c), par (viii), add, L 1993, ch 573, § 1, eff Jan 1, 1994.

Sub (c), par (ix), add, L 2002, ch 559, § 1, eff Sept 24, 2002.

Sub (c), closing par, amd, L 2004, ch 452, § 7, eff Sept 14, 2004 (see 2004 note below).

The 2004 act deleted at fig 1 "the foregoing list"

Sub (m), add, L 1995, ch 617, § 1, eff Aug 8, 1995.

Sub (n), add, L 2003, ch 647, § 1, eff Oct 7, 2003.

Sub (o), add, L 2006, ch 714, § 9, eff June 1, 2007 (see 2006 note below).

## NOTES:

### Editor's Notes

Laws 2004, ch 452, § 8, eff Sept 14, 2004, provides as follows:

§ 8. This act shall take effect immediately; provided, however, any change or amendment to a service award program made by this act shall only take effect as of the first of January next succeeding completion of the proceedings required for adoption of the change or amendment, and shall only apply prospectively; and provided further that the governing board of any political subdivision with an existing service award program authorized by *section 216 or 216-a of the general municipal law* shall have 180 days from the effective date of this act to notify the state comptroller of the existence of such service award program and whether such service award program is a defined contribution plan or a defined benefit plan.

Laws 2006, ch 714, § 13, eff June 1, 2007, provides as follows:

§ 13. This act shall take effect June 1, 2007, provided, however, that effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date are authorized and directed to be made and completed by the state comptroller on or before such effective date.

### New York References:

Authorization to establish service award programs for volunteer firefighters of political subdivisions of the state and for volunteer firefighters other than of political subdivisions of the state, § 216

Requirements and benefits under a defined contribution plan service award program, § 218

Requirements and benefits under a defined benefit plan service award program, § 219

### NYCRR References:

Department of audit and control: state-administered defined contribution service award programs for volunteer firefighters. 2 NYCRR §§ 154.1 et seq

Department of audit and control: state-administered defined benefit service award programs for volunteer firefighters. 2 NYCRR §§ 155.1 et seq

### Research References & Practice Aids:

27 NY Jur 2d Counties, Towns, and Municipal Corporations §§ 1188, 1189

### Case Notes:



Volunteer firefighters who also serve as paid employees of political subdivision may not earn credit under service award program for responding to fire alarms during their "regularly assigned work periods" (those times during which individual is ordinarily required to be at work under terms and conditions of his or her employment); permitting volunteer firefighter to take time off to respond to fire alarms does not alter periods when, in fact, volunteer ordinarily is expected to be at work. 1993 Op St Compt No. 93-16.

There is no authorization under CLS *Gen Mun* § 217(c)(v) for credit to be granted towards year of firefighting service under service award program for attendance at "meetings" of emergency rescue and first aid squad, fire police squad, or "executive board" of fire company. 1994 Op St Compt No. 94-25.

"Retired" members of fire department may not participate in service award program unless they are subject to being called to duty under department's rules and regulations. 1994 Op St Compt No. 94-33.

Fire district commissioner who is also active volunteer firefighter may not be granted points toward year of firefighting service under length of service award program for attending fire district governing board meetings. 1995 Op St Compt No. 95-9.

Points toward year of firefighting service may not be granted under CLS *Gen Mun* § 217(c)(v) to active volunteer firefighters for attending meetings of committees of fire company. 1995 Op St Compt No. 95-9.

Service award program may not provide for pro rating number of points credited if firefighter participates in less than minimum number of calls set forth in CLS *Gen Mun* § 217(c)(vi). 1995 Op St Compt No. 95-9.

Volunteer firefighter serving disciplinary suspension may not earn points for training courses taken during suspension. 1997 Op St Compt No. 97-13.

Volunteer firefighter in fire district department may not be granted points for training unless training is approved by chief or board of fire commissioners. 1997 Op St Compt No. 97-13.

Members of "auxiliary" of incorporated volunteer fire company located in fire district may not participate in service award program established for members of fire company unless they have been approved as members of fire company and are subject to call for whatever duties may be assigned under rules and regulations of department or company. 1997 Op St Compt No. 97-24.

Assets of service award program for volunteer firefighters must be held in trust. 1999 Op St Compt No. 99-1.

Service award program may provide death benefits only in case of active volunteer firefighter who has nonforfeitable right to service award. 1999 Op St Compt No. 99-1.

Joint fire district may establish service award program for volunteer firefighters of joint fire district fire department, but service award program may not provide prior service credit for activities performed under auspices of village fire department. 2000 Op St Compt No. 2000-18.

When village that has established service award program is included within joint fire district, village lacks authority to transfer its fiscal and administrative responsibilities for program to joint fire district. 2000 Op St Compt No. 2000-18.

Service award program sponsor may not require accumulation of more than 50 points as condition precedent to crediting active volunteer firefighter with year of fire fighting service, sponsor may not require participation in number of calls greater than statutory minimum in order to qualify for 25 points for that activity, and sponsor may not create priorities among activities by conditioning granting of points for one activity on accumulation of points in another category. 2001 Op St Compt No. 2001-2.

When establishing service award program for volunteer firefighters, if program is to provide credit for up to 5 years of firefighting service rendered prior to establishment of program, proposition authorizing establishment of program must state, in addition to certain other information, extent to which prior service credit will be provided; however, there is no requirement that proposition contain statement of maximum service credit that may be turned under program, program's entitlement age, or coverage and amount of any life insurance utilized in program. 2002 Op St Compt No. 2002-1.

Amendments to service award program for volunteer firefighters are subject to mandatory referendum, regardless of effect of amendment on cost of program. 2002 Op St Compt No. 2002-1.

Service award program may provide for participant to earn service credit after attaining program's entitlement age, subject to 40-year maximum provided for in CLS *Gen Mun Law Art 11-A*; to implement such feature, program may allow participant to waive voluntarily right to begin receiving his or her service award on reaching entitlement age

in order to continue to earn credit after entitlement age, but program should not be structured so as to allow participant to begin receiving payment of his or her service award at program's entitlement age and to continue to earn service credit while receiving such payment. 2002 Op St Compt No. 2002-2.

For purpose of earning year of firefighting service under fire district service award program that provides points for participation in department responses, volunteer firefighter must be credited with 25 points for responding to minimum number of calls of emergency rescue and first aid squad, as set forth in CLS *Gen Mun* § 217(c)(vi)(B), and additional 25 points for responding to minimum number of fire company calls other than emergency rescue and first aid squad calls, as set forth in § 217(c)(vi)(A). 2002 Op St Compt No. 02-11.

Maximum benefit that may be provided under defined benefit plan service award program cannot exceed monthly payment for life of \$ 20 for each year of firefighting service credited under such program, subject to maximum of 40 years of service; fire district may not establish defined benefit plan service award program that provides service award equivalent to \$ 40 per month for each year of firefighting service based on no more than 20 years of service. 2003 Op St Compt No. 03-3.

Municipality may define "enrolled member" for purposes of volunteer firefighters and ambulance workers exemption available to members who have served for 5 years and continue to so serve (CLS *RPTL* § 466-g(2), added L 2005 ch 419) as one who is eligible under municipality's length of service award program (LOSAP). 11 Op. Counsel SBRPS No. 82.

## **NY CLS Gen Mun § 217-a (2012)**

### **§ 217-a. Public information website**

1. The comptroller is hereby authorized to make available to the public on its website information about vendors of service award programs, both defined contribution programs and defined benefit programs, for volunteer firefighters. Such information shall include, but need not be limited to:

- (a) categorization by class of all costs, fees and commissions of any type;
- (b) rate of return on investment for one, three, five and ten year periods ending December thirty-first, including gross of all costs and net of all costs;
- (c) length of time the company has been in business;
- (d) information regarding management stability including the length of tenure of board members;
- (e) description of investment structure including its ten largest holdings;
- (f) statement of investment philosophy;
- (g) list of all representatives and their relationship to any program sponsor;
- (h) percentage of investments bought or sold during each year.

2. The comptroller is hereby authorized to develop and distribute to every vendor, not more than sixty days after the effective date of this section, a form that shall be used for the purpose of collecting the information required by subdivision one of this section and any other information the comptroller may deem desirable to accomplish the purposes of this section. Every vendor shall return such forms to the comptroller no later than ninety days after the effective date of this section and annually thereafter, but no later than March first of each year commencing in two thousand eight. The comptroller is hereby authorized to publish the information obtained from such forms and make it available to New York residents on the office of the comptroller website by July first, two thousand eight and annually thereafter.

3. As used in this section, "vendor" shall mean an organization duly authorized to do business in the state and which is qualified to administer and maintain records and accounts of defined benefit and defined contribution plans which meet the requirements for qualification under the internal revenue code and governmental defined benefit and defined contribution plans.

### **HISTORY:**

Add, L 2006, ch 262, § 1, eff Jan 22, 2007 (see 2006 note below).

### **NOTES:**

Editor's Notes

Laws 2006, ch 262, § 2, eff Jan 22, 2007, provides as follows:

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed by the state comptroller on or before such effective date.

NYCRR References:

Department of audit and control: state-administered defined contribution service award programs for volunteer firefighters. 2 NYCRR §§ 154.1 et seq

Department of audit and control: state-administered defined benefit service award programs for volunteer firefighters. 2 NYCRR §§ 155.1 et seq

## **NY CLS Gen Mun § 218 (2012)**

### **§ 218. Requirements and benefits under a defined contribution plan service award program**

(a) An active volunteer firefighter's service award program that is a defined contribution plan shall be subject to minimum and maximum contribution requirements as set forth in subdivision (b) of this section. In determining whether such minimum and maximum contribution requirements have been satisfied, all benefits provided under all service award programs instituted by a sponsor shall be considered as one program.

(b) The sponsor of a defined contribution plan shall contribute to the plan a fixed amount of money, as determined by the sponsor, on behalf of each participant who is credited with a year of service. The minimum and maximum contribution requirements for a defined contribution service award program shall be as follows. The minimum contribution shall be one hundred twenty dollars per year of service. The maximum contribution shall be [fig 1] seven hundred [fig 2] dollars per year of service. The maximum number of years of service for which a participant may receive a contribution shall be forty years. The sponsor shall appropriate annually an amount sufficient to pay the contributions.

(c) The benefit payable to a [fig 1] participant in a defined contribution plan shall be the resulting amount from a defined annual contribution made by the sponsor less necessary administrative costs and shall include interest and/or other earnings resulting from investment of the annual contribution. The governing board of the sponsor may retain an actuary to provide advice with respect to the investment of annual contributions or any other aspect of the program and the cost thereof shall constitute a necessary administrative cost of the program. Benefits shall be available [fig 2] when the participating volunteer firefighter reaches entitlement age or at the time permanent total disability is established.

(d) In the event that any active volunteer firefighter becomes disabled and in the event that the disability prevents the active volunteer firefighter from pursuing such volunteer's normal occupation and if the disability is total and of a permanent nature as certified by the workers' compensation board or other competent authority approved by the sponsor of the service award program, the volunteer firefighter is entitled to receive the benefits described in this section, regardless of age or length of service. Such benefits shall begin on the first day of the first month following the establishment of such disability.

At the option of the sponsor of the service award program, the sponsor may provide an additional disability benefit in the event that any active volunteer firefighter becomes disabled during the course of service as a volunteer while actively engaged in providing a line of duty services, as defined in subdivision one of section five of the volunteer firefighters' benefit law. The additional disability benefit shall be an amount equal to an amount stated in the referendum under which the program was established or amended and payable to the disabled firefighter monthly for life. The plan sponsor shall provide the plan annually with the additional funds necessary to accommodate this additional disability benefit or the sponsor may purchase an annuity or make other provisions to effectuate the additional disability benefit.

(e) A volunteer firefighter's retirement income plan shall provide that, in the event of the death of an active volunteer firefighter who has a right to a nonforfeitable percentage of retirement income pursuant to subdivision (b) of this section, the designated beneficiaries of such active volunteer firefighter (or his estate if no beneficiary is so designated) shall be entitled to receive death benefits under the service award plan. Such benefits shall be equal to the amount of benefits earned by the volunteer firefighter under the plan at the date of death.

At the option of the sponsor of the services award program, if the active volunteer firefighter dies during the course of service as a volunteer while actively engaged in providing line of duty services, as defined in subdivision

one of section five of the volunteer firefighters' benefit law, additional death benefits may be provided by the sponsor. The amount of such death benefit shall be stated in the referendum under which the program was established or amended. In the event of the death of an active volunteer firefighter during the course of service as a volunteer while actively engaged in providing line of duty services, as defined in subdivision one of section five of the volunteer firefighters' benefit law, such death benefit amount shall be paid by the sponsor to the plan for distribution to the beneficiary or the estate if no beneficiary is designated.

(f) In the case of a state-administered service award program, a service award shall be paid only after an application is made to the program administrator and the administrator approves the application.

#### **HISTORY:**

Add, L 1988, ch 775, § 1, eff Sept 1, 1989.

Sub (b), amd, L 2003, ch 648, § 1, eff Oct 7, 2003, L 2004, ch 452, § 1, eff Sept 14, 2004 (see 2004 note below).

The 2004 act deleted at fig 1 "four" and at fig 2 "eighty"

Sub (c), amd, L 2003, ch 648, § 1, eff Oct 7, 2003.

The 2003 act deleted at fig 1 "participating active volunteer firefighter entitled to a benefit under" and at fig 2 "commence"

Sub (f), add, L 2006, ch 714, § 10, eff June 1, 2007 (see 2006 note below).

#### **NOTES:**

##### Editor's Notes

Laws 2004, ch 452, § 8, eff Sept 14, 2004, provides as follows:

§ 8. This act shall take effect immediately; provided, however, any change or amendment to a service award program made by this act shall only take effect as of the first of January next succeeding completion of the proceedings required for adoption of the change or amendment, and shall only apply prospectively; and provided further that the governing board of any political subdivision with an existing service award program authorized by *section 216 or 216-a of the general municipal law* shall have 180 days from the effective date of this act to notify the state comptroller of the existence of such service award program and whether such service award program is a defined contribution plan or a defined benefit plan.

Laws 2006, ch 714, § 13, eff June 1, 2007, provides as follows:

§ 13. This act shall take effect June 1, 2007, provided, however, that effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date are authorized and directed to be made and completed by the state comptroller on or before such effective date.

##### NYCRR References:

Department of audit and control: state-administered defined contribution service award programs for volunteer firefighters. 2 NYCRR §§ 154.1 et seq

Department of audit and control: state-administered defined benefit service award programs for volunteer firefighters. 2 NYCRR §§ 155.1 et seq

##### Research References & Practice Aids:

*27 NY Jur 2d Counties, Towns, and Municipal Corporations* §§ 1188, 1189

##### Case Notes:

Assets of service award program for volunteer firefighters must be held in trust. 1999 Op St Compt No. 99-1.

Service award program may provide death benefits only in case of active volunteer firefighter who has nonforfeitable right to service award. 1999 Op St Compt No. 99-1.

Foreign fire insurance tax monies received by village treasurer may be used to fund length of service award program for volunteer firefighters of village fire department. 2000 Op St Compt No. 2000-6.

Service award program may provide for participant to earn service credit after attaining program's entitlement age, subject to 40-year maximum provided for in CLS Gen Mun Law Art 11-A; to implement such feature, program may allow participant to waive voluntarily right to begin receiving his or her service award on reaching entitlement age in order to continue to earn credit after entitlement age, but program should not be structured so as to allow participant to begin receiving payment of his or her service award at program's entitlement age and to continue to earn service credit while receiving such payment. 2002 Op St Compt No. 2002-2.

## **NY CLS Gen Mun § 219 (2012)**

### **§ 219. Requirements and benefits under a defined benefit plan service award program**

(a) An active volunteer firefighter's service award program that is a defined benefit plan shall be subject to minimum and maximum retirement benefit requirements as set forth in subdivision (b) of this section. In determining whether such minimum and maximum benefit requirements have been satisfied, all benefits provided under all service award programs instituted by a sponsor shall be considered as one program.

(b) The minimum and maximum retirement benefit requirements for a service award program that is a defined benefit plan shall be defined as follows. Each participating active volunteer firefighter shall be entitled to a minimum service award benefit of five dollars per month for each year of firefighting service completed after satisfying the program's eligibility requirement and after establishment of the program. The maximum benefit amount payable to a participating active volunteer firefighter entitled to a benefit shall be determined on the basis of an actuarial valuation. The valuation shall take into account the age, and such other factors as the actuary deems appropriate, of the eligible participating active volunteer firefighters and the amount of available financing available per active covered volunteer firefighter. The maximum service award under a service award program shall be a monthly payment, payable for life, that does not exceed an amount equal to [fig 1] thirty dollars for each year of firefighting service credited under the terms of the program to a maximum of forty years of firefighting service.

(c) No benefit payments may be made under any service award program that is a defined benefit plan until the tenth anniversary of the establishment of the service award program. The foregoing sentence shall not preclude a service award program from providing for additional benefit payments after the tenth anniversary of the establishment of the service award program to reflect the fact that the payment of benefits could not commence until that date.

Notwithstanding the preceding paragraph, if a program sponsor has been authorized pursuant to section two hundred sixteen or two hundred sixteen-a of this article to provide benefits prior to the tenth anniversary of the establishment of the service award program, it may provide for the payment of service awards from the date of establishment of the service award program or from such other date as is set forth in the authorization.

(d) The governing board shall engage the services of an actuary for the purpose of determining the annual amount required to be contributed to a defined benefit service award program, [fig 1] which [fig 2] amount shall be based on the interest and mortality tables or other appropriate assumptions and methods selected by actuary. The sum so determined shall be appropriated annually by the political subdivision. The governing board may also retain an actuary to provide advice with respect to any other aspect of the program.

(e) In the event that any active volunteer firefighter becomes disabled and in the event that the disability prevents the active volunteer firefighter from pursuing such volunteer's normal occupation and if the disability is total and of a permanent nature as certified by the workers' compensation board or other competent authority as approved by the program sponsor, the volunteer firefighter is entitled to receive the benefits described in this section, regardless of age or length of service. Such benefits shall begin on the first day of the first month following the establishment of such disability.

At the option of the sponsor of the service award program, if the active volunteer firefighter becomes disabled during the course of service as a volunteer while actively engaged in providing line of duty services as defined in subdivision one of section five of the volunteer firefighters' benefit law, an additional disability benefit may be authorized. Additional disability benefit shall be equal to the amount of additional benefits that the volunteer firefighter would have been entitled to had he continued to earn years of firefighting service through his entitlement age if the rate of benefits being provided under the service award program at the time of disability continued to be provided through the entitlement age.

(f) A volunteer firefighter's retirement income plan may provide that, in the event of the death of an active volunteer firefighter who has a right to a nonforfeitable percentage of retirement income pursuant to subdivision (b) of this section, the designated beneficiaries of such active volunteer firefighter (or his estate if no beneficiary is

so designated) shall be entitled to receive death benefits under the service award plan. Such death benefits shall be payable in the form of a lump sum amount designated by the sponsor as payable at death or a percentage of the retirement benefits otherwise payable. Such benefits shall be equal to the amount of benefits earned by the volunteer firefighter under the plan at the date of death.

At the option of the sponsor of the service award program, if the active volunteer firefighter dies during the course of service as a volunteer while actively engaged in providing line of duty services, as defined in subdivision one of section five of the volunteer firefighters' benefit law, additional death benefits may be provided.

(g) In the case of a state-administered service award program, a service award shall be paid only after an application is made to the program administrator and the administrator approves the application.

#### **HISTORY:**

Add, L 1988, ch 775, § 1, eff Sept 1, 1989.

Sub (b), amd, L 2004, ch 452, § 2, eff Sept 14, 2004 (see 2004 note below).

The 2004 act deleted at fig 1 "twenty"

Sub (c), closing par, amd, L 1995, ch 550, § 6, eff Aug 8, 1995.

Sub (d), amd, L 2003, ch 648, § 2, eff Oct 7, 2003.

The 2003 act deleted at fig 1 "authorized under the provisions of this article," and at fig 2 "amounts"

Sub (g), add, L 2006, ch 714, § 11, eff June 1, 2007 (see 2006 note below).

#### **NOTES:**

##### Editor's Notes

Laws 2004, ch 452, § 8, eff Sept 14, 2004, provides as follows:

§ 8. This act shall take effect immediately; provided, however, any change or amendment to a service award program made by this act shall only take effect as of the first of January next succeeding completion of the proceedings required for adoption of the change or amendment, and shall only apply prospectively; and provided further that the governing board of any political subdivision with an existing service award program authorized by *section 216 or 216-a of the general municipal law* shall have 180 days from the effective date of this act to notify the state comptroller of the existence of such service award program and whether such service award program is a defined contribution plan or a defined benefit plan.

Laws 2006, ch 714, § 13, eff June 1, 2007, provides as follows:

§ 13. This act shall take effect June 1, 2007, provided, however, that effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date are authorized and directed to be made and completed by the state comptroller on or before such effective date.

##### New York References:

Authorization to establish service award programs for volunteer firefighters of political subdivisions of the state and for volunteer firefighters other than of political subdivisions of the state, § 216

##### Research References & Practice Aids:

*27 NY Jur 2d Counties, Towns, and Municipal Corporations §§ 1188, 1189*

##### Case Notes:

There is no authority for village to transfer its responsibilities in connection with service award program to fire company. 1994 Op St Compt No. 94-32.

Village is required to continue service award program established for village fire department in event that fire department ceases to provide service under contract to area outside village; dissolution of village fire department for which service award program has been established would preclude former members of department from earning service credit under program on basis of activities performed after dissolution. 1994 Op St Compt No. 94-32.

Assets of service award program for volunteer firefighters must be held in trust. 1999 Op St Compt No. 99-1.

Service award program may provide death benefits only in case of active volunteer firefighter who has nonforfeitable right to service award. 1999 Op St Compt No. 99-1.

Foreign fire insurance tax monies received by village treasurer may be used to fund length of service award program for volunteer firefighters of village fire department. 2000 Op St Compt No. 2000-6.

Service award program may provide for participant to earn service credit after attaining program's entitlement age, subject to 40-year maximum provided for in CLS Gen Mun Law Art 11-A; to implement such feature, program may allow participant to waive voluntarily right to begin receiving his or her service award on reaching entitlement age in order to continue to earn credit after entitlement age, but program should not be structured so as to allow participant to begin receiving payment of his or her service award at program's entitlement age and to continue to earn service credit while receiving such payment. 2002 Op St Compt No. 2002-2.

Maximum benefit that may be provided under defined benefit plan service award program cannot exceed monthly payment for life of \$ 20 for each year of firefighting service credited under such program, subject to maximum of 40 years of service; fire district may not establish defined benefit plan service award program that provides service award equivalent to \$ 40 per month for each year of firefighting service based on no more than 20 years of service. 2003 Op St Compt No. 03-3.

## **NY CLS Gen Mun § 219-a (2012)**

### **§ 219-a. Administration, reporting and disclosure**

1. [As amended L 2006, ch 620 and ch 714] The sponsor or the designated program administrator shall provide each active volunteer firefighter who participates in a service award program maintained under this article with a summary of the program's provisions, including the program's provisions relating to the participation requirements, the rate at which a nonforfeitable interest in program benefits increases and the program's service awards formula. This summary shall be provided to each service award program participant within six months from the date the program participation commences. In addition, any material modification to such program provisions shall be communicated in writing to each participant within six months after the later of the date modification is adopted or the date it is effective. [fig 1] The designated program administrator shall cause a statement of contributions to be provided to sponsors at least once annually. [fig 2] A copy of this program, the summary of the program, and documents related to the funding or investment of the assets of the program and of any contracts or agreements with service providers to the program shall be [fig 3] provided to participants annually and a copy shall be [fig 4] made available for inspection or copying by a program participant or beneficiary at the sponsor's main office. The plan document and the summary of the plan document shall be made available for public inspection and copying.

2. (a) This program shall be administered by such political subdivisions in accordance with standards and procedures established by them. Payment shall be made when certified by such political subdivisions; provided, however, that in the case of a state-administered program, the procedures for administration and payment shall be consistent with the rules and regulations governing the state-administered program.

(b) It shall be the responsibility of each participating volunteer fire company to maintain all required records on forms prescribed by the governing board of such political subdivision of the state; provided, however, that in the case of a state-administered program, each participating fire company shall compile and maintain such records in a manner consistent with the rules and regulations governing the state-administered program.

(c) Each volunteer fire company shall furnish to the governing board of such political subdivision a list of all volunteer members, certified under oath, and shall identify those volunteer members who have qualified for credit under the award program for the previous year. Such list shall be submitted annually by March thirty-first. In the case of state-administered plans, such list shall be submitted annually by March thirty-first or otherwise as provided in the rules and regulations governing the state-administered program. Notwithstanding the provisions of this paragraph a volunteer firefighter may request that his name be deleted from said list as a "participant" in said "defined benefit plan" or "defined contribution plan". Such request for deletion shall be in writing and shall remain effective until withdrawn in the same manner.

(d) The governing board of each such political subdivision shall review the list of each volunteer fire company and approve the final annual certification. The approved list of certified members shall then be returned to each company and posted for at least thirty days for review by members.

3. The sponsor or designated program administrator shall obtain an annual audit of its records by an independent certified public accountant or an independent public accountant. Such audit shall examine the program's financial conditions, actuarial assumptions, fiduciary investment and control, and asset allocations, including whether current assets are adequate to fund future liabilities. A copy of the audit shall be presented to the program sponsor and to the state comptroller by such accountant. Copies of the audit shall also be made available for public inspection and copying. The audit must be completed within [fig 1] two hundred seventy days of the program sponsor's fiscal year.

#### **HISTORY:**

Add, L 1988, ch 775, § 1, eff Sept 1, 1989; amd, L 2006, ch 714, § 12, eff June 1, 2007 (see 2006 note below).

Sub 1, amd, L 2006, ch 620, § 1, eff Jan 1, 2007, L 2006, ch 714, § 12, eff June 1, 2007 (see 2006 note below).

The 2006 act (ch 620) added the matter between figs 1 and 2 and 3 and 4

Both 2006 act added the matter in italics

Sub 2, par (a), formerly sub 2, par (b), so designated sub 2, par (a), L 2003, ch 648, § 3, eff Oct 7, 2003; amd, L 2006, ch 714, § 12, eff June 1, 2007 (see 2006 note below).

Former sub 2, par (a), repealed, L 2003, ch 648, § 3, eff Oct 7, 2003.

Sub 2, par (b), formerly sub 2, par (c), so designated sub 2, par (b), L 2003, ch 648, § 3, eff Oct 7, 2003; amd, L 2006, ch 714, § 12, eff June 1, 2007 (see 2006 note below).

Former sub 2, par (b), redesignated sub 2, par (a), L 2003, ch 648, § 3, eff Oct 7, 2003.

Sub 2, par (c), formerly sub 2, par (d), so designated sub 2, par (c), L 2003, ch 648, § 3, eff Oct 7, 2003; amd, L 2006, ch 714, § 12, eff June 1, 2007 (see 2006 note below).

Former sub 2, par (c), redesignated sub 2, par (b), L 2003, ch 648, § 3, eff Oct 7, 2003.

Sub 2, par (d), formerly sub 2, par (e), so designated sub 2, par (d), L 2003, ch 648, § 3, eff Oct 7, 2003.

Former sub 2, par (d), redesignated sub 2, par (c), L 2003, ch 648, § 3, eff Oct 7, 2003.

Sub 2, par (e), redesignated sub 2, par (d), L 2003, ch 648, § 3, eff Oct 7, 2003.

Sub 3, add, L 2006, ch 620, § 2, eff June 30, 2007; amd, L 2008, ch 458, § 1, eff Aug 5, 2008, deemed eff on and after June 30, 2008.

The 2008 act deleted at fig 1 "ninety"

#### **NOTES:**

##### Editor's Notes

Laws 2006, ch 714, § 13, eff June 1, 2007, provides as follows:

§ 13. This act shall take effect June 1, 2007, provided, however, that effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date are authorized and directed to be made and completed by the state comptroller on or before such effective date.

##### NYCRR References:

Department of audit and control: state-administered defined contribution service award programs for volunteer firefighters. 2 NYCRR §§ 154.1 et seq

Department of audit and control: state-administered defined benefit service award programs for volunteer firefighters. 2 NYCRR §§ 155.1 et seq

##### Case Notes:

Foreign fire insurance tax monies received by village treasurer may be used to fund length of service award program for volunteer firefighters of village fire department. 2000 Op St Compt No. 2000-6.



Joint fire district may establish service award program for volunteer firefighters of joint fire district fire department, but service award program may not provide prior service credit for activities performed under auspices of village fire department. 2000 Op St Compt No. 2000-18.

When village that has established service award program is included within joint fire district, village lacks authority to transfer its fiscal and administrative responsibilities for program to joint fire district. 2000 Op St Compt No. 2000-18.

Service award program may provide for participant to earn service credit after attaining program's entitlement age, subject to 40-year maximum provided for in CLS Gen Mun Law Art 11-A; to implement such feature, program may allow participant to waive voluntarily right to begin receiving his or her service award on reaching entitlement age in order to continue to earn credit after entitlement age, but program should not be structured so as to allow participant to begin receiving payment of his or her service award at program's entitlement age and to continue to earn service credit while receiving such payment. 2002 Op St Compt No. 2002-2.

## **ARTICLE 11-AA. DEFINED CONTRIBUTION SERVICE AWARD PROGRAMS FOR VOLUNTEER AMBULANCE WORKERS**

### **NY CLS Gen Mun Article 11-AA Note (2012)**

Gen Mun Article 11-AA Note

#### **HISTORY:**

Add, L 1993, ch 447, § 1, eff July 26, 1993 (see 1993 note below); amd, L 1998, ch 514, § 1, eff July 29, 1998, L 1998, ch 558, § 1, eff Aug 5, 1998.

Article heading amd, L 1998, ch 558, § 1, eff Aug 5, 1998.

Article schedule, amd, L 1998, ch 514, § 1, eff July 29, 1998.

Article schedule, § 219-d, amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "establish" and at fig 2 "for volunteer ambulance workers of political subdivisions of the state and for volunteer ambulance workers other than of political subdivisions of the state"

Article schedule, §§ 219-e, 219-f, 219-g, add, L 1998, ch 514, § 1, eff July 29, 1998.

Article schedule, former §§ 219-e, 219-f, 219-g, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

#### **NOTES:**

Editor's Notes

Laws 1993, ch 447, § 3, eff July 26, 1993, provides as follows:

§ 3. This act shall take effect immediately; provided, however, that the service award program shall not commence prior to the first day of January next succeeding the date on which it shall have become a law.

### **NY CLS Gen Mun § 219-b (2012)**

#### **§ 219-b. Purpose**

It is hereby declared that this article is intended to effectuate the objects and purposes of section eighteen of article one of the constitution and that the relationship between the political subdivision liable for payments of service awards under this article and a volunteer ambulance worker entitled to such payments is that of employer and employee within the meaning of such provision of the constitution. In no event shall the receipt of a service award under the provisions of this article be deemed to constitute membership in any pension or retirement system of the state or of a civil division [fig 1] thereof within the purview of section seven of article five of the constitution.

#### **HISTORY:**

Add, L 1993, ch 447, § 1, eff July 26, 1993 (see 1993 note below); amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "thereon"

#### **NOTES:**

Editor's Notes

Laws 1993, ch 447, § 3, eff July 26, 1993, provides as follows:

§ 3. This act shall take effect immediately; provided, however, that the service award program shall not commence prior to the first day of January next succeeding the date on which it shall have become a law.

### **NY CLS Gen Mun § 219-c (2012)**

#### **§ 219-c. Definitions**

As used in this article:

1. [fig 1] "Ambulance company" shall mean a municipal ambulance service or a voluntary ambulance service, but shall not include an ambulance service organized pursuant to section two hundred nine-b of this chapter.

2. "Defined contribution plan" means any service award program that provides to [fig 1] a participant a benefit as the result of definite and determinable contributions [fig 2] made to the program [fig 3] on behalf of the participant without reference to any income, expense, gains or losses or forfeitures of other participants under the program.
3. "Entitlement age" means the earliest age, except in the case of disability or death, designated by the sponsor at which a participant who has a nonforfeitable right to a service award is entitled to apply for and begin receiving [fig 1] a service award. [fig 2] In no event shall [fig 3] entitlement age [fig 4] be earlier than age fifty-five nor later than [fig 5] age [fig 6] sixty-seven.
- 3-a. "Fiduciary" means any person, including an administrative service agency and a financial organization, exercising discretionary authority or control with respect to the administration of a service award program or the custody, management or disposition of program assets, or any person who renders advice to the program for a fee.
4. "Fund" means the volunteer ambulance service award fund created pursuant to this article.
- 4-a. "Municipal ambulance service" means an ambulance service as defined in subdivision two of section three thousand one of the public health law operated by a municipal corporation or agency thereof, or by an ambulance district, and staffed in whole or in part by volunteer ambulance workers.
5. "Nonforfeitable" means the unconditional and legally enforceable right to receive [fig 1] a service award.
6. "Participant" means a volunteer ambulance worker who [fig 1] satisfies the age and service requirements of subdivision one of section two hundred nineteen-e of this article.
- 6-a. "Political subdivision" means a county, city, town, village, ambulance district, or fire protection district which contracts with an ambulance service which is not organized pursuant to section two hundred nine-b of this chapter.
7. "Service award" means the benefit payable [fig 1] pursuant to a service award program.
8. "Service award program" or "program" means a defined contribution plan established [fig 1] , adopted and maintained under this article to provide service awards for volunteer ambulance workers.
9. "Sponsor" or "sponsoring organization" means [fig 1] a political subdivision which adopts a service award program.
- 9-a. "Voluntary ambulance service" means an ambulance service as defined in subdivision three of section three thousand one of the public health law (i) operating not for pecuniary profit or financial gain, and (ii) no part of the assets or income of which is distributable to, or enures to the benefit of its members, directors or officers except to the extent permitted under article thirty of the public health law.
- 9-b. "Volunteer ambulance worker" means an active volunteer member of an ambulance company as specified on a list regularly maintained by the company for purposes of the volunteer ambulance workers' benefit law.
10. "Year of ambulance service" means a [fig 1] calendar year during which a volunteer ambulance worker [fig 2] accumulates at least fifty points in accordance with the system established pursuant to [fig 3] subdivision three of section two hundred nineteen-e of this article.
11. "Elected or appointed position" means [fig 1] the directors, president, vice president, treasurer [fig 2] , secretary or other corporate officers and line officers of an ambulance company [fig 3] .
12. "Administrator" or "plan administrator" means the state comptroller, [fig 1] or an administrative service agency or financial organization selected by the state comptroller to perform all or a portion of the functions required to administer service award programs.
13. "Administrative service agency" means an organization duly authorized to do business in the state and which is qualified to administer and maintain records and accounts of plans which meet the requirements for qualification under the internal revenue code and governmental plans.
14. "Financial organization" means an organization duly authorized to do business in the state and which is (i) registered as an investment adviser under the Investment Advisers Act of 1940, as such provisions may be amended from time to time; (ii) licensed or chartered by the state [fig 1] department of financial services; (iii) licensed or chartered by the state [fig 2] department of financial services; (iv) chartered by an agency of the federal government; or (v) subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.

