

FPPA Rules & Regulations

Codified September 7, 2007

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

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FIRE AND POLICE PENSION ASSOCIATION

RULES AND REGULATIONS

CODIFIED FEBRUARY 28, 2007

CHAPTER 1 DEFINITIONS AND MEMBER STATUS

101. Definitions

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

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

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

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

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

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

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

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

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

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

101.08.1.1. **REPEALED**

101.09. *Dependent child* means an unmarried child under the age of 19 or, if such child is enrolled as a full-time student at a secondary school or an accredited institution of higher education, under the age of 23 and includes, if the Board so determines, any child of whatever age and marital status who is so mentally or physically incapacitated that he cannot provide for himself/herself. The term also includes a child who is conceived but unborn at the date of the Member's death or the date of disability, whichever applies. Any applicable increase in benefits will occur upon birth.

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

101.11. **REPEALED**

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

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

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

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

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

102. Member Status

102.01. Evidentiary Hearings on Eligibility for Member Status

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

102.01.02. Either the applicant or the applicant's employer may file a request for an evidentiary hearing on the applicant's eligibility for membership within 30 days of the mailing of the notice of the determination of ineligibility. Such hearing shall be held within 90 days from receipt of the request.

102.01.03. At the commencement of the hearing, the presiding officer shall state the reasons that FPPA denied membership, and may, if necessary, call upon FPPA staff and the attorney for FPPA to assist in the explanation.

102.01.04. The Board may call any witnesses it desires at that time. The applicant and/or the applicant's employer shall then present their evidence. The applicant and/or the applicant's employer have the burden of proof.

102.01.05. At the conclusion of the evidence offered by the parties, any other witness desired by the Board or any Member thereof shall also testify.

102.01.06. When the Board affirms or reverses its prior decision, then such affirmation or reversal is final as of the date it is announced, unless the Board makes its decision subject to the adoption of written findings. In that case, the decision is final as of the date the Board adopts such written findings. If the final decision is adverse to the applicant or the applicant's employer, any allowable judicial review may then proceed.

102.01.07. The provisions of Rule 501 shall apply to proceedings under this Rule 102.01.

102.02. Department Chief Exemption

102.02.01. Except as provided in Rule 102.02.02, upon a Department Chief's election to be exempted from the Statewide Defined Benefit Plan within 90 days of his/her appointment to the position of Department Chief, FPPA shall return to the employer, all Member and Employer Contributions made to the Statewide Defined Benefit Plan on behalf of the Department Chief. Except as provided in Rule 102.02.02, upon a Department Chief's election to be exempted from the Statewide Defined Benefit Plan more than 90 days following his/her appointment to the position of Department Chief, FPPA shall return to the Member, the Member's Contributions to the Statewide Defined Benefit Plan plus five percent as interest.

102.02.02. A Department Chief, upon his/her election to be exempted from the Statewide Defined Benefit Plan, may elect coverage under the Statewide Money Purchase Plan or the Statewide Hybrid Plan. The procedure for electing coverage under the Statewide Money Purchase Plan or the Statewide Hybrid Plan shall be in the form of an agreement signed by the Employer and Department Chief. The amount to be transferred to such plan shall be consistent with the provisions of Rule 607 governing the election of Statewide Money Purchase Plan coverage by an entire department.

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

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

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

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

202. A refund shall be processed within 90 days after FPPA has received a completed Request for Refund of Contributions Form, all supporting documentation and the final contribution. This form may be obtained by contacting FPPA.

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

204. In the event a Member who is covered by the Statewide Defined Benefit Plan dies while in active service, the deceased Member's Contributions plus an amount equal to 5% of the Member's Contributions may be refunded to the Member's Designated Beneficiary or, if none, the Member's estate if:

- (a) The Member is not eligible for Normal retirement benefits as set forth in C.R.S. § 31-31-403, as amended;
- (b) The Member leaves no surviving spouse and/or dependent children who are eligible for survivor's benefits under the Statewide Death and Disability Plan.

205. If a Member who is covered by the Statewide Defined Benefit Plan terminates his/her employment but, within 90 days of his/her termination, he/she becomes employed by another employer and in his/her new employment is again covered by the Statewide Defined Benefit Plan, his/her contributions will remain in the FPPA fund and he/she will retain all service credit earned with his/her prior employer.

206. If a Member dies after he/she has terminated service, does not have at least 5 years of service and has not yet received a refund, FPPA shall refund the Member's Contributions to the Member's Designated Beneficiary; if no Designated Beneficiary, to the surviving spouse; if no Designated Beneficiary or surviving spouse, to the dependent children; or, where there is no Designated Beneficiary, surviving spouse or dependent children, to the deceased Member's estate.

CHAPTER 3 RULES OF THE STATEWIDE DEFINED BENEFIT PLAN

301. Rules on Service Credits

301.01. A Member's service with successive employers shall be aggregated to determine eligibility and benefits for Normal, Early, Deferred or Vested retirement under the Statewide Defined Benefit Plan if the Member's service was rendered while the employer(s) covered their Members under the Statewide Defined Benefit Plan for Normal retirement benefits. If, however, a Member has received a refund of contributions as provided in C.R.S. § 31-31-404 (1), as amended, no service will be credited for that period of time covered by the refunded contributions unless:

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

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

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

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

301.02. REPEALED

301.03. Based on information submitted by a Member applying for retirement benefits, FPPA shall compile a list of all former employers of the Member, and those employers shall verify the Member's employment and shall certify the Member's service.

301.04. If an employer cannot verify a Member's employment and/or cannot certify a Member's service, FPPA shall contact the Member for additional information.

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

301.06. In order to accrue service credit for a particular pay period, a Member must work or be paid on a full-time basis for at least 50% of the pay period. If a Member takes a leave of absence without pay, or is suspended without pay, a Member shall not receive service credit for any pay period in which the Member does not work or is not paid at least 50% of the normal schedule for the period. Credit for such a pay period shall be considered lost service, except as provided in this Rule.

A Member returning from an authorized leave of absence will receive service credit for any period of lost service attributable to his/her leave not exceeding five (5) years upon FPPA's receipt of the amount of Member and employer contributions which would have been paid to the fire and police Members' benefit fund if the Member had remained in active service. Any such funds must be paid to FPPA within 12 months of the Member's return to service.

The above provisions of this Rule shall also apply for the purpose of calculating the benefits of a Member who takes an authorized leave of absence pursuant to the provisions of the Family Medical Leave Act or the Uniformed Services Employment and Reemployment Rights Act (USERRA). However, a Member on a family medical leave of absence, or a military leave of absence covered by USERRA, shall not lose service credit for the purpose of determining eligibility for vesting and retirement benefits. Further, a Member on a military leave of absence covered by USERRA, shall not lose service credit for benefit purposes, assuming Member and employer contributions for the period of the leave are remitted to the fire and police Members' benefit fund in accord with the provisions of USERRA. It is intended that with respect to military service, this Rule shall be construed so as to comply with Internal Revenue Code Section 414(u) and notwithstanding any provision to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u).

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

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

301.09. The Member shall purchase service credit in the Statewide Defined Benefit Plan by contributing to the plan, in one lump sum, an amount which is equal to the actuarial cost of such service. No service credit shall be awarded to the Member until the association has approved the request and has received the full contribution of the prescribed amount. In order to receive credit for the service, the Member must complete the contribution no later than the last day of active Membership in the Statewide Defined Benefit Plan. In order to complete the purchase transaction, FPPA must receive the full amount required within 90 days of the date that FPPA gives written notice to the Member of the cost of the requested service credit purchase. If all funds are not received within the 90 day period, FPPA may return the funds received to the source from which they came and cancel the transaction. No earnings or losses shall accrue on funds held by FPPA for service credit purchases. The Chief Benefits Officer may grant an extension to the 90 day funding period upon request with good cause shown.

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

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

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

“nonqualified service” under I.R.C. Section 415(n)(3)(C), which includes any service or employment not meeting the definition of “other public employment” except military service.

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

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

301.14. A Member who is restored to active service after a Temporary Occupational Disability ceases to exist will receive service credit for the period during which the Member received Temporary Occupational Disability Benefits. The Statewide Death and Disability Plan shall transfer to the Member’s Normal retirement plan in the amount of sixteen percent of the monthly base salary that the Member was being paid at the time of Disability retirement multiplied by the number of months the Member received Temporary Occupational Disability benefits. Any amount in excess of sixteen percent which would normally have been contributed to the Member’s Normal retirement plan had the Member not been Temporarily Occupationally disabled shall be contributed by the Employer.

301.15. Payment for purchase of service credit for time served while on active duty in the uniformed services of the United States pursuant to 31-31-402(1)(e) may include transfers from other tax qualified plans.

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

302.01. The average of a Member's highest three (3) years' base salary, for purpose of calculating a Member's Normal, Early, Deferred or Vested retirement benefit, shall be the average of the Member's highest three (3) calendar years' actual salary on which contributions were paid. If the Member purchased service credit within the last three (3) years of service, the attributed salaries calculated by using the actuarial data in the service credit calculator for the periods of service credit purchase may also be used in calculating the average of a Member’s highest three (3) years’ service.

302.02. The year in which a Member retires may be considered in calculating the average of the Member's highest three years' base salary if the Member retired on or after July 1. In that event, FPPA will annualize the last year's salary by comparing total pay periods for the year to total pay periods actually paid. If a Member retires on or before June 30 of any given year, the Member's salary for that year shall not be considered for purposes of calculating the average of the Member's highest three years' salary.

303. General Matters

303.01. The effective date of Normal, Vested or Early retirement shall be the day after the last date for which the employer deducted FPPA contributions from the Member's base salary. The effective date of

Normal retirement for Members classified as having a Temporary Occupational Disability shall be the date upon which the Member would have met the age and service requirement if the Member had not been granted a disability.

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

303.03. The reduced retirement pension provided under any option shall be calculated according to the appropriate actuarial assumptions adopted by the Board which take into account the life expectancy of both the Member and his/her designated beneficiary; the reduced retirement pension, however, shall be calculated as the actuarial equivalent of the full retirement pension otherwise payable.

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

303.05. In the event that an inactive Member who is eligible for Vested benefits dies prior to the commencement of benefit payments, FPPA shall pay the greater of either (i) a refund of the inactive Member's Contributions and Separate Retirement Account to the Member's estate; or (ii) provide survivor benefits to the Member's Designated Beneficiary, payable when the Member would have been eligible to receive a Vested benefit. Survivor benefits will be calculated as if the Member had selected Option 1 provided by C.R.S. § 31-31-403 (5) (a) (I), as amended. If the Member's designated beneficiary dies prior to the time the Member would have been eligible to receive a Vested benefit, the inactive Member's Contributions and Separate Retirement Account will be refunded to the beneficiary's estate.

303.06. Any benefit recipient whose benefit distribution method requires multiple payments and for whom the original effective date of benefit eligibility is on or after April 1, 2000, shall provide authorization to FPPA for the electronic transfer of pension payments to the benefit recipient's banking institution. In lieu thereof, the benefit recipient may apply for a waiver, which is subject to approval by FPPA for good cause. Such authorization or application for waiver shall be executed, in writing, in the form prescribed by the association. Benefit recipients who fail to provide such authorization and who fail to show good cause for a waiver shall pay reasonable administrative charges for the additional costs to FPPA of issuing benefit checks, and such charges shall be deducted from the benefits paid. In the event a member makes a special request for issuance of a payment, FPPA may assess the costs related to issuing the payment including but not limited to delivery and administrative costs. Compliance with such requests is subject to FPPA's ability to process and administer the requested payment.

Members who are receiving benefits from the Fire and Police Members' self-directed investments fund shall be subject to the requirements of the Recordkeeper of the fund with regard to issuance of benefits.

303.07. Retirement applications and distributions and refund of contributions under the Statewide Defined Benefit Plan may be approved after administrative review by the Chief Executive Officer, or the Chief, or the Chief Benefits Officer, without further hearing by the Board. Such an application shall otherwise meet all criteria required for approval of a retirement application by the Board. The Chief Executive Officer may defer consideration of any application to the Board. An appeal of the Chief Executive Officer's decision shall be processed pursuant to Rule 509. The Chief Executive Officer shall report each such approval at the next regularly scheduled Board meeting. Any application not approved by the Chief Executive Officer shall be processed for consideration by the Board.

304. Stabilization Reserve Account

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

- (a) No allocation will be made if the total amount of contributions to the New Hire benefits account will not be sufficient to meet the benefit liabilities funded by the actuarial account;
- (b) If the total amount of contributions to the New Hire benefits account exceeds the amount required to meet the benefit liabilities funded by the actuarial account the Board, in its sole discretion, may allocate all, a part, or none of such excess to the stabilization reserve account;
- (c) If there is a funding shortfall such that the total amount of contributions to the New Hire benefits account is not sufficient to meet the benefit liabilities funded by the actuarial account, then such additional amount as may be necessary to fund the shortfall shall be transferred from the stabilization reserve account to the actuarial account; and
- (d) If the funding shortfall is less than one percent, the Board in its discretion may defer the reallocation of funds required by paragraph (c).

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

304.03. Earnings, losses, and reductions to a Member's Separate Retirement Account shall be made in accord with the provisions of C.R.S. § 31-31-405 (5), as amended. Statements will be sent to each Member on at least an annual basis showing all changes to his/her account during the preceding reporting period. Statements shall also be provided upon request.

If a Member elects to receive payment of the Member's Separate Retirement Account funds in periodic installments, the unpaid balance of the Member's Separate Retirement Account shall accrue earnings at the same rate realized by FPPA on the Fire and Police Members' benefit fund. Alternatively, the Member may elect to accrue earnings at the rate of a short-term investment fund selected by the FPPA Board beginning the first day of the month following such election. Investments at the short-term investment fund rate may be subject to an administrative fee to pay the cost of the separate investment. Said election shall be irrevocable and may be made at the time of retirement but not later than prior to receipt of the first installment.

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

304.05. Upon termination and election of an Early, Normal, Deferred or Vested retirement, a Member's interest in his/her Separate Retirement Account shall be non-forfeitable except that a Vested retired Member, prior to the selection of a payment option with respect to amounts in his/her Separate

Retirement Account may elect a refund of his/her Member Contributions to the Statewide Defined Benefit Plan, thereby revoking his/her right to Vested retirement benefits and forfeiting the entire amount in his/her Separate Retirement Account to the actuarial account. Once a Vested retired Member has selected a payment option with respect to amounts in his/her Separate Retirement Account, he/she may not elect a refund of his/her Member Contributions to the Statewide Defined Benefit Plan.

304.06. A Member retired under an Early, Normal, Deferred or Vested retirement may elect to commence payment of the amount in the Member's Separate Retirement Account at any time after the Member terminates service but payments must begin at the required beginning date. Member shall be given notice of the right to elect a payment plan within 60 days of FPPA receiving notification that Member has terminated service. If the Member fails to elect a payment option, FPPA shall distribute the balance in the Member's Separate Retirement Account to the Member in a lump sum payment at the required beginning date.

304.061. In the event a Vested retired Member reactivates as a Member of the Statewide Defined Benefit Plan prior to the commencement of payments from the Member's Separate Retirement Account he/she will not be eligible to commence payments from the Member's previously Vested Separate Retirement Account until the Member again terminates service. If payments from the Vested Member's Separate Retirement Account have commenced at the time of reactivation, payments will continue in accord with the original option elected by the Member.

304.07. If a Member elects to receive payment of the Member's Separate Retirement Account funds in periodic installments, the unpaid balance in the Member's Separate Retirement Account will continue to accrue earnings: (i) at the rate of a short-term investment fund selected by the FPPA Board; or (ii) at the same rate realized by FPPA on the Fire and Police Members' benefit fund. The Member must irrevocably elect one of these two options prior to receipt of the first installment. In the event a Member selects periodic installments but does not indicate prior to the first installment the method of interest accumulation, it will be deemed he/she has elected method (ii).

304.08. In the event a retired Member elects to receive payment of the Member's Separate Retirement Account funds in a lump sum or in periodic installments and dies prior to the distribution of the Member's entire account balance, or the retired Member dies prior to making an election regarding the payment of the Member's Separate Retirement Account, the remaining funds in the account shall be payable to the Member's surviving spouse or dependent children or designated beneficiary in accordance with their selection of one of the payment options permitted by C.R.S. § 31-31-406 (3). If there is no surviving spouse, dependent child or designated beneficiary, the remaining funds shall be paid to the Member's estate.

304.09. A Member who is awarded a Permanent Occupational or Total Disability pension shall elect a payment option and commencement date for distribution of the Member's Separate Retirement Account. FPPA shall distribute the balance in the Member's Separate Retirement Account to the disability retiree in a lump sum payment on the required beginning date if the disability retiree fails to elect a payment option and commencement date prior to such time. If the disability retiree dies prior to making an election, the remaining funds in the account shall be distributed to the disability retiree's surviving spouse or dependent children or designated beneficiary in accordance with their selection of one of the payment options permitted by C.R.S. § 31-31-803 (1)(b) or (8)(a). If there is no surviving spouse, dependent child or designated beneficiary, the remaining funds shall be paid to the Member's estate.

304.10. A surviving spouse or legal guardian of the dependent children of a Member having a Separate Retirement Account who dies prior to termination of employment shall elect a payment option and commencement date for distribution of the deceased Member's Separate Retirement Account. If the surviving spouse or legal guardian for the dependent children of the deceased Member fails to elect a payment option and commencement date, FPPA shall distribute the balance in the Member's Separate

Retirement Account to the surviving spouse or legal guardian of the dependent children in a lump sum payment on the required beginning date.

304.11 Regardless of the form of distribution selected, distribution must be made in accordance with minimum distribution requirements under Internal Revenue Code Section 401(a)(9) and the regulations there under. The minimum distribution may be recalculated on the basis of the life expectancy of the Member and/or the beneficiary, if applicable. A Member will continue to accrue investment earnings and losses on the amount in the Member's Separate Retirement Account at the same rate realized by FPPA on the Fire and Police Members' benefit fund until such time as the account is exhausted, unless a Member otherwise elects under Rule 304.07.

305. Vesting for Former Part-Time SWMP Members

305.01. For purposes of vesting under the Statewide Money Purchase Plan, the years of service for a Member who participates in the SWMP as a part-time Member and subsequently enters the Statewide Defined Benefit Plan, shall include cumulative service under the SWMP and the SWDB. Such Members shall maintain their account balances. Once the Member is one-hundred percent Vested, the Member may transfer the SWMP account balance in order to purchase service credit under the SWDB plan. The Member shall vest in the SWDB plan based on service credit earned and purchased under the plan.

306. Deferred Retirement

306.01 Any Member retiring and eligible for a Normal retirement benefit or a Vested retirement benefit under the Statewide Defined Benefit Plan may elect to defer receipt of such pension until as late as the time at which the Member attains the age of sixty-five (65) years. In the case of such an election, the monthly Deferred retirement pension amount shall be the actuarial equivalent of the Normal retirement pension. If the Member has not completed a retirement form prior to the Member's 65th birthday, it is presumed that he/she has elected the Normal payment option.

306.02 In the event that a Member who has selected a Deferred Retirement under the Statewide Defined Benefit Plan dies prior to the commencement of the Member's benefit payments, the Plan Administrator shall pay survivor benefits to the Member's Designated Beneficiary, payable beginning on the date on which the benefits were deferred by the Member or shall pay an actuarial equivalent monthly amount beginning on such other date as the survivor elects payment to begin. The survivor benefits shall be calculated as if the Member had selected Option 1 as set forth in C.R.S. § 31-31-403(5)(a). In the event that the Member's Designated Beneficiary dies prior to the date of deferment, the Plan Administrator shall refund the Member's Defined Benefit Contributions to the Designated Beneficiary's estate plus 5% interest. In the event there is no designated beneficiary, the Member's Contributions shall be paid to the Member's estate

307. Conversion to a Monthly Lifetime Benefit

307.01 A Member who is eligible for retirement may elect to convert all or part of his/her Separate Retirement Account balance within the Statewide Defined Benefit Plan and/or his/her account balance within the DROP to a monthly lifetime benefit. Funds may not be transferred from outside the Statewide Defined Benefit Plan to purchase a monthly benefit.

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

307.03 At retirement or separation of service, which ever comes later, a Member may make a one-time, irrevocable election to convert a benefit to a monthly lifetime benefit. The conversion must be in

one lump sum, which must be transferred prior to the receipt of monthly benefits under the Statewide Defined Benefit Plan.