## HISTORY:

Add, L 1993, ch 447, § 1, eff July 26, 1993 (see 1993 note below); amd, L 1998, ch 514, § 1, eff July 29, 1998, L 2011, ch 62, § 104 (Part A), eff Oct 3, 2011.

## NOTES:

### Editor's Notes

Laws 1993, ch 447, § 3, eff July 26, 1993, provides as follows:

§ 3. This act shall take effect immediately; provided, however, that the service award program shall not commence prior to the first day of January next succeeding the date on which it shall have become a law.

### Amendment Notes

**2011.** Chapter 62, § 104 (Part A) amended:

Sub 14 at fig 1 by substituting "department of financial services" for "insurance department" and at fig 2 "by substituting "department of financial services" for "banking department".

**1998.** Chapter 514, § 1 amended:

Sub 1 by deleting at fig 1 "The terms "volunteer ambulance worker" and "ambulance company" shall have the meanings defined in section three of the volunteer ambulance workers' benefit law" and adding the matter in italics.

Sub 2 by deleting at fig 1 "eligible volunteer ambulance workers", at fig 2 "under", at fig 3 ", and" and adding the matter in italics.

Sub 3 by deleting at fig 1 "an unreduced", at fig 2 "Except in the case of death or disability, in", at figs 3 and 5 "the", at fig 4 "under a program" and at fig 6 "at which the participant can receive an unreduced benefit under Title II of the Social Security Act (Public Law 74-271 U.S.C. 306 et seq.)" and adding the matter in italics.

By adding sub 3-a.

By adding sub 4-a.

Sub 5 by deleting at fig 1 "benefits attributable to service as a volunteer ambulance worker under the program that will begin at the entitlement age specified in the program" and adding the matter in italics.

Sub 6 by deleting at fig 1 "is eligible for a benefit under a service award program" and adding the matter in italics.

By adding sub 6-a.

Sub 7 by deleting at fig 1 "to a participant in" and adding the matter in italics.

Sub 8 by deleting at fig 1 "or" and adding the matter in italics.

Sub 9 by deleting at fig 1 "any county, city, town, village, or ambulance district" and adding the matter in italics.

By adding sub 9-a.

By adding sub 9-b.

Sub 10 by deleting at fig 1 "twelve month period", at fig 2 "participates in ambulance service and satisfies the requirements established by the sponsoring organization (which shall be applied on a consistent and uniform basis)", at fig 3 "subdivisions (a) and (c)" and adding the matter in italics.

Sub 11 by deleting at fig 1 "line officers, department or company officers and", at fig 2 "and", at fig 3 "or department" and adding the matter in italics.

Sub 12 by deleting at fig 1 "unless he or she in his discretion, selects" and adding the matter in italics.

### Federal References:

The Investment Advisers Act of 1940, cited in statutory text, appears as *15 USCS §§ 80b-1 et seq*

### Case Notes:

Municipality may define "enrolled member" for purposes of volunteer firefighters and ambulance workers exemption available to members who have served for 5 years and continue to so serve (CLS *RPTL § 466-g(2)*),

added L 2005 ch 419) as one who is eligible under municipality's length of service award program (LOSAP). 11 Op. Counsel SBRPS No. 82.

## **NY CLS Gen Mun § 219-d (2012)**

### **§ 219-d. Authorization to [fig 1] adopt service award programs [fig 2]**

1. No political subdivision shall be required to adopt a service award program. Any service award program adopted pursuant to this section shall be governed by the provisions of this article.
2. A political subdivision may adopt a service award program for the volunteer ambulance workers of ambulance companies which are either:
  - (a) a municipal ambulance service of the political subdivision; or
  - (b) a voluntary ambulance service which provides service to the political subdivision under contract with the governing board thereof and has its principal headquarters in the political subdivision.
3. A service award program may be adopted only by resolution of the governing board of a political subdivision receiving the affirmative vote of at least sixty percent of the governing board and the approval of a proposition authorizing the adoption of the program at a referendum of the electors of the political subdivision.
4. The resolution authorizing adoption of a service award program shall state:
  - (a) the name of each volunteer ambulance company having volunteer ambulance workers who are potential participants in the program;
  - (b) the entitlement age under the program;
  - (c) the number of years of ambulance service required to obtain a nonforfeitable right to a service award;
  - (d) the activities for which points shall be granted toward a year of ambulance service;
  - (e) the amount of the contribution to the program to be made by the sponsor on behalf of each participant credited with a year of ambulance service;
  - (f) the extent to which the program provides for contributions for ambulance service rendered by a participant during one or more of the five calendar years immediately preceding the adoption of the program;
  - (g) in the case of a service award program which provides for contributions for ambulance service rendered by a participant during one or more of the five calendar years immediately preceding the adoption of the program, the timing and method of financing such contributions;
  - (h) the date as of which the program shall take effect;
  - (i) in the case of a service award program to take effect on a day other than the first day of January, whether points toward a year of ambulance service shall be granted for activities performed prior to the effective date of the program and on or after the immediately preceding first day of January; and
  - (j) the date on which the proposition authorizing the adoption of the program shall be submitted to referendum.
5. The proposition authorizing adoption of the service award program shall be submitted to referendum not less than thirty days and not more than ninety days after the governing board votes to authorize the adoption of the program. Notice of the referendum shall be published at least once, not less than fourteen days prior to the date of the referendum, in the official newspaper of the political subdivision or, if the political subdivision does not have an official newspaper, in one or more newspapers having general circulation in the political subdivision. The referendum shall be conducted and the cost thereof charged in the same manner as other referenda held by the political subdivision.
6. The proposition [fig 1] shall state:
  - (a) the estimated annual cost of the service award program [fig 1] ;
  - (b) the portion of the estimated annual cost of the program, if any, to be paid by one or more other political subdivisions;
  - (c) the estimated annual cost per [fig 1] participant [fig 2] ;

(d) in the case of a proposition to be voted on at a referendum held on or after January first, nineteen hundred ninety-five, the estimated annual administration fee;

(e) the extent to which the program provides for contributions for ambulance service rendered by a participant during one or more of the five calendar years immediately preceding the adoption of the program and the estimated cost thereof; and

(f) in the case of a service award program to take effect on a day other than the first day of January, whether points toward a year of ambulance service shall be granted for activities performed prior to the effective date of the program and on or after the immediately preceding first day of January.

7. Upon approval of the proposition, the service award program shall be deemed adopted by the political subdivision in accordance with the terms of the resolution adopted by the governing board.

8. (a) Once a service award program has been adopted, participation therein by the sponsor may be terminated [fig 1] , or the amount of the sponsor's contribution to the program may be changed, or the program may be amended to provide for contributions for ambulance service rendered by a participant during one or more of the five calendar years immediately preceding the adoption of the program, by resolution of the governing board of the sponsor receiving the affirmative vote of at least sixty percent of the governing board and the approval of a proposition at a referendum of the electors of the sponsor.

(b) The entitlement age, the number of years of ambulance service required to obtain a nonforfeitable right to a service award, and the activities for which points shall be granted toward a year of ambulance service may be changed by resolution adopted by the affirmative vote of at least sixty percent of the governing board of the sponsor without referendum.

(c) The sponsor's participation in a service award program adopted for the volunteer ambulance workers of one or more ambulance companies described in paragraph (b) of subdivision two of this section shall be suspended to the extent that service credit shall not be granted for activities performed by the volunteer ambulance workers of any such ambulance company during any period in which the company ceases to provide service to the sponsor under contract with the governing board thereof.

#### **HISTORY:**

Add, L 1993, ch 447, § 1, eff July 26, 1993 (see 1993 note below); amd, L 1998, ch 514, § 1, eff July 29, 1998.

Section heading, amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "establish" and at fig 2 "for volunteer ambulance workers of political subdivisions of the state and for volunteer ambulance workers other than of political subdivisions of the state"

Sub 1, add, L 1998, ch 514, § 1, eff July 29, 1998.

Former sub 1, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 2, add, L 1998, ch 514, § 1, eff July 29, 1998.

Former sub 2, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (a), redesignated as sub 6, opening par, pars (a), (c) and (d), L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (b), deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (c), redesignated sub 8, par (a), L 1998, ch 515, § 1, eff July 29, 1998.

Sub 4, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 5, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 6, opening par, formerly part of sub 3, par (a), amd, L 1994, ch 317, § 1, eff July 20, 1994, deemed eff July 26, 1993; so designated sub 6, opening par and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "to be voted on at the referendum prescribed by subdivision one or two of this section"

Sub 6, par (a), formerly part of sub 3, par (a), L 1994, ch 317, § 1, eff July 20, 1994, deemed eff July 26, 1993; so designated sub 6, par (a) and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 a comma

Sub 6, par (b), add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 6, par (c), formerly part of sub 3, par (a), amd, L 1994, ch 317, § 1, eff July 20, 1994, deemed eff July 26, 1993; so designated sub 6, par (c) and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "covered" and at fig 2 "and,"

Sub 6, par (d), formerly part of sub 3, par (a), amd, L 1994, ch 317, § 1, eff July 20, 1994, deemed eff July 26, 1993; so designated sub 6, par (d) and amd, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 6, par (e), add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 6, par (f), add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 7, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 8, par (a), formerly sub 3, par (c), so designated sub 8, par (a) and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "or amended in the same manner as it was adopted in accordance with the provisions of this article by following the procedures set forth in subdivision one or two of this section"

Sub 8, par (b), add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 8, par (c), add, L 1998, ch 514, § 1, eff July 29, 1998.

#### **NOTES:**

##### **Editor's Notes**

Laws 1993, ch 447, § 3, eff July 26, 1993, provides as follows:

§ 3. This act shall take effect immediately; provided, however, that the service award program shall not commence prior to the first day of January next succeeding the date on which it shall have become a law.

#### **NY CLS Gen Mun § 219-e (2012)**

##### **§ 219-e. Participation, vesting and service credit**

1. A volunteer ambulance worker must be eligible to participate in any service award program provided under this article if the volunteer ambulance worker has reached the age of eighteen and has completed at least one year of ambulance service.

2. A participant shall have a nonforfeitable right to a [fig 1] service award [fig 2] upon completing five years of ambulance service, provided, however, that a sponsor may [fig 2] reduce the number of years of ambulance service required to obtain a nonforfeitable right to a service award. Any amounts attributable to forfeiture of a participant's service award shall be used to reduce contributions for other service award program participants and shall not in any case be used to increase benefits for other participants. The preceding shall not preclude amendment of a service award program to provide for an increase in benefits.

3. A year of ambulance service shall be credited under a service award program for each calendar year [fig 1], beginning with the year in which the program is adopted, in which a volunteer ambulance worker accumulates at least fifty points. [fig 2] Except as provided in subdivision five of this section and subdivision eight of section two hundred nineteen-d of this article, points shall be granted for activities performed after the effective date of the program in accordance with a system adopted by the [fig 3] sponsor which shall be applied on a consistent and uniform basis. Such system shall provide that points shall be granted for activities designated by the [fig 4] sponsor, which activities shall be selected from the following:

(a) Training courses-twenty-five points maximum.

(i) Courses under twenty hours duration-one point per hour, with a maximum of five points.

(ii) Courses of twenty to forty-five hours duration-one point per hour for each hour over initial twenty hours, with a maximum of ten points.

(iii) Courses over forty-five hours duration-fifteen points per course.

For purposes of this paragraph, the term "training course" shall mean a course of instruction having a prescribed topic and syllabus. Points for a training course shall be awarded only upon the successful completion of the course and only in the year in which the course is successfully completed.

(b) Drills and seminars - twenty points maximum. One point per minimum two hour drill [fig 1] or seminar. For purposes of this paragraph, the term "drill" shall mean a skills practice or skills training session related to emergency medical service and the term "seminar" shall mean a lecture on a topic relating to the emergency medical service.

(c) Sleep-in or stand-by - twenty points maximum.

(i) Sleep-in - one point each full night.

(ii) Stand-by - one point each. A stand-by is defined as line of duty activity of the volunteer [fig 1] ambulance company, lasting for four hours, not falling under one of the other categories. A service award program may not provide points pursuant to this paragraph if the program provides points for tours of duty pursuant to paragraph (d) of this subdivision.

(d) Tours of duty. A maximum of twenty points may be granted for serving tours of duty at a rate equal to no more than one-sixth of a point per hour served as determined by the sponsor. For purposes of this paragraph, the term "tour of duty" shall mean a line of duty activity, not falling under one of the other paragraphs of this subdivision, involving a period of time scheduled or assigned by an ambulance company during which a volunteer ambulance worker is responsible for providing emergency medical service or general ambulance service, including sleep-ins, stand-bys and backup duty, by reason of being stationed at an event, as part of a rostered duty crew or as otherwise provided by the regular procedures of the ambulance company. A sponsor may also define two or more activities included within the meaning of the term tour of duty and provide for points to be granted for the performance of such activities at different rates, provided, that points for such activities shall not be granted at a rate in excess of one-sixth of a point per hour served and no more than twenty points shall be granted for all such activities. A service award program may not provide points pursuant to this paragraph if the program provides points for sleep-ins or stand-bys pursuant to paragraph (c) of this subdivision.

(e) Elected or appointed position [fig 1] - twenty-five points maximum.

(i) Completion of one year term in an elected or appointed position.

(ii) A volunteer ambulance worker elected to serve as a delegate to an ambulance workers' convention shall also be eligible to receive one point per meeting.

(iii) A volunteer ambulance worker appointed to serve on the New York state emergency medical services council, the state emergency medical advisory committee, a regional emergency medical services council or a regional emergency medical advisory committee, established pursuant to article thirty of the public health law shall also be eligible to receive one point per meeting.

(f) Attendance at meetings - twenty points maximum.

(i) Attendance at any official meetings of the [fig 1] ambulance company - one point per meeting.

(ii) Attendance at official meetings of a standing committee of the ambulance company by a member of the committee -- one point per meeting.

(g) Participation in [fig 1] ambulance company responses - twenty-five points for responding on the minimum number of calls, as outlined below:

	0	500	1000	1500
(A) Total number of calls ambulance company responds to annually	to	to	to	and
	500	1000	1500	over
Minimum number of calls volunteer ambulance worker must run annually in order to receive twenty-five points credit	10%	7.5%	5%	2.5%

A volunteer ambulance worker who is granted points toward a year of ambulance service pursuant to this paragraph may not be granted points toward the same year of ambulance service for alternative participation company responses pursuant to paragraph (h) of this subdivision.



(h) Alternative participation in company responses. A maximum of twenty-five points may be granted for participation in company responses at a rate equal to no more than one-half point per response as determined by the sponsor. A volunteer ambulance worker who is granted points toward a year of ambulance service pursuant to this paragraph may not be granted points toward the same year of ambulance service for participation in company responses pursuant to paragraph (g) of this subdivision.

(i) Miscellaneous activities - maximum fifteen points. Participation in inspections and other activities covered by the volunteer ambulance workers' benefit law and not otherwise listed - one point per activity.

(j) The [fig 1] sponsor may designate less than all the activities specified in [fig 2] this subdivision as activities for which points may be earned.

4. Points toward a year of ambulance service may be granted for activities performed after a participant reaches entitlement age, but shall not be granted for activities performed after a participant applies for a service award.

5. A service award program which is to take effect on a day other than the first day of January may provide for points to be granted toward a year of ambulance service for activities performed prior to the effective date of the program and on or after the immediately preceding first day of January, provided, the proposition authorizing adoption of the program contains a statement authorizing points to be granted for such activities. Points attributable to such activities shall be granted in accordance with the point system adopted by the sponsor pursuant to subdivision three of this section.

6. In computing credit for those volunteer ambulance workers who also serve as paid employees within a political subdivision of the state, credit shall not be given for activities performed during the individual's regularly assigned work periods.

7. A participant whose ambulance service is interrupted by full-time extended obligatory military service or by a single voluntary enlistment not to exceed four years in the armed forces of the United States shall be considered on military leave. During such period of military leave, the participant shall receive [fig 1] fifty points for each full year of military service, prorated for military service of less than a year.

7-a. An active volunteer ambulance worker's service award program may provide for the crediting of years of and points for volunteer ambulance service for periods after an active volunteer ambulance worker has reached the entitlement age and is receiving a service award.

8. The state comptroller may promulgate rules and regulations prescribing procedures and forms for the compilation and maintenance of records of the points accumulated by each volunteer ambulance worker. Each ambulance company shall compile and maintain such records in the manner prescribed.

9. The president, secretary and chief or comparable officers of each ambulance company shall submit to the governing board of the sponsor a list of all volunteer members, certified under oath, which shall identify those volunteer members who have qualified for credit under the award program for the previous year. Such list shall be submitted annually by March thirty-first or otherwise as provided in the rules and regulations of the state comptroller and shall be accompanied by such membership records and records of point accumulations as the governing board may require to substantiate the accuracy of the list. Notwithstanding the provisions of this subdivision a volunteer ambulance worker may request that his name be deleted from said list as a "participant". Such request for deletion shall be in writing and shall remain effective until withdrawn in the same manner.

10. The governing board of the sponsor shall review the list of each ambulance company and may delete the name of any person who was not a volunteer ambulance worker during the preceding calendar year or the name of any volunteer ambulance worker who did not earn fifty points during the preceding calendar year or whose point accumulation has not been adequately documented. Thereafter, the governing board shall approve the list and return a copy of the list to the ambulance company and forward a certified copy of the approved list to the program administrator.

11. Upon receipt of the approved list, the ambulance company shall post the list at its principal headquarters for at least thirty days. A volunteer ambulance worker whose name does not appear on the approved list shall have the right to appeal within thirty days of posting of the list. The appeal shall be in writing and mailed to the clerk or secretary of the governing board of the sponsor, which shall investigate the appeal. The decision of the governing board shall be subject to judicial review pursuant to article seventy-eight of the civil practice law and rules.

12. In the event that a volunteer ambulance worker is either totally and temporarily disabled or partially and permanently disabled as certified by the workers' compensation board or other competent authority approved by the state comptroller, and the disability occurs during the course of service as a volunteer while actively engaged

in providing line-of-duty services as defined in the volunteer ambulance workers benefit law, the volunteer shall be credited with five points for each full month of such disability; provided, however, such volunteer shall cease to be credited with such line of duty disability points after attaining the entitlement age.

#### **HISTORY:**

Add, L 1993, ch 447, § 1, eff July 26, 1993 (see 1993 note below); L 1998, ch 514, § 1, eff July 29, 1998.

Section heading, add, L 1998, ch 514, § 1, eff July 29, 1998.

Former section heading, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Opening par, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 1, formerly sub (a), so designated sub 1, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 2, formerly sub (b), so designated sub 2 and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "percentage of a", at fig 2 "that is not less than the percentage determined under the following table:

Years of Ambulance Service	Nonforfeitable Percentage
Less than 5	0
5 or more	100

Each" and at fig 3 "establish a percentage table that provides for a faster rate of becoming nonforfeitable"

Sub 3, formerly sub (c), so designated sub 3, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, opening par, amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "after establishment of the program", at fig 2 "Points" and at figs 3 and 4 "program"

Sub 3, par (a), formerly sub (c), par (i), so designated sub 3, par (a), L 1998, ch 514, § 1, eff July 1, 1998.

Sub 3, par (a), subpar (i), formerly sub (c), par (i), subpar (A), so designated sub 3, par (a), subpar (i), L 1998, ch 514, § 1, eff July 1, 1998.

Sub 3, par (a), subpar (ii), formerly sub (c), par (i), subpar (B), so designated sub 3, par (a), subpar (ii), L 1998, ch 514, § 1, eff July 1, 1998.

Sub 3, par (a), subpar (iii), formerly sub (c), par (i), subpar (C), so designated sub 3, par (a), subpar (iii), L 1998, ch 514, § 1, eff July 1, 1998.

Sub 3, par (a), closing par, add, L 1998, ch 514, § 1, eff July 1, 1998.

Sub 3, par (b), formerly sub (c), par (ii), so designated sub 3, par (b) and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "(minimum two hour drill)"

Sub 3, par (c), formerly sub (c), par (iii), so designated sub 3, par (c), L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (c), subpar (i), formerly sub (c), par (iii), subpar (A), so designated sub 3, par (c), subpar (i), L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (c), subpar (ii), formerly sub (c), par (iii), subpar (B), so designated sub 3, par (c), subpar (ii) and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "fire or"

Sub 3, par (d), add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (e), formerly sub (c), par (iv), so designated sub 3, par (e) and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "(see definition)"

Sub 3, par (e), subpar (i), formerly sub (c), par (iv), subpar (A), so designated sub 3, par (e), subpar (i), L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (e), subpar (ii), formerly sub (c), par (iv), subpar (B), so designated sub 3, par (e), subpar (ii), L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (e), subpar (iii), added, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (f), opening par, formerly sub (c), par (v), first undesignated par, so designated sub 3, par (f), opening par, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (f), subpar (i), formerly sub (c), par (v), second undesignated par, so designated sub 3, par (f), subpar (i) and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "volunteer fire or"

Sub 3, par (f), subpar (ii), add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (g), formerly sub (c), par (vi), so designated sub 3, par (g), L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (g), opening par, amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "department"

Sub 3, par (g), table, amd, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (g), closing par, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (h), add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (i), formerly sub (c), par (vii), first undesignated par, so designated sub 3, par (i), L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, par (j), formerly sub (c), par (vii), second undesignated par, so designated sub 3, par (j) and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "program" and at fig 2 "the foregoing list"

Sub 4, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 5, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 6, formerly sub (f), so designated sub 6, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 7, formerly sub (h), so designated sub 7 and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "active volunteer service"

Sub 7-a, add, L 2003, ch 647, § 2, eff Oct 7, 2003.

Sub 8, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 9, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 10, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 11, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 12, add, L 2008, ch 261, § 1, eff July 7, 2008.

Sub (a), redesignated sub 1, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (b), redesignated sub 2, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (c), redesignated sub 3, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (c-1), add, L 1994, ch 317, § 2, eff July 20, 1994, deemed eff July 26, 1993; deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (d), deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (e), deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (f), redesignated sub 6, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (g), deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (h), redesignated sub 7, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (i), deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (j), amd, L 1994, ch 317, § 3, eff July 20, 1994, deemed eff July 26, 1993; deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (k), delete, L 1998, ch 514, § 1, eff July 29, 1998.

## **NOTES:**

### **Editor's Notes**

Laws 1993, ch 447, § 3, eff July 26, 1993, provides as follows:

§ 3. This act shall take effect immediately; provided, however, that the service award program shall not commence prior to the first day of January next succeeding the date on which it shall have become a law.

### **Case Notes:**

Municipality may define "enrolled member" for purposes of volunteer firefighters and ambulance workers exemption available to members who have served for 5 years and continue to so serve (CLS *RPTL* § 466-g(2), added L 2005 ch 419) as one who is eligible under municipality's length of service award program (LOSAP). 11 Op. Counsel SBRPS No. 82.

## **NY CLS Gen Mun § 219-f (2012)**

### **§ 219-f. Contributions and benefits**

1. The sponsor of a service award program shall contribute to the program a fixed amount of money, as determined by the sponsor, on behalf of each participant who is credited with a year of ambulance service. The minimum contribution shall be one hundred twenty dollars per year of ambulance service. The maximum contribution shall be [fig 1] seven hundred [fig 2] dollars per year of ambulance service.

2. A service award program may provide for contributions for ambulance service rendered by a participant during one or more of the five calendar years immediately preceding the year in which the program is adopted, but only to the extent authorized pursuant to section two hundred nineteen-d of this article. In order to determine eligibility for such contributions, each ambulance company shall review its prior membership rosters and service records to determine the number of years for which each participant is entitled to a contribution. In making such determination, the point system established pursuant to subdivision three of section two hundred nineteen-e of this article shall be used. The president, secretary and chief or comparable officers of the ambulance company shall submit to the governing board of the sponsor a certified list of participants who are entitled to such contributions and the number of years for which each participant is entitled to a contribution, and such membership and service records as the governing board may require. The list shall be submitted to and approved by the governing board, and posted by the ambulance company, at the same time and in the same manner as provided in subdivisions nine through eleven of section two hundred nineteen-e of this article, and each person named on the list approved by the governing board shall be entitled to the number of contributions indicated thereon. A person whose name does not appear on the list as submitted to or approved by the governing board shall have the administrative and judicial remedies set forth in subdivision eleven of section two hundred nineteen-e of this article.

3. The maximum number of years for which a [fig 1] participant may receive a contribution shall be forty years.

4. [fig 1] A service award shall be the [fig 2] amount resulting from the contributions made by the sponsor on behalf of a participant less necessary administrative costs and shall include interest and/or other earnings resulting from investment of the contributions [fig 3], determined as of the valuation date or dates provided for in the program. Service awards shall be paid in the form of a lump sum, a life annuity with or without survivor benefits, a period certain annuity, or any other form provided under the program, provided, that all forms of payment shall be actuarially equivalent to each other. The program may limit the forms of payment or impose conditions concerning the availability of a form of payment.

5. Except as otherwise provided in this section, a participant shall be entitled to apply for and receive a service award only when the participant has acquired a nonforfeitable right to a service award and has reached entitlement age.

6. In the event that a [fig 1] participant becomes totally and permanently disabled [fig 2] , as certified by the workers' compensation board or other competent authority approved by the administrator [fig 3] , and the disability prevents the participant from pursuing his or her normal occupation, the [fig 4] participant shall be entitled to apply for and receive a service award, regardless of whether the participant has reached entitlement age or [fig 5] has acquired a nonforfeitable right to a service award.

7. [fig 1] In the event of the death of a [fig 2] participant who has [fig 3] acquired a nonforfeitable [fig 4] right to a service award and who has not previously received all or a portion of a service award, the [fig 5] beneficiaries [fig 6] designated by the participant or, if no beneficiaries have been so designated, the participant's estate, shall be entitled to apply for and receive the participant's service award, regardless of whether the participant reached entitlement age before death.

8. A service award shall be paid only after an application is made to the program administrator and the administrator approves the application. In the event that a participant dies after receiving a portion of a service award, the remaining portion, if any, shall be paid in accordance with the terms and conditions of the form of payment selected by the participant prior to death.

9. No service award may be assigned or alienated except to provide for the legally obligated support of minor children or a spouse.

10. Payment of a service award shall not impair any rights of volunteer ambulance workers under the volunteer ambulance workers' benefit law or any other law.

#### **HISTORY:**

Add, L 1993, ch 447, § 1, eff July 26, 1993 (see 1993 note below); amd, L 1998, ch 514, § 1, eff July 29, 1998.

Section heading, add, L 1998, ch 514, § 1, eff July 29, 1998.

Former section heading, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 1, formerly part of sub (b), so designated sub 1 and amd, L 1998, ch 514, § 1, eff July 29, 1998; amd, L 2004, ch 452, § 3, eff Sept 14, 2004 (see 2004 note below).

The 2004 act deleted at fig 1 "four" and at fig 2 "eighty"

Sub 2, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, formerly part of sub (b), so designated sub 3 and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "participating volunteer ambulance worker"

Sub 4, formerly sub (c), so designated sub 4 and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "The benefit payable to a participating volunteer ambulance worker entitled to a benefit", at fig 2 "resulting" and at fig 3 ". Benefits shall be available and commence when the participating volunteer ambulance worker reaches entitlement age or at the time permanent total disability is established"

Sub 5, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 6, formerly sub (d), so designated sub 6 and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "volunteer ambulance worker", at fig 2 "and in the event that the disability prevents the volunteer ambulance worker from pursuing such volunteer's normal occupation and if the disability is total and of a permanent nature", at fig 3 "of the service award program", at fig 4 "volunteer ambulance worker is entitled to receive the benefits described in this section" and at fig 5 "length of service. Such benefits shall begin on the first day of the first month following the establishment of such disability"

Sub 7, formerly sub (e), so designated sub 7 and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "A volunteer ambulance worker's retirement income plan shall provide that, in", at fig 2 "volunteer ambulance worker", at fig 3 "a right to", at fig 4 "percentage of retirement income pursuant to subdivision (b) of this section", at fig 5 "designated" and at fig 6 "of such volunteer ambulance worker (or his estate if no beneficiary is so designated) shall be entitled to receive death benefits under the service award plan. Such benefits shall be equal to the amount of benefits earned by the volunteer ambulance worker under the plan at the date of"

Sub 8, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 9, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 10, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (a), deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (b), redesignated sub 1 and sub 3, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (c), redesignated sub 4, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (d), redesignated sub 6, L 1998, ch 514, § 1, eff July 29, 1998.

Sub (e), redesignated sub 7, L 1998, ch 514, § 1, eff July 29, 1998.

## **NOTES:**

### **Editor's Notes**

Laws 1993, ch 447, § 3, eff July 26, 1993, provides as follows:

§ 3. This act shall take effect immediately; provided, however, that the service award program shall not commence prior to the first day of January next succeeding the date on which it shall have become a law.

Laws 2004, ch 452, § 8, eff Sept 14, 2004, provides as follows:

§ 8. This act shall take effect immediately; provided, however, any change or amendment to a service award program made by this act shall only take effect as of the first of January next succeeding completion of the proceedings required for adoption of the change or amendment, and shall only apply prospectively; and provided further that the governing board of any political subdivision with an existing service award program authorized by *section 216 or 216-a of the general municipal law* shall have 180 days from the effective date of this act to notify the state comptroller of the existence of such service award program and whether such service award program is a defined contribution plan or a defined benefit plan.

### **Case Notes:**

Person may simultaneously participate in, and receive benefits from, service award program for volunteer ambulance workers and State Employees' Retirement System. 1996 Op St Compt No. 96-13.

## **NY CLS Gen Mun § 219-g (2012)**

### **§ 219-g. Funding**

1. The [fig 1] cost of a service award program shall be a charge against the sponsor. The governing board of the sponsor shall appropriate annually an amount equal to the estimated amount due the service award program during the fiscal year for which the appropriation is made. On or before May first, or such date as may be prescribed by rules and regulations promulgated by the state comptroller, the governing board, without prior submission of a claim, shall direct the chief fiscal officer of the sponsor to pay to the program administrator the amount due the program.

2. (a) Before or after a service award program is adopted for the volunteer ambulance workers of an ambulance company which contracts to provide service to one or more political subdivisions other than the prospective or actual sponsor of the program, the governing boards of the sponsor and one or more of such other political subdivisions may enter into agreements to apportion the cost of the program in any equitable manner between the sponsor and such other political subdivisions.

(b) No such agreement shall be entered into by a political subdivision other than the sponsor unless a resolution authorizing the agreement is approved by the affirmative vote of at least sixty percent of the governing board of the political subdivision and a proposition authorizing the agreement or amendment is approved at a referendum of the electors of the political subdivision.

(c) The proposition authorizing the agreement or amendment shall be submitted to referendum not less than thirty days and not more than ninety days after the governing board votes to authorize the agreement or amendment. Notice of the referendum shall be published at least once, not less than fourteen days prior to the date of the referendum, in the official newspaper of the political subdivision or, if the political subdivision does not have an official newspaper, in one or more newspapers having general circulation in the political subdivision.

(d) Any such agreement shall remain in effect until amended or terminated by resolution and submission of a proposition to referendum as provided in paragraphs (b) and (c) of this subdivision, but shall be suspended with respect to any such political subdivision which ceases to contract with the ambulance company or in the event the sponsor ceases to contract with the ambulance company.

(e) The amount to be paid by a political subdivision under any such contract shall be a charge against the political subdivision and shall be paid to the sponsor. The governing board of the sponsor shall apply the amount received under any such contract to reduce the amount that would otherwise be raised for the program from the sponsor.

#### **HISTORY:**

Add, L 1993, ch 447, § 1, eff July 26, 1993 (see 1993 note below); amd, L 1998, ch 514, § 1, eff July 29, 1998.

Section heading, add, L 1998, ch 514, § 1, eff July 29, 1998.

Former section heading, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 1, amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "administrator or sponsor shall provide each volunteer ambulance worker who participates in a service award program maintained under this article with a summary of the program's provisions, including the program's provisions relating to the participation requirements, the rate at which a nonforfeitable interest in program benefits increases and the program's service awards formula. This summary shall be provided to each service award program participant within six months from the date the program participation commences. In addition, any material modification to such program provisions shall be communicated in writing to each participant within six months after the later of the date modification is adopted or the date it is effective. A copy of this program, the summary of the program, and documents related to the funding or investment of the assets of the program and of any contracts or agreements with service providers to the program shall be made available for inspection or copying by a program participant or beneficiary."

Sub 2, add, L 1998, ch 514, § 1, eff July 29, 1998.

Former sub 2, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 4, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

#### **NOTES:**

##### Editor's Notes

Laws 1993, ch 447, § 3, eff July 26, 1993, provides as follows:

§ 3. This act shall take effect immediately; provided, however, that the service award program shall not commence prior to the first day of January next succeeding the date on which it shall have become a law.

##### NYCRR References:

Service award programs for volunteer ambulance workers. 2 NYCRR §§ 150.1 et seq

#### **NY CLS Gen Mun § 219-h (2012)**

##### **§ 219-h. Administration**

1. Service award programs shall be centrally administered by the state comptroller, or the comptroller may enter into one or more of the following contracts:

(a) a contract with an administrative service agency or financial organization to serve as program administrator and to perform all or any portion of the functions required to establish and administer such programs including, but not limited to, preparation of a plan document, record keeping, reporting, payment of service awards, and having custody of program moneys and assets; or

(b) contracts with one or more financial organizations to invest program moneys. If the comptroller contracts for the performance of any function as provided in this subdivision, the comptroller shall be liable only for the exercise of due care in the selection of the administrative service agency or financial organization.

2. The state comptroller shall promulgate rules and regulations, as appropriate, for [fig 1] service award [fig 2] programs. Such rules shall include, but not be limited to, standards for the selection of financial organizations, the method and timing of the payment of contributions to the fund made by the sponsoring organization, the reporting on individual participant accounts, matters relating to the preparation of a plan document and any other matter properly pertaining thereto.

3. (a) The state comptroller, or an administrative service agency or financial organization selected by the comptroller, shall prepare and may amend a single plan document setting forth the obligations of sponsors, the rights of the volunteer ambulance workers, and standards and procedures for the administration of all service award programs. The plan document and any amendments thereto shall be consistent with the provisions of this article, the rules and regulations promulgated by the comptroller and any amendments thereto. If the plan document or any amendment thereto is prepared by an administrative service agency or financial organization, it shall not take effect until approved by the comptroller.

(b) The plan administrator shall cause a summary of the plan document to be provided to each participant within six months from the date that program participation commences. The plan administrator shall also cause a summary of any material amendment of the plan document to be provided to each participant within six months of the date the amendment takes effect.

(c) The plan document and the summary of the plan document shall be made available for public inspection and copying.