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

307.05 As part of the pension, the converted monthly benefit may be adjusted pursuant to C.R.S. § 31-31-40.

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

308. Delinquent Contributions

308.01. The Board may waive the statutory interest charge mandated by C.R.S. § 31-31-402(4), as amended, for new accounts in hardship cases. An account is established when an employer, who is a new participant within the Statewide Defined Benefit Plan, has an employee first enroll as a Member within the plan. An account qualifies as "new" for a period of six months from the date of establishment. "Hardship cases" are limited to instances in which the employer has paid erroneously into the Federal Social Security system or another retirement benefits provider instead of FPPA. The period for which interest may be waived shall begin on the latter of the first date on which an employee of the new participant enrolls as a Member with FPPA or the date on which the employer applies for a refund of contributions erroneously paid to the Federal Social Security system or another retirement benefits provider, and shall continue until the date on which FPPA receives the erroneously paid contributions and any earnings or interest that have been refunded to the employer. The employer shall provide documentation satisfactory to FPPA of its efforts to collect all amounts erroneously paid to the federal Social Security system or another retirement benefits provider.

308.02 The statutory interest charge mandated by C.R.S. § 31-31-402(4), as amended, shall be compounded on an annual basis.

309 SRA for Members in the Statewide Defined Benefit Plan at the Re-entry rate

309.01. Contributions to the Statewide Defined Benefit Plan for Members who are subject to the continuing rate of contribution established by the Board pursuant to C.R.S. § 31-31-1103 (2), shall be allocated to the actuarial account and the stabilization reserve account pursuant to C.R.S. § 31-31-301(3), and the Separate Retirement Accounts pursuant to C.R.S. § 31-31-405. The Board shall take all actions necessary to make such allocations.

309.02. Allocations to the actuarial account and the stabilization reserve account made pursuant to Rule 309.01 shall be based on two components: the general benefit cost calculated by the actuary for the Statewide Defined Benefit Plan and the incremental cost of benefits for Members required to pay the continuing rate of contribution pursuant to C.R.S. § 31-31-1103 (2). Members required to pay the additional incremental cost shall have allocations made to their Separate Retirement Account in an amount calculated in the same manner as to all other Members of the Statewide Defined Benefit Plan plus an amount calculated using the difference between the incremental cost set by the Board at four percent of pay (4% = 20% contribution rate less 16% standard defined benefit rate) and the actual additional cost of benefits, but not more than 4%, for the Members of the group paying the contribution rate established pursuant to C.R.S. § 31-31-1103(2).

309.03. SRA funds granted under Rule 309 shall be available to the Board in the same manner as other SRA funds are available to the Board under Colorado law, but for the sole purpose of meeting funding requirements that are uniquely identifiable to the group of Members for whom contributions are

made pursuant to C.R.S. § 31-31-1103 (2). In all other respects, the laws, rules and policies governing the stabilization reserve account and the Separate Retirement Accounts shall apply to the Re-entry SRA Funds.

CHAPTER 4 DISABILITY RETIREMENT AND SURVIVOR BENEFITS

401. Leaves of Absence

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

- (a) Absences in which the employee is not off the employer's payroll in any given month, although his/her earnings for that month may be less than full regular salary; and
- (b) Absences in which the employee is off the employer's payroll for one month or more but less than two years.

Official certification of the leave by the Member's employer is not required for leaves in the first category.

401.02. A Member will continue to be covered under the Statewide Death and Disability Plan while on an authorized leave of absence for a period of up to two years. A Member hired after January 1, 1997 on authorized leave will continue to be covered only if FPPA receives a monthly contribution at the established contribution rate multiplied by the Member's monthly base salary immediately prior to the beginning of the authorized leave of absence. Coverage under the Statewide Death and Disability Plan shall terminate if the monthly contribution is not received by FPPA.

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

401.04. A Member on military leave is entitled to the same Death and Disability benefits that a person on an authorized leave of absence is entitled to receive. Any benefits payable under the Statewide Death and Disability Plan shall be offset by any Death or Disability benefits received from the military.

402. Marital Status and Dependent Children

402.01. For purposes of calculating Disability benefits or eligibility for survivor benefits, the terms "spouse" and "surviving spouse" may include a spouse by common law marriage, if the Member or such spouse can prove the existence of a common law marriage. Evidence may include, but shall not be limited to, evidence of cohabitation, joint credit, joint checking and/or savings accounts, joint purchase of a house, joint tax returns, and/or evidence that the spouse or Member represented that they were married.

402.02. The final determination as to whether an individual qualifies as a spouse by common law marriage for disability and survivor benefits, as set forth in Rule 402.01, may be made by the DDRC or a recommendation shall be made after an evidentiary hearing conducted by a Hearing Officer substantially in accord with Rule 508.

402.03. For purposes of calculating disability benefits or eligibility for survivor benefits, the term dependent child as defined in C.R.S. § 31-31-801 (2), as amended, and Rule 101.09 of these Rules,

includes a Member's birth children, adopted children, and stepchildren living in the Member's household. It also may include a Member's birth children or adopted children living in another household or any other child living in the Member's household if:

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

402.04. A Member or applicant for survivor benefits wishing to claim the Member's stepchild, stepchildren, birth children or adopted children living in another household as dependent children shall list the names of such children on the application for disability or survivor benefits. The Member or applicant for survivor benefits also shall give the percentage of support provided by the Member to such children.

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

402.06. The final determination of eligibility for dependent status of a stepchild, stepchildren, birth children or adopted children living in another household, may be made by the DDRC or a recommendation shall be made after an evidentiary hearing conducted by a Hearing Officer substantially in accord with Rule 508.

402.07. Mental or physical incapacity of any dependent child shall be initially determined at the time of the award of disability or survivor benefits. The DDRC or the Hearing Officer may require the subsequent review and consideration of the continuing status of the child initially found to be incapacitated.

402.08. Members found to be occupationally disabled prior to October 1, 2002 and receiving a spousal benefit who become divorced may continue to receive the spousal benefit in an amount equal to the amount of maintenance actually paid by the Member to the former spouse but not more than ten percent of the annual base salary, as provided under § 31-31-803(2)(a) C.R.S.

402.09. In order to receive benefits for dependent children who are 19 years or older and younger than age 23, proof of full-time enrollment in school shall be submitted annually at the beginning of the school year and according to FPPA established deadlines. If a dependent child is subsequently enrolled in school during the year, proof of enrollment may be submitted at that time and benefits will be paid for the remainder of the year through the following August.

403. Reduction of Disability and Survivor Benefits

403.01. For purposes of calculating the earned income offset against occupational disability benefits provided in C.R.S. § 31-31-804 (1), as amended, FPPA will convert any lump sum Workmen's Compensation award to an "actuarial equivalent" as that term is defined in Rule 101.03 of these Rules; the term "earned income" shall have the meaning set forth in Rule 101.10 of these Rules.

403.02. For purposes of calculating the offset against benefits for an Occupational Disability granted prior to October 1, 2002, for a permanent Occupational Disability, or for a Total Disability and against survivor benefits provided in C.R.S. §§ 31-31-804 (2), 31-31-808, and 31-31-812 (2), as amended, the term "actuarial equivalent" is defined as set forth in Rule 101.03 of these Rules.

403.03. To determine whether an earned income offset against Occupational Disability benefits is required, FPPA will require the Member to submit to FPPA a copy of the Member's most recent Federal Income Tax Return for each year up to and including the year in which the Member attains the age of 55. FPPA may also require the member to execute IRS Form 4506 and/or 4506T allowing the IRS to release a copy of the filed tax return and/or a tax return transcript to FPPA for internal auditing purposes. If the Member fails to submit said return or fails to allow the IRS to release a copy of the return, FPPA may discontinue the distribution of benefits until such time as the return and release authorizations are submitted. A deadline for submitting information may be extended upon a showing of good cause. Benefit payments accruing during the non-compliance period shall not be paid upon compliance. If the Member fails to comply for a period of two years from the original deadline for submission of the Tax Return, the Member's benefit shall be permanently discontinued.

403.035 Members who have failed to provide a Federal Income Tax Return as required for tax years prior to 2007 (Prior Non-complying Members) shall have until December 31, 2007 to come into compliance. After December 31, 2007, benefits for Prior Non-complying Members shall be subject to Rule 403.03. Benefits will be discontinued during the period of non-compliance with no retroactive payment upon compliance. Benefits shall be permanently discontinued after a 2 year period of non-compliance from the original deadline for submission of the Tax Return.

403.04. Spousal and dependent child benefits shall be reduced upon the loss of eligibility of the surviving spouse or dependent child.

403.05. When a surviving spouse or dependent child becomes ineligible to receive survivor benefits, the amount of survivor benefits to which a remaining surviving spouse or remaining dependent children are entitled will be determined according to the schedules set forth in C.R.S. §§ 31-31-807 and 807.5, as amended.

403.06. In order to remain eligible for disability or survivor benefits, a Member or the Member's survivors must comply with the Rules in this Section 403 and applicable FPPA staff procedures. Failure to comply may result in the discontinuance of disability or survivor benefits.

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

404.01. FPPA will determine only those applications for Total or Occupational Disability benefits, where the Member became disabled on or after January 1, 1980. The Board presumes that all disability applications filed on and after January 1, 1980, concern disabilities occurring on and after January 1, 1980, until such time as this presumption is rebutted by substantial evidence. If the presumption is rebutted, then the Board shall refer the case to the appropriate local pension authority for determination in accordance with the applicable provisions of C.R.S. 31-30.5 -7, as amended.

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

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

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

- (a) Said employee has not received a refund;
- (b) Said employee is not eligible for an age and service retirement or Normal retirement, as provided in C.R.S. § 31-31-803(1)(a)(I) (A) and (B);

- (c) Said employee can demonstrate that the disability existed on the date of termination of Membership;
- (d) The Member has not elected to take a Deferred, Vested, or Early retirement, unless participating in DROP under early or vested retirement.

404.05. The determination of a Member's last day on his/her employer's payroll for purposes of Rule 404.04 is a matter to be decided by the employer and the Member. In particular, the treatment of accrued sick leave and/or vacation leave in this regard is left to the discretion of the Employer and the Member. FPPA does not require that such leave be included in calculating the last day on the payroll.

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

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

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

404.09. Once a complete application for disability benefits has been received by FPPA, the DDRC shall, in consultation with its Medical Advisor, appoint a panel of three physicians to examine the Applicant unless the Applicant requests that a preliminary determination of jurisdiction be made. In the event such a request is made, the DDRC shall determine if the application reveals on its face whether FPPA has jurisdiction to grant an award of Disability benefits, pursuant to the limitations set forth in Rule 404.01, and shall proceed as follows:

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

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

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

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

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

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

404.15 The disability benefit will be calculated based on the Member's base salary immediately prior to the date of disability.. If due to the health condition, a Member has continued to be employed in a position of accommodation or light-duty at a lesser base salary, the disability benefits shall be calculated based on the base salary just prior to the Member beginning the accommodating position

405. General Rules Governing Survivor Benefit Matters

405.01. If a Member covered by the Statewide Defined Benefit Plan or Statewide Hybrid Plan dies while in active service or on an authorized unpaid leave of absence properly documented, if necessary, pursuant to Rule 401, and leaves no surviving spouse or dependent children, FPPA shall refund the Member's Pension Contributions plus an amount equal to 5% of the Member's Contributions and the Member's Separate Retirement Account if the Member has at least five (5) years of service, to the deceased Member's estate.

405.011. If a Member dies after he/she has terminated service, FPPA shall refund the Member's Pension Contributions, and the Member's Separate Retirement Account if the Member has at least 5 years of service in the Statewide Defined Benefit Plan or the Statewide Hybrid Plan, to the Member's surviving spouse or dependent children or, where there is no surviving spouse or dependent children, to the deceased Member's estate.

405.02. If a Member eligible for a Normal, Vested, or Early retirement under the Statewide Defined Benefit Plan or the Statewide Hybrid Plan dies while off the Employer's payroll and prior to making an election of a retirement option, the Member shall be considered to have retired on the day before the Member's death and to have elected retirement Option 1 provided by C.R.S. § 31-31-403 (5) (a) (I), as amended, or Statewide Hybrid Plan rules 6.02 (b) and 6.05 , if the Member is survived by a spouse or dependent child or designated beneficiary.

405.03. If, preceding death, a Member was on extended sick leave drawing only a portion of the Member's normal base salary, the Member's normal salary, and not the Member's sick leave pay, shall be used to calculate survivor benefits as set forth in C.R.S. § 31-31-807, as amended.

405.04. In order to remain eligible for survivor benefits, a Member's eligible survivors must comply with the Rules in this Section 405 and applicable FPPA staff procedures. Failure to comply may result in the discontinuance of survivor benefits.

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

405.06 The survivor benefit will be calculated based on the Member's base salary immediately prior to the date of death. If due to a health condition, a Member was employed in a position of accommodation or light-duty at a lesser base salary at the time of death, the survivor benefits shall be calculated based on the base salary just prior to the Member beginning the accommodating position.

406. Administrative Approvals

406.01. The Board hereby establishes the Death and Disability Review Committee, which shall include the Chief Executive Officer, the Chief Benefits Officer and the Retirement Supervisor. The Medical Advisor and General Counsel shall act as advisors to the Committee. The Committee shall be referred to as the DDRC in these rules. The Chief Executive Officer may appoint additional persons to the committee as she or he deems appropriate. The DDRC may take the following actions after administrative review:

- (a) Approval of initial Disability applications which receive a recommendation for approval by all three physician panel Members for a Temporary Occupational Disability, a Permanent Occupational Disability or a Total Disability;
- (b) Approval of treatment plan and reexamination schedules for Members awarded Temporary Occupational Disabilities;
- (c) Make determinations or referrals pursuant to Rule 503.05 and 504.03 regarding whether the disabling injury or illness or the death arose out of and in the course of the Member's employment;
- (d) Approval of treatment plan compliance reviews where there is no evidence of non-compliance;
- (e) Approval of continuing disability benefits after a reexamination and a recommendation of continuing disability by the reexamining physicians;
- (f) Authority to order a reexamination when recommended by the Medical Advisor at the time an application is initially approved or after the review of intervening medical records;
- (g) Determine that no more reexaminations are required after a review of intervening medical records and a recommendation by the Medical Advisor.
- (h) Approval of continuing benefits after reexamination and recommendation of continuing disability by the reexamining physicians for Occupational Disabilities granted prior to October 2002;
- (i) Approval of uncontested applications for survivor benefits.
- (j) Affirm approvals recommended by the Hearing Officer.
- (k) Refer any matter to a Hearing Officer.
- (l) Refer matters recommended by the Hearing Officer to the Board for further consideration.
- (m) Make initial determinations regarding jurisdiction of the Board to hear Death and Disability applications.
- (n) Such other authority the Board may grant it by Rule or by specific grant.

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

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

407. Election of Alternate Benefits

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

407.02. A Member retired for Disability, who was a Member of the FPPA Defined Benefit System, may elect to terminate his/her Disability benefits and shall receive his/her Vested retirement pension under the applicable plan, payable at Normal retirement age.

408. Payment of Premiums after Reaching Age and Service

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

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

409. Miscellaneous Statewide Death and Disability Plan Rules

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

409.02. In the event that a Member is granted Permanent Occupational Disability benefits or Total Disability benefits and is eligible for a distribution of the Member's Deferred Retirement Option Plan account under any Statewide or Local Plan, the Member's monthly Disability benefit shall be offset by the actuarial equivalent monthly amount of the Deferred Retirement Option Plan account.

409.03. In the event where a Member is participating in a Deferred Retirement Option Plan under a Vested or Early retirement and where a Member's survivor is granted survivor benefits under the Statewide Death and Disability Plan and is eligible for a distribution of the Member's Deferred Retirement

Option Plan account under any Statewide or Local Plan, the monthly survivor's benefit payable by the Statewide Death and Disability Plan shall be offset by the actuarial equivalent monthly amount of the Deferred Retirement Option Plan account.

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

410. Benefit Suspension

410.01 Members or beneficiaries receiving death or disabilities shall complete the forms necessary to verify eligibility for continuing benefits as requested from time to time. Members receiving Occupational Disability benefits shall file a report with FPPA of earned income or report that no additional income has been earned for each year on the form provided by FPPA, pursuant to §31-31-804 C.R.S. and FPPA Rule 403.03.

410.02 Benefits shall be suspended after the FPPA has sent three notices First Class U.S. Mail to the Member's or the beneficiary's last known address requesting that required forms be completed and filed. Benefits may be reinstated, including benefits withheld during the suspension, when the Member or beneficiary has complied with the requirement of filing the form. Payment of benefit distributions to insurance providers or to other parties on behalf of Members failing to file the required form shall also be suspended until the Member or beneficiary complies with the requirement. It shall be the Member's responsibility to reinstate insurance in the event that it is terminated due to non-payment and FPPA shall have no liability for the consequences of the suspension of insurance payments.

CHAPTER 5 HEARINGS

501. Procedures For Hearings

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

- (a) The Applicant, Employer and Local Pension Authority, as applicable, may be represented by an Attorney at his/her or its own expense;
- (b) The Hearing Officer shall rule on all questions of law that arise during the hearing. The Attorney for the FPPA Board may advise the Hearing Officer on legal matters;
- (c) The Medical Advisor shall advise the Hearing Officer on medical matters, and shall not be considered a witness, but a confidential advisor;
- (d) All witnesses shall be placed under oath or affirmation by the Hearing Officer, as follows: "Do you swear (affirm), under the penalty of perjury, that the testimony you are about to give will be the truth?"
- (e) All witnesses, at the time of their testimony, may be questioned by the Hearing Officer, the Attorney for the FPPA board, the Medical Advisor, the FPPA staff, or by any party to the proceeding;
- (f) The Colorado Rules of Evidence shall be followed to the extent practicable;

- (g) At the conclusion of the evidence, any party may make an oral argument; if desired by the Hearing Officer, a period of time, not to exceed 30 days, may be allowed for filing of written arguments, except in hearing under Rule 503. If more than one party is to file a written argument, their filing deadline dates shall be the same;
- (h) After the presentation of evidence is concluded, the Hearing Officer may, before issuance of his/her recommendation, order the submission of evidence reopened, with such limitations and instructions as he/she desires;
- (i) All hearings are open to the public. The Hearing Officer may call an executive session as permitted by law;
- (j) All hearings shall be recorded and such recordings shall be made available for public review during regular business hours. FPPA will not prepare or arrange for transcription of any recording unless necessary pursuant to judicial review of a Board action. Any exhibits or documents introduced during a hearing or relied upon by the Hearing Officer in making his/her recommendation shall not be available for inspection and copying except to the Applicant or the Applicant's Attorney as provided by Rules 404.12 and 404.13.
- (k) All references to "days" shall be measured in calendar days unless stated otherwise. Any deadline falling on a day on which the FPPA's offices are not open for business shall be extended to the next business day.

502. Jurisdictional Hearings

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

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

502.03. The party requesting the redetermination of jurisdiction shall have the burden of proof and shall proceed with his/her proof first. The party opposing redetermination shall proceed second. The party requesting redetermination shall then have the opportunity to rebut.

502.04. If both parties request redetermination, then the Applicant shall proceed first and the Local Pension Authority second. There shall be no rebuttal from either the Applicant or the Local Pension Authority.

502.05. At the conclusion of the evidence offered by the parties, any other witness desired by the Hearing Officer or any Member thereof shall also testify.

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

502.07. If the Board reverses a denial of jurisdiction, then the application shall proceed in accordance with Rule 404.09 (a)

503. Initial Disability Proceedings

503.01. In the event the DDRC has accepted jurisdiction under the provisions of Rule 404.09 (a), it shall, upon receipt of the reports of the physician panel and the Medical Advisor, determine jurisdiction. If it declines jurisdiction, then the matter shall proceed as set forth in Rule 502 of these Rules. If it accepts jurisdiction, then the matter shall proceed as set forth in the following portions of this Rule 503.

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

503.03. The DDRC may approve Disability benefits pursuant to the statutory requirements where the panel unanimously recommends a specific level of benefit. The DDRC shall promptly schedule all applications which are not so approved for an initial hearing before a Hearing Officer.

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

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

- (a) Make an initial determination that the Applicant's Disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Applicant's employment; or
- (b) Refer the matter to a Hearing Officer appointed who shall, following notice to the Applicant and an opportunity for a hearing, make specific findings and a recommendation.

503.051. REPEALED (August 23, 2006)

503.052. If the Hearing Officer recommends that an Applicant be found Temporarily Occupationally Disabled, Permanently Occupationally Disabled, or Totally Disabled and the Applicant claims the disability is the result of an injury received while performing official duties or an Occupational disease arising out of and in the course of the Applicant's employment, the Hearing Officer shall, on the basis of documentary evidence submitted by the Applicant with the Applicant's Disability Application and the reports of the three physician panel, also make specific findings and a recommendation regarding whether the Applicant's disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Applicant's employment. The Hearing Officer may continue the matter in order to allow additional evidence and testimony and may sever the on-duty issue from the disability issue.