4. All program assets shall be held in trust for the exclusive purpose of providing service awards to participants and their beneficiaries or for the purpose of defraying the reasonable expenses of the operation and administration of the program. The trust shall be established and may be amended by the state comptroller. The comptroller may designate him or herself, an administrative service agency or a financial organization as trustee, and may substitute trustees. If the service award programs and the trust are not tax qualified within the meaning of *sections 401 and 501 of the Internal Revenue Code of 1954* (68A Stat. 3.26 U.S.C. 401 and 501), the trust may provide that assets apportioned to an individual sponsor may be subject to the claims of general creditors, if any, of the sponsor or may contain such other terms and provisions as are necessary to ensure that participation in a service award program does not result in taxable income under any provision of the Internal Revenue Code of 1986, as amended.

5. There is hereby established in the custody of the state comptroller a special fund to be known as the volunteer ambulance service award fund. Such fund shall consist of any money of service award programs held by the comptroller. Moneys may be paid from such fund without an appropriation by law. All payments from such fund shall be made only in accordance with the provisions of this article, the rules and regulations promulgated thereto and the plan document.

6. The moneys held for the participants of each service award program shall be accounted for separately. The administrator shall cause a statement of contributions to be provided to sponsors and a statement of account balances to be provided to participants at least once annually.

7. The administrator and every fiduciary of a service award program shall be required to act solely in the interest of the program's participants and beneficiaries. Notwithstanding the provisions of any general or special law restricting the power or duty of the state comptroller to invest moneys belonging to a fund which the comptroller is authorized to invest, a fiduciary may accept, hold, invest in and retain any investment if purchased or retained with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aim.

8. (a) [fig 1] All contracts or agreements with an administrative service agency or financial organization shall be awarded only after receiving competitive proposals. In addition to other statutory requirements, the state comptroller shall cause to be published in the state register and in the official newspaper or newspapers, if any, or otherwise in an appropriate newspaper designated for such purposes, at least sixty days prior to the date on which the contract or agreement will be awarded and shall request proposals within thirty days of [fig 2] publication.

(b) All contracts and agreements entered into with an administrative service agency or a financial organization shall be in writing, shall not exceed five years in duration, and shall impose no penalties or surrender charges for the transfer of assets or responsibilities on termination of the contract or agreement such contracts and agreements shall be available for public inspection and copying.



## **HISTORY:**

Add, L 1993, ch 447, § 1, eff July 26, 1993 (see 1993 note below); amd, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 1, add, L 1998, ch 514, § 1, eff July 29, 1998.

Former sub 1, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 2, formerly sub 3, so designated sub 2 and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "the" and at fig 2 "program"

Former sub 2, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 3, add, L 1998, ch 514, § 1, eff July 29, 1998.

Former sub 3, redesignated sub 2, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 4, add, L 1998, ch 514, § 1, eff July 29, 1998.

Former sub 4, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 5, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 5, opening par and par (a), deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 5, par (b), redesignated sub 8, par (a), L 1998, ch 514, § 1, eff July 29, 1998.

Sub 5, par (c), redesignated sub 8, par (b), L 1998, ch 514, § 1, eff July 29, 1998.

Sub 6, add, L 1998, ch 514, § 1, eff July 29, 1998.

Former sub 6, deleted, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 7, add, L 1998, ch 514, § 1, eff July 29, 1998.

Sub 8, par (a), formerly sub 5, par (b), so designated sub 8, par (a) and amd, L 1998, ch 514, § 1, eff July 29, 1998.

The 1998 act deleted at fig 1 "All such" and at fig 2 "publications"

Sub 8, par (b), formerly sub 5, par (c), so designated sub 8, par (b) and amd, L 1998, ch 514, § 1, eff July 29, 1998.

## **NOTES:**

### Editor's Notes

Laws 1993, ch 447, § 3, eff July 26, 1993, provides as follows:

§ 3. This act shall take effect immediately; provided, however, that the service award program shall not commence prior to the first day of January next succeeding the date on which it shall have become a law.

### NYCRR References:

Service award programs for volunteer ambulance workers. 2 NYCRR §§ 150.1 et seq

Department of audit and control: service award programs for volunteer ambulance workers. 2 NYCRR Part 150

## **NY CLS Gen Mun § 219-i (2012)**

### **§ 219-i. Conversion to defined benefit plan**

The sponsor of a service award program adopted pursuant to this article may convert such program into a defined benefit plan authorized by article eleven-AAA of this chapter by adopting a defined benefit service award program in accordance with the procedures set forth in section two hundred nineteen-l of this chapter. Upon conversion to a defined benefit plan, a service award program adopted pursuant to this article which provides contributions for years of ambulance service rendered by a participant during the five calendar years immediately preceding the year in which the program is adopted need not provide credit for years of ambulance service rendered prior to the adoption of the program. Upon the conversion of a service award program, the program shall be governed by the provisions of article eleven-AAA of this chapter as if the program was originally adopted pursuant to such article eleven-AAA, provided, that (1) conversion of a service award program shall not affect the

number of years of ambulance service earned by a volunteer ambulance worker or a participant's status as having a nonforfeitable right to a service award or the amount of a service award paid in whole or in part prior to the conversion, and (2) upon conversion of a service award program adopted pursuant to this article which provides contributions for years of ambulance service rendered by a participant during the five calendar years immediately preceding the year in which the program is adopted, if the converted program provides for credit for years of ambulance service rendered by a participant during the five calendar years immediately preceding the year in which the program is adopted, if the converted program provides for credit for years of ambulance service rendered during the five calendar years immediately preceding the adoption of the program, such five year period shall be measured from the date of adoption of the program pursuant to this article. The comptroller may promulgate rules and regulations relating to such conversions including, but not limited to, the disposition of assets and the time and manner of making any additional payments required to fund benefits attributable to years of ambulance service earned prior to the conversion over a period not to exceed five years.

**HISTORY:**

Add, L 1998, ch 558, § 2, eff Aug 5, 1998.

## **ARTICLE 11-AAA. DEFINED BENEFIT SERVICE AWARD PROGRAM FOR VOLUNTEER AMBULANCE WORKERS**

### **NY CLS Gen Mun Article 11-AAA Note (2012)**

Gen Mun Article 11-AAA Note

#### **HISTORY:**

Add, L 1998, ch 558, § 3, eff Aug 5, 1998 (see 1998 note below).

#### **NOTES:**

Editor's Notes

Laws 1998, ch 558, § 7, eff Aug 5, 1998, provides as follows:

§ 7. This act shall take effect immediately, provided, that no political subdivision shall adopt a defined benefit service award program for volunteer ambulance workers during the nine month period immediately succeeding the date on which this act shall become a law.

### **NY CLS Gen Mun § 219-j (2012)**

#### **§ 219-j. Purpose**

It is hereby declared that this article is intended to effectuate the objects and purposes of section eighteen of article one of the constitution and that the relationship between the political subdivision liable for payments of service awards under this article and a volunteer ambulance worker entitled to such payments is that of employer and employee within the meaning of such provision of the constitution. In no event shall the receipt of a service award under the provisions of this article be deemed to constitute membership in any pension or retirement system of the state or of a civil division thereof within the purview of section seven of article five of the constitution.

**HISTORY:** Add, L 1998, ch 558, § 3, eff Aug 5, 1998.

### **NY CLS Gen Mun § 219-k (2012)**

#### **§ 219-k. Definitions**

As used in this article:

1. "Ambulance company" shall mean a municipal ambulance service or a voluntary ambulance service, but shall not include an ambulance service organized pursuant to section two hundred nine-b of this chapter.
2. "Defined benefit plan" means any service award program that provides to a participant a benefit that is definitely determinable under the program without reference to the amount contributed to the program on the participant's behalf or to any income, expense, gains or losses or forfeitures of other participants under the program.
3. "Entitlement age" means age sixty-five and, except in the case of disability or death, shall be the earliest age at which a participant who has a nonforfeitable right to a service award is entitled to apply for and begin receiving a service award.
4. "Fiduciary" means any person, including an administrative service agency and a financial organization, exercising discretionary authority or control with respect to the administration of a service award program or the custody, management or disposition of program assets, or any person who renders advice to the program for a fee.
5. "Fund" means the volunteer ambulance defined benefit service award fund created pursuant to this article.
6. "Municipal ambulance service" means an ambulance service as defined in subdivision two of section three thousand one of the public health law operated by a municipal corporation or agency thereof, or by an ambulance district, and staffed in whole or in part by volunteer ambulance workers.
7. "Nonforfeitable" means the unconditional and legally enforceable right to receive a service award.
8. "Participant" means a volunteer ambulance worker who satisfies the age and service requirements of subdivision one of section two hundred nineteen-m of this article.

9. "Political subdivision" means a county, city, town, village, ambulance district, or fire protection district which contracts with an ambulance service which is not organized pursuant to section two hundred nine-b of this chapter.

10. "Service award" means the benefit payable pursuant to a service award program.

11. "Service award program" or "program" means a defined benefit plan established, adopted and maintained under this article to provide service awards for volunteer ambulance workers.

12. "Sponsor" or "sponsoring organization" means a political subdivision which adopts a service award program.

13. "Voluntary ambulance service" means an ambulance service as defined in subdivision two of section three thousand one of the public health law (a) operating not for pecuniary profit or financial gain, and (b) no part of the assets or income of which is distributable to, or enures to the benefit of its members, directors or officers except to the extent permitted under article thirty of the public health law.

14. "Volunteer ambulance worker" means an active volunteer member of an ambulance company as specified on a list regularly maintained by the company for purposes of the volunteer ambulance workers' benefit law.

15. "Year of ambulance service" means a calendar year during which a volunteer ambulance worker accumulates at least fifty points in accordance with the system established pursuant to subdivision three of section two hundred nineteen-m of this article.

16. "Elected or appointed position" means the directors, president, vice president, treasurer, secretary, other corporate officers and line officers of an ambulance company.

17. "Administrator" or "plan administrator" means the state comptroller, or an administrative service agency or financial organization selected by the state comptroller to administer service award programs.

18. "Administrative service agency" means an organization duly authorized to do business in the state and which is qualified to administer and maintain records and accounts of plans which meet the requirements for qualification under the internal revenue code and governmental plans.

19. "Financial organization" means an organization duly authorized to do business in the state which is (a) registered as an investment adviser under the Investment Advisers Act of 1940, as such provisions may be amended from time to time; (b) licensed or chartered by the state [fig 1] department of financial services; (c) licensed or chartered by the state [fig 2] department of financial services; (d) chartered by an agency of the federal government; or (e) subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.

#### **HISTORY:**

Add, L 1998, ch 558, § 3, eff Aug 5, 1998; amd, L 2011, ch 62, § 104 (Part A), eff Oct 3, 2011.

#### **NOTES:**

##### **Amendment Notes**

**2011.** Chapter 62, § 104 (Part A) amended:

Sub 19 at fig 1 by substituting "department of financial services" for "insurance department" and at fig 2 "by substituting "department of financial services" for "banking department".

##### **Federal References:**

The Investment Advisers Act of 1940, cited in statutory text, appears as *15 USCS §§ 80b-1 et seq*

#### **NY CLS Gen Mun § 219-I (2012)**

##### **§ 219-I. Authorization to adopt service award programs**

1. No political subdivision shall be required to adopt a service award program. Any service award program adopted pursuant to this section shall be governed by the provisions of this article.

2. A political subdivision may adopt a service award program for the volunteer ambulance workers of ambulance companies which are either:

(a) a municipal ambulance service of the political subdivision; or

(b) a voluntary ambulance service which provides service to the political subdivision under contract with the governing board thereof and has its principal headquarters in the political subdivision.

3. The governing board of a political subdivision which intends to adopt a service award program shall engage the services of the program actuary designated by the comptroller for the purpose of determining the estimated annual cost of the program. The program actuary shall determine estimated annual cost of the program on the basis of an interest rate, mortality tables and other appropriate assumptions and methods selected by the actuary. The cost of obtaining such estimate shall be a charge against the political subdivision, provided, that if the political subdivision is an ambulance district or a fire protection district, the town in which the district is located may temporarily advance moneys from its general fund to pay for the services of the actuary and the district shall reimburse the town with interest from moneys raised for that purpose in the district's next succeeding fiscal year.

4. Following such determination of the estimated annual cost of a service award program, the program may be adopted only by resolution of the governing board of a political subdivision receiving the affirmative vote of at least sixty percent of the governing board and the approval of a proposition authorizing the adoption of the program at a referendum of the electors of the political subdivision.

5. The resolution authorizing adoption of a service award program shall state:

(a) the name of each volunteer ambulance company having volunteer ambulance workers who are potential participants in the program;

(b) the activities for which points shall be granted toward a year of ambulance service;

(c) the amount of the benefit provided under the program;

(d) whether the program provides credit for years of ambulance service rendered by a participant during the five calendar years immediately preceding the adoption of the program;

(e) in the case of a service award program which provides credit for years of ambulance service rendered by a participant during the five calendar years immediately preceding the adoption of the program, the timing and method of financing the cost of providing such credit;

(f) the date as of which the program shall take effect;

(g) in the case of a service award program to take effect on a day other than the first day of January, whether points toward a year of ambulance service shall be granted for activities performed prior to the effective date of the program and on or after the immediately preceding first day of January; and

(h) the date on which the proposition authorizing the adoption of the program shall be submitted to referendum.

6. The proposition authorizing adoption of the service award program shall be submitted to referendum not less than thirty days and not more than ninety days after the governing board votes to authorize the adoption of the program. Notice of the referendum shall be published at least once, not less than fourteen days prior to the date of the referendum, in the official newspaper of the political subdivision or, if the political subdivision does not have an official newspaper, in one or more newspapers having general circulation in the political subdivision. The referendum shall be conducted and the cost thereof charged in the same manner as other referenda held by the political subdivision.

7. The proposition shall state:

(a) the estimated annual cost of the service award program;

(b) the portion of the estimated annual cost of the program, if any, to be paid by one or more other political subdivisions;

(c) the estimated annual cost per participant;

(d) the estimated annual administration fee;

(e) whether the program provides credit for years of ambulance service rendered by a participant during the five calendar years immediately preceding the adoption of the program and the estimated cost of providing such credit; and

(f) in the case of a service award program to take effect on a day other than the first day of January, whether points toward a year of ambulance service shall be granted for activities performed prior to the effective date of the program and on or after the immediately preceding first day of January.

8. Upon approval of the proposition, the service award program shall be deemed adopted by the political subdivision in accordance with the terms of the resolution adopted by the governing board.

9. (a) Once a service award program has been adopted, participation therein by the sponsor may be terminated, or the benefits under the program may be changed, or the program may be amended to provide credit for years of ambulance service rendered by a participant during the five calendar years immediately preceding the adoption of the program, by resolution of the governing board of the sponsor receiving the affirmative vote of at least sixty percent of the governing board and the approval of a proposition at a referendum of the electors of the sponsor.

(b) The activities for which points shall be granted toward a year of ambulance service may be changed by resolution adopted by the affirmative vote of at least sixty percent of the governing board of the sponsor without referendum.

(c) The sponsor's participation in a service award program adopted for the volunteer ambulance workers of one or more ambulance companies described in paragraph (b) of subdivision two of this section shall be suspended to the extent that service credit shall not be granted for activities performed by the volunteer ambulance workers of any such ambulance company during any period in which the company ceases to provide service to the sponsor under contract with the governing board thereof.

#### **HISTORY:**

Add, L 1998, ch 558, § 3, eff Aug 5, 1998.

#### **NOTES:**

NYCRR References:

Department of audit and control: defined benefit service awards for volunteer ambulance programs. 2 *NYCRR Part 152*

#### **NY CLS Gen Mun § 219-m (2012)**

##### **§ 219-m. Participation, vesting and service credit**

1. A volunteer ambulance worker must be eligible to participate in any service award program provided under this article if the volunteer ambulance worker has reached the age of eighteen and has completed at least one year of ambulance service.

2. A participant shall have a nonforfeitable right to a service award upon completing five years of ambulance service. Any amounts attributable to forfeiture of a participant's service award shall be used to reduce contributions for all other service award program participants and shall not in any case be used to increase benefits for any other participants. The provisions of this subdivision shall not preclude amendment of a service award program to provide for an increase in benefits.

3. A year of ambulance service shall be credited under a service award program for each calendar year, beginning with the year in which the program is adopted, in which a volunteer ambulance worker accumulates at least fifty points. Except as provided in subdivision five of this section and subdivision eight of section two hundred nineteen-l of this article, points shall be granted for activities performed after the effective date of the program in accordance with a system adopted by the sponsor which shall be applied on a consistent and uniform basis. Such system shall provide that points shall be granted for activities designated by the sponsor, which activities shall be selected from the following:

(a) Training courses -- twenty-five points maximum.

(i) Courses under twenty hours duration -- one point per hour, with a maximum of five points.

(ii) Courses of twenty to forty-five hours duration -- one point per hour for each hour over initial twenty hours, with a maximum of ten points.

(iii) Courses over forty-five hours duration -- fifteen points per course.

For purposes of this paragraph, the term "training course" shall mean a course of instruction having a prescribed topic and syllabus. Points for a training course shall be awarded only upon the successful completion of the course and only in the year in which the course is successfully completed.

(b) Drills and seminars -- twenty points maximum. One point per minimum two hour drill or seminar. For purposes of this paragraph, the term "drill" shall mean a skills practice or skills training session related to emergency medical service and the term "seminar" shall mean a lecture on a topic relating to the emergency medical service.

(c) Sleep-in or stand-by -- twenty points maximum.

(i) Sleep-in -- one point each full night.

(ii) Stand-by -- one point each. A stand-by is defined as line of duty activity of the volunteer ambulance company, lasting for four hours, not falling under one of the other categories. A service award program may not provide points pursuant to this paragraph if the program provides points for tours of duty pursuant to paragraph (d) of this subdivision.

(d) Tours of duty. A maximum of twenty points may be granted serving tours of duty at a rate equal to no more than one-sixth of a point per hour served as determined by the sponsor. For purposes of this paragraph, the term "tour of duty" shall mean a line of duty activity, not falling under one of the other paragraphs of this subdivision, involving a period of time scheduled or assigned by an ambulance company during which a volunteer ambulance worker is responsible for providing emergency medical service or general ambulance service, including sleep-ins, stand-bys and backup duty, by reason of being stationed at an event, as part of a rostered duty crew or as otherwise provided by the regular procedures of the ambulance company. A sponsor may also define two or more activities included within the meaning of the term tour of duty and provide for points to be granted for the performance of such activities at different rates, provided, that points for such activities shall not be granted at a rate in excess of one-sixth of a point per hour served and no more than twenty points shall be granted for all such activities. A service award program may not provide points pursuant to this paragraph if the program provides points for sleep-ins or stand-bys pursuant to paragraph (c) of this subdivision.

(e) Elected or appointed position, as defined in subdivision sixteen of section two hundred nineteen-k of this article -- twenty-five points maximum.

(i) Completion of one year term in an elected or appointed position.

(ii) A volunteer ambulance worker elected to serve as a delegate to an ambulance workers' convention shall also be eligible to receive one point per meeting.

(iii) A volunteer ambulance worker appointed to serve on the New York state emergency medical services council, the state emergency medical advisory committee, a regional emergency medical services council or a regional emergency medical advisory committee, established pursuant to article thirty of the public health law shall also be eligible to receive one point per meeting.

(f) Attendance at meetings -- twenty points maximum.

(i) Attendance at any official meetings of the ambulance company -- one point per meeting.

(ii) Attendance at official meetings of a standing committee of the ambulance company by a member of the committee -- one point per meeting.

(g) Participation in ambulance company responses -- twenty-five points for responding on the minimum number of calls, as outlined below:

	0	500	1000	1500
(A) Total number of calls ambulance company responds to annually	to	to	to	and
	500	1000	1500	over
Minimum number of calls volunteer ambulance worker must run annually in order to receive twenty-five points credit	10%	7.5%	5%	2.5%

A volunteer ambulance worker who is granted points toward a year of ambulance service pursuant to this paragraph may not be granted points toward the same year of ambulance service for alternative participation company responses pursuant to paragraph (h) of this subdivision.

(h) Alternative participation in company responses. A maximum of twenty-five points may be granted for participation in company responses at a rate equal to no more than one-half point per response as determined by the sponsor. A volunteer ambulance worker who is granted points toward a year of ambulance service pursuant to

this paragraph may not be granted points toward the same year of ambulance service for participation in company responses pursuant to paragraph (g) of this subdivision.

(i) Miscellaneous activities -- maximum fifteen points. Participation in inspections and other activities covered by the volunteer ambulance workers' benefit law and not otherwise listed -- one point per activity.

(j) Activities; designation. The sponsor may designate less than all the activities specified in this subdivision as activities for which points may be earned.

4. Points toward a year of ambulance service may be granted for activities performed after a participant reaches entitlement age, but shall not be granted for activities performed after a participant applies for a service award. The maximum number of years for which a participant may receive credit for a year of ambulance service shall be forty years.

5. A service award program which is to take effect on a day other than the first day of January may provide for points to be granted toward a year of ambulance service for activities performed prior to the effective date of the program and on or after the immediately preceding first day of January, provided, the proposition authorizing adoption of the program contains a statement authorizing points to be granted for such activities. Points attributable to such activities shall be granted in accordance with the point system adopted by the sponsor pursuant to subdivision three of this section.

6. In computing credit for those volunteer ambulance workers who also serve as paid employees within a political subdivision of the state, credit shall not be given for activities performed during the individual's regularly assigned work periods.

7. A participant whose ambulance service is interrupted by full-time extended obligatory military service or by a single voluntary enlistment not to exceed four years in the armed forces of the United States shall be considered on military leave. During such period of military leave, the participant shall receive fifty points for each full year of military service, prorated for military service of less than a year.

7-a. An active volunteer ambulance worker's service award program may provide for the crediting of years of and points for volunteer ambulance service for periods after an active volunteer ambulance worker has reached the entitlement age and is receiving a service award.

8. The state comptroller may promulgate rules and regulations prescribing procedures and forms for the compilation and maintenance of records of the points accumulated by each volunteer ambulance worker. Each ambulance company shall compile and maintain such records in the manner prescribed.

9. The president, secretary and chief or comparable officers of each ambulance company shall submit to the governing board of the sponsor a list of all volunteer members, certified under oath, which shall identify those volunteer members who have qualified for credit under the award program for the previous year. Such list shall be submitted annually by March thirty-first or otherwise as provided in the rules and regulations of the state comptroller and shall be accompanied by such membership records and records of point accumulations as the governing board may require to substantiate the accuracy of the list. Notwithstanding the provisions of this subdivision a volunteer ambulance worker may request that his name be deleted from said list as a "participant". Such request for deletion shall be in writing and shall remain effective until withdrawn in the same manner.

10. The governing board of the sponsor shall review the list of each ambulance company and may delete the name of any person who was not a volunteer ambulance worker during the preceding calendar year or the name of any volunteer ambulance worker who did not earn fifty points during the preceding calendar year or whose point accumulation has not been adequately documented. Thereafter, the governing board shall approve the list and return a copy of the list to the ambulance company and forward a certified copy of the approved list to the program administrator.

11. Upon receipt of the approved list, the ambulance company shall post the list at its principal headquarters for at least thirty days. A volunteer ambulance worker whose name does not appear on the approved list shall have the right to appeal within thirty days of posting of the list. The appeal shall be in writing and mailed to the clerk or secretary of the governing board of the sponsor, which shall investigate the appeal. The decision of the governing board shall be subject to judicial review pursuant to article seventy-eight of the civil practice law and rules.

12. A service award program may provide credit for years of ambulance service rendered by a participant during the five calendar years immediately preceding the year in which the program is adopted, but only if authorized pursuant to section two hundred nineteen-I of this article. In order to determine eligibility for such credit, each ambulance company shall review its prior membership rosters and service records to determine the number of



years for which each participant is entitled to a contribution. In making such determination, the point system established pursuant to subdivision three of this section shall be used. The president, secretary and chief or comparable officers of the ambulance company shall submit to the governing board of the sponsor a certified list of participants who are entitled to such credit and the number of years for which each participant is entitled to such credit, and such membership and service records as the governing board may require. The list shall be submitted to and approved by the governing board, and posted by the ambulance company, at the same time and in the same manner as provided in subdivisions nine through eleven of this section, and each person named on the list approved by the governing board shall be entitled to the credit indicated thereon. A person whose name does not appear on the list as submitted to or approved by the governing board shall have the administrative and judicial remedies set forth in subdivision eleven of this section.

13. In the event that a volunteer ambulance worker is either totally and temporarily disabled or partially and permanently disabled as certified by the workers' compensation board or other competent authority approved by the state comptroller, and the disability occurs during the course of service as a volunteer while actively engaged in providing line-of-duty services as defined in the volunteer ambulance workers benefit law, the volunteer shall be credited with five points for each full month of such disability; provided, however, such volunteer shall cease to be credited with such line of duty disability points after attaining the entitlement age.

#### **HISTORY:**

Add, L 1998, ch 558, § 3, eff Aug 5, 1998.

Sub 7-a, add, L 2003, ch 647, § 3, eff Oct 7, 2003.

Sub 13, add, L 2008, ch 261, § 2, eff July 7, 2008.

#### **NY CLS Gen Mun § 219-n (2012)**

##### **§ 219-n. Benefits**

1. The benefit payable under a service award program shall be the actuarial equivalent of an annual payment for life in one of the following amounts as selected by the sponsor:

- (a) sixty dollars per year of ambulance service;
- (b) one hundred twenty dollars per year of ambulance service;
- (c) one hundred eighty dollars per year of ambulance service; [fig 1]
- (d) two hundred forty dollars per year of ambulance service [fig 1] ; or
- (e) three hundred sixty dollars per year of ambulance service.

2. Service awards shall be paid in the form of a lump sum, a life annuity with or without survivor benefits, a period certain annuity, or any other form provided under the program, provided, that all forms of payment shall be actuarially equivalent to each other. The program may limit the forms of payment or impose conditions concerning the availability of a form of payment.

3. Except as otherwise provided in this section, a participant shall be entitled to apply for and receive a service award only when the participant has acquired a nonforfeitable right to a service award and has reached entitlement age.

4. In the event that a participant becomes totally and permanently disabled, as certified by the workers' compensation board or other competent authority approved by the administrator, and the disability prevents the participant from pursuing his or her normal occupation, the participant shall be entitled to apply for and receive a service award, regardless of whether the participant has reached entitlement age or has acquired a nonforfeitable right to a service award.

5. In the event of the death of a participant who has acquired a nonforfeitable right to a service award, the beneficiaries designated by the participant or, if no beneficiaries have been so designated, the participant's estate, shall be entitled to apply for and receive a lump sum death benefit, regardless of whether the participant reached entitlement age before death. Such benefit shall be equal to the lump sum equivalent of the service award earned by the participant at the date of death, provided that the benefit provided pursuant to this subdivision shall not be paid following commencement of payment of a service award.

6. A service award shall be paid only after an application is made to the program administrator and the administrator approves the application.
7. No service award may be assigned or alienated except to provide for the legally obligated support of minor children or a spouse.
8. Payment of a service award shall not impair any rights of volunteer ambulance workers under the volunteer ambulance workers' benefit law or any other law.

#### **HISTORY:**

Add, L 1998, ch 558, § 3, eff Aug 5, 1998.

Sub 1, par (c), amd, L 2004, ch 452, § 4, eff Sept 14, 2004 (see 2004 note below).

The 2004 act deleted at fig 1 "or"

Sub 1, par (d), amd, L 2004, ch 452, § 4, eff Sept 14, 2004 (see 2004 note below).

The 2004 act deleted at fig 1 a period

Sub 1, par (e), add, L 2004, ch 452, § 4, eff Sept 14, 2004 (see 2004 note below).

#### **NOTES:**

##### **Editor's Notes**

Laws 2004, ch 452, § 8, eff Sept 14, 2004, provides as follows:

§ 8. This act shall take effect immediately; provided, however, any change or amendment to a service award program made by this act shall only take effect as of the first of January next succeeding completion of the proceedings required for adoption of the change or amendment, and shall only apply prospectively; and provided further that the governing board of any political subdivision with an existing service award program authorized by *section 216 or 216-a of the general municipal law* shall have 180 days from the effective date of this act to notify the state comptroller of the existence of such service award program and whether such service award program is a defined contribution plan or a defined benefit plan.

#### **NY CLS Gen Mun § 219-o (2012)**

##### **§ 219-o. Funding**

1. The cost of a service award program including, but not limited to, amounts necessary to fund benefits and to pay for all necessary administrative services, shall be a charge against the sponsor. The governing board of the sponsor annually shall appropriate and pay to the administrator an amount sufficient to pay the cost of the program. The cost of the program shall be determined annually by the program actuary designated by the comptroller. The program actuary shall select the interest rate, mortality tables and other appropriate assumptions and methods to determine the cost of the program. The cost of the program, if any, attributable to (a) years of ambulance service rendered during the five years immediately preceding the adoption of the program or (b) the conversion of the program pursuant to section two hundred nineteen-i of this chapter, shall be paid over a period not to exceed five years. The comptroller shall promulgate rules and regulations prescribing the time and manner of payment of the cost of the program.

2. (a) Before or after a service award program is adopted for the volunteer ambulance workers of an ambulance company which contracts to provide service to one or more political subdivisions other than the prospective or actual sponsor of the program, the governing boards of the sponsor and one or more of such other political subdivisions may enter into agreements to apportion the cost of the program in any equitable manner between the sponsor and such other political subdivisions.

(b) No such agreement shall be entered into by a political subdivision other than the sponsor unless a resolution authorizing the agreement is approved by the affirmative vote of at least sixty percent of the governing board of the political subdivision and a proposition authorizing the agreement or amendment is approved at a referendum of the electors of the political subdivision.

(c) The proposition authorizing the agreement or amendment shall be submitted to referendum not less than thirty days and not more than ninety days after the governing board votes to authorize the agreement or amendment. Notice of the referendum shall be published at least once, not less than fourteen days prior to the date of the

referendum, in the official newspaper of the political subdivision or, if the political subdivision does not have an official newspaper, in one or more newspapers having general circulation in the political subdivision.

(d) Any such agreement shall remain in effect until amended or terminated by resolution and submission of a proposition to referendum as provided in paragraphs (b) and (c) of this subdivision, but shall be suspended with respect to any such political subdivision which ceases to contract with the ambulance company or in the event the sponsor ceases to contract with the ambulance company.

(e) The amount to be paid by a political subdivision under any such contract shall be a charge against the political subdivision and shall be paid to the sponsor. The governing board of the sponsor shall apply the amount received under any such contract to reduce the amount that would otherwise be raised for the program from the sponsor.

#### **HISTORY:**

Add, L 1998, ch 558, § 3, eff Aug 5, 1998.

#### **NY CLS Gen Mun § 219-p (2012)**

##### **§ 219-p. Administration**

1. Service award programs shall be centrally administered by the state comptroller, or the comptroller may enter into one or more of the following contracts:

(a) a contract with an administrative service agency or financial organization to serve as program administrator and to perform all or any portion of the functions required to establish and administer such programs including, but not limited to, preparation of a plan document, record keeping, reporting, payment of service awards, and having custody of program moneys and assets;

(b) contracts with one or more financial organizations to invest program moneys; or

(c) a contract with an actuary for the performance of all actuarial calculations required by the program. If the comptroller contracts for the performance of any function as provided in this subdivision, the comptroller shall be liable only for the exercise of due care in the selection of the administrative service agency, financial organization or actuary performing the function.

2. The state comptroller shall promulgate rules and regulations, as appropriate, for the service award programs. Such rules shall include, but not be limited to, standards for the selection of service providers, the method and timing of the payments required to be made by the sponsor, reporting requirements, matters relating to the preparation of a plan document, and any other matter relating to the service award programs.

3. (a) The state comptroller, or an administrative service agency or financial organization serving as program administrator, shall prepare and may amend a single plan document setting forth the obligations of sponsors, the rights of the volunteer ambulance workers, and standards and procedures for the administration of all service award programs. The plan document and any amendments thereto shall be consistent with the provisions of this article, the rules and regulations promulgated by the comptroller and any amendments thereto. If the plan document or any amendment thereto is prepared by an administrative service agency or financial organization, it shall not take effect until approved by the comptroller.

(b) The program administrator shall cause a summary of the plan document to be provided to each participant within six months from the date that program participation commences. The program administrator shall also cause a summary of any material amendment of the plan document to be provided to each participant within six months of the date the amendment takes effect.

(c) The plan document and the summary of the plan document shall be made available for public inspection and copying.

4. All program assets shall be held in trust for the exclusive purpose of providing service awards to participants and their beneficiaries or for the purpose of defraying the reasonable expenses of the operation and administration of the program. The trust shall be established and may be amended by the state comptroller. The comptroller may designate him or herself, an administrative service agency or a financial organization as trustee, and may substitute trustees. If the service award programs and the trust are not tax qualified within the meaning of *section 401 and 501 of the Internal Revenue Code of 1954* (68A Stat. 3.26 [3, 26] [n1] [n1] U.S.C. 401 and 501), the trust may provide that assets apportioned to an individual sponsor may be subject to the claims of general creditors, if any, of the sponsor or may contain such other terms and provisions as are necessary to

ensure that participation in a service award program does not result in taxable income under any provision of the Internal Revenue Code of 1986, as amended.

5. There is hereby established in the custody of the state comptroller a special fund to be known as the volunteer ambulance service award fund. Such fund shall consist of any money of service award programs held by the comptroller. Moneys may be paid from such fund without an appropriation by law. All payments from such fund shall be made only in accordance with the provisions of this article, the rules and regulations promulgated thereto and the plan document.

6. The moneys held for the sponsor of each service award program shall be accounted for separately. The administrator shall cause a statement of contributions to be provided to sponsors at least once annually.

7. The administrator and every fiduciary of a service award program shall be required to act solely in the interest of the program's participants and beneficiaries. Notwithstanding the provisions of any general or special law restricting the power or duty of the state comptroller to invest moneys belonging to a fund which the comptroller is authorized to invest, a fiduciary may accept, hold, invest in and retain any investment if purchased or retained with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aim.

8. (a) All contracts or agreements with an administrative service agency, financial organization or actuary shall be awarded only after receiving competitive proposals. In addition to other statutory requirements, the state comptroller shall cause to be published in the state register and in the official newspaper or newspapers, if any, or otherwise in an appropriate newspaper designated for such purposes, at least sixty days prior to the date on which the contract or agreement will be awarded and shall request proposals within thirty days of publications.

(b) All contracts and agreements entered into with an administrative service agency, financial organization or actuary shall be in writing, shall not exceed five years in duration, and shall impose no penalties or surrender charges for the transfer of assets or responsibilities on termination of the contract or agreement such contracts and agreements shall be available for public inspection and copying.

#### **HISTORY:**

Add, L 1998, ch 558, § 3, eff Aug 5, 1998.

#### **NOTES:**

NYCRR References:

Department of audit and control: defined benefit service awards for volunteer ambulance programs. 2 *NYCRR Part 152*

#### **FOOTNOTES:**

[n1] The bracketed numbers have been inserted by the Publisher.