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

- (1) An "injury received while performing official duties" means an injury occurring:
 - (1) during a scheduled shift of the Member; or
 - (2) while the Member is otherwise performing official duties for the Employer; or
 - (3) while the Member is performing official duties in the employ of a third party and the employment is authorized by the Member's Employer.
- (2) A Member's "official duties" are those set forth in the written job description for the Member's position, which the Member is regularly required to perform. If there is no written job description for the Member's position, the Employer shall submit a written summary of the Member's job duties, which the Member is regularly required to perform for the Hearing Officer's consideration in this regard.
- (3) An "occupational disease" shall be determined to have resulted directly from the employment of the Member or the conditions under which work was performed, if it follows as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment as a proximate cause and does not come from a hazard to which the Member would have been equally exposed outside of the Member's employment.
- (4) Those standards established in applicable Colorado statutes and case law governing the award of Workmen's Compensation benefits and Disability claims generally, to the extent practicable.

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

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

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

503.061. REPEALED (August 23, 2006)

503.07 In all cases under this Rule 503 which are referred to a Hearing Officer, the Hearing Officer shall issue his/her written recommendation within 15 days from the closure of the hearing on the initial determination. FPPA shall mail the applicant a copy of the Hearing Officer's recommendation within seven (7) days of the issuance of the Hearing Officer's recommendation.

503.08. The applicant may file a written request for an evidentiary hearing if the applicant disagrees with any aspect of the initial determination regarding the applicant's disability application, except for those issues for which an evidentiary hearing has already been conducted as part of the initial hearing such as under Rule 402. Such request must be filed within 30 days from the date of mailing of the DDRC's decision or the Hearing Officer's recommendation.

504. Initial Survivor Benefit Proceedings

504.01. Upon receipt of a completed application for survivor benefits or, where there is more than one applicant, upon receipt of all completed applications for survivor benefits, the DDRC may approve survivor benefits pursuant to the statutory requirements or shall promptly schedule the matter for an initial hearing before a Hearing Officer.

504.02. At the initial hearing, the Hearing Officer shall determine, based upon the information supplied in the applications, and any other relevant evidence, each applicant's eligibility for survivor benefits in accord with C.R.S. § 31-31-807, as amended, and Rules 401 and 402.

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

- (a) Make an initial determination that the Member's death was the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment. In making its decision, DDRC shall consider the standards set forth in Rule 503.053. In the case of line-of-duty deaths occurring after December 31, 1996, DDRC shall also determine whether any of the exceptions specified in Section 101 (h) (2) of the Federal "Internal Revenue Code of 1986," as amended, are applicable. ; or
- (b) Refer the matter to a Hearing Officer who shall, following notice to the applicant and an opportunity for a hearing, make specific findings and a recommendation pursuant to Rule 515.

504.04. The Hearing Officer shall issue his/her written recommendation by mail within 15 days from the closure of the final hearing on the initial survivor benefit proceedings. FPPA shall mail the applicant a copy of the Hearing Officer's recommendation within 7 days of the issuance of the Hearing Officer's recommendation.

504.05. After the evidence is concluded, the Hearing Officer may, before issuance of its recommendation, order the submission of evidence reopened, with such limitations and instructions as he/she desires.

504.06. If evidence is reopened under Rule 504.05, then the decision time under Rule 504.04 shall be extended accordingly.

504.07. The applicant may file a written request for an evidentiary hearing in the event the applicant believes the initial determination of the applicant's eligibility for survivor benefits is incorrect or, where it has been determined that more than one applicant is eligible for benefits, any such applicant may request

an evidentiary hearing on the other applicants' eligibility for benefits. Such request must be filed within 30 days from the date of mailing of the DDRC's determination or the Hearing Officer's recommendation.

504.08. Where a Hearing Officer has been appointed pursuant to Rule 504.03 (b), the matter shall proceed as provided in Rule 515.

505. Hearing on a Change in Status from Total to Permanent Occupational Disability

505.01. When the Hearing Officer has received evidence that indicates a Member is no longer totally disabled based upon a reexamination or based upon other evidence of ability to engage in substantial gainful activity, the Hearing Officer may conduct a hearing to consider a change in the Member's status from total to permanent occupational disability.

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

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

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

505.04. FPPA will require Members to submit a statement of income to verify continuing eligibility for each year up to and including the year in which the Member attains the age of 55. If the Member fails to submit the required information, FPPA may withhold the distribution of benefits until such time as the information is submitted. Generally, earnings from work as an employee, including earnings or income from self-employment, will show that a Member is not engaged in substantial gainful activity if the Member's earnings on a monthly basis average less than 20 percent of the highest monthly base salary paid to the Chief of a Fire or Police Department in the largest 5 departments within the state of Colorado.

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

505.06. Prior to the hearing, the DDRC shall provide the retired Member with copies of any medical reports issued by physicians who have examined the Member and shall advise the Member of any other evidence of ability to engage in substantial gainful activity.

505.07. At the hearing, the association may present evidence and the Hearing Officer may call witnesses. The Member then may present his/her evidence.

505.08. The Hearing Officer shall notify the Member of his/her recommendation in writing. If the Hearing Officer determines that the Member's status should be changed from total to occupational disability, the Member may file a written request for an evidentiary hearing. Such request must be filed within 30 days of the mailing of the Hearing Officer's recommendation.

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

506.01. A Member retired for a permanent occupational disability may apply to have his/her status changed to total disability anytime within five years from the date of original disablement, the day after the last day on the payroll. A Member retired for an occupational disability prior to October 1, 2002 may apply to have his/her status changed to total disability within five years from the date he was declared occupationally disabled. Any such application must be filed with FPPA no later than 90 days prior to the expiration of the five-year period. The Hearing Officer may waive the 90 day period for good cause shown. The application should be accompanied by physician reports or other medical documentation, which supports the request for a change in status.

506.011. A Member retired for a temporary occupational disability may apply to have his/her status changed to permanent occupational disability or total disability within five years from the date of original disablement, the last day after the last day on the payroll. Any such application must be filed with FPPA no later than 180 days prior to the expiration of the five-year period. The application should be accompanied by physician reports or other medical documentation, which supports the request for a change in status.

506.02. The DDRC, or the Hearing Officer upon referral by the DDRC, will review the application and supporting documentation and determine whether reasonable grounds exist for a reexamination.

506.03. If the Hearing Officer determines there are no reasonable grounds for reexamination, the matter shall terminate and the Hearing Officer shall notify the Member of his/her recommendation in writing. The Member may file a written request for an evidentiary hearing. Such request must be filed within 30 days from the date of mailing of the Hearing Officer's recommendation.

506.04. If the DDRC or the Hearing Officer determines there are reasonable grounds for reexamination, it shall, upon the recommendation of the medical advisor, appoint one or more physicians to examine the Member. The physician or physicians shall submit reports to the DDRC on the Member's disability status and, following submission of the reports, the matter shall be set for a hearing before a Hearing Officer. Prior to the hearing, the DDRC shall provide the Member with copies of the medical reports submitted by the physicians appointed to examine the Member. Alternatively, on the basis of medical reports submitted by the Member, the DDRC or the Hearing Officer may waive the requirement of a reexamination by the physician panel and declare the Member permanently occupationally or totally disabled.

506.05. At the hearing, the association may present evidence and the Hearing Officer may call witnesses. The Member then may present evidence.

506.06. The Hearing Officer shall notify the Member of his/her recommendation in writing. If the Hearing Officer denies the request for a change in status, the Member may file a written request for an evidentiary hearing. Such request must be filed within 30 days from the date of mailing of the Hearing Officer's recommendation.

506.07. If the Member's disability status is changed from occupational to total after January 1, 2000 and if the occupational disability was granted prior to October 1, 2002, or if the Member's temporary occupational disability status is changed to permanent occupational disability or total disability, the Member shall elect one of the payment options available under C.R.S. § 31-31-803 (1), as amended, in

writing, on the form prescribed by FPPA. The Member's election shall be made within 90 days of the date on which all determinations affecting the change in status have become final. Determinations shall not be deemed final until all applicable appeal periods have expired. If the Member fails to make the election within 90 days, FPPA shall continue to pay benefits under the Member's prior status until the election is received. Upon receipt of the written election, FPPA shall pay the Member's unpaid benefits resulting from the change in status without interest or earnings. If the Member dies without making an election and the Member is survived by a spouse or dependent child, the Member shall be considered to have elected Option 3 provided by C.R.S. § 31-31-803 (1) (b), as amended,

507. Discontinuance of Disability Benefits

507.00. Discontinuance Upon Reemployment

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

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

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

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

- (a) Secretarial and other office support positions;
- (b) Civilian positions within law enforcement agencies and fire departments which provide only technical support services such as crime analysis, code enforcement, dispatch, etc.;

- (c) Technical consultants to law enforcement agencies and fire departments;
- (d) Private security personnel if they are not required to carry a firearm and do not have arrest powers; and
- (e) Private investigators.

507.04. If, after reviewing the written job description, the Hearing Officer finds that the position is one directly involved with the provision of police or fire protection, he/she shall notify the affected Member of his/her recommendation by mail. The affected Member may then file a request for an evidentiary hearing within 30 days of the mailing of the notice of the Hearing Officer's recommendation.

507.10 Discontinuance of Temporary Occupational Disability

507.11. The Hearing Officer may recommend termination of temporary occupational disability benefits if the Member fails to make rehabilitation efforts or if insufficient evidence of compliance and of a continuing disability is provided to the Hearing Officer by the Member.

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

507.13. If, after reviewing the evidence submitted, and after considering any comments submitted by the medical advisor, the Hearing Officer finds that the Member has failed to comply with the treatment plan, the Hearing Officer shall recommend termination of disability benefits and the Member shall have no right to be restored to active service. The Hearing Officer shall notify the affected Member of his/her recommendation by mail. The affected Member may then file a request for an evidentiary hearing within 30 days of the mailing of the notice of the Hearing Officer's recommendation.

507.14. If the Hearing Officer finds that the Member has failed to submit evidence of compliance with the treatment plan and evidence of continuing disability, the Hearing Officer shall recommend termination of disability benefits and the Member shall have no right to be restored to active service. The Hearing Officer shall notify the affected Member of his/her recommendation by mail. The affected Member may then file a request for an evidentiary hearing within 30 days of the mailing of the notice of the Hearing Officer's recommendation.

508. Evidentiary Hearings

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

508.02. At the commencement of the hearing, the Hearing Officer shall state the reasons for the initial determination or, if the hearing is being held at the Board's request pursuant to Rule 402.02 or 402.06, the reason for the hearing.

508.03. The DDRC may call any witnesses or present any evidence following the presiding officer's preliminary statement. If the hearing concerns the issue of base salary, the applicant's employer shall be

given notice of the hearing, and shall be requested to present evidence supporting its determination of base salary.

508.04. The applicant shall then present the applicant's evidence. The applicant has the burden of proof. If the applicant is challenging the determination of eligibility for survivor benefits with respect to another applicant, the other applicant may also present evidence. In that case, the applicant requesting the evidentiary hearing has the burden of proof.

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

- (a) If, at an initial disability hearing, the applicant was found not disabled because less than a majority of the physician panel has found a disability as required by C.R.S. § 31-31-803 (4) (a) (I), as amended, the Hearing Officer may affirm the prior recommendation or order a reexamination by a new panel of physicians. If a reexamination is ordered, the case shall proceed in all particulars as a new case under Rule 404.09 (a).
- (b) If, at an initial disability hearing, the applicant was found not disabled, the Hearing Officer may affirm or reverse his/her prior recommendation or, in the event the initial panel of physicians included physicians having different specialties or areas of expertise, the Hearing Officer may order a reexamination by a new panel of physicians. If the Hearing Officer orders a reexamination, then the case shall proceed in all particulars as a new case under Rule 404.09 (a).
- (c) In all other cases where an initial determination has been made, the Hearing Officer may affirm, modify or reverse the prior recommendation.
- (d) If the hearing has been held pursuant to Rule 402.02 or 402.06, the Board will affirm, modify, or reverse the recommendation of the Hearing Officer.
- (e) In all cases under paragraph (d), or where the Hearing Officer recommends affirmation, modification or reversal of a prior recommendation, the decision is final at the time it is affirmed by the Board and any allowable judicial review may then proceed.

509. Evidentiary Hearings On Staff Determinations

509.01. When a preliminary determination is made by FPPA staff affecting benefit eligibility, amount or duration of benefits, or an employer's obligation to enroll Members under one of the state plans administered by FPPA, and an evidentiary hearing on such a determination is not provided elsewhere in these Rules, then the person or entity affected by the determination will be granted an evidentiary hearing by a Hearing Officer upon request as provided by Rule 509.02.

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

509.03. At the commencement of the hearing, the FPPA staff shall state the reasons for staff's determination, and may, if necessary, call upon FPPA staff and the attorney for FPPA to assist in the explanation.

509.04. At the hearing, the staff may present evidence and the Hearing Officer may call witnesses. The person or entity requesting the hearing then shall present his/her/its evidence, and shall have the burden of proof.

509.05. At the conclusion of the evidence offered by the parties, any other witness desired by the Hearing Officer or by any Member thereof shall also testify.

509.06. When the Hearing Officer affirms or reverses staff's determination, then such affirmation or reversal is final as of the date it is affirmed by the Board. Any allowable judicial review may then proceed.

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

510. REPEALED

511. Recommendations By a Hearing Officer

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

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

511.03 REPEALED

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

511.05. Within 30 days after any type of hearing, except initial hearings as provided in 503.07, 504.04 and 504.07, and including an evidentiary hearing, the Hearing Officer shall file written findings and a recommendation. The Member shall be notified of the Hearing Officer's written findings and recommendation and shall have 30 days from the date of the mailing of the findings to file objections thereto. Objections shall be in writing and shall set forth in detail the particular errors and objections relied upon, and may be accompanied by a supporting brief. If objections are not timely filed, the Board shall consider the Hearing Officer's written findings and recommendation uncontested.

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

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

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

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

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

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

512. Determination of Employer Liability

512.01. When the Board has reasonable grounds to believe that an employer is liable for payment of disability or survivor benefits, it shall consider the matter at a regular or special meeting.

512.02. If the Board determines that the employer is not liable, the matter shall terminate.

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

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

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

512.06. At the conclusion of the hearing, the Hearing Officer shall make findings and a recommendation to the Board. If the Board determines that the employer is not liable, the matter shall terminate.

512.07. At the conclusion of the hearing, if the Board determines that the employer is liable, the Board's decision is final at the time it is announced and the employer may then proceed with any allowable judicial review, unless the Board makes its decision subject to the adoption of written findings. In that case, the Board's decision is final as of the date the Board adopts such written findings.

513. Statewide Standard Health History Form

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

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

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

514. REPEALED

515. Review of Death-in-the-Line-of-Duty Status by Hearing Officer

515.01. The Hearing Officer shall promptly set the matters for review pursuant to Rule 504.03(b) for a hearing and shall notify the applicant of the date and time of the hearing. Any survivor beneficiary may attend the hearing and may be represented by counsel at the survivor's expense. A survivor, for good cause, may have the date of the hearing continued but in no event may the hearing be continued beyond one year from the date of the initial hearing. All hearings before the Hearing Officer shall be recorded and all witnesses appearing in any hearing shall be placed under oath or affirmation.

515.02. The Hearing Officer shall be governed by the standards set forth in Rule 503.053. In the case of line-of-duty deaths occurring after December 31, 1996, the Hearing Officer shall consider whether any of the exceptions specified in Section 101 (h) (2) of the Federal "Internal Revenue Code of 1986," as amended, are applicable.

515.03. REPEALED

515.04. In making a recommendation on a case referred pursuant to Rule 504.03 (b), the Hearing Officer may consider any relevant evidence, including but not limited to the following:

- (a) Evidence demonstrating whether the injury or occupational disease which caused the death was compensable under the Workers' Compensation Act of Colorado as having occurred in the course of employment and within the place of employment as defined in C.R.S. § 8-40-201 (17), as amended;
- (b) Employer records demonstrating whether the death resulted from an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment;
- (c) Other records or documents demonstrating whether the death resulted from an injury received while performing official duties or an occupational disease arising out of and in the course of the Member's employment; and
- (d) Testimony from the applicant or witnesses.

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

515.06. The Board shall conduct an administrative appellate review of the Hearing Officer's written findings and recommendation and any timely filed survivor objections to the recommendation, at a regularly scheduled Board meeting. The survivor(s) shall be notified of the date the Board will conduct such review.

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

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

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

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

515.09. A copy of the Board's final decision shall be sent to the survivor(s). If the Board affirms the recommendation of the Hearing Officer, then that decision is final as of the date it is announced and any allowable judicial review may then proceed. If the Board directs the preparation of new written findings for its review and approval pursuant to Rule 515.07, the decision is final as of the date the Board adopts such written findings. The survivor(s) may then proceed with any allowable judicial review.

516. Reexamination Hearings and Additional Basis For Disability

516.01. The Hearing Officer or the DDRC shall establish a period for reexamination of all Members awarded temporary disability. Reexamination of Members retired for any type of occupational disability may be ordered as deemed warranted. The Hearing Officer or the DDRC may delegate the decision regarding the necessity and timing of the reexamination to the medical advisor. At each subsequent reexamination review, the DDRC or the Hearing Officer may establish the subsequent period for reexamination.

516.02. Prior to the reexamination hearing, the medical advisor may schedule a reexamination with a physician panel. The reexamination shall include a review of compliance with the treatment plan if one was required.

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

516.04. At least thirty days prior to making a determination that a disability ceases to exist, the FPPA shall provide written notice to the employer and the Member of the physicians' findings and of the opportunity for a hearing, upon request of the employer or Member, before the Hearing Officer.

516.05. If the appropriate number of physicians agree that the disability ceases to exist, and if the employer has filed a statement of additional basis for disability with the original application, the Member shall be examined by a three Member physician panel and evaluated for disability based on the statement of additional basis for disability. If it is found that the Member refuses or fails to cooperate with additional examination, the Member's benefits shall terminate. If after the subsequent examination, the appropriate number of physicians agree that the Member is not disabled on the additional basis for disability, at least thirty days prior to making its determination as to whether the disability ceases to exist, FPPA shall provide written notice to the employer and the Member of the opportunity for a hearing before the Hearing Officer, at the request of the Member or the employer.

517. New Hearing before the Board

517.01. After any final action has been taken, such as the affirmation of a Hearing Officer's recommendation, the applicant may apply to the Board for a new hearing. For purposes for appellate review under Colorado Appellate Rule 106(a)(4), a request for a new hearing shall not be required in order for it to be considered that the applicant has exhausted his/her/its administrative appeals.

517.02. A request for a new hearing shall be filed with FPPA within 30 days of the mailing of the notice of final decision sent to the applicant. Said request shall state in detail the basis for the request and

shall include references to any previous evidence upon which the applicant relies, any argument which the applicant wishes to make in support of the request, and any new evidence the Member wishes to present.

517.03. It shall be within the Board's discretion to grant or deny the applicant's request for a new hearing.

517.04. If a new hearing is granted, the Board may proceed with the hearing or may schedule the hearing for a later date. Upon request from the Member, the Board shall schedule the hearing for a later date. The Board shall conduct the hearing in substantial conformance to the procedures set forth in Rule 501. At the conclusions of the hearing, the Board may announce its decision or may order that written findings be prepared for its consideration at a later date.

CHAPTER 6 AFFILIATIONS AND WITHDRAWALS

601. Affiliation of Old Hire Plans

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

601.02. For Members of an affiliating old hire plan who, pursuant to C.R.S. § 31-31-701 (2), as amended, elect coverage under the Statewide Defined Benefit Plan for retirement benefits, the greater of the following shall be transferred from the old hire pension fund to the FPPA:

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

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

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

601.05. The interest rate, set forth in Rule 601.04, shall be calculated to be the yield rate to maturity, as published by the Western Edition of the *Wall Street Journal* effective for a U. S. treasury bill, note, or bond, with the maturity date falling nearest the date on which the final installment of transferring liability is due, but in no event shall the interest rate be less than the then current actuarial earnings assumptions adopted by the Board.

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

601.07. The cost of any actuarial study performed pursuant to C.R.S. § 31-30.5-306, as amended, with respect to employers desiring to receive state assistance contributions for their old hire pension plans shall be a cost of the association and shall be paid for as provided in C.R.S. § 31-31-302 (3), as amended. Once an old hire pension plan fund is actuarially sound and no longer eligible for state assistance contributions, however, the cost of any subsequent actuarial study on such fund shall not be considered an expense of the association payable from the fire and police Members' benefit fund. The cost of such a study shall be the responsibility of the employer or old hire pension plan fund.

602. Optional Affiliation by Social Security Employers

602.01 (a) A social security employer may elect affiliation with FPPA for:

- 1) Retirement benefits under the Social Security Supplemental Plan provided pursuant to § 31-31-704.6 C.R.S.; or
- 2) Disability retirement and survivor benefits provided pursuant to § 31-31-801 *et seq.* C.R.S.; or
- 3) Both retirement benefits under paragraph (1) and disability and survivor benefits under paragraph (2).

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

(c) FPPA will accept a resolution for affiliation under this Section 602 at any time. A timeline for the affiliation process will be established upon acceptance of the resolution.