**NEW YORK CODES, RULES AND REGULATIONS**  
**TITLE 2. DEPARTMENT OF AUDIT AND CONTROL**  
**CHAPTER IV. MISCELLANEOUS RULES**

**PART 150. SERVICE AWARD PROGRAMS FOR VOLUNTEER AMBULANCE WORKERS**

**2 NYCRR Part 150 Notes (2012)**

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

**2 NYCRR § 150.1 (2012)**

**§ 150.1 Scope**

Article 11-AA of the General Municipal Law authorizes the establishment of defined contribution service award programs to provide municipally-funded, pension-like benefits for volunteer ambulance workers. Service award programs may be adopted by political subdivisions for the volunteer ambulance workers of ambulance companies which are either: (a) under the control of the governing board of the political subdivision; or (b) in the political subdivision and under contract with the governing board to provide service therein. Adoption of a service award program requires the affirmative vote of at least 60 percent of the governing board of the political subdivision and the approval of a proposition at a referendum of the eligible voters of the political subdivision. Article 11-AA requires the service award programs to be centrally administered by the State Comptroller, or by an administrative service agency and/or one or more financial organizations selected by the Comptroller. The Comptroller is also required to promulgate rules and regulations for the programs. The rules and regulations must, at a minimum, include standards for the selection of financial organizations, the method and timing of contributions to the programs by local government sponsors, the reporting on individual participant accounts, matters relating to the preparation of a plan document and any other matter properly pertaining thereto.

Section statutory authority: General Municipal, § A11-AA

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

**2 NYCRR § 150.2 (2012)**

**§ 150.2 Definitions**

(a) Unless otherwise defined, the terms used in this part shall have the same meaning as provided in Article 11-AA of the General Municipal Law.

(b) In addition, as used in this part:

(1) "Account" shall mean the bookkeeping account established for a participant by the administrator.

(2) "Account balance" shall mean, as of any given time, the value of all contributions credited to a participant's account, plus all interest, earnings and gains thereon, and minus all losses, distributions, forfeitures and necessary administrative costs charged thereto.

(3) "Administrator" shall mean the State Comptroller or, if the Comptroller retains an administrative service agency or financial organization to perform the functions set forth in section 150.10 of this part, such administrative service agency or financial organization.

(4) "Participant" shall mean a volunteer ambulance worker who is eligible for a benefit under a service award program.

(5) "Prior service contribution" means a contribution to a service award program made by the sponsor of the program on behalf of a participant for ambulance service rendered by the participant during any one of the five calendar years immediately preceding the adoption of the program.

(6) "Sponsor" means a county, city, town, village or ambulance district which adopts a service award program.

(7) "Valuation Date" shall mean the last day of each calendar quarter, and each other day as may be determined by the administrator, as of which the administrator shall determine the value of participants' account balances.

Section statutory authority: General Municipal, § A11-AA

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.3 (2012)**

### **§ 150.3 Notice of adoption**

(a) On or before December 15, 1995, or within 30 days after the adoption of a service award program, whichever is later, the chief executive officer of the sponsor shall file with the Office of the State Comptroller in Albany, NY, two copies of a verified notice of adoption which shall contain the following:

(1) a statement of the date on which the governing board of the sponsor approved the resolution authorizing adoption of the program and the vote thereon, and a certified copy of the resolution;

(2) a statement of the date on which the eligible voters of the sponsor approved the proposition authorizing adoption of the program and the vote thereon, and a certified copy of the proposition;

(3) an opinion of legal counsel which shall:

(i) be addressed to the sponsor;

(ii) expressly provide that the administrator may rely thereon;

(iii) state that in his or her capacity as legal counsel to the sponsor, he or she has examined originals or true and complete copies of those records, documents and other instruments necessary to render his or her opinion, including, but not limited to, the provisions of Article 11-AA of the General Municipal Law and such other statutes as may be relevant, the resolution of the governing board of the sponsor authorizing the adoption of the program, proof of any posting and publication of required notice and the certificate certifying the result of the vote on the proposition authorizing the adoption of the program; and

(iv) express his or her opinion that the sponsor has undertaken all actions and proceedings required by law to adopt the program;

(4) a statement of the name, address and telephone number of the chief executive officer of the sponsor; and

(5) a statement of the name, address and telephone number of each ambulance company having volunteer ambulance workers who are potential participants in the program.

(b) Upon receipt of the notice of adoption, the State Comptroller's Office shall notify the chief executive officer of the name, address and telephone number of the administrator. If the administrator is not the State Comptroller, the State Comptroller's Office shall forward one copy of the notice of the adoption to the administrator.

Section statutory authority: General Municipal, § A11-AA

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.4 (2012)**

### **§ 150.4 Adoption agreement**

(a) Within 30 days of receipt of the notice of adoption provided for in section 150.3 of this part, the administrator shall send to the chief executive officer of the sponsor a copy of the program document and two copies of a standard form of adoption agreement for the program.

(b) The form of adoption agreement shall contain a statement that the sponsor agrees to abide by the provisions of article 11-AA of the General Municipal Law, the rules and regulations promulgated thereunder and the program document, as amended from time to time. The form of adoption agreement shall be completed by incorporating the following terms of the program as determined by the sponsor:

(1) entitlement age;

(2) the number of years of ambulance service required for a participant to obtain a nonforfeitable right to a service award;

(3) the amount to be contributed to the program by the sponsor on behalf of each participant who is credited with a year of ambulance service; and,

(4) whether the sponsor shall make prior service contributions and, if so, the number of years for which such contributions shall be made and an irrevocable election to pay prior service contributions in the form of a single lump sum payment or in five equal annual installments as provided in section 150.7 of this part.

(c) Within 30 days of receipt of the form of adoption agreement, the chief executive officer shall complete and

execute two originals of the adoption agreement, retain one executed original of the adoption agreement and the program document as public records, and file one executed original of the adoption agreement with the administrator. The chief executive officer shall also cause a copy of the adoption agreement and program document to be provided to each ambulance company for which the program is adopted.

(d) The administrator shall rely on the terms of the program determined by the sponsor as set forth in the adoption agreement until such time as the chief executive officer of the sponsor files a notice of amendment or a notice of termination with the administrator as provided in section 150.9 of this part.

Section statutory authority: General Municipal, § A11-AA

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.5 (2012)**

### **§ 150.5 Collection of personal information**

(a) Except as provided in subdivision (b) of this section, annually, at such time and in such form as the administrator may require, the chief executive officer of the sponsor shall obtain from each ambulance company for which the program is established for submission to the administrator, and each ambulance company shall provide to the chief executive officer for such purpose, the following information for each volunteer ambulance worker of the ambulance company, whether or not such volunteer ambulance worker is a participant in the program:

- (1) name;
- (2) address;
- (3) social security number;
- (4) date of birth;
- (5) ambulance company;
- (6) beneficiaries; and
- (7) such other information as the administrator determines necessary for the administration of the program.

(b) In lieu of requiring the chief executive officer of the sponsor to obtain the information specified in subdivision (a) of this section for submission to the administrator, the administrator may request the chief executive officer of an ambulance company to obtain and submit such information to the administrator. In such case, the chief executive officer of the ambulance company shall provide a copy of the information submitted to the administrator to the chief executive officer of the sponsor.

(c) The chief executive officer of the sponsor shall retain a copy of the information obtained pursuant to this section for use solely in connection with the administration of the service award program.

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.6 (2012)**

### **§ 150.6 Service credit**

(a) Each ambulance company for which a service award program is adopted shall maintain at all times for each volunteer ambulance worker of the company, whether or not a participant in the program, a record of the activities performed and points granted toward a year of ambulance service. The administrator may prescribe the form and manner of compiling and maintaining such records.

(b) On or before February 1st of each year, each ambulance company for which a service award program is adopted shall, except as provided in subdivision (f) of this section, prepare and submit to the governing board of the sponsor a list of all the volunteer ambulance workers of the company and which identifies all those who have qualified for credit for a year of ambulance service during the preceding calendar year. Such list shall be certified under oath by the president, secretary and chief or comparable officers of the ambulance company and shall be accompanied by such membership records or records of point accumulations as the governing board may require to substantiate the accuracy of the list.

(c) On or before March 1st of each year, the governing board of the sponsor shall review and approve each such certified list of volunteer ambulance workers and each volunteer ambulance worker thereon identified as having qualified for credit for a year of ambulance service during the preceding calendar year shall be credited with a year of ambulance service. Upon approval, the governing board shall cause the return of each list to the appropriate ambulance company and each ambulance company shall, immediately upon receipt, post the list in a conspicuous place at its principal headquarters for at least 30 days and maintain a record of the date on which the list is posted.

(d) Not later than 30 days after the approved list is posted by the ambulance company, any volunteer ambulance worker whose name does not appear on the list as having qualified for credit for a year of ambulance service may appeal to the governing board of the sponsor to have his or her name added to the list. The appeal shall be in writing and mailed to the clerk or secretary of the governing board of the sponsor. The governing board shall investigate all appeals and upon finding that such a volunteer ambulance worker has qualified for a year of ambulance service for the preceding calendar year, shall order the volunteer ambulance worker to be identified as having qualified for a year of ambulance service on the approved list.

(e) On, or before May 1st of each year, the governing board of the sponsor shall cause a certified copy of the approved list to be filed with the administrator, accompanied by a payment in an amount equal to the amount of the sponsor's contribution to the program on behalf of each participant who is credited with a year of ambulance service times the number of participants credited with a year of ambulance service on the list, less the total amount of forfeitures set forth on the report provided to the sponsor for the preceding calendar year pursuant to section 150.12 (a) of this part.

(f) Any volunteer ambulance worker not wishing to participate in the service award program may request omission or deletion of his or her name from the list to be prepared or prepared by the ambulance company pursuant to subdivision (b) of this section at any time prior to the approval of the list by the governing board of the sponsor pursuant to subdivision (c) of this section. Such request shall be in writing, shall be filed with the chief executive officer of the ambulance company or political subdivision having custody of the list, and shall remain effective until withdrawn in the same manner. During the period such a request remains effective, a volunteer ambulance worker shall not earn service credit, nor be entitled to a contribution to, nor a distribution from, the program.

(g) Notwithstanding the provisions of subdivisions (b) through (e) of this section, in the case of the service award program which was in effect at any time during calendar year 1994, ambulance companies and the governing boards of sponsors shall comply with the following procedures:

(1) If the governing board of a sponsor has not approved a certified list of volunteer ambulance workers qualified for credit for a year of ambulance service rendered during 1994 in substantial compliance with the procedures set forth in subdivisions (b) through (d) of this section, excepting the dates set forth therein, the ambulance company and the governing board of the sponsor shall comply with the procedures set forth in subdivisions (b) through (d), and the filing and payment requirements of subdivision (e) of this section, in the following manner:

(i) Not later than 30 days after the ambulance company receives a copy of the adoption agreement pursuant to section 150.4 of this part, the ambulance company shall submit to the governing board of the sponsor the list required by subdivision (b) of this section.

(ii) Not later than 30 days after receipt of such list, the governing board of the sponsor shall review, approve and return the list to the ambulance company, and the ambulance company shall post the approved list, as required by subdivision (c) of this section.

(iii) Not later than 30 days after the approved list is posted by the ambulance company, any volunteer ambulance worker whose name does not appear on the list as having qualified for credit for a year of ambulance service may appeal to the governing board of the sponsor, and the governing board of the sponsor shall investigate and determine such appeals, as required by subdivision (d) of this section.

(iv) Not later than 30 days after the last day for a volunteer ambulance worker to appeal to the governing board of the sponsor, the governing board of the sponsor shall comply with the filing and payment requirements of subdivision (e) of this section.

(2) If the governing board of a sponsor has approved a certified list of volunteer ambulance workers qualified for credit for a year of ambulance service rendered during 1994 in substantial compliance with the procedures set forth in subdivisions (b) through (d) of this section, excepting the dates set forth therein, the governing board shall comply with the filing and payment requirements of subdivision (e) of this section no later than 30 days after the chief executive officer of the sponsor files a completed and executed copy of the adoption agreement with the administrator pursuant to section 150.4 of this part.



## **2 NYCRR § 150.7 (2012)**

### **§ 150.7 Prior service contributions**

(a) In the event that a service award program provides for prior service contributions, each ambulance company for which the program is adopted shall identify on the list prepared pursuant to subdivision (b) of section 150.6 of this part those participants who are entitled to one or more prior service contributions and the number of years for which each participant is entitled to such prior service contributions. Any participant who is denied a prior service contribution for one or more years may appeal to the governing board at the same time, in the same manner, and with like effect as provided in subdivision (d) of section 150.6 of this part. Except as provided in subdivision (b) of this section, prior service contributions shall be paid to the administrator in a single lump sum in the year in which a participant is determined to be entitled to the contribution, by remitting, together with any payment required by subdivision (e) of section 150.6 of this part, an amount equal to the sponsor's contribution on behalf of each participant credited with a year of ambulance service for the first year of the program times the number of years for which each participant is entitled to a prior service contribution indicated on the list.

(b) The governing board of the sponsor may elect to pay prior service contributions in five equal annual installments. Where such an election is made, the first annual installment shall be paid on or before May 1st of the year in which a participant is determined entitled to a prior service contribution. Each subsequent annual installment shall be paid on or before May 1st of each of the four years immediately succeeding the year in which the first installment is paid, together with interest at the rate determined pursuant to subdivision (c) of this section on the unpaid balance of the prior service contribution as of the date of such payment, provided, however, that in the event that the administrator notifies the sponsor that a participant has been determined eligible for a distribution of a service award prior to the payment of the fifth annual installment, the governing board of the sponsor shall cause payment to be made to the administrator of an unscheduled prior service contribution within 30 days of receiving such notice. The unscheduled prior service contribution shall equal the unpaid balance of the participant's prior service contribution plus interest at the rate determined pursuant to subdivision (c) of this section on such unpaid balance.

(c) On or before March 31st of each year the administrator shall determine the rate of interest to be paid on the unpaid balance of prior service contributions. The rate of interest shall equal the rate of return on program assets during the preceding calendar year. The administrator shall notify sponsors of the rate of interest by inclusion in or enclosure with the report required by subdivision (a) of section 150.12 of this part.

(d) Notwithstanding the provisions of subdivisions (a) and (b) of this section, in the case of a service award program which was in effect at any time during calendar year 1994 and which provides for prior service contributions, ambulance companies and the governing boards of sponsors shall comply with the following procedures:

(1) If the governing board of a sponsor has not approved a certified list of volunteer ambulance workers qualified for credit for a year of ambulance service rendered during 1994 which identifies those participants entitled to one or more prior service contributions in substantial compliance with the procedures referred to in subdivision (a) of this section, the list prepared pursuant to section 150.6 (g) (1) (i) of this part shall identify such participants and the number of years for which each participant is entitled to prior service contributions. A participant who is denied a prior service contribution for one or more years may appeal to the governing board of the sponsor at the same time, in the same manner, and with like effect as provided in section 150.6 (g) (1) (iii) of this part. The governing board shall comply with the payment requirement of subdivision (a) or (b) of this section at the time payment is made pursuant to section 150.6 (g) (1) (iv) of this part.

(2) If the governing board of a sponsor has approved a certified list of volunteer ambulance workers qualified for credit for a year of ambulance service rendered during 1994 which identifies those participants entitled to one or more prior service contributions in substantial compliance with the procedures referred to in subdivision (a) of this section, the governing board shall comply with the payment requirement of subdivision (a) or (b) of this section at the time payment is made pursuant to section 150.6 (g) (2) of this part.

## **2 NYCRR § 150.8 (2012)**

### **§ 150.8 Distributions**

(a) A service award shall equal a participant's account balance as of the valuation date immediately succeeding application for distribution of the service award plus any unscheduled prior service contributions received by the administrator pursuant to section 150.7 of this part. A service award shall be paid in the form of a lump sum distribution or in such other manner selected by the participant in his or her application for distribution of the service award as may be permitted by the terms and conditions of the program document.

(b) Except as otherwise provided in this section, a participant shall be entitled to apply for and receive distribution of a service award only when the participant has acquired a nonforfeitable right to the service award and has reached entitlement age.

(c) A service award shall be payable only after an application for distribution is filed with the administrator and the administrator approves the application, and shall be paid as soon as practicable following approval of the application and the valuation date next succeeding the date the application is received by the administrator. The administrator shall determine whether to approve an application based on the terms of the sponsor's adoption agreement, the records maintained by the administrator and, in the case of disability or death, such additional records or information as the administrator may require. The administrator, in its sole discretion, may require the sponsor, the appropriate ambulance company or the participant to verify or supply any information the administrator deems necessary to determine entitlement to distribution of a service award.

(d) In the event that a participant becomes totally and permanently disabled as certified by the workers' compensation board or by any other competent authority approved by the administrator, and the disability prevents the participant from pursuing his or her normal occupation, the participant shall be entitled to apply for and receive distribution of a service award regardless of whether the participant has reached entitlement age or has acquired a nonforfeitable right to a service award.

(e) In the event of the death of a participant who has acquired a nonforfeitable right to a service award and who has not previously received distribution of all or any portion of a service award, the beneficiaries designated by the participant or, if no beneficiaries have been so designated, the participant's estate, shall be entitled to apply for and receive distribution of the participant's service award regardless of whether the participant had reached entitlement age before death. If a participant dies after receiving distribution of less than the full amount of the service award, the remaining portion, if any, shall be paid in accordance with the distribution option selected by the participant in his or her application for distribution of the service award made pursuant to this section.

(f) In the event that the sponsor has elected to pay prior service contributions in installments as provided in section 150.7 of this part and the administrator determines that a participant is eligible for a distribution of a service award prior to the payment of all annual installments of the participant's prior service contribution, the administrator shall promptly notify the sponsor of the amount of the unscheduled prior service contribution which must be paid to the administrator.

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.9 (2012)**

### **§ 150.9 Notice of amendment or termination**

(a) Once a service award program has been adopted, the sponsor may amend or terminate its participation in the program in the manner provided by article 11-AA of the General Municipal Law.

(b) Within 30 days after the amendment of any of the terms of a service award program set forth in the adoption agreement, or the termination of the sponsor's participation in a service award program, the chief executive officer of the sponsor shall file with the administrator a verified notice of amendment or notice of termination which shall contain the following:

(1) a statement of the date on which the governing board of the sponsor approved the resolution authorizing the amendment or termination of the program and the vote thereon, and a certified copy of the resolution;

(2) in the case of termination, or if the amendment requires submission of a proposition to the eligible voters of the sponsor, a statement of the date on which the eligible voters approved the proposition authorizing the amendment or termination and the vote thereon, and a certified copy of the proposition; and

(3) an opinion of legal counsel which shall:

- (i) be addressed to the sponsor;
  - (ii) expressly provide that the administrator may rely thereon;
  - (iii) state that in his or her capacity as legal counsel to the sponsor, he or she has examined originals or true and complete copies of those records, documents and other instruments necessary to render his or her opinion, including, but not limited to, the provisions of Article 11-AA of the General Municipal Law and such other statutes as may be relevant, the resolution of the governing board of the sponsor authorizing the amendment or termination of the program, proof of any posting and publication to required notice and the certificate certifying the result of the vote on the proposition authorizing the amendment or termination of the program; and
  - (iv) express his or her opinion the sponsor has undertaken all actions and proceedings required by law to amend or terminate the program.
- (c) Contemporaneously with such filing with the administrator, the chief executive officer shall also file a copy of the notice of amendment or notice of termination with the Office of the State Comptroller in Albany, NY.
- (d) Within 30 days of the receipt of a notice of amendment, the administrator shall send to the chief executive officer of the sponsor two copies of an amended form of adoption agreement. The chief executive officer shall complete the copies of the amended form of adoption agreement by incorporating the terms of the amendment, and shall execute, retain, file, and provide a copy of the amended agreement to each ambulance company, in the same manner as the original adoption agreement.
- (e) Any change in the amount to be contributed to the program by the sponsor on behalf of each participant who is credited with a year of ambulance service may become effective only as of January 1st of the calendar year following the amendment.

Section statutory authority: General Municipal, § A11-AA

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.10 (2012)**

### **§ 150.10 Administration**

- (a) Service award programs shall be administered by the State Comptroller unless the Comptroller retains an administrative service agency or financial organization to administer the programs. Upon receipt of a notice of adoption of a service award program the Office of the State Comptroller shall notify the chief executive officer of the sponsor of the name, address and telephone number of the administrator and, if the administrator is not the State Comptroller, forward one copy of the notice of adoption to the administrator. In the event that there is a change in the identity of the administrator, the Office of the State Comptroller shall notify the chief executive officer of each sponsor of a service award program of the identity of the new administrator.
- (b) The administrator shall:
- (1) prepare a standard form of program document which shall be utilized by all program sponsors;
  - (2) prepare all forms necessary for the administration of the program;
  - (3) compile and maintain all records required for the administration of the program, including records of participant account balances;
  - (4) prepare and distribute to participants, ambulance companies and sponsors reports and program summaries as required by this part;
  - (5) if the Comptroller is not the administrator, prepare and furnish to the Comptroller such reports as the Comptroller may require;
  - (6) record and process contributions made by program sponsors;
  - (7) approve applications for distributions of service awards;
  - (8) record and process distributions of service awards;
  - (9) withhold all taxes and prepare all tax reporting forms required by federal, state and local law; and
  - (10) perform such other functions as may be required by or pursuant to article 11-AA of the General Municipal Law and this part.

Section statutory authority: General Municipal, § A11-AA

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.11 (2012)**

### **§ 150.11 Program document**

The administrator shall prepare and may amend the service award program document setting forth the obligations of sponsors, the rights of volunteer ambulance workers and participants, and standards and procedures for the administration of service award programs. The program document and any amendments thereto shall be consistent with the provisions of article 11-AA of the General Municipal Law and the provisions of this Part, as amended. If the program document is prepared by an administrative service agency or financial organization, the program document and any amendments to the program document shall not take effect until approved by the State Comptroller.

Section statutory authority: General Municipal, § A11-AA

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.12 (2012)**

### **§ 150.12 Reports**

(a) On or before March 31st of each year, the administrator shall provide to each sponsor a report which shall include, but not be limited to, the following information for the preceding calendar year for the sponsor:

- (1) the total value of participant account balances as of January 1st;
- (2) the total amount contributed to the program by the sponsor;
- (3) the total amount of administrative expenses charged against participant account balances;
- (4) the total amount of interest, earnings and gains credited to participant account balances;
- (5) the total amount of losses charged to participant account balances;
- (6) the total amount of distributions;
- (7) the total value of forfeitures; and
- (8) the total value of participant account balances as of December 31st.

(b) On or before March 31st of each year, the administrator shall provide to each ambulance company, and immediately thereafter each ambulance company shall provide to each participant who is a member of the company, a confidential statement for the preceding calendar year which shall include, but shall not be limited to, the following information for the participant:

- (1) name;
- (2) address;
- (3) social security number;
- (4) date of birth,
- (5) account balance as of January 1st;
- (6) amount contributed by the sponsor on behalf of the participant;
- (7) administrative expenses charged against the account balance;
- (8) interest, earnings and gains credited to account balance;
- (9) losses charged to account balance;
- (10) distributions;
- (11) account balance as of December 31st;
- (12) total number of years of ambulance service required to obtain a nonforfeitable right to a service award;

- (13) total number of years of ambulance service credited to the participant;
- (14) entitlement age; and
- (15) designated beneficiaries.

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.13 (2012)**

### **§ 150.13 Disclosure**

(a) Not later than six months after a volunteer ambulance worker becomes a participant in a service award program, the administrator shall provide to the ambulance company of which the participant is a member, and promptly thereafter the ambulance company shall provide to the participant, a summary of the program's provisions as adopted by the sponsor of the program.

(b) In the event that a material modification is made to a service award program, the administrator shall provide to each ambulance company a copy of the modification within six months after the date on which the modification is adopted or the date on which the modification takes effect, whichever is later, and promptly thereafter each ambulance company shall provide a copy of the modification to each participant who is a member of the company.

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.14 (2012)**

### **§ 150.14 Standards for selecting service providers**

(a) When selecting an administrative service agency or a financial organization to serve as administrator, the following standards shall be utilized:

- (1) the entity's experience with defined contribution programs and defined benefit programs;
- (2) the capitalization of the entity;
- (3) the entity's creditworthiness;
- (4) the entity's ability to perform the required duties; and
- (5) the cost of services to be provided by the entity.

(b) When selecting a financial organization to invest program funds the following standards shall be utilized:

- (1) the standards set forth in subdivision (a) of this section;
- (2) the entity's investment expertise;
- (3) the entity's investment sophistication and flexibility;
- (4) the entity's familiarity with similar plans;
- (5) the entity's ability to procure or provide suitable investments; and
- (6) the entity's ability to perform the required duties in recognition of the fiduciary nature of its responsibilities.

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.15 (2012)**

### **§ 150.15 Acknowledgement**

Each administrative service agency or financial organization selected to provide services in connection with service award programs shall contractually agree to discharge its duties as a fiduciary to the participants in service award programs. In addition, when a financial organization is selected to perform duties in connection with investment matters, it shall contractually agree to discharge its duties as a fiduciary in accordance with the prudent expert standard of care.

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.16 (2012)**

### **§ 150.16 Solicitation, education and confidentiality**

(a) No financial organization or administrative service agency nor any of their agents shall solicit a volunteer ambulance worker to purchase any products made available by such financial organization or administrative service agency other than in connection with the program, nor use information obtained by reason of its appointment as a financial organization or administrative service agency to solicit volunteer ambulance workers with respect to such other products.

(b) Educational materials designed to acquaint volunteer ambulance workers with the benefits of the program may be provided by the financial organization or administrative service agency upon prior approval by the Office of the comptroller. In addition, at the time of distribution of a service award, an administrative service agency or financial organization may include with distribution written information concerning the potential tax consequences of the distribution and generic categories of investment options. Such information may contain a statement indicating that additional information may be obtained from the administrative service agency or financial organization or their agents and from other financial institutions, but in all cases such information shall also contain a clear and prominent statement that the Office of the State Comptroller does not review, approve, endorse or recommend, and is not in any way involved with, any financial instrument, product or service offered by or acquired through, an administrative service agency, financial organization or their agents, or any other financial institution.

(c) Except as otherwise provided by law, all information obtained under the program by the sponsor, an ambulance company, an administrative service agency or a financial organization shall be confidential and shall be used exclusively for purposes relating to the program.

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **2 NYCRR § 150.17 (2012)**

### **§ 150.17 Auditing**

Service award programs shall be audited annually by an independent certified public accounting firm of recognized standing in the industry. Financial statements shall include the status of investments, a valuation of each investment and a valuation of investment holdings in the aggregate. The audit shall be performed in accordance with generally accepted auditing standards and financial statements shall be prepared in accordance with generally accepted accounting principles. Marketable securities shall be valued at market value.

Statutory authority: *General Municipal Law*, §§ 219-g, 219-h(2); L. 1998, ch. 558, § 6

## **PART 152. DEFINED BENEFIT SERVICE AWARD PROGRAMS FOR VOLUNTEER AMBULANCE WORKERS**

### **2 NYCRR Part 152 Notes (2012)**

Statutory authority: *General Municipal Law, §§ 219-i, 219-p*

### **2 NYCRR § 152.1 (2012)**

#### **§ 152.1 Scope**

Article 11-AAA of the General Municipal Law authorizes the establishment of defined benefit plan service award programs to provide municipally funded, pension-like benefits for volunteer ambulance workers. Paragraph 2 of Section 219-p of Article 11-AAA states that "the State Comptroller shall promulgate rules and regulations, as appropriate, for the service award programs. Such rules shall include, but not be limited to, standards for the selection of service providers, the method and timing of the payments required to be made by the sponsor, reporting requirements, matters relating to the preparation of a plan document, and any other matter relating to the service award programs".

These are the Comptroller's rules and regulations for defined benefit plan service award programs.

Section statutory authority: General Municipal, § A11-AAA, § 219-P

Statutory authority: *General Municipal Law, 219-i, 219-p*

### **2 NYCRR § 152.2 (2012)**

#### **§ 152.2 Definitions**

(a) Unless otherwise defined, the terms used in this part shall have the same meaning as provided in Article 11-AAA of the General Municipal Law.

(b) In addition, in this part:

(1) "Benefit" or "benefit amount" means an annual payment of \$ 60, \$ 120, \$ 180 or \$ 240 for each year of ambulance service, as selected by the sponsor.

(2) "Comptroller" means the New York State Comptroller.

(3) "Program Actuary" means the actuary designated by the Comptroller to perform the functions required to be performed by an actuary under Article 11-AAA of the General Municipal Law and these rules and regulations, as they may be amended from time to time.

Section statutory authority: General Municipal, § A11-AAA

Statutory authority: *General Municipal Law, 219-i, 219-p*

### **2 NYCRR § 152.3 (2012)**

#### **§ 152.3 Adoption of programs**

Defined benefit plan service award programs shall be adopted in accordance with Article 11-AAA of the General Municipal Law. Prior to consideration of a resolution authorizing adoption of such a service award program, the governing board of a political subdivision shall obtain from the Program Actuary an estimate of the annual cost of the program. In making such estimate, the Program Actuary shall calculate each separate component and the total estimated cost of a proposed program. In calculating such costs, the Program Actuary may rely upon information provided by the political subdivision and any ambulance company having members who are potential participants in the program and shall use the actuarial methodology and assumptions that shall be or are expected to be used to calculate the estimated annual cost of the proposed program as of the last day of the first calendar year ending after the effective date of the program. The Program Actuary shall disclose to the political subdivision in writing the fee for preparing the estimated annual cost of the program before beginning the cost estimate calculation. If a member of the Comptroller's staff is not the Program Actuary, the fee for preparing the cost estimate shall not exceed the amount which the Program Actuary is permitted to charge for such service pursuant to an agreement between the Program Actuary and the Comptroller. The sponsor shall pay such fee to the Program Actuary after rendition of the service promptly following receipt of the appropriate billing documents.

Section statutory authority: General Municipal, § A11-AAA

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.4 (2012)**

### **§ 152.4 Notice of adoption**

(a) Within sixty days after the adoption of a defined benefit plan service award program, the chief executive officer of the sponsor shall file with the Office of the State Comptroller in Albany, New York, two copies of a verified notice of adoption which shall contain the following:

(1) a statement of the date on which the governing board of the sponsor approved the resolution authorizing adoption of the program and the vote thereon, and a certified copy of the resolution;

(2) a statement of the date on which the electors of the sponsor approved the proposition authorizing adoption of the program and the vote thereon, and a certified copy of the proposition;

(3) an opinion of legal counsel which shall:

(i) be addressed to the sponsor;

(ii) expressly provide that the administrator may rely thereon;

(iii) state that in his or her capacity as legal counsel to the sponsor, he or she has examined originals or true and complete copies of those records, documents and other instruments necessary to render his or her opinion, including, but not limited to: the provisions of Article 11-AAA of the General Municipal Law and such other statutes as may be relevant; the resolution of the governing board of the sponsor authorizing the adoption of the program; proof of any posting and publication of required notice; the certificate certifying the result of the vote on the proposition authorizing the adoption of the program; and, proof that the estimated annual cost as well as the program cost components disclosed in the proposition were prepared by the Program Actuary; and

(iv) express his or her opinion that the sponsor has undertaken all actions and proceedings required by law to adopt the program;

(4) a statement of the name, address and telephone number of the chief executive officer of the sponsor; and

(5) a statement of the name, address and telephone number of each ambulance company having volunteer ambulance workers who are potential participants in the program.

(b) Upon receipt of the notice of adoption, the Office of the State Comptroller shall notify the chief executive officer of the name, address and telephone number of the administrator. If the administrator is not the Comptroller, the Office of the State Comptroller shall forward one copy of the notice of the adoption to the administrator.

Section statutory authority: General Municipal, § A11-AAA

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.5 (2012)**

### **§ 152.5 Adoption agreement**

(a) Within thirty (30) days of receipt of a notice of adoption, the administrator shall send to the chief executive officer of the sponsor a copy of the program agreement, the trust agreement and two copies of a completed adoption agreement for the program.

(b) The adoption agreement shall contain a statement that the sponsor agrees to abide by the provisions of Article 11-AAA of the General Municipal Law, the rules and regulations promulgated thereunder and the program and trust agreements, as amended from time to time. The adoption agreement shall incorporate the following terms of the program as determined by the sponsor:

(1) the name of the sponsor;

(2) the name of each volunteer ambulance company having volunteer ambulance workers who are potential program participants;

(3) the benefit under the program;

(4) in the case of a defined benefit plan service award program which was not converted from a pre-existing defined contribution plan service award program:



- (i) the date as of which the program shall take effect;
  - (ii) whether the program provides credit for years of ambulance service rendered by a participant during the five calendar years immediately preceding the adoption of the program;
  - (iii) if the program provides credit for years of ambulance service rendered by a Participant during the five calendar years immediately preceding the adoption of the program, a statement setting forth the timing and method of financing the cost of providing such credit; and
  - (iv) if the program is to take effect on a day other than the first day of January, a statement setting forth whether points toward a year of ambulance service shall be granted for activities performed between the immediately preceding first day of January and the effective date of the program;
- (5) in the case of a defined benefit plan service award program which was converted from a Defined contribution plan service award program:
- (i) the effective date of the original defined contribution plan service award program (which shall be the effective date of the defined benefit plan service award program).
  - (ii) a statement setting forth whether the defined benefit plan service award program provides credit for years of ambulance service rendered by a participant during the five calendar years immediately preceding the effective date of the defined contribution plan program.
  - (iii) if the defined benefit plan program allows credit for years of ambulance service during the five calendar years immediately preceding the effective date of the defined contribution plan service award program, a statement setting forth the timing and method of financing the cost of granting such service credit under the defined benefit plan service award program.
- (c) Within 10 days of receipt of the completed adoption agreement from the administrator, the sponsor's legal counsel shall review the adoption agreement for consistency with the resolution authorizing the adoption of the program and the proposition submitted to referendum. Thereafter, the chief executive officer of the sponsor shall execute two originals of the adoption agreement, retain one executed original of the adoption agreement and the program and trust agreements as public records, and file one executed original of the adoption agreement with the administrator. The chief executive officer shall also cause a copy of the adoption agreement and program and trust agreements to be provided to each ambulance company for which the program is adopted.
- (d) Upon receipt of one executed original of an adoption agreement, the administrator shall forward a copy of the adoption agreement to the Program Actuary.
- (e) The administrator and the Program Actuary shall rely on the terms of the program as set forth in the adoption agreement until the administrator and Program Actuary receive a copy of an amended adoption agreement or notice of termination as provided in Section 152.14 of these rules and regulations.

Section statutory authority: General Municipal, § A11-AAA

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.6 (2012)**

### **§ 152.6 Collection of personal information**

- (a) Except as provided in subdivision (b) of this Section, annually, and at such other times and in such form as the administrator may require, the chief executive officer of the sponsor shall obtain from each ambulance company for which the program is established for submission to the administrator, and each ambulance company shall provide to the chief executive officer for such purpose, the following information for each volunteer ambulance worker of the ambulance company, whether or not such volunteer ambulance worker is a participant in the program:
- (1) name;
  - (2) address;
  - (3) social security number;
  - (4) date of birth;
  - (5) name of ambulance company in which he or she is a volunteer ambulance worker; and,

(6) such other information as the administrator determines necessary for the administration of the program.

(b) In lieu of requiring the chief executive officer of the sponsor to obtain the information specified in subdivision (a) of this section for submission to the administrator, the administrator may request the chief executive officer of an ambulance company to obtain and submit such information to the administrator. In such case, the chief executive officer of the ambulance company shall provide a copy of the information submitted to the administrator to the chief executive officer of the sponsor.

(c) The chief executive officer of the sponsor shall retain a copy of the information obtained pursuant to this section for use solely in connection with the administration of the service award program.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.7 (2012)**

### **§ 152.7 Service credit**

(a) Each ambulance company for which a service award program is adopted shall maintain at all times for each volunteer ambulance worker of the company, whether or not a participant in the program, a record of the activities performed and points granted toward a year of ambulance service credit.

(b) On or before March thirty-first of each year, each ambulance company for which a service award program is adopted shall prepare and submit to the governing board of the sponsor a list of all the volunteer ambulance workers of the company which identifies all those who have earned credit for a year of ambulance service during the preceding calendar year. Such list shall be certified under oath by the president, secretary and chief or comparable officers of the ambulance company and shall be accompanied by such membership records or records of point accumulations as the governing board may require to substantiate the accuracy of the list. Such list shall also identify those volunteer ambulance workers who have waived participation in the service award program as provided in subdivision (g) of this section.

(c) On or before May first of each year, the governing board of the sponsor shall review each such certified list and may delete the name of any person who was not a volunteer ambulance worker during the preceding calendar year or disallow the service credit of any volunteer ambulance worker who did not earn fifty (50) points during the preceding calendar year or whose point accumulation has not been adequately documented. Thereafter, the governing board shall approve each such certified list of Volunteer ambulance workers and each volunteer ambulance worker thereon identified as having earned fifty (50) or more points during the preceding calendar year shall be credited with a year of ambulance service. Upon approval, the governing board shall cause a copy of each list to be returned to the appropriate ambulance company and each ambulance company shall, immediately upon receipt, post the list in a conspicuous place at its principal headquarters for at least thirty (30) days and maintain a record of the date on which the list is posted.

(d) Not later than thirty (30) days after the approved list is posted by the ambulance company, any volunteer ambulance worker whose name does not appear on the list as having earned credit for a year of ambulance service may appeal to the governing board of the sponsor to have his or her name added to the list as having earned credit for a year of ambulance service. The appeal shall be in writing and mailed to the clerk or secretary of the governing board of the sponsor. The governing board shall investigate all appeals and upon finding that such a volunteer ambulance worker has earned a year of ambulance service credit for the preceding calendar year, shall order the volunteer ambulance worker to be identified as having earned a year of ambulance service credit on the approved list.

(e) On or before July first of each year, the governing board of the sponsor shall cause a certified copy of the approved list to be filed with the administrator accompanied by appropriate documentation supporting any changes to the list made pursuant to subdivision (d) of this section.

(f) The administrator shall retain such list and shall promptly forward a copy of such list to the Program Actuary.

(g) Any volunteer ambulance worker not wishing to participate in the service award program may waive participation by filing with the chief executive officer of the ambulance company, the chief executive officer of the political subdivision and the administrator a written notice of waiver of participation. Such waiver shall remain effective until withdrawn in the same manner. During the period such a waiver remains effective, a volunteer ambulance worker shall not earn service credit, nor be entitled to a distribution from the program.

(h) If the effective date as of which a volunteer ambulance worker (or the volunteer ambulance worker's beneficiary, if the volunteer ambulance worker is deceased) begins to be paid a service award is other than the last day of a calendar year, the volunteer ambulance worker shall have the opportunity to earn service credit (i.e.

points under the point system) up to the day immediately preceding the effective date as of which the Service award payments commence. When preparing this list described in paragraph (b) above, only activities performed by a volunteer ambulance worker up to the day immediately preceding the effective date as of which service award payments commenced to the volunteer shall be considered when determining whether the volunteer earned fifty (50) points during the calendar year in which the service award payments commenced to the volunteer. One year of service credit shall be awarded to a volunteer ambulance worker only if he or she earned fifty (50) points for activities he or she performed up to the day immediately preceding the effective date as of which the service award payments commenced to the volunteer. When determining the points to be awarded to the volunteer ambulance worker for participation in ambulance company responses up to such day, the volunteer ambulance worker must have responded to the same minimum number of calls for the year that all other volunteer ambulance workers may be required to respond to under the point system adopted by the sponsor. Upon receipt of a certified copy of the approved list by the administrator as set forth in (e) above, the administrator shall promptly direct the program trustee to begin paying the volunteer ambulance worker any additional service award to which he or she may be entitled to be paid as of the effective date on which service award payments commenced to the volunteer ambulance worker.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.8 (2012)**

### **§ 152.8 Prior service costs**

(a) In the event that a defined benefit plan service award program provides credit for years of ambulance service during the five calendar years immediately preceding the adoption of a program, each ambulance company for which the program is adopted shall identify on the list created pursuant to Section 152.7 of this Part participants who are entitled to one or more years of prior service credit and the number of years for which each participant who is entitled to such prior service credit. Any participant who is denied prior service credit for one or more years may appeal to the governing board at the same time, in the same manner, and with like effect as provided in Section 152.7 of this part. Except as otherwise provided in this Section, prior service cost shall be paid to the administrator in a single lump sum in the year next following the first calendar year for which a participant earned credit for a year of ambulance service. Such prior service cost shall be calculated by the Program Actuary.

(b) The governing board of the sponsor may elect to pay initial prior service costs over the five consecutive calendar year period beginning with the calendar year next succeeding the year in which the program takes effect. For this purpose, initial prior service costs means the cost of granting prior service credit to volunteer ambulance workers who become participants as result of having earned a year of ambulance service for activities performed in any year during the five consecutive calendar years beginning with the year in which the program takes effect. Initial prior service costs shall be computed annually during such five year period and each annual payment shall equal the level annual payment calculated by the Program Actuary required to amortize the remaining unfunded initial prior service costs over the number of years remaining in such five year period.

(c) The prior service costs of a service award program for the volunteer ambulance workers of a volunteer ambulance company which contracts with the sponsor of a service award program with one or more other political subdivisions shall be apportioned and paid by such participating political subdivisions in accordance with any agreement between the sponsor and the political subdivision(s); provided, however that unless any such agreement provides otherwise, the portion of the prior service costs of a program allocated to a political subdivision in accordance with such agreement shall be paid in full by a political subdivision even if the political subdivision ceases to contract with the ambulance company after a program is adopted.

(d) In the case of a defined benefit plan service award program converted from a defined contribution plan service award program, the governing board of the sponsor may elect to pay initial prior service costs over the five consecutive calendar year period beginning with the calendar year next succeeding the year in which the conversion takes effect. For purposes of this subdivision, "initial prior service costs" means the cost of granting prior service credit to volunteer ambulance workers who became or become participants as a result of having earned a year of ambulance service for activities performed in any calendar year during the period commencing with the calendar year in which the defined contribution plan program took effect and ending with the fourth calendar year next succeeding the year in which the conversion took effect. Initial prior service costs shall be computed annually during such five (5) year period and each annual payment shall equal the level annual payment calculated by the Program Actuary required to amortize the remaining unfunded initial prior service costs over the number of years remaining in such five year period.

(e) In the case of a defined benefit plan service award program which is amended to provide prior service credit,

the governing board of the sponsor may elect to pay initial prior service costs over the five consecutive calendar year period beginning with the calendar year next succeeding the year in which such amendment takes effect. For purposes of this subdivision, "initial prior service costs" means the cost of granting prior service credit to volunteer ambulance workers who became or become participants as a result of having earned a year of ambulance service for activities performed in any calendar year during the period commencing with the calendar year in which the defined benefit plan program took effect and ending with the fourth calendar year next succeeding the year in which the amendment took effect. Initial prior service costs shall be computed annually during such five year period and each annual payment shall equal the level annual payment calculated by the Program Actuary required to amortize the remaining unfunded initial prior service costs over the number of years remaining in such five year period.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.9 (2012)**

### **§ 152.9 Sponsor contributions**

(a) Within forty-five (45) days of receiving from the administrator a copy of the certified list in accordance with Section 152.7 of this Part, the Program Actuary shall calculate and the administrator shall bill the sponsor for the contribution due for the calendar year ended on the immediately preceding December thirty-first. In addition to the program administration costs for such year, such contribution shall include the actuarially determined normal cost plus any prior service costs associated with the adoption of a program, including the conversion from a defined contribution plan service award program to a defined benefit plan program, or the adoption of an amendment to an existing program. For good cause shown, the Program Actuary may recalculate the contribution, and, in such a case, the Administrator shall issue a corrected bill.

(b) Within sixty (60) days of the invoice date of a bill for sponsor contributions, the sponsor shall pay to the administrator the total amount of the sponsor contribution shown on such invoice.

(c) The actuarial methodology and assumptions used by the Program Actuary to calculate such annual contribution shall be the same for all defined benefit plan service award programs.

(d) The actuarial methodology and assumptions used by the Program Actuary to calculate such annual contribution shall be reviewed beginning with the calendar year 2000 sponsor contribution and for every third program (calendar) year thereafter by an independent enrolled actuary selected and retained by the Program Actuary subject to approval by the Comptroller. Such enrolled actuary shall submit a written report to the Program Actuary and the Comptroller regarding the appropriateness of the actuarial methodology and assumptions used by the Program Actuary in the calculation of the program costs and the funded status of the existing defined benefit plan program as a whole. In addition, the enrolled actuary, on a statistical random sampling basis of sufficient size, shall select a number of specific programs to audit for completeness and correctness of participant data, consistency of actuarial cost calculations with program provisions and correctness of actuarial calculations.

(e) Interest shall accrue and be paid by the sponsor on all contributions due during a calendar year but not received by the administrator within sixty (60) days of the invoice date or the billing statement from the administrator to the sponsor for the amount of annual contribution owed. The interest rate or rates used to calculate such interest shall be the greater of:

(i) the investment return rate (or rates) assumed by the Program Actuary in the calculation of the normal cost component of such unpaid contribution; or

(ii) the actual investment return rate earned by the volunteer ambulance workers' defined benefit plan service award program trust fund during the calendar year (or years) in which such unpaid contributions were due to be paid.

(f) The administrator shall notify the Comptroller of any outstanding unpaid contributions after the end of a calendar year during which payment of contributions should have been received by the administrator.

(g) In the event that a sponsor does not submit to the administrator the certified list (with supporting documentation) in accordance with Section 152.7 of these rules and regulations, the administrator shall bill the sponsor for the contribution due during the calendar year in which the list should have been submitted in an amount calculated by the Program Actuary equal to the estimated contribution due during such year. Such estimated contribution shall be calculated by the Program Actuary as if all volunteer ambulance workers on the latest year's certified list received by the administrator continued to be volunteer ambulance workers and all such persons earned a year of service credit during the calendar year or years for which the list or lists should have

been prepared in accordance with Section 152.7 of these rules and regulations. Payment of such contribution shall be made in accordance with subdivisions (b) and (e) of this section as if the Program Actuary's cost calculations were based upon the actual certified listings prepared in accordance with Section 152.7 of these rules and regulations. Upon receipt by the administrator of the actual certified list prepared in accordance with Section 152.7 of these rules and regulations, the Program Actuary shall calculate the actual amount of contributions due for such calendar year. In the event that additional contributions are owed by the sponsor (including any additional administration costs), the administrator shall bill the sponsor for such additional amounts. Interest shall be paid by the sponsor on all additional amounts owed and shall accrue from the due date of the payment of the estimated contribution billed to the sponsor by the administrator with such interest calculated in accordance with paragraph (e) of this section of these rules and regulations. Any excess of the estimated contributions over the actual contributions shall be refunded to the sponsor. The amount of such refund shall be reduced by any related additional administration costs charged by the administrator or the Program Actuary. The assessment of any extra additional administration charges payable by the sponsor to either the administrator or the Program Actuary because of the failure to comply with Section 152.7 of these rules and regulations shall be in accordance with the contract(s) between the Comptroller and the administrator/Program Actuary.

(h) In the event that two years have elapsed since an inactive volunteer ambulance worker participant or a participant's designated beneficiary becomes eligible to apply for a service award and the administrator does not receive an application for distribution, the administrator, the sponsor and the ambulance company in which the participant was a member shall attempt to notify the person or persons to whom the service award would be paid. In the event that the administrator, in his sole discretion, determines that a reasonable attempt has been made to contact such person or persons without success, the service award payable shall then be considered as forfeited for the purpose of determining future contributions payable by the sponsor. Such forfeiture shall be treated by the Program Actuary as an actuarial gain in the program cost calculations in the same manner as any other forfeiture of a service award. The funds accumulated to pay the participant or the participant's beneficiary shall remain within the service award program trust fund as if such funds were the accumulated funds associated with the forfeiture of a non-vested service award. Should the person to whom service award payments are owed subsequently file an application for payment with the administrator, the administrator shall determine and pay the amount of the service award owed to the person and the actuarial liability for such payments shall be included in subsequent actuarial calculations of the sponsor's funding costs of the program by the Program Actuary.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.10 (2012)**

### **§ 152.10 Forfeitures**

(a) Except in the case of a participant, who, upon application to the administrator is determined by the administrator to be totally and permanently disabled, a participant, who before he or she earned five years of service credit, ceases to be a volunteer ambulance worker of an ambulance company whose volunteer ambulance workers are eligible to participate in the service award program in which such person participates, shall forfeit his or her service credit upon receipt by the administrator of the list described in Section 152.7 of these rules and regulations on which he or she is first indicated as having ceased to be a volunteer ambulance worker during the calendar year for which the list is prepared.

(b) If a person whose service credit was forfeited in accordance with paragraph (a) above, within the five calendar year period beginning immediately after the calendar year in which he or she ceased to be a volunteer ambulance worker, again becomes a volunteer ambulance worker of an ambulance company whose volunteer ambulance workers are eligible to participate in the program in which such person previously participated, such person's forfeited service credit shall be restored as of December thirty-first of the first calendar year in which he or she again earns a year of ambulance service credit and again becomes a participant in the program in which he or she formerly was a participant.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.11 (2012)**

### **§ 152.11 Distributions**

(a) Unless a participant elects to be paid his or her service award in an optional actuarially equivalent form on the written application for distribution he or she files with the administrator, the service award shall be paid to the

participant in the form of a monthly payment straight life annuity. The amount of the monthly straight life annuity payment shall be one-twelfth (1/12) of the benefit amount times the years of ambulance service credit earned by the participant as of the effective date of the commencement of payment of his or her service award.

(b) Except as otherwise provided in this section, a participant shall be entitled to apply for and receive distribution of a service award only when the participant has acquired a Nonforfeitable right to a service award and has attained the entitlement age. A written application for distribution must be received by the administrator from a participant before payments shall commence to the participant. The participant shall, on such written application, specify the effective date of payment commencement and shall select the form of payment of his or her service award. The effective date of payment commencement shall be the first day of any month commencing within the ninety (90) day period immediately following the date the written application is received by the administrator. A participant may file a written application within the ninety (90) day period immediately preceding the date on which he or she shall have attained the entitlement age and acquired a nonforfeitable right to a service award and specify an effective date of payment commencement:

(i) no earlier than the date of attainment of the entitlement age and acquiring a nonforfeitable right to a Service award, and

(ii) no later than ninety (90) days after the application is filed with the administrator.

(c) The effective date of the commencement of payment of a service award to a participant shall not be on or before the last day of the first calendar year during which a participant earned a year of ambulance service credit.

(d) The administrator shall approve an application for distribution based on the terms of the sponsor's adoption agreement, the records maintained by the administrator and, in the case of disability or death, such additional records or information as the administrator may require. The administrator, in its sole discretion, may require the sponsor, the appropriate ambulance company or the participant to verify or supply any information the administrator deems necessary to determine entitlement to distribution of a service award.

(e) The number and types of optional forms of payments of a service award available under a program shall be at the sole discretion of the administrator subject to the approval of the Comptroller. Program sponsors and ambulance companies whose volunteer ambulance workers participate in a defined benefit plan service award program shall be promptly notified by the administrator in writing of any changes in the optional forms of payment. Participants shall then be promptly notified about such changes by the ambulance company. The optional forms of payment under the program are set forth in section 152/26 of this Part.

(f) For determining the payments of a service award to a participant under an actuarially equivalent form of payment, the Program Actuary shall use the actuarial assumptions used to calculate the annual program costs payable by the sponsor during the calendar year in which the payments of the service award to the participant or the participant's beneficiary shall commence.

(g) No ambulance service credit may be earned by a participant after the effective date of commencement of payment of a service award to a participant. Only service credit earned before the effective date of commencement of the service award payments to a participant shall be considered when calculating a participant's service award.

(h) In the event that a participant becomes totally and permanently disabled as certified by the workers' compensation board or by any other competent authority approved by the administrator, and the disability prevents the participant from pursuing his or her normal occupation, the participant shall be entitled to apply for and receive distribution of his or her service award regardless of whether the participant has reached the entitlement age or acquired a nonforfeitable right to a service award. The participant may select one of the optional forms of payment available under the service award program in case of disability. The value of the service award shall be determined on the basis of the years of ambulance service credited to the participant as of the effective date of commencement of payment of the service award. The amount of payments shall be calculated so as to be actuarially equivalent to the present value of the payments as if they commenced at the entitlement age.

(i) In the event of the death of a participant who has acquired a nonforfeitable right to a service award and who has not previously received distribution of any portion of his or her service award, the beneficiaries designated by the participant or, if no beneficiaries have been so designated, the participant's estate, shall be entitled to apply for and receive distribution of the participant's service award. The applicant may select one of the optional forms of payment available under the service award program in case of death. The value of the service award shall be determined on the basis of the years of ambulance service credited to the participant as of the effective date of commencement of payment of the service award. The amount of the payments shall be calculated so as to be

actuarially equivalent to the present value of the payments as if they commenced at the entitlement age.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.12 (2012)**

### **§ 152.12 Program amendment**

(a) Once a service award program has been adopted, the sponsor may amend the program in the manner provided by subdivision 9 of *section 219-1 of the General Municipal Law*. All amendments to a service award program shall take effect on January first next succeeding the completion of the process of adopting the amendment provided by subdivision 9 of Section 219-l.

(b) The resolution authorizing the adoption of an amendment to a service award program shall include:

(i) the name of each ambulance company having volunteer ambulance workers who are participants in the program;

(ii) a description of the amendment;

(iii) except in the case of a change to the activities for which points shall be granted toward a year of ambulance service credit, a statement of the effect if any, as determined by the Program Actuary, that the amendment would have on the annual cost of the program including a statement of the current and estimated future annual cost of the program.

(iv) except in a case of a change to the activities for which points shall be granted toward a year of ambulance service, the date on which the proposition authorizing the adoption of the amendment shall be submitted to referendum.

(c) The proposition authorizing adoption of an amendment to a service award program shall identify the service award program and shall include:

(i) a brief description of the amendment;

(ii) an estimate of the effect, if any, as determined by the Program Actuary, that the amendment would have on the annual cost of the program, including the current and estimated future annual cost of the program; and

(iii) the portion of any change in the estimated annual cost of the program to be borne by one or more other political subdivisions.

(d) In computing the amount of a service award, an amendment changing the program benefit amount shall be applied only to the service awards payable to participants who earn at least one year of ambulance service credit for activities performed on and after the effective date of such amendment.

Section statutory authority: *General Municipal, § 219-L*

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.13 (2012)**

### **§ 152.13 Program termination**

(a) A defined benefit plan service award program may be terminated by the sponsor in the manner provided by subdivision 9 of *section 219-l of the General Municipal Law*. The termination of a service award program shall take effect on the December thirty-first (31st) next succeeding approval by voters of the proposition to terminate the defined benefit plan service award program.

(b) The resolution authorizing the termination of a service award program shall:

(i) list the name of each ambulance company having volunteer ambulance workers who are participants or in the program to be terminated;

(ii) the estimated one-time cost of terminating the program, as determined by the program actuary; and

(iii) indicate the date on which the proposition authorizing the termination shall be submitted to referendum.

(c) The proposition authorizing the termination of a service award program shall identify the program and include:

- (i) a statement that the program shall be terminated; and
  - (ii) an estimate of the one-time cost of terminating the program as determined by the Program Actuary.
- (d) Upon the termination of a program, all participants including those then receiving payment of their service award, shall be paid a single-sum equal to the actuarial present value of the unpaid balance of their earned service award as of the date of program termination. Payment shall be made within one year of the effective date of termination.
- (e) The Program Actuary shall determine the actuarial present value single-sum distributions to participants and beneficiaries using the same actuarial assumptions he or she used to calculate the annual program funding cost payable during the calendar year in which voters approved the proposition to terminate the program.
- (f) The one-time cost to terminate the program shall be calculated by the program actuary. Such costs shall include the difference between the total cost of the single-sum distributions to participants and beneficiaries calculated by the Program Actuary, and the program assets. Such costs shall also include administrative costs. When the Comptroller is not the administrator, the administrative costs shall be determined in accordance with the service agreement between the Comptroller, the administrator and the Program Actuary. The total one-time cost to terminate the program shall be paid by the Sponsor to the administrator within one-hundred eighty (180) days of the effective date of termination of the program.
- (g) In the event that the program assets exceed the total single-sum distributions to participants and beneficiaries, all or a portion of the administrative costs of terminating the program may be paid, at the discretion of the sponsor, from the program assets.
- (h) After payment of the one-time cost to terminate the program, the Program Trustee, upon notification by the administrator, shall transfer the remaining program assets to the sponsor.
- (i) A participant or beneficiary may waive payment of any Service award payable to him or her from a terminated program by filing a written waiver of payment with the administrator.

Section statutory authority: *General Municipal, § 219-L*

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.14 (2012)**

### **§ 152.14 Notice of amendment or termination**

(a) Within thirty (30) days after the amendment of any of the terms of a service award program as set forth in the adoption agreement, or the termination of the sponsor's participation in a service award program, the chief executive officer of the sponsor shall file with the Comptroller in Albany, New York, two copies of a verified notice of amendment or notice of termination which shall contain the following:

- (1) a statement of the date on which the governing board of the sponsor approved the resolution authorizing the amendment or termination of the program and the vote thereon, and a certified copy of the resolution;
- (2) in the case of termination, or if the amendment requires submission of a proposition to the electors of the sponsor, a statement of the date on which the electors approved the proposition authorizing the amendment or termination and the vote thereon, and a certified copy of the proposition; and
- (3) an opinion of legal counsel which shall:
  - (i) be addressed to the sponsor;
  - (ii) expressly provide that the administrator may rely thereon;
  - (iii) state that in his or her capacity as legal counsel to the sponsor, he or she has examined originals or true and complete copies of those records, documents and other instruments necessary to render his or her opinion, including, but not limited to: the provisions of Article 11-AAA of the General Municipal Law and such other statutes as may be relevant; the resolution of the governing board of the sponsor authorizing the amendment or termination of the program; proof that the Program Actuary calculated the estimated annual cost of the amended program including administration costs or the additional costs, if any, of terminating a program; proof of any posting and publication of required notice and the certificate certifying the result of the vote on the proposition authorizing the amendment or termination of the program; and
  - (iv) express his or her opinion the sponsor has undertaken all actions and proceedings required by law to amend



or terminate the program.

(b) Upon receipt of a notice of amendment or a notice of termination, the Office of the State Comptroller shall forward one copy to the administrator and one copy to the Program Actuary. Within thirty (30) days of the receipt of a notice of amendment or a notice of termination, the administrator shall send to the chief executive officer of the sponsor two copies of an amended adoption agreement. The sponsor's legal counsel shall review such adoption agreement for consistency with the resolution of the sponsor's governing body authorizing the amendment and, if applicable, the proposition submitted to electors authorizing the amendment. The chief executive officer shall then execute, retain, file, and provide a copy of the amended agreement to each ambulance company, in the same manner as the original adoption agreement.

Section statutory authority: General Municipal, § A11-AAA

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.15 (2012)**

### **§ 152.15 Conversion to defined benefit plan**

(a) A defined contribution plan service award program adopted in accordance with Article 11-AA of the General Municipal Law may be converted into a defined benefit plan service award program in accordance with *Sections 219-i and 219-l of the General Municipal Law* and these rules and regulations.

(b) In addition to the requirements of *Section 219-l of the General Municipal Law*, the resolution authorizing conversion of a service award program shall include: a statement that the purpose of the resolution is to authorize the conversion of a defined contribution plan service award program into a defined benefit plan service award program;

(c) In addition to the requirements of *Section 219-1 of the General Municipal Law*, the proposition authorizing the conversion of a service award program shall identify the program and include a statement that the purpose of the proposition is to authorize conversion of a Defined contribution plan Service award program into a Defined benefit plan Service award program.

(d) No person who applied for a distribution of a Service award under a defined contribution plan service award program before the effective date of the conversion of the program into a defined benefit plan service award program shall be eligible for a distribution under the defined benefit plan service award program. Any distribution to such person shall be made in accordance with the provisions of the defined contribution plan service award program.

(e) All the assets within the defined contribution plan service award program trust fund on the effective date as of which a defined contribution plan service award program is converted to a defined benefit plan service award program shall be transferred to the defined benefit plan service award program trust fund and shall become the initial assets of the replacement defined benefit plan service award program. Any prior service contributions owed to the defined contribution plan service award program trust fund under the provisions of the defined contribution plan service award program by the sponsor shall no longer be payable, shall not be considered as an asset of the defined benefit plan program and shall not be considered as an asset in any calculations by the Program Actuary of the cost or costs of the Defined benefit plan service award program. Except for those persons who applied for a distribution of a defined contribution plan service award before the effective date of the conversion to a defined benefit plan, no person shall have any right to payment of a defined contribution plan service award, or any claim whatsoever to the assets held within the defined contribution plan service award program trust fund.

Section statutory authority: General Municipal, § A11-AA, § 219-I, § 219-L

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.16 (2012)**

### **§ 152.16 Administration**

(a) Service award programs shall be administered by the State Comptroller unless the Comptroller retains or designates an administrative service agency, financial organization, and/or an actuary to administer the programs.

(b) In the event that there is a change in the identity of the administrator, the Office of the State Comptroller shall notify the chief executive officer of each sponsor of a service award program of the change.

(c) The administrator shall:

- (1) prepare standard forms of a program agreement and adoption agreement which shall be utilized by all program sponsors;
- (2) prepare and distribute all forms and documents necessary for the administration of the program;
- (3) compile and maintain all records required for the administration of the program, including records of participant accrued benefit amounts;
- (4) prepare and distribute to participants, ambulance companies and sponsors, the reports and program summaries as required by these rules and regulations;
- (5) if the Comptroller is not the administrator, prepare and furnish to the Comptroller such reports as the Comptroller may require;
- (6) record and process contributions made by program sponsors;
- (7) cooperate with the Program Actuary, and Program Trustee to ensure the effective and efficient operation of the programs, including the provision in a timely manner of such information as the Program Actuary and Program Trustee may require to exercise and perform their powers and duties;
- (8) approve applications for distributions of service awards;
- (9) record and process distributions of service awards;
- (10) withhold all taxes and prepare all tax reporting forms required by federal, state and local law; and
- (11) perform such other functions as may be required by or pursuant to Article 11-AAA of the General Municipal Law and this part.

Section statutory authority: General Municipal, § A11-AAA

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.17 (2012)**

### **§ 152.17 Program actuary**

- (a) The Comptroller may designate a member of his staff or contract with an actuary to serve as the Program Actuary.
- (b) The Program Actuary shall calculate:
  - (i) the estimated annual cost and the components thereof of all proposed defined benefit plan service award programs, including defined benefit plan programs which are converted from defined contribution plan service award programs, and amendments to existing defined benefit plan programs;
  - (ii) the estimated costs to terminate a defined benefit plan service award program;
  - (iii) for each calendar year during which a defined benefit plan service award program is in effect, the actual cost of the program, including all components of such actual cost;
  - (iv) the amount of all actual distributions of service awards, including all amounts payable under actuarially equivalent forms of payment of service awards;
  - (v) any other amounts, costs or actuarial present values related to a defined benefit plan service award program requested by the Comptroller, the Program Trustee or required by statute, rule or regulation or by generally accepted actuarial or accounting practices applicable to volunteer ambulance workers' defined benefit plan service award programs.
- (c) The Program Actuary shall disclose the actuarial assumptions and actuarial methodology used to calculate the estimated and annual costs of a defined benefit plan service award program to the Comptroller and the Program Trustee. In addition, the Program Actuary shall upon request calculate and/or disclose any other information to the Program Trustee or the Comptroller.
- (d) The Program Actuary shall cooperate with the administrator and Program Trustee to ensure the effective and efficient operation of the programs, including the provision in a timely manner of such information as the administrator and program trustee may require to exercise and perform their powers and duties.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.18 (2012)**

### **§ 152.18 Program trustee**

(a) The Comptroller may designate himself or herself as Program Trustee or the Comptroller may contract with a financial organization or administrative service agency to serve as Program Trustee.

(b) The Program Trustee shall:

(i) hold the assets of the programs in trust;

(ii) receive and process contributions to the trust in a timely manner;

(iii) invest the assets of the trust;

(iv) determine the fair market value of the trust estate as of each valuation date as defined in the program agreement, commencing with December 31, 2000;

(v) make payments approved by the administrator to program participants and their beneficiaries, and other approved disbursements from the trust fund;

(vi) provide the administrator and Program Actuary with such information as may be necessary to enable the administrator and Program Actuary to prepare the annual reports for sponsors and annual participant statements provided for in these rules and regulations and program agreement, including the reports and statements required for calendar year 2000;

(vii) provide the administrator and Program Actuary with such information as may be necessary to enable the administrator and Program Actuary to withhold all appropriate taxes and prepare and file all tax reporting forms required by federal, state and local law; and

(viii) cooperate with the administrator, Program Actuary and the Comptroller to ensure the effective and efficient operation of the programs. In furtherance of this purpose, the Program Trustee shall provide in a timely manner such information as the administrator and Program Actuary may require to exercise and perform its powers and duties under the General Municipal Law, these rules and regulations and the program agreement. The Program Trustee shall also provide in a timely manner such information as the Comptroller may require to monitor the operation of the programs.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.19 (2012)**

### **§ 152.19 Program document**

(a) The administrator shall provide the chief executive officer of each sponsor with a copy of the defined benefit plan service award program document. Such program document shall consist of a copy of the program agreement, the trust agreement, and adoption agreement, as amended.

(b) The administrator shall prepare, maintain and may amend the program agreement. The program agreement shall set forth the rights and obligations of sponsors, volunteer ambulance workers, participants and beneficiaries of participants, and procedures for the administration of programs. The program agreement and any amendments thereto shall be consistent with the provisions of Article 11-AAA of the General Municipal Law and the provisions of these rules and regulations, as amended. If the program agreement is prepared by an administrative service agency or a financial organization, the program agreement and any amendments thereto shall not take effect until approved by the Comptroller.

(c) The Comptroller shall prepare and/or amend the trust agreement pursuant to subdivision 4 of *Section 219-p of the General Municipal Law*. The Comptroller may, however, direct the program trustee to prepare and/or amend the trust agreement subject to review and approval by the Comptroller. The Comptroller shall provide to the administrator a copy of the trust agreement and any amendments thereto.

(d) The adoption agreement shall be prepared by the administrator and the sponsor as provided in Section 152.5 of these rules and regulations.

Section statutory authority: *General Municipal, § A11-AAA, § 219-P*

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.20 (2012)**

### **§ 152.20 Reports**

(a) On or before September thirtieth (30th) of each year, the administrator shall provide to each sponsor a report which shall include, but not be limited to, the following information for the sponsor for the preceding calendar year:

- (1) the total value of program assets as of January first (1st);
- (2) the total amount contributed to the program by the sponsor;
- (3) the total amount of trustee expenses charged against program assets;
- (4) the total amount of administrative expenses charged against program assets;
- (5) the total amount of interest and investment earnings credited to program assets;
- (6) the total amount of investment losses charged to program assets;
- (7) the total amount of distributions;
- (8) the total value of program assets as of December thirty-first (31st);
- (9) the actuarially determined normal cost and prior service cost for the preceding calendar year which is payable by the sponsor in the current calendar year;
- (10) the administration costs payable in the current calendar year;
- (11) the names of persons paid service awards during the preceding calendar year as well as the amount paid to each person during such year;
- (12) the names and earned service credit of all persons who were participants in the program, including those in pay status or pending pay status, as of December thirty-first of such preceding calendar year along with a statement setting forth of each person's status in the program as of such date;
- (13) the names of those active volunteer ambulance workers who were not participants as of December thirty-first of such preceding calendar year; and
- (14) the projected annual program costs for each year within the five calendar year period next following the current calendar year.

(b) On or before September thirtieth (30th) of each year, the administrator shall provide to each ambulance company, and immediately thereafter each ambulance company shall provide to each participant who is a member of the company, a confidential statement for the preceding calendar year which shall include, but shall not be limited to, the following information for the participant:

- (1) name;
- (2) address;
- (3) social security number;
- (4) date of birth;
- (5) number of years of ambulance service credited as of December thirty-first (31st);
- (6) the amount of any death or disability benefit payable as of December thirty-first (31st) to the participant or the participant's beneficiary;
- (7) whether the participant had a nonforfeitable right to a service award as of December thirty-first;
- (8) a statement as to the number of years of ambulance service required for the participant to acquire a nonforfeitable right to a service award;
- (9) name(s) of the beneficiaries designated by the participant;
- (10) a description of the sponsor report;
- (11) the name and address of the person to whom the sponsor report was mailed from whom they may obtain a copy of such report;
- (12) the name of the person in the ambulance company who submitted information about the participant to the administrator;

(13) the procedure for correcting information shown on the statement.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.21 (2012)**

### **§ 152.21 Disclosure**

(a) Not later than six months after a volunteer ambulance worker becomes a participant in a service award program, the administrator shall provide to the ambulance company of which the participant is a member, and promptly thereafter the ambulance company shall provide to the participant, a summary of the program's provisions as adopted by the sponsor of the program.

(b) In the event that a service award program is amended, the administrator shall provide to each ambulance company a copy of the amendment and a written non-technical explanation of such amendment within six (6) months after the date on which the amendment takes effect and promptly thereafter each ambulance company shall provide a copy of the amendment and explanation to each participant who is a volunteer ambulance worker of the ambulance company.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.22 (2012)**

### **§ 152.22 Standards for selecting service providers**

(a) When selecting an administrative service agency or financial organization to serve as administrator, the following standards shall be utilized:

- (1) the entity's experience with defined benefit plans and/or service award programs;
- (2) the entity's ability to perform the required duties; and
- (3) the cost of services to be provided by the entity.

(b) When selecting an administrative service agency or financial organization to serve as program trustee or a financial organization to invest program funds, the following standards shall be utilized:

- (1) the standards set forth in subdivision (a) of this section;
- (2) the entity's investment expertise;
- (3) the capitalization of the entity;
- (4) the entity's creditworthiness.