(d) The affiliation resolution shall be revocable by the employer at any time prior to commencement of the withholding of contributions from the Members' salaries. If the employer does not revoke the resolution prior to the withholding of contributions, affiliation becomes irrevocable.

(e) An employer which elects to affiliate pursuant to this Section 602 shall furnish FPPA with all information necessary in order to carry out the provisions of the Plan.

602.02. Social Security Supplemental Plan as a component of the Statewide Defined Benefit Plan

(a) The level of contributions for Members of employers which affiliate pursuant to this Section 602 for supplemental retirement benefits will be determined in accord with the provisions of C.R.S. § 31-31-704.6 (3) as amended.

(b) Election for participation.

(1) Social Security employers who have adopted a resolution seeking affiliation shall prepare a disclosure statement which describes and compares the main provisions of the current retirement plan, if any and if the current plan is to be replaced, and the Social Security Supplemental Plan component of the Statewide Defined Benefit Plan for affiliated social security employers. The disclosure statement shall be submitted to FPPA for its approval. Once approved, the employer shall hand deliver or mail a copy of the disclosure statement to each Member eligible to vote in the election at least 10 days prior to the date the employer has set for the Member election.

(2) All employees whose duties are directly involved with the provision of law enforcement or fire protection, who are employed on the date or dates of the election (Members), are

eligible to vote. Those hired less than 10 days prior to the commencement of the election shall be personally handed a disclosure statement by the employer on the date of their employment.

- (3) All Members voting in the election shall sign a register of voters at the time they receive their ballots.
 - (4) At the election conducted by the employer concerning coverage under the Social Security Supplemental Plan component of the Statewide Defined Benefit Plan, all Members shall vote by secret ballot. The ballot shall contain the following statement: I have read and I understand the disclosure statement, and I vote in favor of participating in the following plan. The ballot shall then contain the applicable options. A sample ballot shall be approved by FPPA prior to the election. Subject to approval of the procedure by FPPA, an employer may allow Members to vote by absentee ballots.
 - (5) After all of those eligible to vote have had an opportunity to cast their ballots, the election shall be closed, but in no event shall the election be conducted during more than three consecutive days.
 - (6) After the election, the employer shall deliver the following to FPPA:
 - (1) A list of Members eligible to vote, showing their dates of employment;
 - (2) The register of voters;
 - (3) The sealed ballots; and
 - (4) A certification by an officer of the employer that the disclosure statement was properly served to all eligible Members, and that the election was conducted fairly.
 - (7) FPPA shall count the ballots in the presence of designated representatives of the employer.
 - (8) If the above procedures have been completed and if 65 percent of the Members eligible to vote approve coverage under the Social Security Supplemental Plan component of the Statewide Defined Benefit Plan, such coverage shall be considered approved, subject to compliance with the other requirements of this Rule 602 and C.R.S. § 31-31-704.5, as amended.
- (c) Members of affiliated Social Security employers, who are covered under the Social Security Supplemental Plan component of the Statewide Defined Benefit Plan established pursuant to C.R.S. § 31-31-704.6 shall be eligible to receive retirement benefits equivalent to one half of the benefits paid under the normal benefits of the Statewide Defined Benefit Plan. Benefits earned through participation in the Social Security Supplemental Plan as established pursuant to C.R.S. § 31-31-704 prior to January 1, 2007 shall be paid pursuant to said statute and subject to reduction pursuant to FPPA Rule 603.
- (d) All additional benefits, optional benefits, and all rules and regulations applicable to the Statewide Defined Benefit Plan shall apply to the Social Security Supplemental Plan component of the Plan. This shall include, but not be limited to, the Separate Retirement Account, the deferred retirement option plan, and the options and deferrals available for payment of retirement benefits. Service credit may be purchased by Members in the Social Security Supplemental Plan component and benefits from service credit purchase shall be at the same rate as awarded in the Statewide Defined Benefit Plan.

- (e) Members of the Social Security Supplemental Plan component may opt to have monthly benefit payments adjusted to provide for level income on an actuarially equivalent basis as approved by the FPPA actuary based on earliest Social Security eligibility. The reduction beginning at the earliest Social Security eligibility shall be calculated as a fixed amount and the factors used in the calculation of the actuarial equivalent increased benefit prior to eligibility shall reflect that methodology. No payment options providing survivor benefits are available for Members electing the level income option.
- (f) A Member who has earned benefits under the Social Security Supplemental Plan established pursuant to C.R.S. § 31-31-704 and whose employer has elected not to participate in the plan established pursuant to C.R.S. § 31-31-704.6 may elect an in-service transfer of his/her Member Contributions to an alternative pension or Deferred Compensation Plan as allowed under the Internal Revenue Code.

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

- (a) The level of contributions for Members of employers which affiliate pursuant to this Section 602 for supplemental death and disability benefits will be determined in accordance with the provisions of C.R.S. § 31-31-801, as amended.
- (b) Members of employers which affiliate for disability retirement and survivor benefits will be eligible to receive the disability and survivor benefits provided by C.R.S. § 31-31-8, as amended, but any benefits so received shall be reduced by the pro rata amount of any Social Security benefit received by the Member attributable to the Member's credits of Social Security coverage derived from employment as a Member.

602.04. Members with service under both Social Security Supplemental Plans of the Statewide Defined Benefit Plan In calculating benefits under both the plans as described in C.R.S. §§ 31-31-704 and 31-31-704.6, the Member's highest average salary during the period the Member was in either plan shall be used to calculate benefits under both plans. The Member's service credit under both plans shall also be accumulated to establish the Member's benefit.

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

603.01. This Section 603 applies to the reduction in retirement, survivor and disability payments payable to the Members of affiliated Social Security employers, as required by C.R.S. § 31-31-704 (5), as amended. This Section 603 shall not apply to benefit payments received from the plan established pursuant to C.R.S. § 31-31-704.6.

603.02. The amount of benefits to which a person is determined to be entitled shall be reduced by the pro rata amount of any Estimated Social Security benefits to be received by the Member attributable to the Member's Social Security coverage derived from employment as a Member. To calculate the amount of the reduction, FPPA will multiply the Member's Estimated Social Security benefit by a fraction, the numerator of which is equal to the Member's years of service in the plan with an affiliated Social Security employer, and the denominator of which is equal to the Member's years for all Social Security employment. Social Security employment shall be assumed to begin at age 21, or the date on which participation in FPPA began if earlier. Social Security employment shall be assumed to end at retirement in the case of a retirement benefit calculation, or at the earliest Social Security eligibility date in the case of a Vested benefit calculation.

603.03. The Estimated Social Security Benefit is the estimated monthly amount of income that would be payable to a Member under the provisions of Title II of the Social Security Act (Monthly Primary Insurance Amount) as in effect on the Member's date of termination, commencing as of the Member's

retirement date, regardless of whether or not the Member is eligible for or receives a Social Security benefit.

The determination of an Estimated Monthly Social Security Benefit shall be made with the assumption that the Member had been continuously covered under the Social Security Act from the earlier of his/her 21st birthday, or FPPA hire, until the Member's date of termination, and that the Member's last full year of Compensation prior to the date of determination was discounted backward in time at an annual rate of 6%, compounded annually, continuously during each year of such period of coverage, subject to the following subparagraphs.

The determination of the Estimated Monthly Social Security Benefit for a Vested benefit calculation shall be made with the assumption that the Member continues employment until the earliest Social Security eligibility date at the same rate of Compensation which was paid to the Member in the last full calendar year of employment prior to his/her termination.

Any Member shall have the right to provide FPPA with his/her actual Social Security earnings history for the period prior to his/her termination of service, and the Estimated Monthly Social Security Benefit shall be determined by using the actual Social Security earnings history. The Social Security earnings history must be obtained by the Member from the Social Security Administration and supplied by the Member to FPPA within 6 months of the time he/she is notified of his/her benefit. Additional time may be granted by FPPA if the Member can show that he/she has requested the information from the Social Security Administration but has not yet received such information. In no event will any actual earnings after FPPA termination be considered. Any adjustments to be made in benefits payable shall be retroactive to the date of first payment.

603.04. No explicit offset for survivor benefits paid by Social Security will be made against payments by FPPA to a survivor pursuant to the election by the Member of a joint and survivor annuity. Any adjustment for Member elections shall apply to the Member's benefit as reduced in the manner described by paragraphs 603.02 and 603.03.

An offset for estimated survivor benefits paid by Social Security will be made against payments by FPPA to a survivor under the Statewide Death and Disability Plan. Such offset shall be calculated in a manner consistent with paragraph 603.03.

An offset for estimated pension benefits to be paid by Social Security will be made against pension and disability benefit payments by FPPA to be calculated in a manner consistent with Rule 603.03. In the event a disabled Member receives disability benefits paid by Social Security, an offset for actual disability benefits to be paid by Social Security shall be implemented, in lieu of the offset for estimated pension benefits, against the disability benefit payments by FPPA.

603.05. The offset will not be increased to reflect subsequent cost of living increases in Social Security benefits. Any adjustment for FPPA cost of living increases shall apply to the Member's benefit as reduced in the manner described by Rules 603.02 and 603.03.

603.06. REPEALED

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

604. Affiliation of Volunteer Fire Departments

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

604.02. The district must file with FPPA a resolution of intent to affiliate no less than 30 days procedures for affiliating such a plan are as follows:

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

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

604.04. An affiliating municipality, fire protection district, fire authority or county improvement district shall furnish FPPA with all information necessary to implement FPPA's affiliation agreement with the governing body providing the local volunteer firefighters' pension plan.

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

- (a) The municipality, fire protection district, fire authority or county improvement district must file with FPPA a resolution of intent to disaffiliate no less than 60 days prior to the effective date of disaffiliation, unless a shorter waiting period is approved by the Board. The effective date of disaffiliation shall be the January 1, April 1, July 1, or October 1 next following the waiting period;
- (b) Within 90 days after the effective date of disaffiliation from FPPA, the association shall return to the municipality, fire protection district, fire authority or county improvement district all monies in the municipality, fire protection district, fire authority or county improvement district volunteer firefighter pension fund together with the net earnings thereon. For the purposes of this subparagraph 2, "net earnings" means actual earnings less actual administrative expenses and expenses connected with the disaffiliation. The determination of net earnings shall be made by the Board; and

- (c) Between the effective date of disaffiliation and the actual return of monies by FPPA, assets in the volunteer fund will accrue interest based upon the yield rate to maturity of a 90-day U.S. treasury bill, as published by the Western Edition of the *Wall Street Journal*. Monies returned by FPPA shall remain assets of the volunteer firefighter pension fund.