(c) When selecting the Program Actuary, the following standards shall apply:

- (1) the standards set forth in subdivision (a) of this section;
- (2) the professional credentials of the person applying to be retained as the Program Actuary.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.23 (2012)**

### **§ 152.23 Acknowledgment**

(a) Each actuary, administrative service agency or financial organization selected to provide services in connection with service award programs shall contractually agree to discharge its duties as a fiduciary to service award programs. In addition, when a financial organization is selected to perform duties in connection with investment matters, it shall contractually agree to discharge its duties as a fiduciary in accordance with the prudent expert standard of care.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.24 (2012)**

### **§ 152.24 Solicitation, education and confidentiality**

(a) No financial organization, administrative service agency or actuary, nor any of their agents, shall solicit a

volunteer ambulance worker to purchase any products made available by such financial organization, administrative service agency or actuary other than in connection with the program, nor use information obtained by reason of its appointment as a financial organization, administrative service agency, or actuary to solicit volunteer ambulance workers with respect to such other products.

(b) Educational materials designed to acquaint volunteer ambulance workers with the benefits of the program may be provided by the financial organization, administrative service agency, or actuary upon prior approval by the Office of the State Comptroller. In addition, at the time of distribution of a service award, an administrative service agency, financial organization, or actuary may include with the distribution written information concerning the potential tax consequences of the distribution and generic categories of investment options. Such information may contain a statement indicating that additional information may be obtained from the administrative service agency, financial organization, or actuary or their agents and from other financial institutions, but in all cases such information shall also contain a clear and prominent statement that the Office of the State Comptroller does not review, approve, endorse or recommend, and is not in any way involved with, any financial instrument, product or service offered by or acquired through, an administrative service agency, financial organization, or actuary or their agents, or any other financial institution.

(c) Except as otherwise provided by law, all information obtained under the program by the sponsor, an ambulance company, an administrative service agency, financial organization, or actuary shall be confidential and shall be used exclusively for purposes relating to the program.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.25 (2012)**

### **§ 152.25 Auditing**

(a) The program records held by the administrator and the Program Trustee shall be audited by an independent certified public accounting firm selected and retained by the Comptroller of recognized standing in the industry. The frequency of the audits shall be at the discretion of the Comptroller; provided however, the Comptroller shall have an audit performed at least once in every five consecutive calendar year period beginning with the five year period commencing in calendar year 2000. Financial statements shall include the status of investments, a valuation of each investment and a valuation of investment holdings in the aggregate. The audit shall be performed in accordance with generally accepted auditing standards and financial statements shall be prepared in accordance with generally accepted accounting principles. Marketable securities shall be valued at market value.

Statutory authority: *General Municipal Law, 219-i, 219-p*

## **2 NYCRR § 152.26 (2012)**

### **§ 152.26 Optional forms of payment of service awards**

(a) There shall be two forms available for payment of service awards commencing on or after attainment of the entitlement age:

- (1) a monthly payment straight life annuity (standard form);
- (2) a five or ten year continuous and certain monthly payment life annuity which is actuarially equivalent to the monthly payment straight life annuity (standard form).

(b) There shall be two forms available for payment to participants who upon application to the administrator have been determined by the administrator to be totally and permanently disabled:

- (1) monthly payment straight life annuity; or
- (2) a single lump sum.

Both forms of payment shall be actuarially equivalent to the monthly straight life annuity (standard) form of payment that would have commenced to the participant on the first day of the month following or coinciding with the participant's 65th birthday.

(c) Forms available for payment of service awards to beneficiaries of deceased participants.

(1) If the beneficiary is the participant's estate, payment shall be a single lump-sum which shall be actuarially equivalent to the monthly straight life annuity (standard) form of payment that would have commenced to the participant on the first day of the month following or coinciding with the participant's 65th birthday or actuarially

equivalent to any continuing payments to the participant's designated beneficiary had the participant been being paid a service award at the time of his or her death and had the participant designated a person (or persons) to be his or her beneficiary.

(2) If the participant died before the effective date of the commencement of payment of his or her service award, the payments to the participant's designated beneficiary, which shall be actuarially equivalent to the monthly straight life annuity (standard) form of payment that would have commenced to the participant on the first day of the month following or coinciding with the later of the participant's 65th birthday or the participant's date of death, shall be in one of the following forms:

(i) monthly payment straight life annuity; or

(ii) a single, lump-sum.

(3) If the participant died after the effective date of the commencement of payment of his or her service award, the participant's designated beneficiary shall have the option to be paid:

(i) the remaining monthly service award payments due to the designated beneficiary under the optional form of payment selected by the participant; or

(ii) a single, lump-sum which is actuarially equivalent to the remaining monthly service award payments due to the designated beneficiary under the optional form of payment selected by the participant.

(d) In all cases where the monthly payments to a participant or a beneficiary under a monthly payment straight life annuity form of payment option shall be less than \$ 50, payment shall be made in an actuarially equivalent single, lump-sum to the participant or the participant's designated beneficiary (applies to subdivisions (a), (b) and (c) of this section).

(e) In any case where a deceased participant's designated beneficiary dies before having received all service award payments that would have been made to such designated beneficiary had he or she survived, the remaining payments shall be made to the estate of such designated beneficiary in an actuarially equivalent lump-sum.

Statutory authority: *General Municipal Law, §§ 219-i, 219-p*

## **PART 154. STATE-ADMINISTERED DEFINED CONTRIBUTION SERVICE AWARD PROGRAMS FOR VOLUNTEER FIREFIGHTERS**

### **2 NYCRR Part 154 Notes (2012)**

Statutory authority: *General Municipal Law*, §§ 214, 215, 216, 216-a, 216-b, 216-c, 217, 217-a, 218, 219-a, L. 2006, ch. 714, § 13

### **2 NYCRR § 154.1 (2012)**

#### **§ 154.1 Scope**

Article 11-A of the General Municipal Law authorizes the establishment of defined contribution service award programs to provide municipally-funded, pension-like benefits for volunteer firefighters. In general, defined contribution volunteer firefighter service award programs may be adopted by political subdivisions for the volunteer firefighters of volunteer fire companies or volunteer fire departments which are either: (a) under the control of the governing board of the political subdivision; or (b) located in a fire protection district of the political subdivision and under contract with the governing board to provide service therein. Adoption of a defined contribution volunteer firefighter service award program requires the affirmative vote of at least 60 percent of the governing board of the political subdivision and the approval of a proposition at a referendum of the eligible voters of the political subdivision. Article 11-A requires defined contribution volunteer firefighter service award programs to be either: (a) administered by the political subdivision; or (b) centrally administered by the State Comptroller or by service providers retained by the Comptroller. The Comptroller is required and authorized to adopt rules and regulations for defined contribution volunteer firefighter service award programs administered by the State. The rules and regulations must include standards for the selection of service providers, the method and timing of payments required to be made by the Sponsors, reporting requirements, matters relating to the preparation of a plan document, application procedures for transfer into the State-administered program, procedures and forms for the compilation and maintenance of the points accumulated by each volunteer firefighter, and any other matter relating to State-administered defined contribution volunteer firefighter service award programs. This Part contains the regulations governing such State-administered defined contribution volunteer firefighter service award programs.

Section statutory authority: General Municipal, § A11-A

### **2 NYCRR § 154.2 (2012)**

#### **§ 154.2 Definitions**

(a) Unless otherwise defined, the terms used in this Part shall have the same meaning as provided in Article 11-A of the General Municipal Law.

(b) In addition, as used in this Part:

(1) "Account" means the bookkeeping account established for a participant by the Administrator.

(2) "Account balance" means, as of any given time, the value of all contributions credited to a participant's account, plus all interest, earnings and gains thereon, and minus all losses, distributions, forfeitures and necessary administrative costs charged thereto.

(3) "Administrator" means the State Comptroller or, if the Comptroller retains an administrative service agency or financial organization to perform the functions set forth in section 154.10 of this Part, such administrative service agency or financial organization.

(4) "Comptroller" means the New York State Comptroller.

(5) "Participant" means a volunteer firefighter who is eligible for a benefit under a State-administered defined contribution volunteer firefighter service award program.

(6) "Prior service contribution" means a contribution to a defined contribution volunteer firefighter service award program made by the Sponsor of the program on behalf of a participant for volunteer firefighter service rendered by the participant during any one of the five calendar years immediately preceding the adoption of the program. A volunteer firefighter service award program established by a local sponsor prior to June 1, 2007 may, at the option of the local sponsor, provide for prior service contributions for volunteer firefighter service rendered during a period longer than the five calendar years immediately preceding the adoption of the program.



(7) "Sponsor" means a county, city, town, town on behalf of a fire protection district, village, village on behalf of a fire service area, or fire district which adopts a State-administered defined contribution volunteer firefighter service award program.

(8) "State-administered defined contribution volunteer firefighter service award program" means a service award program for volunteer firefighters established or maintained as a defined contribution plan for which State administration has been selected pursuant to Article 11-A of the General Municipal Law.

(9) "Valuation Date" means the last day of each calendar quarter, and each other day as may be determined by the Administrator, as of which the Administrator shall determine the value of participants' account balances.

Section statutory authority: General Municipal, § A11-A

## **2 NYCRR § 154.3 (2012)**

### **§ 154.3 Notice of adoption or transfer**

(a) Cost estimates. Prior to consideration of a resolution authorizing adoption of a State-administered defined contribution volunteer firefighter service award program, or the transfer of a locally-administered defined contribution volunteer firefighter service award program to State administration, the governing board of a political subdivision shall obtain from the Administrator an estimate of the annual cost of the State-administered defined contribution volunteer firefighter service award program. In making such estimate, the Administrator shall calculate each separate component of the total estimated cost of a proposed State-administered defined contribution volunteer firefighter service award program. In the case of a transfer of a locally-administered defined contribution volunteer firefighter service award program to State administration, the Administrator shall also estimate the additional amount, if any, determined to be necessary to fully fund all existing obligations of such program, up to and including contributions for credit for a year of firefighting service performed during the calendar year immediately preceding the year in which State administration is anticipated to commence and unfunded prior service costs. To enable the Administrator to make such estimates, the Sponsor and each volunteer fire company or volunteer fire department having members who are potential participants in the State-administered defined contribution volunteer firefighter service award program shall provide to the Administrator such information as the Administrator may require, and the Administrator may rely upon such information in making such estimates. The Administrator shall make such estimates using the methodology and assumptions that would be used to calculate the contributions payable by the Sponsor pursuant to section 154.6 of this Part. Before beginning to make such estimates, the Administrator shall disclose to the governing board in writing the fee for preparing such estimates. The fee for preparing the estimates shall not exceed the amount which the Administrator is permitted to charge for such service pursuant to an agreement between the Administrator and the Comptroller. The cost of such estimates shall be a charge against the Sponsor.

(b) For any defined contribution volunteer firefighter service award program which, on or after June 1, 2007, is to be State-administered pursuant to voter approval of either (i) the adoption of such a program, or (ii) the transfer of administration of such a program to the State of New York, the chief executive officer of the Sponsor shall, within 30 days after the approval of a proposition authorizing the adoption or transfer, submit to the State Comptroller by e-mail or other method prescribed by the Office of the State Comptroller, a verified notice of adoption or transfer which shall contain the following:

(1) a statement of the date on which the governing board of the Sponsor approved the resolution authorizing adoption of the State-administered defined contribution volunteer firefighter service award program or transfer to the State of the administration of a defined contribution volunteer firefighter service award program and the vote thereon, and a certified copy of the resolution;

(2) a statement of the date on which the eligible voters of the Sponsor approved the proposition authorizing adoption of the State-administered defined contribution volunteer firefighter service award program or transfer to the State of the administration of a defined contribution volunteer firefighter service award program and the vote thereon, and a certified copy of the proposition;

(3) an opinion of legal counsel which shall:

(i) be addressed to the Sponsor;

(ii) expressly provide that the Administrator may rely thereon;

(iii) state that in his or her capacity as legal counsel to the Sponsor, he or she has examined originals or true and complete copies of those records, documents and other instruments necessary to render his or her opinion, including, but not limited to, the provisions of Article 11-A of the General Municipal Law and such other laws as

may be relevant; the resolution of the governing board of the Sponsor authorizing the adoption of the State-administered defined contribution volunteer firefighter service award program or the transfer to the State of the administration of a defined contribution volunteer firefighter service award program; proof of any posting and publication of required notice; the certificate certifying the result of the vote on the proposition authorizing the adoption of the State-administered defined contribution volunteer firefighter service award program or the transfer to the State of the administration of a defined contribution volunteer firefighter service award program; and proof that the cost estimates prepared pursuant to subdivision (a) of this section were disclosed in the Proposition; and

(iv) express his or her opinion that the Sponsor has undertaken all actions and proceedings required by law to adopt the State-administered defined contribution volunteer firefighter service award program or the transfer to the State of the administration of a defined contribution volunteer firefighter service award program;

(4) a statement of the name, address and telephone number of the chief executive officer of the Sponsor; and

(5) a statement of the name, address and telephone number of each volunteer fire company or volunteer fire department having volunteer firefighters who are potential participants in a newly established State-administered defined contribution volunteer firefighter service award program or participants in an existing defined contribution volunteer firefighter service award program being transferred to State administration.

Section statutory authority: General Municipal, § A11-A

## **2 NYCRR § 154.4 (2012)**

### **§ 154.4 Adoption or transfer agreement**

(a) (1) State administration of a newly adopted defined contribution volunteer firefighter service award program shall not be effective until the Sponsor and the Administrator deliver to each other duly executed originals of an Adoption or Transfer Agreement setting forth the obligations of the Sponsor and the locally-determined features of the defined contribution volunteer firefighter service award program.

(2) No transfer to the State of responsibility for administration of a defined contribution volunteer firefighter service award program shall be effective until (i) the Sponsor and the Administrator deliver to each other duly executed originals of an Adoption or Transfer Agreement setting forth the obligations of the Sponsor and the locally-determined features of the defined contribution volunteer firefighter service award program, and (ii) the Sponsor pays in full to the Administrator the cash value of all program assets plus any additional amount determined by the Administrator to be necessary to fully finance all existing obligations of such program, up to and including contributions for credit for years of firefighting service performed during the calendar year immediately preceding the year in which State administration commences and any unpaid prior service costs payable in a lump sum pursuant to subdivision (a) of section 154.7 of this Part. Such payment shall be made in cash or cash equivalents acceptable to the Administrator, and the Administrator shall not be obligated to accept an insurance contract, a security, or any other asset that is not cash or a cash equivalent. Such payment shall be made at the time that the Adoption or Transfer Agreement is submitted to the Administrator pursuant to subdivision (c) of this section.

(3) An Adoption or Transfer Agreement shall include, but shall not be limited to, the following provisions:

(A) An original or copy of the notice of adoption or transfer submitted by the Sponsor pursuant to section 154.3 of this Part, together with a warranty by the Sponsor of the accuracy and completeness of the information set forth in such notice and an express agreement by the Sponsor to submit promptly to the Administrator such additional information as may be necessary to make the records of the defined contribution volunteer firefighter service award program accurate and complete;

(B) An express agreement by the Sponsor to pay to the Administrator on time and in full all required annual contributions, fees, charges, or assessments determined by the Administrator;

(C) In the case of a defined contribution volunteer firefighter service award program being transferred from local administration to State administration, a statement of the payment to be made to the Administrator by the Sponsor for the purpose of fully financing the obligations of the defined contribution volunteer firefighter service award program, together with an express agreement by the Sponsor to make such payment to the Administrator at the time that the Adoption or Transfer Agreement is submitted to the Administrator pursuant to subdivision (c) of this section, and an express agreement by the Sponsor to turn over to the Administrator in a timely manner such records as the Administrator deems necessary to effectuate such transfer;

(D) An express agreement by the Sponsor (i) that the Comptroller shall have the authority to suspend or terminate State administration of a defined contribution volunteer firefighter service award program at any time the Comptroller determines that the Sponsor has failed, for more than 30 days beyond the due date, to make any

required payment or to satisfy any other material obligation of the Adoption or Transfer Agreement; (ii) that the Comptroller may elect, at his or her sole option, to collect any required payment or other material obligation owed by the Sponsor by delivering to the Sponsor a duly executed order specifying the overdue amount and requiring the Sponsor to pay such amount from any funds available therefor; (iii) that the Comptroller may elect, at his or her sole option, to collect any required payment or other material obligation owed by the Sponsor by intercepting the requisite amount from any State aid payment or other amount otherwise due to the Sponsor from the State and applying the same to satisfy the overdue obligation; and (iv) that, notwithstanding such suspension or termination, the Sponsor shall continue to be obligated to make all required payments and to satisfy all other material obligations of the Adoption or Transfer Agreement;

(E) A statement that the Sponsor agrees to abide by the provisions of article 11-A of the General Municipal Law, the rules and regulations promulgated thereunder and the program document, as amended from time to time. The Adoption or Transfer Agreement shall be completed by incorporating the following locally-determined features of the State-administered defined contribution volunteer firefighter service award program:

(1) entitlement age;

(2) the number of years of volunteer firefighter service required for a participant to obtain a nonforfeitable right to a service award;

(3) the amount to be contributed to the program by the Sponsor on behalf of each participant who is credited with a year of firefighting service;

(4) whether the Sponsor shall make prior service contributions and, if so, the number of years for which such contributions shall be made and, if such prior service contributions have not been fully paid prior to commencement of State administration, an irrevocable election to pay prior service contributions in the form of a single lump sum payment or in annual installments as provided in section 154.7 of this Part;

(5) the amount of any optional additional line of duty disability or death benefit;

(6) the date as of which the newly adopted State-administered defined contribution volunteer firefighter service award program shall take effect;

(7) if the State-administered defined contribution volunteer firefighter service award program is to take effect on a day other than the first day of January, a statement setting forth whether points toward a year of firefighting service shall be granted for activities performed between the immediately preceding first day of January and the effective date of the State-administered defined contribution volunteer firefighter service award program; and

(F) A certification that, prior to the approval of a resolution by a governing board and the approval of a proposition by voters authorizing the transfer of a locally-administered defined contribution volunteer firefighter service award program to State administration, the Sponsor fully disclosed to each participant in the locally-administered program the estimated effects of such transfer on the value of such participant's defined contribution account, including, but not limited to, any investment losses incurred during local administration, any investment losses anticipated as a result of trading or liquidating program assets in order to acquire assets acceptable to the State program Administrator, and any fees and expenses incident to the transfer; and

(G) Such other provisions as the Comptroller may deem necessary and advisable to assure the proper financing and management of the State-administered defined contribution volunteer firefighter service award program.

(b) Within 30 days of receipt of the notice of adoption or transfer required by section 154.3 of this Part, the Administrator shall send to the chief executive officer of the Sponsor a copy of the program document and an Adoption or Transfer Agreement for the State-administered defined contribution volunteer firefighter service award program.

(c) Within 30 days of receipt of the Adoption or Transfer Agreement, the chief executive officer shall complete and execute two originals of the Adoption or Transfer Agreement, retain one executed original of the Adoption or Transfer Agreement and the program document and trust agreement as public records, and submit one executed original of the Adoption or Transfer Agreement to the Administrator. The chief executive officer shall also cause a copy of the Adoption or Transfer Agreement and program document and trust agreement to be provided to each volunteer fire company or volunteer fire department for which the State-administered defined contribution volunteer firefighter service award program is adopted or for which the responsibility for administration is transferred to the Comptroller or service providers retained by the Comptroller.

(d) The Administrator shall rely on the information set forth in the Adoption or Transfer Agreement until such time as the chief executive officer of the Sponsor files a notice of amendment or a notice of termination with the

Administrator as provided in section 154.9 of this Part.

Section statutory authority: General Municipal, § A11-A

## **2 NYCRR § 154.5 (2012)**

### **§ 154.5 Collection of personal information**

(a) Except as provided in subdivision (b) of this section, annually, at such time and in such form as the Administrator may require, the chief executive officer of the Sponsor shall obtain from each volunteer fire company or volunteer fire department for which the State-administered defined contribution volunteer firefighter service award program is established for submission to the Administrator, and each volunteer fire company or volunteer fire department shall provide to the chief executive officer for such purpose, the following information for each volunteer firefighter of the volunteer fire company or volunteer fire department, whether or not such volunteer firefighter is a participant in the State-administered defined contribution volunteer firefighter service award program:

(1) name;

(2) address;

(3) social security number;

(4) date of birth;

(5) name of the volunteer fire company or volunteer fire department;

(6) beneficiaries; and

(7) such other information as the Administrator determines necessary for the administration of the State-administered defined contribution volunteer firefighter service award program.

(b) In lieu of requiring the chief executive officer of the Sponsor to obtain the information specified in subdivision (a) of this section for submission to the Administrator, the Administrator may request the chief executive officer of a volunteer fire company or volunteer fire department to obtain and submit such information to the Administrator. In such case, the chief executive officer of the volunteer fire company or volunteer fire department shall provide a copy of the information submitted to the Administrator to the chief executive officer of the Sponsor.

(c) The chief executive officer of the Sponsor shall retain a copy of the information obtained pursuant to this section for use solely in connection with the administration of the State-administered defined contribution volunteer firefighter service award program.

(d) To the extent required by the Personal Privacy Protection Law, Article 6-A of the Public Officers Law, all personal information obtained pursuant to this section shall be protected from public disclosure.

Section statutory authority: Public Officers Law, § A6-A

## **2 NYCRR § 154.6 (2012)**

### **§ 154.6 Service credit and payment of contributions**

(a) Each volunteer fire company or volunteer fire department for which a State-administered defined contribution volunteer firefighter service award program is in effect shall maintain at all times for each volunteer firefighter of the volunteer fire company or volunteer fire department, whether or not such volunteer firefighter is a participant in the State-administered defined contribution volunteer firefighter service award program, a record of the activities performed and points granted toward a year of firefighting service. The Administrator may prescribe the form and manner of compiling and maintaining such records.

(b) On or before March thirty-first of each year, each volunteer fire company or volunteer fire department for which a State-administered defined contribution volunteer firefighter service award program is adopted shall prepare and submit to the governing board of the Sponsor a list of all the volunteer firefighters of the volunteer fire company or volunteer fire department which identifies all those who have qualified for credit for a year of firefighting service during the preceding calendar year. Such list shall be certified under oath by the president, secretary and chief or comparable officers of the volunteer fire company or volunteer fire department and shall be accompanied by such membership records or records of point accumulations as the governing board may require to substantiate the accuracy of the list. Such list shall also identify those volunteer firefighters who have waived participation in the State-administered defined contribution volunteer firefighter service award program as

provided in subdivision (f) of this section.

(c) On or before May first of each year, the governing board of the Sponsor shall review each such certified list and may delete the name of any person who was not a volunteer firefighter during the preceding calendar year or disallow the service credit of any volunteer firefighter who did not earn or otherwise receive fifty (50) points during the preceding calendar year or whose point accumulation has not been adequately documented. Thereafter, the governing board shall approve each such certified list of volunteer firefighters and each volunteer firefighter named thereon shall be credited with a year of firefighting service. Upon approval, the governing board shall cause a copy of each list to be returned to the appropriate volunteer fire company or volunteer fire department and each volunteer fire company or volunteer fire department shall, immediately upon receipt, post the list in a conspicuous place at its principal headquarters for at least thirty (30) days and maintain a record of the date on which the list is posted; provided, however, that no personal identifying information shall be included in the list that is posted except the names of the firefighters credited with a year of firefighting service.

(d) Not later than 30 days after the approved list is posted by the volunteer fire company or volunteer fire department, any volunteer firefighter whose name does not appear on the list as having qualified for credit for a year of firefighting service may appeal to the governing board of the Sponsor to have his or her name added to the list. The appeal shall be in writing and mailed to the clerk or secretary of the governing board of the Sponsor. The governing board shall investigate all appeals and upon finding that such a volunteer firefighter has qualified for a year of firefighting service for the preceding calendar year, shall order the volunteer firefighter's name to be added to the approved list.

(e) On or before July 1st of each year, the governing board of the Sponsor shall cause a certified copy of the approved list to be filed with the Administrator.

(f) Any volunteer firefighter not wishing to participate in the State-administered defined contribution volunteer firefighter service award program may waive participation by filing with the chief executive officer of the volunteer fire company or volunteer fire department, the chief executive officer of the political subdivision and the Administrator a written notice of waiver of participation. Such waiver shall remain effective until withdrawn in the same manner. During the period such a waiver remains effective, a volunteer firefighter shall not earn service credit, nor be entitled to a distribution from the State-administered defined contribution volunteer firefighter service award program.

(g) Notwithstanding the provisions of subdivisions (b) through (e) of this section, if, as of the effective date of the conversion of the locally-administered defined contribution volunteer firefighter service award program into a State-administered defined contribution volunteer firefighter service award program, the governing board of a Sponsor has approved a certified list of volunteer firefighters qualified for credit for a year of firefighting service rendered during the preceding calendar year in substantial compliance with the procedures set forth in subdivisions (b) through (d) of this section, excepting the dates set forth therein, the governing board shall comply with the filing requirement of subdivision (e) of this section no later than 30 days after the chief executive officer of the Sponsor files a completed and executed copy of the Adoption or Transfer Agreement with the Administrator pursuant to section 154.4 of this Part.

(h)(1) Commencing on November 15th of the year in which State administration begins, and each November 15th thereafter, the Administrator shall estimate the amount that each Sponsor is required to contribute to a State-administered defined contribution volunteer firefighter service award program for the current calendar year, including any prior service contributions required to be paid in such year pursuant to section 154.7 of this Part, and any additional amounts determined by the Administrator to be necessary to fully finance all existing obligations of such program. The Administrator shall submit to the fiscal officer of each Sponsor a statement of the amount so payable, plus any administrative costs payable by the Sponsor. For good cause shown, the Administrator may recalculate the contribution and issue a corrected statement. If, as a result of the amount determined to be paid for any calendar year, a Sponsor overpaid its actual obligation for that year, the amount to be determined by the Administrator for the next succeeding November 15th shall reflect the amount of the overpayment, plus interest, as a reduction in the amount otherwise required to be paid by such Sponsor.

(2) Within sixty (60) days after the date of a statement issued pursuant to paragraph one of this subdivision, the Sponsor shall pay to the Administrator the total amount due as shown on such statement.

(3) Interest shall accrue and be paid by the Sponsor on all amounts due, but not received by the Administrator within sixty (60) days after the date of the statement issued pursuant to paragraph one of this subdivision. The interest rate or rates used to calculate such interest shall be the actual investment return rate earned by the volunteer firefighters' defined contribution service award program trust fund during the calendar year (or years) in which such unpaid contributions were due to be paid.

(4) The Administrator shall notify the Comptroller of any amounts remaining unpaid more than 90 days after the date of the statement issued pursuant to subdivision (a) of this section.

(5) In the event that a Sponsor does not submit to the Administrator an approved list in accordance with subdivision (e) or (g) of this section, the Administrator shall bill the Sponsor for the contribution due for the calendar year in which the list should have been submitted in an amount calculated by the Administrator equal to the estimated contribution due during such year. Such estimated contribution shall be calculated by the Administrator as if all volunteer firefighters named on the latest year's approved list received by the Administrator continued to be volunteer firefighters and all such persons earned a year of service credit during the calendar year for which the list should have been prepared in accordance with subdivision (e) or (g) of this section. Payment of such estimated contribution shall be made in accordance with paragraphs one through three of this subdivision as if the Administrator's estimate was based upon the actual approved lists prepared in accordance with subdivisions (a) through (e) of this section. Upon receipt by the Administrator of the actual approved list prepared in accordance with subdivisions (a) through (e) of this section, the Administrator shall recompute the contributions due for such calendar year. In the event that additional contributions are owed by the Sponsor (including any additional administration costs), the Administrator shall bill the Sponsor for such additional amounts. Interest shall be paid by the Sponsor on all additional amounts owed and shall accrue from the due date of the payment of the estimated contribution billed to the Sponsor by the Administrator with such interest calculated in accordance with paragraph three of this subdivision. Any excess of the estimated contributions over the actual contributions shall be treated as an overpayment by the Sponsor in the manner provided in subdivision (a) of this section. The amount of such overpayment shall be reduced by any related additional administration costs charged by the Administrator. The assessment of any extra additional administration charges payable by the Sponsor to the Administrator because of the failure to comply with subdivisions (a) through (e) of this section shall be in accordance with the contract between the Comptroller and the Administrator.

(i) (1) Forfeitures shall be used to reduce contributions for other service award participants.

(2) In the event that two years have elapsed since an inactive volunteer firefighter participant or a participant's designated beneficiary becomes eligible to apply for a service award and the Administrator does not receive an application for distribution, the Administrator, the Sponsor and the volunteer fire company or volunteer fire department in which the participant was a member shall attempt to notify the person or persons to whom the service award would be paid. In the event that the Administrator, in his or her sole discretion, determines that a reasonable attempt has been made to contact such person or persons without success, the service award payable shall then be considered as forfeited for the purpose of determining future contributions payable by the Sponsor.

(3) A participant who ceases to be a volunteer firefighter before he or she has earned a nonforfeitable right to a service award shall forfeit his or her service credit and account balance upon receipt by the Administrator of notice from the Sponsor and the appropriate volunteer fire department or volunteer fire company that the individual has ceased to be a volunteer firefighter. The provisions of this subdivision shall not apply to a volunteer firefighter who is determined to be totally and permanently disabled in accordance with subdivision (d) of section 154.8 of this Part.

(4) In the event that a person whose service credit and account balance were forfeited in accordance with paragraph (3) of this subdivision resumes being a volunteer firefighter within the five-year period beginning immediately after the calendar year in which he or she ceased to be a volunteer firefighter, such person's forfeited service credit shall be restored as of December thirty-first of the first calendar year for which he or she again qualifies for a year of firefighting service credit and again becomes a participant in the State-administered defined contribution volunteer firefighter service award program in which he or she formerly was a participant.

## **2 NYCRR § 154.7 (2012)**

### **§ 154.7 Prior service contributions**

(a) In the event that a State-administered defined contribution service award program provides for prior service contributions, each volunteer fire company or volunteer fire department for which the program is adopted shall identify on the list prepared pursuant to subdivision (b) of section 154.6 of this Part those participants who are entitled to one or more prior service contributions and the number of years for which each participant is entitled to such prior service contributions. Any participant who is denied a prior service contribution for one or more years may appeal to the governing board at the same time, in the same manner, and with like effect as provided in subdivision (d) of section 154.6 of this Part. Except as provided in subdivisions (b) or (d) of this section, prior service contributions shall be paid to the Administrator in a single lump sum.

(b) In the case of a State-administered defined contribution volunteer firefighter service award program that is initially established as a State-administered defined contribution volunteer firefighter service award program, the governing board of the Sponsor may elect to pay service contributions over the five-year period beginning with the calendar year in which the program first takes effect; provided, however, that if a volunteer firefighter first qualifies for a year of firefighting service for a calendar year later than the first calendar year in which the program first takes effect, and thereby becomes a participant entitled to prior service credit, then any prior service contribution attributable to such prior service credit shall be paid over the five-year period beginning with the calendar year for which the volunteer firefighter first qualified for a year of firefighting service. Where such an election is made, the first annual installment shall be paid to the Administrator at the same time that the first contribution on behalf of a participant is made pursuant to section 154.6 of this Part. Each subsequent annual installment shall be paid in each of the four years immediately succeeding the year in which the first installment is paid, together with interest at the rate determined pursuant to subdivision (c) of this section on the unpaid balance of the prior service contribution as of the date of such payment; provided, however, that in the event that the Administrator notifies the Sponsor that a participant has been determined eligible for a distribution of a service award prior to the payment of the fifth annual installment, the governing board of the Sponsor shall cause payment to be made to the Administrator of an unscheduled prior service contribution within 30 days of receiving such notice. The unscheduled prior service contribution shall equal the unpaid balance of the participant's prior service contribution plus interest at the rate determined pursuant to subdivision (c) of this section on such unpaid balance.

(c) On or before March 31st of each year the Administrator shall determine the rate of interest to be paid on the unpaid balance of prior service contributions. The rate of interest shall equal the rate of return on program assets during the preceding calendar year. The Administrator shall notify Sponsors of the rate of interest by inclusion in, or enclosure with, the report required by subdivision (a) of section 154.12 of this Part.

(d) Notwithstanding the provisions of subdivisions (a) and (b) of this section, if, as of the effective date of the conversion of the locally-administered defined contribution volunteer firefighter service award program into a State-administered defined contribution volunteer firefighter service award program, the governing board of a Sponsor has not approved a certified list of volunteer firefighters qualified for credit for a year of firefighting service rendered during the preceding calendar year which identifies those participants who, by virtue of earning such credit, became entitled to one or more prior service contributions in substantial compliance with the procedures referred to in subdivision (a) of this section, the list prepared pursuant to section 154.6 (g) of this Part shall identify such participants and the number of years for which each participant is entitled to prior service contributions. A participant who is denied a prior service contribution for one or more years may appeal to the governing board of the Sponsor at the same time, in the same manner, and with like effect as provided in section 154.6(d) of this Part. Payment of prior service contributions shall be made in a single lump sum or in installment payments as provided in subdivision (b) of this section.

(e) If, as of the effective date of the conversion of a locally administered defined contribution volunteer firefighter service award program into a State-administered defined contribution volunteer firefighter service award program, the governing board of a Sponsor has approved a certified list of volunteer firefighters qualified for credit for a year of firefighting service rendered during the preceding calendar year which identifies those participants who, by virtue of earning such credit, became entitled to one or more prior service contributions in substantial compliance with the procedures referred to in subdivision (a) of this section, the Sponsor shall pay such prior service contributions in a single lump sum or in installment payments as provided in subdivision (b) of this section.

## **2 NYCRR § 154.8 (2012)**

### **§ 154.8 Distributions**

(a) A service award shall equal a participant's account balance as of the valuation date immediately succeeding application for distribution of the service award plus any unscheduled prior service contributions received by the Administrator pursuant to section 154.7 of this Part. A service award shall be paid in the form of a lump sum distribution or in such other manner selected by the participant in his or her application for distribution of the service award as may be permitted by the terms and conditions of the program document.

(b) Except as otherwise provided in this section, a participant shall be entitled to apply for and receive distribution of a service award only when the participant has reached entitlement age.

(c) A service award shall be payable only after an application for distribution is filed with the Administrator and the Administrator approves the application, and shall be paid as soon as practicable following approval of the application and the valuation date next succeeding the date the application is received by the Administrator. The Administrator shall determine whether to approve an application based on the terms of the Sponsor's adoption

agreement, the records maintained by the Administrator and, in the case of disability or death, such additional records or information as the Administrator may require. The Administrator, in its sole discretion, may require the Sponsor, the appropriate volunteer fire company or volunteer fire department or the participant to verify or supply any information the Administrator deems necessary to determine entitlement to distribution of a service award.

(d) In the event that a participant becomes totally and permanently disabled as certified by the workers' compensation board or by any other competent authority approved by the Administrator, and the disability prevents the participant from pursuing his or her normal occupation, the participant shall be entitled to apply for and receive distribution of a service award regardless of whether the participant has reached entitlement age or has acquired a nonforfeitable right to a service award. If a State-administered defined contribution volunteer firefighter service award program includes an optional additional disability benefit that the Sponsor has elected to provide for a participant who becomes disabled during the course of service as an active volunteer firefighter while actively engaged in providing a line of duty service, then, in the event that a participant becomes totally and permanently disabled as a result of such cause and such total and permanent disability is certified by the workers' compensation board or by any other competent authority approved by the Administrator, the participant shall be entitled to apply for and receive distribution of such optional additional disability benefit in the form of a monthly payment for life in the amount stated in the referendum authorizing such benefit.

(e) In the event of the death of a participant who has acquired a nonforfeitable right to a service award and who has not previously received distribution of all or any portion of a service award, the beneficiary or beneficiaries designated by the participant or, if no beneficiary has been designated, the participant's estate, shall be entitled to apply for and receive distribution of the participant's service award regardless of whether the participant had reached entitlement age before death. If a participant dies after receiving distribution of less than the full amount of the service award, the remaining portion, if any, shall be paid in accordance with the distribution option selected by the participant in his or her application for distribution of the service award made pursuant to this section. If a State-administered defined contribution volunteer firefighter service award program includes an optional additional death benefit that the Sponsor has elected to provide for a participant who dies during the course of service as an active volunteer firefighter while actively engaged in providing a line of duty service, then, in the event that a participant dies as a result of such cause, the beneficiary or beneficiaries designated by the participant or, if no beneficiary has been designated, the participant's estate, shall be entitled to apply for and receive distribution of such additional optional death benefit in the amount stated in the referendum authorizing such benefit.

(f) In the event that the Sponsor has elected to pay prior service contributions in installments as provided in section 154.7 of this Part and the Administrator determines that a participant is eligible for a distribution of a service award prior to the payment of all annual installments of the participant's prior service contribution, the Administrator shall promptly notify the Sponsor of the amount of the unscheduled prior service contribution which must be paid to the Administrator.

## **2 NYCRR § 154.9 (2012)**

### **§ 154.9 Notice of amendment or termination**

(a) Once a State-administered defined contribution volunteer firefighter service award program has been adopted, the Sponsor may amend or terminate its participation in the State-administered defined contribution volunteer firefighter service award program in the manner provided by article 11-A of the General Municipal Law.

(b) Within 30 days after the amendment of any of the terms of a State-administered defined contribution volunteer firefighter service award program set forth in the Adoption or Transfer Agreement, or the termination of the Sponsor's participation in a State-administered defined contribution volunteer firefighter service award program, the chief executive officer of the Sponsor shall file with the Administrator a verified notice of amendment or notice of termination which shall contain the following:

(1) a statement of the date on which the governing board of the Sponsor approved the resolution authorizing the amendment or termination of participation in the State-administered program and the vote thereon, and a certified copy of the resolution;

(2) in the case of termination, or in the case of an amendment requiring submission of a proposition to the eligible voters of the Sponsor, a statement of the date on which the eligible voters approved the proposition authorizing the amendment or termination and the vote thereon, and a certified copy of the proposition; and

(3) an opinion of legal counsel which shall;

(i) be addressed to the Sponsor;



(ii) expressly provide that the Administrator may rely thereon;

(iii) state that in his or her capacity as legal counsel to the Sponsor, he or she has examined originals or true and complete copies of those records, documents and other instruments necessary to render his or her opinion, including, but not limited to, the provisions of Article 11-A of the General Municipal Law and such other laws as may be relevant, the resolution of the governing board of the Sponsor authorizing the amendment or termination of the program, proof of any posting and publication to give required notice and the certificate certifying the result of the vote on the proposition authorizing the amendment or termination of the State-administered defined contribution volunteer firefighter service award program; and

(iv) express his or her opinion that the Sponsor has undertaken all actions and proceedings required by law to amend or terminate the State-administered defined contribution volunteer firefighter service award program.

(c) Within 30 days of the receipt of a notice of amendment, the Administrator shall send to the chief executive officer of the Sponsor two copies of an amended form of Adoption or Transfer Agreement. The chief executive officer shall complete the copies of the amended form of Adoption or Transfer Agreement by incorporating the terms of the amendment, and shall execute, retain, file, and provide a copy of the amended Adoption or Transfer Agreement to each volunteer fire company or volunteer fire department, in the same manner as the original Adoption or Transfer Agreement.

(d) Any amendment to the program by the Sponsor shall only take effect as of January 1st of the calendar year following the amendment and shall only apply prospectively.

Section statutory authority: General Municipal, § A11-A

## **2 NYCRR § 154.10 (2012)**

### **§ 154.10 Administration**

(a) State-administered defined contribution volunteer firefighter service award programs shall be administered by the State Comptroller unless the Comptroller retains an administrative service agency or financial organization to administer the programs. Upon receipt of a notice of adoption or transfer of a defined contribution volunteer firefighter service award program the Office of the State Comptroller shall notify the chief executive officer of the Sponsor of the name, address and telephone number of the Administrator and, if the Administrator is not the State Comptroller, forward one copy of the notice of adoption or transfer to the Administrator. In the event that there is a change in the identity of the Administrator, the Office of the State Comptroller shall notify the chief executive officer of each Sponsor of a State-administered defined contribution volunteer firefighter service award program of the identity of the new Administrator.

(b) The Administrator shall:

(1) prepare a standard form of program document which shall be utilized by all program Sponsors;

(2) prepare all forms necessary for the administration of the program;

(3) compile and maintain all records required for the administration of the program, including records of participant account balances;

(4) prepare and distribute to participants, volunteer fire companies or volunteer fire departments and Sponsors reports and program summaries as required by this Part;

(5) if the Comptroller is not the Administrator, prepare and furnish to the Comptroller such reports as the Comptroller may require;

(6) record and process contributions made by program Sponsors;

(7) approve applications for distributions of service awards;

(8) record and process distributions of service awards;

(9) withhold all taxes and prepare all tax reporting forms required by federal, state and local law; and

(10) perform such other functions as may be required by or pursuant to Article 11-A of the General Municipal Law and this Part.

(c) The Comptroller may designate himself or herself as the Program Trustee or the Comptroller may contract with a financial organization or administrative service agency to serve as Program Trustee. The Program Trustee shall:

- (1) hold the assets of the programs in trust;
  - (2) receive and process contributions to the trust in a timely manner;
  - (3) invest the assets of the trust;
  - (4) annually determine the fair market value of the trust estate;
  - (5) make payments approved by the Administrator to program participants and their beneficiaries, and other approved disbursements from the trust fund;
  - (6) provide the Administrator with such information as may be necessary to enable the Administrator to prepare the annual reports for Sponsors and annual participant statements provided for in this Part and program agreement, including the reports and statements required for calendar year 2007;
  - (7) provide the Administrator with such information as may be necessary to enable the Administrator to withhold all appropriate taxes and prepare and file all tax reporting forms required by federal, state and local law; and
  - (8) cooperate with the Administrator and the Comptroller to ensure the effective and efficient operation of the programs. In furtherance of this purpose, the Program Trustee shall provide in a timely manner such information as the Administrator may require to exercise and perform the Administrator's powers and duties under the General Municipal Law, this Part and the program agreement. The Program Trustee shall also provide in a timely manner such information as the Comptroller may require to monitor the operation of the programs.
- (d) If the Comptroller is not the Administrator or the Program Trustee, the fee for providing such services shall be a charge against the Sponsor and not exceed the amount or amounts which the Administrator or Program Trustee is permitted to charge pursuant to an agreement between the Administrator or Program Trustee and the Comptroller.

Section statutory authority: General Municipal, § A11-A

## **2 NYCRR § 154.11 (2012)**

### **§ 154.11 Program document**

The Administrator shall prepare and may amend a single State-administered defined contribution volunteer service award program document setting forth the obligations of Sponsors, the rights of volunteer firefighters and participants, and standards and procedures for the administration of State-administered defined contribution volunteer firefighter service award programs. The program document and any amendments thereto shall be consistent with the provisions of Article 11-A of the General Municipal Law and the provisions of this Part, as amended. If the program document is prepared by an administrative service agency or financial organization, the program document and any amendments to the program document shall not take effect until approved by the State Comptroller.

Section statutory authority: General Municipal, § A11-A

## **2 NYCRR § 154.12 (2012)**

### **§ 154.12 Reports**

- (a) On or before September 30th of each year, the Administrator shall provide to each Sponsor a report which shall include, but not be limited to, the following information for the preceding calendar year for the Sponsor:
- (1) the total value of participant account balances as of January 1st;
  - (2) the total amount contributed to the State-administered defined contribution volunteer firefighter service award program by the Sponsor;
  - (3) the total amount of administrative expenses charged against participant account balances;
  - (4) the total amount of interest, earnings and gains credited to participant account balances;
  - (5) the total amount of losses charged to participant account balances;
  - (6) the total amount of distributions;
  - (7) the total value of forfeitures; and
  - (8) the total value of participant account balances as of December 31st.

(b) On or before September 30th of each year, the Administrator shall provide to each volunteer fire company or volunteer fire department, and immediately thereafter each volunteer fire company or volunteer fire department shall provide to each participant who is a member of the volunteer fire company or volunteer fire department, a confidential statement for the preceding calendar year which shall include, but shall not be limited to, the following information for the participant:

- (1) name;
- (2) address;
- (3) social security number;
- (4) date of birth;
- (5) account balance as of January 1st;
- (6) amount contributed by the Sponsor on behalf of the participant;
- (7) administrative expenses charged against the account balance;
- (8) interest, earnings and gains credited to account balance;
- (9) losses charged to account balance;
- (10) distributions;
- (11) account balance as of December 31st;
- (12) total number of years of volunteer firefighter service required to obtain a nonforfeitable right to a service award;
- (13) total number of years of volunteer firefighter service credited to the participant;
- (14) entitlement age; and
- (15) designated beneficiaries.

(c) Within 30 days of the conversion of a locally-administered defined contribution volunteer firefighter service award program into a State-administered defined contribution volunteer firefighter service award program, the Administrator shall provide to each participant a statement of the participant's account balance as of the date on which the State administration commenced.

## **2 NYCRR § 154.13 (2012)**

### **§ 154.13 Disclosure**

(a) Not later than six months after a volunteer firefighter becomes a participant in a State-administered defined contribution volunteer firefighter service award program, the Administrator shall provide to the volunteer fire company or volunteer fire department of which the participant is a member, and promptly thereafter the volunteer fire company or volunteer fire department shall provide to the participant, a summary of the State-administered defined contribution volunteer firefighter service award program's provisions as adopted by the Sponsor of the State-administered defined contribution volunteer firefighter service award program.

(b) In the event that a material modification is made to a State-administered defined contribution volunteer firefighter service award program, the Administrator shall provide to each volunteer fire company or volunteer fire department a copy of the modification within six months after the date on which the modification is adopted or the date on which the modification takes effect, whichever is later, and promptly thereafter each volunteer fire company or volunteer fire department shall provide a copy of the modification to each participant who is a member of the volunteer fire company or volunteer fire department.

## **2 NYCRR § 154.14 (2012)**

### **§ 154.14 Standards for selecting service providers**

Service providers shall be selected after competitive proposals are solicited.

(a) When selecting an administrative service agency or a financial organization to serve as Administrator, the following standards shall be utilized, with each standard to be weighted at the discretion of the Comptroller:

- (1) the entity's experience with defined contribution programs;

- (2) the capitalization of the entity;
- (3) the entity's creditworthiness;
- (4) the entity's ability to perform the required duties; and
- (5) the cost of services to be provided by the entity.

(b) When selecting an administrative service agency or financial organization to serve as trustee or a financial organization to invest program funds the following standards shall be utilized, with each standard to be weighted at the discretion of the Comptroller:

- (1) the standards set forth in subdivision (a) of this section;
- (2) the entity's investment expertise;
- (3) the capitalization of the entity;
- (4) the entity's creditworthiness;
- (5) the entity's investment sophistication and flexibility;
- (6) the entity's familiarity with similar programs;
- (7) the entity's ability to procure or provide suitable investments; and
- (8) the entity's ability to perform the required duties in recognition of the fiduciary nature of its responsibilities.

## **2 NYCRR § 154.15 (2012)**

### **§ 154.15 Acknowledgement**

Each administrative service agency or financial organization selected to provide services in connection with State-administered volunteer firefighter defined contribution service award programs shall contractually agree to discharge its duties as a fiduciary solely in the interest of the participants and beneficiaries of the State-administered defined contribution volunteer firefighter service award programs. The fiduciary standard of care, which shall be an express provision of any contract with an administrative service agency or financial organization, shall permit the fiduciary to accept, hold, invest in and retain only such investments as would be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

## **2 NYCRR § 154.16 (2012)**

### **§ 154.16 Solicitation, education and confidentiality**

(a) No financial organization or administrative service agency nor any of their agents shall use information obtained by reason of its appointment as a financial organization or administrative service agency to solicit volunteer firefighters to purchase any product made available by such financial organization or administrative service agency.

(b) Educational materials designed to acquaint volunteer firefighters with the benefits of the program may be provided by the financial organization or administrative service agency upon prior approval by the Office of the State Comptroller. In addition, at the time of distribution of a service award, an administrative service agency or financial organization may include with a distribution written information concerning the potential tax consequences of the distribution and generic categories of investment options. Such information may contain a statement indicating that additional information may be obtained from the administrative service agency or financial organization or their agents and from other financial institutions, but in all cases such information shall also contain a clear and prominent statement that the Office of the State Comptroller does not review, approve, endorse or recommend any such information, and is not in any way affiliated with, any financial instrument, product or service offered by or acquired through an administrative service agency, financial organization or their agents, or any other financial institution.

(c) Except as otherwise provided by law, all information obtained under the State-administered defined contribution volunteer firefighter service award program by the Sponsor, a volunteer fire company or volunteer fire department, an administrative service agency or a financial organization shall be confidential and shall be used exclusively for purposes relating to the program.

## **PART 155. STATE-ADMINISTERED DEFINED BENEFIT SERVICE AWARD PROGRAMS FOR VOLUNTEER FIREFIGHTERS**

### **2 NYCRR Part 155 Notes (2012)**

Statutory authority: *General Municipal Law*, §§ 216, 216-a, 216-c, A11-A, *Public Officers Law* A6-A

### **2 NYCRR § 155.1 (2012)**

#### **§ 155.1 Scope**

Article 11-A of the General Municipal Law authorizes the establishment of defined benefit service award programs to provide municipally funded, pension-like benefits for volunteer firefighters. In general, defined benefit volunteer firefighter service award programs may be adopted by political subdivisions for the volunteer firefighters of volunteer fire companies or volunteer fire departments which are either: (a) under the control of the governing board of the political subdivision; or (b) located in a fire protection district of the political subdivision and under contract with the governing board to provide service therein. Adoption of a defined benefit volunteer firefighter service award program requires the affirmative vote of at least 60 percent of the governing board of the political subdivision and the approval of a proposition at a referendum of the eligible voters of the political subdivision. Article 11-A requires the defined benefit volunteer firefighter service award programs to be either: (a) administered by the political subdivisions; or (b) centrally administered by the State Comptroller or by service providers retained by the Comptroller. The Comptroller is required and authorized to adopt rules and regulations for the programs administered by the State. The rules and regulations must include standards for the selection of service providers, the method and timing of payments required to be made by the Sponsors, reporting requirements, matters relating to the preparation of a plan document, application procedures for transfer into the State-administered program, procedures and forms for the compilation and maintenance of the points accumulated by each volunteer firefighter, and any other matter relating to State-administered defined benefit volunteer firefighter service award programs. This Part contains the regulations governing such State-administered defined benefit volunteer firefighter service award programs.

Section statutory authority: *General Municipal*, § A11-A

### **2 NYCRR § 155.2 (2012)**

#### **§ 155.2 Definitions**

(a) Unless otherwise defined, the terms used in this Part shall have the same meaning as provided in Article 11-A of the General Municipal Law.

(b) In addition, as used in this Part:

(1) "Administrator" means the State Comptroller or, if the Comptroller retains an administrative service agency or financial organization to perform the functions set forth in section 155.15 of this Part, such administrative service agency or financial organization.

(2) "Benefit" or "benefit amount" means an amount equal to an annual payment of \$ 60, \$ 120, \$ 180, \$ 240 or \$ 360 for each year of firefighting service, as selected by the Sponsor.

(3) "Comptroller" means the New York State Comptroller.

(4) "Participant" means a volunteer firefighter who is eligible for a benefit under a State-administered defined benefit volunteer firefighter service award program.

(5) "Prior service costs" means the cost of granting prior service credit to volunteer firefighters.

(6) "Prior service credit" means credit for years of volunteer firefighter service for activities performed during the five calendar years immediately preceding the adoption of a defined benefit volunteer firefighter service award program. A volunteer firefighter service award program established by a local sponsor prior to June 1, 2007 may, at the option of the local sponsor, provide for prior service credit for volunteer firefighter service rendered during a period longer than the five calendar years immediately preceding the adoption of the program.

(7) "Program Actuary" means the actuary designated by the Comptroller to perform the functions required to be performed by an actuary under Article 11-A of the General Municipal Law and this Part, as amended from time to time.

(8) "Sponsor" means a county, city, town, town on behalf of a fire protection district, village, village on behalf of a

fire service area or fire district which adopts a State-administered defined benefit volunteer firefighter service award program.

(9) "State-administered defined benefit volunteer firefighter service award program" means a service award program for volunteer firefighters established or maintained as a defined benefit plan for which State administration has been selected pursuant to Article 11-A of the General Municipal Law.

Section statutory authority: General Municipal, § A11-A

## **2 NYCRR § 155.3 (2012)**

### **§ 155.3 Actuarial cost estimates**

Prior to consideration of a resolution authorizing adoption of a State-administered defined benefit volunteer firefighter service award program, or the transfer of a locally-administered defined benefit volunteer firefighter program to State administration, the governing board of a political subdivision shall obtain from the Program Actuary an estimate of the annual cost of the State-administered defined benefit volunteer firefighter service award program. In making such estimate, the Program Actuary shall calculate each separate component of the total estimated cost of a proposed State-administered defined benefit volunteer firefighter service award program. In the case of a transfer of a locally-administered defined benefit volunteer firefighter service award program to State administration, the Program Actuary shall also estimate the additional amount, if any, determined by the Administrator to be necessary to fully fund all existing obligations of such program, up to and including contributions for credit for a year of firefighting service performed during the calendar year immediately preceding the year in which State administration is anticipated to commence and unfunded prior service costs. To enable the Program Actuary to make such estimates, the Sponsor and each volunteer fire company or volunteer fire department having members who are potential participants in the State-administered defined benefit volunteer firefighter service award program shall provide to the Program Actuary such information as the Program Actuary may require, and the Program Actuary may rely upon such information in making such estimates. The Program Actuary shall make such estimates using the actuarial methodology and assumptions that would be used to calculate the contributions payable by the Sponsor pursuant to section 155.9 of this Part. Before beginning to make such estimates, the Program Actuary shall disclose to the governing board in writing the fee for preparing such estimates. The fee for preparing the estimates shall not exceed the amount which the Program Actuary is permitted to charge for such service pursuant to an agreement between the Program Actuary and the Comptroller. The cost of such estimates shall be a charge against the Sponsor.

## **2 NYCRR § 155.4 (2012)**

### **§ 155.4 Notice of adoption or transfer**

For any defined benefit volunteer firefighter service award program which, on or after June 1, 2007, is to be State-administered pursuant to voter approval of either (i) the adoption of such a program, or (ii) the transfer of administration of such a program to the State of New York, the chief executive officer of the Sponsor shall, within 30 days after the approval of a proposition authorizing the adoption or transfer, submit to the Comptroller by e-mail or other method prescribed by the Office of the State Comptroller, a verified notice of adoption or transfer which shall contain the following:

- (1) a statement of the date on which the governing board of the Sponsor approved the resolution authorizing adoption of the State-administered defined benefit volunteer firefighter service award program or transfer of a locally-administered defined benefit volunteer firefighter program to State administration and the vote thereon, and a certified copy of the resolution;
- (2) a statement of the date on which the electors of the Sponsor approved the proposition authorizing adoption of the State-administered defined benefit volunteer firefighter service award program or transfer or a locally-administered defined benefit volunteer firefighter service award program to State administration and the vote thereon, and a certified copy of the proposition;
- (3) an opinion of legal counsel which shall:
  - (i) be addressed to the Sponsor;
  - (ii) expressly provide that the Administrator and Program Actuary may rely thereon;
  - (iii) state that in his or her capacity as legal counsel to the Sponsor, he or she has examined originals or true and complete copies of those records, documents and other instruments necessary to render his or her opinion,

including, but not limited to: the provisions of Article 11-A of the General Municipal Law and such other statutes as may be relevant; the resolution of the governing board of the Sponsor authorizing the adoption of the State-administered defined benefit volunteer firefighter service award program or transfer of a locally-administered defined benefit volunteer firefighter service award program to State administration; proof of any posting and publication of required notice; the certificate certifying the result of the vote on the proposition authorizing the adoption of the State-administered defined benefit volunteer firefighter service award program or transfer of a locally-administered defined benefit volunteer firefighter service award program to State administration; and proof that the cost estimates prepared pursuant to section 155.3 of this Part were disclosed in the proposition; and

(iv) express his or her opinion that the Sponsor has undertaken all actions and proceedings required by law to adopt the State-administered defined benefit volunteer firefighter service award program or to transfer a locally-administered defined benefit volunteer firefighter service award program to State administration;

(4) a statement of the name, address and telephone number of the chief executive officer of the Sponsor; and

(5) a statement of the name, address and telephone number of each volunteer fire company or volunteer fire department having volunteer firefighters who are potential participants in the State-administered defined benefit volunteer firefighter service award program.

Section statutory authority: General Municipal, § A11-A

## **2 NYCRR § 155.5 (2012)**

### **§ 155.5 Adoption or transfer agreement**

(a) (1) State administration of a newly adopted defined benefit volunteer firefighter service award program shall not be effective until the Sponsor and the Administrator deliver to each other duly executed originals of an Adoption or Transfer Agreement setting forth the obligations of the Sponsor and the locally-determined features of the defined benefit volunteer firefighter service award program.

(2) No transfer to the State of responsibility for administration of a defined benefit volunteer firefighter service award program shall be effective until (i) the Sponsor and the Administrator deliver to each other duly executed originals of an Adoption or Transfer Agreement setting forth the obligations of the Sponsor and the locally determined features of the defined benefit volunteer firefighter service award program, and (ii) the Sponsor pays in full to the Administrator the cash value of all program assets plus any additional amount determined by the Program Actuary to be necessary to fully finance all existing obligations of such program, up to and including contributions for credit for a year of firefighting service performed during the calendar year immediately preceding the year in which State administration commences and any unpaid prior service costs payable in a lump sum pursuant to subdivision (c) of section 155.8 of this Part. Such payment shall be made in cash or cash equivalents acceptable to the Administrator, and the Administrator shall not be obligated to accept an insurance contract, a security, or any other asset that is not cash or a cash equivalent. Such payment shall be made at the time that the Adoption or Transfer Agreement is submitted to the Administrator pursuant to subdivision (c) of this section.

(3) An Adoption or Transfer Agreement shall include, but shall not be limited to, the following provisions:

(A) An original or copy of the notice of adoption or transfer submitted by the Sponsor pursuant to section 155.4 of this Part, together with a warranty by the Sponsor of the accuracy and completeness of the information set forth in such notice and an express agreement by the Sponsor to submit promptly to the Administrator and Program Actuary such additional information as may be necessary to make the records of the defined benefit volunteer firefighter service award program accurate and complete;

(B) An express agreement by the Sponsor to pay to the Administrator on time and in full all required contributions, fees, charges, or assessments determined by the Administrator;

(C) In the case of a defined benefit volunteer firefighter service award program being transferred from local administration to State administration, a statement of the payments required by subdivision (a) of this section to be made by the Sponsor to the Administrator as a condition precedent to the commencement of State administration, together with an express agreement by the Sponsor to make such payments at the time that the Adoption or Transfer Agreement is submitted to the Administrator pursuant to subdivision (c) of this section, and to turn over to the Administrator in a timely manner such records as the Administrator deems necessary to effectuate such transfer;

(D) An express agreement by the Sponsor (i) that the Comptroller shall have the authority to suspend or terminate the operation of any State-administered volunteer firefighter service award program at any time the Comptroller determines that the Sponsor has failed, for more than 30 days beyond the due date, to make any required

payment or to satisfy any other material obligation of the Adoption or Transfer Agreement; (ii) that the Comptroller may elect, at his or her sole option, to collect any required payment or other material obligation owed by the Sponsor by delivering to the Sponsor a duly executed order specifying the overdue amount and requiring the Sponsor to pay such amount from any funds available therefor; (iii) that the Comptroller may elect, at his or her sole option, to collect any required payment or other material obligation owed by the Sponsor by intercepting the requisite amount from any State aid payment or other amount otherwise due to the Sponsor from the State and applying the same to satisfy the overdue obligation; and (iv) that, notwithstanding such suspension or termination, the Sponsor shall continue to be obligated to make all required payments and to satisfy all other material obligations of the Adoption or Transfer Agreement;

(E) A statement that the Sponsor agrees to abide by the provisions of article 11-A of the General Municipal Law, the rules and regulations promulgated thereunder and the program document, as amended from time to time. The Adoption or Transfer Agreement shall be completed by incorporating the following locally-determined features of the State-administered defined benefit volunteer firefighter service award program:

(1) entitlement age;

(2) the number of years of volunteer firefighter service required for a participant to obtain a nonforfeitable right to a service award;

(3) the benefit under the State-administered defined benefit volunteer firefighter service award program;

(4) whether the Sponsor shall make prior service contributions and, if so, the number of years for which such contributions shall be made and, if such prior service contributions have not been fully paid prior to commencement of State administration, an irrevocable election to pay prior service contributions in the form of a single lump sum payment or in annual installments as provided in section 155.8 of this Part;

(5) the amount of any optional additional line of duty disability or death benefit;

(6) the date as of which the newly adopted State-administered defined benefit volunteer firefighter service award program shall take effect;

(7) if the State-administered defined benefit volunteer firefighter service award program is to take effect on a day other than the first day of January, a statement setting forth whether points toward a year of firefighting service shall be granted for activities performed between the immediately preceding first day of January and the effective date of the State-administered defined benefit volunteer firefighter service award program; and

(F) Such other provisions as the Comptroller may deem necessary and advisable to assure the proper financing and management of the State-administered defined benefit volunteer firefighter service award program.

(b) Within 30 days of receipt of the notice of adoption or transfer required by section 155.4 of this Part, the Administrator shall send to the chief executive officer of the Sponsor a copy of the program document and an Adoption or Transfer Agreement for the State-administered defined benefit volunteer firefighter service award program.

(c) Within 30 days of receipt of the Adoption or Transfer Agreement, the chief executive officer of the Sponsor shall complete and execute two originals of the Adoption or Transfer Agreement, retain one executed original of the Adoption or Transfer Agreement and the program document and trust agreement as public records, and file one executed original of the Adoption or Transfer Agreement with the Administrator. The chief executive officer shall also cause a copy of the Adoption or Transfer Agreement and the program document and trust agreement to be provided to each volunteer fire company or volunteer fire department for which the State-administered defined benefit volunteer firefighter service award program is adopted or for which the responsibility for administration is transferred to the Comptroller or service providers retained by the Comptroller.

(d) Upon receipt of the executed original of an Adoption or Transfer Agreement, the Administrator shall forward a copy of the Adoption or Transfer Agreement to the Program Actuary.

(e) The Administrator and the Program Actuary shall rely on the information set forth in the Adoption or Transfer Agreement until such time as the Administrator and Program Actuary receive a copy of an amended Adoption or Transfer Agreement or notice of termination as provided in Section 155.14 of this Part.

Section statutory authority: General Municipal, § A11-A



## **2 NYCRR § 155.6 (2012)**

### **§ 155.6 Collection of personal information**

(a) Except as provided in subdivision (b) of this section, annually, and at such other times and in such form as the Administrator may require, the chief executive officer of the Sponsor shall obtain from each volunteer fire company or volunteer fire department for which the State-administered defined benefit volunteer firefighter service award program is established for submission to the Administrator, and each volunteer fire company or volunteer fire department shall provide to the chief executive officer for such purpose, the following information for each volunteer firefighter of the volunteer fire company or volunteer fire department, whether or not such volunteer firefighter is a participant in the State-administered defined benefit volunteer firefighter service award program:

- (1) name;
- (2) address;
- (3) social security number;
- (4) date of birth;
- (5) name of the volunteer fire company or volunteer fire department in which he or she is a volunteer firefighter;
- (6) beneficiaries; and
- (7) such other information as the Administrator deems necessary for the administration of the State-administered defined benefit volunteer firefighter service award program.

(b) In lieu of requiring the chief executive officer of the Sponsor to obtain the information specified in subdivision (a) of this section for submission to the Administrator, the Administrator may request the chief executive officer of a volunteer fire company or volunteer fire department to obtain and submit such information to the Administrator. In such case, the chief executive officer of the volunteer fire company or volunteer fire department shall provide a copy of the information submitted to the Administrator to the chief executive officer of the Sponsor.

(c) The chief executive officer of the Sponsor shall retain a copy of the information obtained pursuant to this section for use solely in connection with the administration of the State-administered defined benefit volunteer firefighter service award program.

(d) To the extent required by the Personal Privacy Protection Law, Article 6-A of the Public Officers Law, all personal information obtained pursuant to this section shall be protected from public disclosure.

Section statutory authority: Public Officers Law, § A6-A

## **2 NYCRR § 155.7 (2012)**

### **§ 155.7 Service credit**

(a) Each volunteer fire company or volunteer fire department for which a State-administered defined benefit volunteer firefighter service award program is adopted shall maintain at all times for each volunteer firefighter of the volunteer fire company or volunteer fire department, whether or not a participant in the State-administered defined benefit volunteer firefighter service award program, a record of the activities performed and points granted toward a year of firefighting service.

(b) On or before March thirty-first of each year, each volunteer fire company or volunteer fire department for which a State-administered defined benefit volunteer firefighter service award program is adopted shall prepare and submit to the governing board of the Sponsor a list of all the volunteer firefighters of the volunteer fire company or volunteer fire department which identifies all those who have qualified for credit for a year of firefighting service during the preceding calendar year. Such list shall be certified under oath by the president, secretary and chief or comparable officers of the volunteer fire company or volunteer fire department and shall be accompanied by such membership records or records of point accumulations as the governing board may require to substantiate the accuracy of the list. Such list shall also identify those volunteer firefighters who have waived participation in the State-administered defined benefit volunteer firefighter service award program as provided in subdivision (g) of this section.

(c) On or before May first of each year, the governing board of the Sponsor shall review each such certified list and may delete the name of any person who was not a volunteer firefighter during the preceding calendar year or disallow the service credit of any volunteer firefighter who did not earn or otherwise receive fifty (50) points during the preceding calendar year or whose point accumulation has not been adequately documented. Thereafter, the

governing board shall approve each such certified list of volunteer firefighters and each volunteer firefighter named thereon shall be credited with a year of firefighting service. Upon approval, the governing board shall cause a copy of each list to be returned to the appropriate volunteer fire company or volunteer fire department and each volunteer fire company or volunteer fire department shall, immediately upon receipt, post the list in a conspicuous place at its principal headquarters for at least thirty (30) days and maintain a record of the date on which the list is posted; provided, however, that no personal identifying information shall be included in the list that is posted except the names of the firefighters credited with a year of firefighting service.

(d) Not later than thirty (30) days after the approved list is posted by the volunteer fire company or volunteer fire department, any volunteer firefighter whose name does not appear on the list may appeal to the governing board of the Sponsor to have his or her name added to the list as having qualified for credit for a year of firefighting service during the preceding calendar year. The appeal shall be in writing and mailed to the clerk or secretary of the governing board of the Sponsor. The governing board shall investigate all appeals and upon finding that such a volunteer firefighter has qualified for a year of firefighting service credit for the preceding calendar year, shall order the volunteer firefighter's name to be added to the approved list.

(e) On or before July first of each year, the governing board of the Sponsor shall cause a certified copy of the approved list to be filed with the Administrator.

(f) The Administrator shall retain such list and shall promptly forward a copy of such list to the Program Actuary.

(g) Any volunteer firefighter not wishing to participate in the State-administered defined benefit volunteer firefighter service award program may waive participation by filing with the chief executive officer of the volunteer fire company or volunteer fire department, the chief executive officer of the political subdivision and the Administrator a written notice of waiver of participation. Such waiver shall remain effective until withdrawn in the same manner. During the period such a waiver remains effective, a volunteer firefighter shall not earn service credit, nor be entitled to a distribution from the State-administered defined benefit volunteer firefighter service award program.

(h) Notwithstanding the provisions of subdivisions (b) through (e) of this section, if, as of the effective date of the conversion of a locally administered contribution benefit volunteer firefighter service award program into a State-administered defined contribution volunteer firefighter service award program, the governing board of a Sponsor has approved a certified list of volunteer firefighters qualified for credit for a year of firefighting service rendered during the preceding calendar year in substantial compliance with the procedures set forth in subdivisions (b) through (d) of this section, excepting the dates set forth therein, the governing board shall comply with the filing requirement of subdivision (e) of this section no later than 30 days after the chief executive officer of the sponsor files a completed and executed copy of the adoption or transfer agreement with the administrator pursuant to section 155.5 of this Part.

## **2 NYCRR § 155.8 (2012)**

### **§ 155.8 Prior service credit and costs**

(a) In the event that a State-administered defined benefit volunteer firefighter service award program provides prior service credit, each volunteer fire company or volunteer fire department for which the State-administered defined benefit volunteer firefighter service award program is adopted shall identify on the certified list created pursuant to section 155.7 of this Part those participants who, by virtue of earning such credit, became entitled to one or more years of prior service credit and the number of years of prior service credit to which each such participant is entitled. Any participant who is denied prior service credit for one or more years may appeal to the governing board at the same time, in the same manner, and with like effect as provided in section 155.7 of this Part. Except as provided in subdivisions (b) or (c) of this section, prior service costs attributable to such prior service credit shall be paid to the Administrator in a single lump sum in the year in which a participant is determined to be entitled to such credit. Such prior service cost shall be calculated by the Program Actuary.

(b) In the case of a State-administered defined benefit volunteer firefighter service award program that is initially established as a State-administered defined benefit volunteer firefighter service award program, the governing board of the Sponsor may elect to pay prior service costs over the five-year period beginning with the calendar year in which the program first takes effect; provided, however, that if a volunteer firefighter first qualifies for a year of firefighting service for a calendar year later than the first calendar year in which the program first takes effect, and thereby becomes a participant entitled to prior service credit, then any prior service cost attributable to such prior service credit shall be paid over the five-year period beginning with the calendar year for which the volunteer firefighter first qualified for a year of firefighting service.

(c) In the case of a State-administered defined benefit volunteer firefighter service award program that was initially established as a locally-administered defined benefit volunteer firefighter service award program, the Program Actuary shall compute the amount of any unpaid prior service costs at the commencement of State administration. The amount of such unpaid prior service costs shall be paid to the Administrator in a single lump sum as a condition precedent to the commencement of State administration, or the governing board of the Sponsor may elect to pay such prior service costs in annual installments over the five-year period beginning with the calendar year in which State administration commences.

(d) The prior service costs of a State-administered defined benefit volunteer firefighter service award program for the volunteer firefighters of a special fire company or department shall be apportioned and paid by the political subdivisions jointly sponsoring the program in accordance with the agreement among such political subdivisions; provided, however that unless any such agreement provides otherwise, the portion of the prior service costs of a State-administered defined benefit volunteer firefighter service award program allocated to a political subdivision in accordance with such agreement shall be paid in full by a political subdivision even if the political subdivision ceases to contract with the volunteer fire company or volunteer fire department after a State-administered defined benefit volunteer firefighter service award program is adopted.

(e) Notwithstanding the provisions of subdivision (a) of this section, if, as of the effective date of the conversion of the locally-administered defined benefit volunteer firefighter service award program into a State-administered defined benefit volunteer firefighter service award program, the governing board of a Sponsor has not approved a certified list of volunteer firefighters qualified for credit for a year of firefighting service rendered during the preceding calendar year which identifies those participants who, by virtue of qualifying for such credit, are entitled to one or more years of prior service credit in substantial compliance with the procedures referred to in subdivision (a) of this section, the list prepared pursuant to section 155.7 of this Part shall identify such participants and the number of years for which each participant is entitled to prior service credit. A participant who is denied prior service credit for one or more years may appeal to the governing board of the Sponsor at the same time, in the same manner, and with like effect as provided in section 155.7 of this Part.

## **2 NYCRR § 155.9 (2012)**

### **§ 155.9 Sponsor contributions**

(a) Commencing on November 15th of the year in which State administration begins, and each November 15th thereafter, the Program Actuary shall estimate the amount that each Sponsor is required to contribute to a State-administered defined benefit volunteer firefighter service award program for the current calendar year, including the actuarially determined normal cost of the program, any prior service contributions required to be paid in such year pursuant to section 155.8 of this Part, and any additional amounts determined by the Program Actuary to be necessary to fully finance all existing obligations of such program. The Administrator shall submit to the fiscal officer of each Sponsor a statement of the amount so payable plus any administrative costs payable by the Sponsor. For good cause shown, the Program Actuary may recalculate the contribution, and, in such case, the Administrator shall issue a corrected statement. If, as a result of the amount determined to be paid for any calendar year, a Sponsor overpaid its actual obligation for that year, the amount to be determined by the Program Actuary for the next succeeding November 15th shall reflect the amount of the overpayment, plus interest, as a reduction in the amount otherwise required to be paid by such Sponsor.

(b) Within sixty (60) days after the date of a statement issued pursuant to subdivision (a) of this section, the Sponsor shall pay to the Administrator the total amount due as shown on such statement.

(c) The actuarial methodology and assumptions used by the Program Actuary to calculate such contributions shall be the same for all State-administered defined benefit volunteer firefighter service award programs.

(d) Interest shall accrue and be paid by the Sponsor on all amounts due, but not received by the Administrator within sixty (60) days after the date of the statement issued pursuant to subdivision (a) of this section. The interest rate or rates used to calculate such interest shall be the greater of:

(i) the investment return rate (or rates) assumed by the Program Actuary in the calculation of the normal cost component of such unpaid contribution; or

(ii) the actual investment return rate earned by the volunteer firefighters' defined benefit service award program trust fund during the calendar year (or years) in which such unpaid contributions were due to be paid.

(e) The Administrator shall notify the Comptroller of any amounts remaining unpaid more than 90 days after the date of the statement issued pursuant to subdivision (a) of this section.

(f) In the event that a Sponsor does not submit to the Administrator an approved list in accordance with section 155.7 of this Part, the Administrator shall bill the Sponsor for the contribution due for the calendar year in which the list should have been submitted in an amount calculated by the Program Actuary equal to the estimated contribution due during such year. Such estimated contribution shall be calculated by the Program Actuary as if all volunteer firefighters named on the latest year's approved list received by the Administrator continued to be volunteer firefighters and all such persons earned a year of service credit during the calendar year for which the list should have been prepared in accordance with section 155.7 of this Part. Payment of such contribution shall be made in accordance with subdivisions (b) and (d) of this section as if the Program Actuary's cost calculations were based upon the actual certified listings prepared in accordance with section 155.7 of this Part. Upon receipt by the Administrator of the actual approved certified list prepared in accordance with section 155.7 of this Part, the Program Actuary shall estimate the contributions due for such calendar year. In the event that additional contributions are owed by the Sponsor (including any additional administration costs), the Administrator shall bill the Sponsor for such additional amounts. Interest shall be paid by the Sponsor on all additional amounts owed and shall accrue from the due date of the payment of the estimated contribution billed to the Sponsor by the Administrator with such interest calculated in accordance with subdivision (d) of this section. Any excess of the estimated contributions over the actual contributions shall be treated as an overpayment by the Sponsor in the manner provided in subdivision (a) of this section. The amount of such overpayment shall be reduced by any related additional administration costs charged by the Administrator or the Program Actuary. The assessment of any extra additional administration charges payable by the Sponsor to either the Administrator or the Program Actuary because of the failure to comply with section 155.7 of this Part shall be in accordance with the contract(s) between the Comptroller and the Administrator/Program Actuary.

(g) Forfeitures shall be treated by the Program Actuary as an actuarial gain in the program cost calculations in the same manner as any other forfeiture of a service award. The funds accumulated to pay the participant or the participant's beneficiary shall remain within the defined benefit service award program trust fund as if such funds were the accumulated funds associated with the forfeiture of a non-vested service award. Should the person to whom service award payments are owed subsequently file an application for payment with the Administrator, the Administrator shall determine and pay the amount of the service award owed to the person and the actuarial liability for such payments shall be included in subsequent actuarial calculations of the Sponsor's funding costs of the State-administered defined benefit volunteer firefighter service award program by the Program Actuary.

## **2 NYCRR § 155.10 (2012)**

### **§ 155.10 Forfeitures**

(a) In the event that two years have elapsed since an inactive volunteer firefighter participant or a participant's designated beneficiary becomes eligible to apply for a service award and the Administrator does not receive an application for distribution, the Administrator, the Sponsor and the volunteer fire company or volunteer fire department in which the participant was a member shall attempt to notify the person or persons to whom the service award would be paid. In the event that the Administrator, in his or her sole discretion, determines that a reasonable attempt has been made to contact such person or persons without success, the service award payable shall then be considered as forfeited for the purpose of determining future contributions payable by the Sponsor.

(b) A participant who ceases to be a volunteer firefighter before he or she has earned a nonforfeitable right to a service award shall forfeit his or her service credit upon receipt by the Administrator of notice from the Sponsor and the appropriate volunteer fire department or volunteer fire company that the individual has ceased to be a volunteer firefighter. The provisions of this subdivision shall not apply to a volunteer firefighter who is determined to be totally and permanently disabled in accordance with subdivision (g) of section 155.11 of this Part.

(c) In the event that a person whose service credit was forfeited in accordance with paragraph (b) of this section resumes being a volunteer firefighter within the five-year period beginning immediately after the calendar year in which he or she ceased to be a volunteer firefighter, such person's forfeited service credit shall be restored as of December thirty-first of the first calendar year for which he or she again qualifies for a year of firefighting service credit and again becomes a participant in the State-administered defined benefit volunteer firefighter service award program in which he or she formerly was a participant.

## **2 NYCRR § 155.11 (2012)**

### **§ 155.11 Distributions**

(a) Unless a participant elects to be paid his or her service award in an optional actuarially equivalent form on the

written application for distribution he or she files with the Administrator, the service award shall be paid to the participant in the form of a monthly payment straight life annuity. The amount of the monthly straight life annuity payment shall be one-twelfth (1/12) of the benefit amount times the years of firefighting service credited to the participant as of the effective date of the commencement of payment of his or her service award.

(b) Except as otherwise provided in this section, a participant shall be entitled to apply for and receive distribution of a service award only when the participant has attained the entitlement age. A written application for distribution must be received by the Administrator from a participant before payments shall commence to the participant. The participant shall, on such written application, specify the date as of which payment shall commence and shall select the form of payment of his or her service award. The date as of which payment shall commence may be the first day of any month commencing within the ninety (90) day period immediately following the date the written application is received by the Administrator. A participant may file an application for distribution of his or her service award within the ninety (90) day period immediately preceding the date on which he or she will attain the entitlement age and specify the date as of which payment shall commence, which date shall be:

(i) no earlier than the date of attainment of the entitlement age and acquiring a nonforfeitable right to a service award, and

(ii) no later than ninety (90) days after the date of attainment of the entitlement age and acquiring a nonforfeitable right to a service award.

(c) The date as of which payment of a service award shall commence shall not be on or before the last day of the first calendar year for which a participant qualified for a year of firefighting service credit.

(d) The Administrator shall approve an application for distribution based on the terms of the Sponsor's Adoption or Transfer Agreement, the records maintained by the Administrator and, in the case of disability or death, such additional records or information as the Administrator may require. The Administrator, in its sole discretion, may require the Sponsor, the appropriate volunteer fire company or volunteer fire department or the participant to verify or supply any information the Administrator deems necessary to determine entitlement to distribution of a service award.

(e) The number and types of optional forms of payments of a service award available under a State-administered defined benefit volunteer firefighter service award program shall be at the sole discretion of the Administrator subject to the approval of the Comptroller. Program Sponsors and volunteer fire companies or volunteer fire departments whose volunteer firefighters participate in a State-administered defined benefit volunteer firefighter service award program shall be promptly notified by the Administrator in writing of any changes in the optional forms of payment. Participants shall then be promptly notified about such changes by the volunteer fire company or volunteer fire department.

(f) For determining the payments of a service award to a participant under an actuarially equivalent form of payment, the Program Actuary shall use the actuarial assumptions used to calculate the annual program costs payable by the Sponsor during the calendar year in which the payments of the service award to the participant or the participant's beneficiary shall commence.

(g) (1) In the event that a participant becomes totally and permanently disabled as certified by the workers' compensation board or by any other competent authority approved by the Administrator, and the disability prevents the participant from pursuing his or her normal occupation, the participant shall be entitled to apply for and receive distribution of his or her service award regardless of whether the participant has reached the entitlement age or acquired a nonforfeitable right to a service award. The participant may select one of the optional forms of payment available under the State-administered defined benefit volunteer firefighter service award program in case of disability. The value of the service award shall be determined on the basis of the years of volunteer firefighter service credited to the participant as of the effective date of commencement of payment of the service award. The amount of payments shall be calculated so as to be actuarially equivalent to the present value of the payments as if they commenced at the entitlement age.

(2) If a State-administered defined benefit volunteer firefighter service award program includes an optional additional disability benefit that the Sponsor has elected to provide for a participant who becomes disabled during the course of service as an active volunteer firefighter while actively engaged in providing a line of duty service, then, in the event that a participant becomes totally and permanently disabled as a result of such cause and such total and permanent disability is certified by the workers' compensation board or by any other competent authority approved by the Administrator, the participant shall be entitled to apply for and receive distribution of a service award equal to the amount of additional benefits that the participant would have been entitled to had he or she continued to earn years of firefighting service through his or her entitlement age if the rate of benefits being

provided under the State-administered defined benefit service award program at the time of disability continued to be provided through the entitlement age.

(h) (1) In the event of the death of a participant who has acquired a nonforfeitable right to a service award and who has not previously received distribution of any portion of his or her service award, the beneficiary or beneficiaries designated by the participant or, if no beneficiary has been designated, the participant's estate, shall be entitled to apply for and receive distribution of the participant's service award. The applicant may select one of the optional forms of payment available under the State-administered defined benefit volunteer firefighter service award program in case of death. The value of the service award shall be determined on the basis of the years of volunteer firefighter service credited to the participant as of the effective date of commencement of payment of the service award. The amount of the payments shall be calculated so as to be actuarially equivalent to the present value of the payments as if they commenced at the entitlement age.

(2) If a State-administered defined benefit volunteer firefighter service award program includes an optional additional death benefit that the Sponsor has elected to provide for a participant who dies during the course of service as an active volunteer firefighter while actively engaged in providing a line of duty service, then, in the event that a participant dies as a result of such cause, the beneficiary or beneficiaries designated by the participant shall be entitled to apply for and receive distribution of a service award in an amount equal to the amount of such optional additional death benefit.

## **2 NYCRR § 155.12 (2012)**

### **§ 155.12 Program amendment**

(a) Once a State-administered defined benefit volunteer firefighter service award program has been adopted, the Sponsor may amend the program in the manner provided by section 216 or *section 216-a of the General Municipal Law*. All amendments to a State-administered defined benefit volunteer firefighter service award program shall take effect on January first next succeeding the completion of the process of adopting the amendment provided by section 216 or section 216-a.

(b) The resolution authorizing the adoption of an amendment to a State-administered defined benefit volunteer firefighter service award program shall include:

(i) the name of each volunteer fire company or volunteer fire department having volunteer firefighters who are participants in the State-administered defined benefit volunteer firefighter service award program;

(ii) a description of the amendment;

(iii) except in the case of a change to the activities for which points shall be granted toward a year of firefighting service credit, a statement of the effect, if any, as determined by the Program Actuary, that the amendment would have on the annual cost of the State-administered defined benefit volunteer firefighter service award program including a statement of the current and estimated future annual cost of the State-administered defined benefit volunteer firefighter service award program;

(iv) except in a case of a change to the activities for which points shall be granted toward a year of firefighting service, the date on which the proposition authorizing the adoption of the amendment shall be submitted to referendum.

(c) The proposition authorizing adoption of an amendment to a State-administered defined benefit volunteer firefighter service award program shall identify the State-administered defined benefit volunteer firefighter service award program and shall include:

(i) a brief description of the amendment;

(ii) an estimate of the effect, if any, as determined by the Program Actuary, that the amendment would have on the annual cost of the State-administered defined benefit volunteer firefighter service award program, including the current and estimated future annual cost of the State-administered defined benefit volunteer firefighter service award program; and

(iii) in the case of a service award program for a special fire company or department, the portion of any change in the estimated annual cost of the State-administered defined benefit volunteer firefighter service award program to be borne by one or more other political subdivisions.

(d) In computing the amount of a service award, an amendment changing the State-administered defined benefit volunteer firefighter service award program benefit amount shall be applied only to the service awards payable to

participants who earn at least one year of firefighting service credit for activities performed on and after the effective date of such amendment.

Section statutory authority: *General Municipal, § 216, § 216-A*

## **2 NYCRR § 155.13 (2012)**

### **§ 155.13 Program termination**

(a) A State-administered defined benefit volunteer firefighter service award program may be terminated by the Sponsor in the manner provided by section 216 or *section 216-a of the General Municipal Law*. The termination of a State-administered defined benefit volunteer firefighter service award program shall take effect on the December thirty-first (31st) next succeeding approval by voters of the proposition to terminate the State-administered defined benefit volunteer firefighter service award program.

(b) The resolution authorizing the termination of a State-administered defined benefit volunteer firefighter service award program shall:

(i) list the name of each volunteer fire company or volunteer fire department having volunteer firefighters who are participants or in the State-administered defined benefit volunteer firefighter service award program to be terminated;

(ii) state the estimated one-time cost of terminating the State-administered defined benefit volunteer firefighter service award program, as determined by the Program Actuary; and

(iii) indicate the date on which the proposition authorizing the termination shall be submitted to referendum.

(c) The proposition authorizing the termination of a State-administered defined benefit volunteer firefighter service award program shall identify the State-administered defined benefit volunteer firefighter service award program and include:

(i) a statement that the State-administered defined benefit volunteer firefighter service award program shall be terminated; and

(ii) an estimate of the one-time cost of terminating the State-administered defined benefit volunteer firefighter service award program as determined by the Program Actuary.

(d) Upon the termination of a State-administered defined benefit volunteer firefighter service award program, all participants who have earned nonforfeitable rights to a service award or beneficiaries of such participants, including those then receiving payment of their service awards, shall be paid a single-sum equal to the actuarial present value of the unpaid balance of their earned service awards as of the date of program termination. Payment shall be made within one year of the effective date of termination.

(e) The Program Actuary shall determine the actuarial present value single-sum distributions to participants and beneficiaries using the same actuarial assumptions he or she used to calculate the annual program funding cost payable during the calendar year in which voters approved the proposition to terminate the State-administered defined benefit volunteer firefighter service award program.

(f) The one-time cost to terminate the program shall be calculated by the Program Actuary. Such costs shall include the difference between the total cost of the single-sum distributions to participants and beneficiaries calculated by the Program Actuary, and the program assets. Such costs shall also include administrative costs. When the Comptroller is not the Administrator, the administrative costs shall be determined in accordance with the service agreement or agreements between the Comptroller and the Administrator or the Program Actuary or both. The total one-time cost to terminate the program shall be paid by the Sponsor to the Administrator within one hundred eighty (180) days after the effective date of termination of the State-administered defined benefit volunteer firefighter service award program.

(g) In the event that the State-administered defined benefit volunteer firefighter service award program assets exceed the total single-sum distributions to participants and beneficiaries, all or a portion of the administrative costs of terminating the program may be paid, at the discretion of the Sponsor, from the program assets.

(h) After payment of the one-time cost to terminate the program, the Program Trustee, upon notification by the Administrator, shall transfer the remaining program assets to the Sponsor.

(i) A participant or beneficiary may waive payment of any service award payable to him or her from a terminated program by filing a written waiver of payment with the Administrator.

Section statutory authority: *General Municipal*, § 216, § 216-A

## **2 NYCRR § 155.14 (2012)**

### **§ 155.14 Notice of amendment or termination**

(a) Within thirty (30) days after the amendment of any of the terms of a State-administered defined benefit volunteer firefighter service award program as set forth in the Adoption or Transfer Agreement, or the termination of the Sponsor's participation in a State-administered defined benefit volunteer firefighter service award program, the chief executive officer of the Sponsor shall file with the Comptroller in Albany, New York, two copies of a verified notice of amendment or notice of termination which shall contain the following:

(1) a statement of the date on which the governing board of the Sponsor approved the resolution authorizing the amendment or termination of the State-administered defined benefit volunteer firefighter service award program and the vote thereon, and a certified copy of the resolution;

(2) in the case of termination, or if the amendment requires submission of a proposition to the electors of the Sponsor, a statement of the date on which the electors approved the proposition authorizing the amendment or termination and the vote thereon, and a certified copy of the proposition; and

(3) an opinion of legal counsel which shall:

(i) be addressed to the Sponsor;

(ii) expressly provide that the Administrator may rely thereon;

(iii) state that in his or her capacity as legal counsel to the Sponsor, he or she has examined originals or true and complete copies of those records, documents and other instruments necessary to render his or her opinion, including, but not limited to: the provisions of Article 11-A of the General Municipal Law and such other statutes as may be relevant; the resolution of the governing board of the Sponsor authorizing the amendment or termination of the program; proof that the Program Actuary calculated the estimated annual cost of the amended program including administration costs or the additional costs, if any, of terminating a program; proof of any posting and publication of required notice and the certificate certifying the result of the vote on the proposition authorizing the amendment or termination of the program; and

(iv) express his or her opinion that the Sponsor has undertaken all actions and proceedings required by law to amend or terminate the program.

(b) Upon receipt of a notice of amendment or a notice of termination, the Office of the State Comptroller shall forward one copy thereof to the Administrator and one copy to the Program Actuary. Within thirty (30) days after the receipt of a notice of amendment or a notice of termination, the Administrator shall send to the chief executive officer of the Sponsor two copies of an amended Adoption or Transfer Agreement. The Sponsor's legal counsel shall review such Adoption or Transfer Agreement for consistency with the resolution of the Sponsor's governing body authorizing the amendment and, if applicable, the proposition submitted to electors authorizing the amendment. The chief executive officer shall then execute, retain, file, and provide a copy of the amended Adoption or Transfer Agreement to each volunteer fire company or volunteer fire department, in the same manner as the original Adoption or Transfer Agreement.

Section statutory authority: *General Municipal*, § A11-A

## **2 NYCRR § 155.15 (2012)**

### **§ 155.15 Administration**

(a) State-administered defined benefit volunteer firefighter service award programs shall be administered by the State Comptroller unless the Comptroller retains or designates an administrative service agency, financial organization, and/or an actuary to administer the State-administered defined benefit volunteer firefighter service award programs.

(b) In the event that there is a change in the identity of the Administrator, the Office of the State Comptroller shall notify the chief executive officer of each Sponsor of a State-administered defined benefit volunteer firefighter service award program of the change.

(c) The Administrator shall:

(1) prepare standard forms of a program agreement and Adoption or Transfer Agreement which shall be utilized



by all program Sponsors;

(2) prepare and distribute all forms and documents necessary for the administration of the program;

(3) compile and maintain all records required for the administration of the program, including records of participant accrued benefit amounts;

(4) prepare and distribute to participants, volunteer fire companies or volunteer fire departments and Sponsors, the reports and program summaries as required by this Part;

(5) if the Comptroller is not the Administrator, prepare and furnish to the Comptroller such reports as the Comptroller may require;

(6) record and process contributions made by program Sponsors;

(7) cooperate with the Program Actuary and Program Trustee to ensure the effective and efficient operation of the State-administered defined benefit volunteer firefighter service award programs, including the provision in a timely manner of such information as the Program Actuary and Program Trustee may require to exercise and perform their powers and duties;

(8) approve applications for distributions of service awards;

(9) record and process distributions of service awards;

(10) withhold all taxes and prepare all tax reporting forms required by federal, state and local law; and

(11) perform such other functions as may be required by or pursuant to Article 11-A of the General Municipal Law and this Part.

(d) If the Comptroller is not the Administrator, the fee for providing such services and any other services provided by the Administrator shall be a charge against the Sponsor and not exceed the amount or amounts which the Administrator is permitted to charge pursuant to an agreement between the Administrator and the Comptroller.

Section statutory authority: General Municipal, § A11-A

## **2 NYCRR § 155.16 (2012)**

### **§ 155.16 Program actuary**

(a) The Comptroller may designate a member of his or her staff or contract with an actuary to serve as the Program Actuary.

(b) The Program Actuary shall calculate:

(i) the estimated annual cost and the components thereof of all proposed State-administered defined benefit volunteer firefighter service award programs and amendments to existing State-administered defined benefit volunteer firefighter service award programs;

(ii) the estimated costs to terminate a State-administered defined benefit volunteer firefighter service award program;

(iii) for each calendar year during which a State-administered defined benefit volunteer firefighter service award program is in effect, the actual cost of the State-administered defined benefit volunteer firefighter service award program, including all components of such actual cost;

(iv) the amount of all actual distributions of service awards, including all amounts payable under actuarially equivalent forms of payment of service awards;

(v) any other amounts, costs or actuarial present values related to a State-administered defined benefit volunteer firefighter service award program requested by the Comptroller, the Program Trustee or required by law, rule or regulation or by generally accepted actuarial or accounting practices applicable to State-administered defined benefit volunteer firefighter service award programs.

(c) The Program Actuary shall disclose the actuarial assumptions and actuarial methodology used to calculate the estimated and annual costs of a State-administered defined benefit volunteer firefighter service award program to the Comptroller and the Program Trustee. In addition, the Program Actuary shall upon request calculate and/or disclose any other information to the Program Trustee or the Comptroller.

(d) The Program Actuary shall cooperate with the Administrator and Program Trustee to ensure the effective and

efficient operation of the State-administered defined benefit volunteer firefighter service award programs, including the provision in a timely manner of such information as the Administrator and Program Trustee may require to exercise and perform their powers and duties.

(e) The fee for providing such services and any other services provided by the Program Actuary shall be a charge against the Sponsor and not exceed the amount or amounts which the Program Actuary is permitted to charge pursuant to an agreement between the Program Actuary and the Comptroller.

## **2 NYCRR § 155.17 (2012)**

### **§ 155.17 Program trustee**

(a) The Comptroller may designate himself or herself as Program Trustee or the Comptroller may contract with a financial organization or administrative service agency to serve as Program Trustee.

(b) The Program Trustee shall:

(i) hold the assets of the programs in trust;

(ii) receive and process contributions to the trust in a timely manner;

(iii) invest the assets of the trust;

(iv) determine the fair market value of the trust estate as of each valuation date as defined in the program agreement, commencing with December 31, 2007;

(v) make payments approved by the Administrator to program participants and their beneficiaries, and other approved disbursements from the trust fund;

(vi) provide the Administrator and Program Actuary with such information as may be necessary to enable the Administrator and Program Actuary to prepare the annual reports for Sponsors and annual participant statements provided for in this Part and program agreement, including the reports and statements required for calendar year 2007;

(vii) provide the Administrator with such information as may be necessary to enable the Administrator to withhold all appropriate taxes and prepare and file all tax reporting forms required by federal, state and local law; and

(viii) cooperate with the Administrator, Program Actuary and the Comptroller to ensure the effective and efficient operation of the programs. In furtherance of this purpose, the Program Trustee shall provide in a timely manner such information as the Administrator and Program Actuary may require to exercise and perform their powers and duties under the General Municipal Law, this Part and the program agreement. The Program Trustee shall also provide in a timely manner such information as the Comptroller may require to monitor the operation of the programs.

(c) If the Comptroller is not the Program Trustee, the fee for providing such services and any other services provided by the Program Trustee shall be a charge against the Sponsor and not exceed the amount or amounts which the Program Trustee is permitted to charge pursuant to an agreement between the Program Trustee and the Comptroller.

## **2 NYCRR § 155.18 (2012)**

### **§ 155.18 Program document**

(a) The Administrator shall provide the chief executive officer of each Sponsor with a copy of the State-administered defined benefit volunteer firefighter service award program document. Such program document shall include a copy of the trust agreement and the Adoption or Transfer Agreement, as amended.

(b) The Administrator shall prepare, maintain and may amend the program document. The program document shall set forth the rights and obligations of Sponsors, volunteer firefighters, participants and beneficiaries of participants, and procedures for the administration of State-administered defined benefit volunteer firefighter service award programs. The program document and any amendments thereto shall be consistent with the provisions of Article 11-A of the General Municipal Law and the provisions of this Part, as amended. If the program document is prepared by an administrative service agency or a financial organization, the program document and any amendments thereto shall not take effect until approved by the Comptroller.

(c) The Comptroller shall prepare and/or amend the trust agreement pursuant to *section 216-c of the General Municipal Law*. The Comptroller may, however, direct the program trustee to prepare and/or amend the trust

agreement subject to review and approval by the Comptroller. The Comptroller shall provide to the Administrator a copy of the trust agreement and any amendments thereto.

(d) The Adoption or Transfer Agreement shall be prepared by the Administrator and the Sponsor as provided in Section 155.5 of this Part.

Section statutory authority: General Municipal, § A11-A, § 216-C

## **2 NYCRR § 155.19 (2012)**

### **§ 155.19 Reports**

(a) On or before September 30th of each year, the Administrator shall provide to each Sponsor a report which shall include, but not be limited to, the following information for the Sponsor for the preceding calendar year:

- (1) the total value of program assets as of January 1st;
- (2) the total amount contributed to the program by the Sponsor;
- (3) the total amount of trustee expenses charged against program assets;
- (4) the total amount of administrative expenses charged against program assets;
- (5) the total amount of interest and investment earnings credited to program assets;
- (6) the total amount of investment losses charged to program assets;
- (7) the total amount of distributions;
- (8) the total amount of forfeitures;
- (9) the total value of program assets as of December 31st;
- (10) the actuarially determined normal cost and prior service cost for the preceding calendar year;
- (11) the names of persons paid service awards during the preceding calendar year as well as the amount paid to each person during such year;
- (12) the names and earned service credit of all persons who were participants in the program, including those in pay status or pending pay status, as of December 31st of such preceding calendar year along with a statement setting forth each person's status in the program as of such date;
- (13) the names of those active volunteer firefighters who were not participants as of December 31st of such preceding calendar year; and
- (14) the projected annual program costs for each year within the five calendar year period next following the current calendar year.

(b) On or before September 30th of each year, the Administrator shall provide to each volunteer fire company or volunteer fire department, and immediately thereafter each volunteer fire company or volunteer fire department shall provide to each participant who is a member of the volunteer fire company or volunteer fire department, a confidential statement for the preceding calendar year which shall include, but shall not be limited to, the following information for the participant:

- (1) name;
- (2) address;
- (3) social security number;
- (4) date of birth;
- (5) number of years of volunteer firefighter service credited as of December 31st;
- (6) the amount of any death or disability benefit payable as of December 31st to the participant or the participant's beneficiary;
- (7) whether the participant had a nonforfeitable right to a service award as of December 31st;
- (8) a statement as to the number of years of volunteer firefighter service required for the participant to acquire a nonforfeitable right to a service award;

- (9) name(s) of the beneficiaries designated by the participant;
- (10) a description of the Sponsor report;
- (11) the name and address of the person to whom the Sponsor report was mailed from whom the participant may obtain a copy of such report;
- (12) the name of the person in the volunteer fire company or volunteer fire department who submitted information about the participant to the Administrator; and
- (13) the procedure for correcting information shown on the statement.

## **2 NYCRR § 155.20 (2012)**

### **§ 155.20 Disclosure**

(a) Not later than six months after a volunteer firefighter becomes a participant in a State-administered defined benefit service award program, the Administrator shall provide to the volunteer fire company or volunteer fire department of which the participant is a member, and promptly thereafter the volunteer fire company or volunteer fire department shall provide to the participant, a summary of the program's provisions as adopted by the Sponsor of the program.

(b) In the event that a State-administered volunteer firefighter defined benefit service award program is amended, the Administrator shall provide to each volunteer fire company or volunteer fire department a copy of the amendment and a written non-technical explanation of such amendment within six (6) months after the date on which the amendment takes effect and promptly thereafter each volunteer fire company or volunteer fire department shall provide a copy of the amendment and explanation to each participant who is a volunteer firefighter of the volunteer fire company or volunteer fire department.

## **2 NYCRR § 155.21 (2012)**

### **§ 155.21 Standards for selecting service providers**

Service providers shall be selected after competitive proposals are solicited.

(a) When selecting an administrative service agency or financial organization to serve as Administrator, the following standards shall be utilized, with each standard to be weighted at the discretion of the Comptroller:

- (1) the entity's experience with defined benefit programs;
- (2) the entity's ability to perform the required duties; and
- (3) the cost of services to be provided by the entity.

(b) When selecting an administrative service agency or financial organization to serve as program trustee or a financial organization to invest program funds, the following standards shall be utilized, with each standard to be weighted at the discretion of the Comptroller:

- (1) the standards set forth in subdivision (a) of this section;
- (2) the entity's investment expertise;
- (3) the capitalization of the entity;
- (4) the entity's creditworthiness; and
- (5) the entity's ability to perform the required duties in recognition of the fiduciary nature of its responsibilities.

(c) When selecting the Program Actuary, the following standards shall apply, with each standard to be weighted at the discretion of the Comptroller:

- (1) the standards set forth in subdivision (a) of this section;
- (2) the professional credentials of the person applying to be appointed as the Program Actuary.

## **2 NYCRR § 155.22 (2012)**

### **§ 155.22 Acknowledgment**

Each actuary, administrative service agency or financial organization selected to provide services in connection

with State-administered volunteer firefighter defined benefit service award programs shall contractually agree to discharge its duties as a fiduciary solely in the interest of the participants and beneficiaries of the State-administered defined benefit volunteer firefighter service award programs. The fiduciary standard of care, which shall be an express provision of any contract with an actuary, administrative service agency or financial organization, shall permit the fiduciary to accept, hold, invest in and retain only such investments as would be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

## **2 NYCRR § 155.23 (2012)**

### **§ 155.23 Solicitation, education and confidentiality**

(a) No financial organization, administrative service agency or actuary, nor any of their agents, shall solicit a volunteer firefighter to purchase any products made available by such financial organization, administrative service agency or actuary other than in connection with the State-administered defined benefit volunteer firefighter service award program, nor use information obtained by reason of its appointment as a financial organization, administrative service agency, or actuary to solicit volunteer firefighters with respect to such other products.

(b) Educational materials designed to acquaint volunteer firefighters with the benefits of the State-administered defined benefit volunteer firefighter service award program may be provided by the financial organization, administrative service agency, or actuary upon prior approval by the Office of the State Comptroller. In addition, at the time of distribution of a service award, an administrative service agency, financial organization, or actuary may include with the distribution written information concerning the potential tax consequences of the distribution and generic categories of investment options. Such information may contain a statement indicating that additional information may be obtained from the administrative service agency, financial organization, or actuary or their agents and from other financial institutions, but in all cases such information shall also contain a clear and prominent statement that the Office of the State Comptroller does not review, approve, endorse or recommend, and is not in any way involved with, any financial instrument, product or service offered by or acquired through, an administrative service agency, financial organization, or actuary or their agents, or any other financial institution.

(c) Except as otherwise provided by law, all information obtained under the program by the Sponsor, a volunteer fire company or volunteer fire department, an administrative service agency, financial organization, or actuary shall be confidential and shall be used exclusively for purposes relating to the program.

## **2 NYCRR § 155.24 (2012)**

### **§ 155.24 Optional forms of payment of service awards**

(a) There shall be two forms available for payment of service awards commencing on or after attainment of the entitlement age:

(1) a monthly payment straight life annuity (standard form);

(2) a five or ten year continuous and certain monthly payment life annuity which is actuarially equivalent to the monthly payment straight life annuity (standard form).

(b) There shall be two forms available for payment to participants who upon application to the Administrator have been determined by the Administrator to be totally and permanently disabled:

(1) monthly payment straight life annuity; or

(2) a single lump sum.

Both forms of payment shall be actuarially equivalent to the monthly straight life annuity (standard) form of payment that would have commenced to the participant on the first day of the month following or coinciding with the participant's birthday on which he or she attains the entitlement age.

(c) Forms available for payment of service awards to beneficiaries of deceased participants.

(1) If the beneficiary is the participant's estate, payment shall be a single lump-sum which shall be actuarially equivalent to the monthly straight life annuity (standard) form of payment that would have commenced to the participant on the first day of the month following or coinciding with the participant's birthday on which he or she attains the entitlement age or actuarially equivalent to any continuing payments to the participant's designated

beneficiary had the participant been being paid a service award at the time of his or her death and had the participant designated a person (or persons) to be his or her beneficiary.

(2) If the participant died before the effective date of the commencement of payment of his or her service award, the payments to the participant's designated beneficiary, which shall be actuarially equivalent to the monthly straight life annuity (standard) form of payment that would have commenced to the participant on the first day of the month following or coinciding with the later of the participant's birthday on which he or she attains the entitlement age or the participant's date of death, shall be in one of the following forms:

- (i) monthly payment straight life annuity; or
- (ii) a single, lump-sum.

(3) If the participant died after the effective date of the commencement of payment of his or her service award, the participant's designated beneficiary shall have the option to be paid:

- (i) the remaining monthly service award payments due to the designated beneficiary under the optional form of payment selected by the participant; or
- (ii) a single, lump-sum which is actuarially equivalent to the remaining monthly service award payments due to the designated beneficiary under the optional form of payment selected by the participant.

(d) In all cases where the monthly payments to a participant or a beneficiary under a monthly payment straight life annuity form of payment option shall be less than \$ 50, payment shall be made in an actuarially equivalent single, lump-sum to the participant or the participant's designated beneficiary (applies to subdivisions [a], [b] and [c] of this section).

(e) In any case where a deceased participant's designated beneficiary dies before having received all service award payments that would have been made to such designated beneficiary had he or she survived, the remaining payments shall be made to the estate of such designated beneficiary in an actuarially equivalent lump-sum.