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

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

605. Affiliation of Money Purchase Pension Plans

605.01. Any employer providing a money purchase pension plan for its police officers and/or its firefighters which was established pursuant to C.R.S. §§ 31-30.5-8 or 31-31-6, as amended, may elect to affiliate its plan with FPPA for administration and investment purposes.

605.02. The procedures for affiliating such a plan are as follows:

- (a) The municipality, fire authority, or fire protection district must file with FPPA a resolution of intent to affiliate no less than nine months prior to the effective date of affiliation, unless a shorter waiting period is approved by the Board. The effective date of affiliation shall be the first day of the month next following the waiting period;
- (b) The municipality, fire authority or fire protection district must sign an affiliation agreement with FPPA which sets forth the respective liabilities and responsibilities of the municipality, fire authority or fire protection district and FPPA;
- (c) The municipality, fire authority or fire protection district must provide FPPA with an opinion letter from the Internal Revenue Service or other evidence satisfactory to FPPA establishing the plan's status as a "qualified plan" under the Internal Revenue Code.
- (d) On the effective date of affiliation, or on such date as mutually agreed upon by the employer and FPPA, the assets of the local pension plan shall be transferred to the fund created by C.R.S. § 31-31-703, as amended. Such transfer shall be at the market value of such assets at the close of business on the date the assets are received by FPPA's custodian bank.

605.03. Subsequent to the date of affiliation, all contributions to the local money purchase plan shall be paid to FPPA.

605.04. An affiliating municipality, fire authority or fire protection district shall furnish FPPA with all information necessary to administer its local money purchase pension plan and manage the plan's fund, including Member account balances as of the effective date of affiliation. FPPA will follow the direction of the local plan Board or committee regarding the payment of benefits except that in the event a plan is silent as to the payment of benefits upon a Member's death, FPPA will distribute the Member's entire vested account balance in a lump sum to the Member's designated beneficiary.

605.05. Earnings and losses to a Member's individual account shall be posted at least on a quarterly basis. Quarterly statements will be sent to each Member showing all changes to his/her account during the preceding quarter.

605.06. The Board may allow a Member of an affiliating plan to exercise control of the investment of part or all of the Member's accrued benefit under the Member's plan. In allowing a Member to exercise such control, the Board shall select at least three investment alternatives, each of which is diversified in itself, that allow the Member a broad range of investments and a meaningful choice between risk and return in the investment of a Member's accrued benefit.

One hundred percent of all Member Contributions must be invested in any one or a combination of the designated investment alternatives. If no investment election is made by the Member, all monies will be invested in a fund option designated by the Board. Members may redirect the investment of new contributions at any time and may reallocate monies in existing funds at least once a month after earnings are allocated.

605.07. Any municipality, fire authority or fire protection district which entered into an agreement with FPPA for the purpose of having the association administer and manage a money purchase pension plan for the municipality's, fire authority's or fire protection district's Members, may terminate such an agreement in accord with the following procedures:

- (a) The municipality, fire authority or fire protection district must file with FPPA a resolution of intent to disaffiliate no less than 60 days prior to the effective date of disaffiliation, unless a shorter waiting period is approved by the Board. The effective date of disaffiliation shall be the January 1, April 1, July 1, or October 1 next following the waiting period.
- (b) Within 90 days after the effective date of disaffiliation from FPPA, the association shall return to the municipality, fire authority or fire protection district all monies in the municipality's, fire authority's or the fire protection district's money purchase plan pension fund together with the net earnings thereon. For the purposes of this subparagraph 2, "net earnings" means actual earnings less actual administrative expenses and expenses connected with the disaffiliation. The determination of net earnings shall be made by the Board. Of the total administrative expenses incurred by FPPA in administering money purchase pension plans, the amount of administrative expenses which will be attributed to the disaffiliating municipality, fire authority or fire protection district will be determined in the same proportion as the disaffiliating entities' money purchase pension fund bears to the total amount of money purchase pension funds invested with FPPA.
- (c) Between the effective date of disaffiliation and the actual return of monies by FPPA, assets in the money purchase plan pension fund will accrue interest based upon the yield rate to maturity of a 90-day U.S. treasury bill, as published by the Western Edition of the *Wall Street Journal*. Monies returned by FPPA shall remain assets of the money purchase plan pension fund.

605.08. Upon the effective date of disaffiliation, the municipality, fire authority or fire protection district will be liable for the payment of all benefits then vested under the money purchase pension plan.

605.09. Upon the effective date of disaffiliation, FPPA will be released and indemnified from all liabilities and obligations it may have with respect to the money purchase pension plan except as noted above.

606. Exempt Plan Election of Death and Disability Coverage

606.01. Any employer which has established a money purchase plan on or before December 1, 1978, in accordance with the provisions of C.R.S. § 31-30.5-8, as amended, may elect to have its Members covered by the provisions of the death and disability plan.

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

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

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

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

607. Withdrawal From the Statewide Defined Benefit Plan/Election of Coverage Under the Statewide Money Purchase Plan

607.01. Any employer may withdraw its police officers and/or firefighters from the Statewide Defined Benefit Plan for the purpose of covering them under the Statewide Money Purchase Plan, subject to the limitations set forth in this Section 607 and C.R.S. § 31-31-5, as amended.

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

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

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

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

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

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

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

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

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

607.11. At the election conducted by the employer concerning the withdrawal, all Members shall vote by secret ballot. The ballot shall contain the following statement: *I have read and I understand the disclosure statement.* The ballot shall then contain the applicable options. A sample ballot shall be

approved by FPPA prior to the election. Subject to approval of the procedure by FPPA, an employer may allow Members to vote by absentee ballots.

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

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

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

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

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

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

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

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

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

608. Electing Coverage Under The Statewide Money Purchase Plan For Members of a Local Money Purchase Plan

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

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

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

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

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

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

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

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

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

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

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

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

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

609. Electing Coverage Under The Statewide Hybrid Plan For Members of a Local Money Purchase Plan or The Statewide Money Purchase Plan

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

611. Employer Election To Cover Part-Time Employees

611.01. Employers whose Members participate in the Statewide Defined Benefit Plan or the Statewide Money Purchase Plan and the Statewide Death and Disability Plan may elect to cover police officers and/or firefighters working less than 1600 hours, but who otherwise qualify as Members, in the Statewide Money Purchase Plan and the Statewide Death and Disability Plan administered by FPPA.

611.02. Employers whose Members participate in the Statewide Death and Disability Plan may elect to cover police officers and/or firefighters working less than 1600 hours, but otherwise qualifying as Members, in the Statewide Death and Disability Plan administered by FPPA.

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

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

612. Employer Election To Cover Clerical and Other Personnel

612.01. A fire protection district, fire authority, or county improvement district providing fire protection services whose Members participate in the FPPA Defined Benefit System or the Statewide Money Purchase Plan may elect to cover clerical or other personnel whose services are auxiliary to fire protection in the Statewide Defined Benefit Plan or the Statewide Money Purchase Plan administered by FPPA, unless said clerical or other personnel participate the Public Employees' Retirement Association established under Title 24, Article 51, *Colorado Revised Statutes*.

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

CHAPTER 7 ADMINISTRATIVE MATTERS

701. Operating Rules of the Board

701.01. The Board shall elect a vice chairperson prior to the September meeting of each year. The vice-chairperson, after serving a one year term, shall succeed to the chair on the following September 1. In the event the vice-chairperson is unable to succeed to the chair, then the Board shall elect both a chairperson and a vice-chairperson prior to the September meeting at which the then current vice-chairperson would have succeeded to the chair position. In the absence of the chairperson and vice-chairperson from any meeting, the meeting may be called to order by any Member and the Board shall immediately elect a temporary chairperson. The temporary chairperson shall serve until entrance of the regular chairperson or vice-chairperson or until election of another temporary chairperson.

701.02. The calendar year shall be the fiscal year of the FPPA.

701.03. A majority of the Members of the Board shall constitute a quorum, and a majority of those Members participating in any vote shall be required for approval of an action.

701.04. The Board shall meet at least 10 times per year according to a schedule established by the Board. Each meeting shall be set at least one month in advance.

701.05. The chairperson of the Board, or any three Members of the Board, may call a special meeting of the Board by giving all Board Members four days' (96 hours) notice in writing or by telephone. Any Member of the Board may call a special meeting of the Board by telephone upon less than four days (96 hours) notice, for the sole purpose of conducting an emergency disability hearing where the applicant for disability retirement is in imminent danger of death.

701.06. Excessive excused or unexcused absences from the meetings of the Board shall be reviewed by the full Board and two consecutive unexcused absences from Board meetings shall be reviewed automatically by the full Board.

701.07. Any operating rule of the Board which does not have a basis in state law may be amended or new rules may be adopted, by a two-thirds vote of the Board.

701.08. Any such amendment or alteration to the operating rules of the Board shall be submitted in writing to each Board Member at least seven days before the regular Board meeting at which the rule amendment or rule addition is to be considered.

701.09. REPEALED

701.10. Any procedural meeting matter which is not specifically addressed in this Section 701 shall be governed by *Robert's Rules of Order Newly Revised*, wherever applicable and not in conflict with state law.

701.11. The only exception to *Robert's Rules of Order Newly Revised* will be that the chairperson of the Board may vote on business before that group.

701.12. Actions taken by the Chief Executive Officer regarding policy guidelines shall be ratified by the Board at its next regularly constituted meeting if such actions involve interpretation of policy.

701.13. The Board shall annually designate at its first meeting each year a public place within the offices of FPPA where notice of all meetings of the Board will be posted at least 24 hours prior to any such meeting. In the event of a special meeting called pursuant to Rule 701.05 for the purpose of

conducting an emergency disability hearing, notice shall be posted as early as possible prior to the meeting. The notice shall include specific agenda information where possible. Minutes of any Board meeting at which the adoption of any proposed policy, position, resolution, rule, regulation or formal action occurs or could occur shall be taken and promptly recorded and such records shall be open to public inspection. Minutes of a meeting during which an executive session is held shall reflect the general topic of the discussion at the executive session.

702. Rules on Rule-Making By The Board

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

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

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

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

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

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

702.06. FPPA shall make available to the public and shall deliver to anyone requesting it a copy of any rule of FPPA then in effect or of any notice of proposed rule-making proceeding in which action has not been completed. Upon request, such copy shall be certified by the Board's executive secretary. FPPA may make a reasonable charge for supplying any such copy.

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

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

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

703. Plan Modification of Old Hire Plans

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

703.02. Notwithstanding any other provision of these Rules, the percentage of annual state contributions toward an employer's unfunded pension liability will not be increased due to any local plan modification. The employer will be required to separately track and account for increases in unfunded liabilities attributable to any local plan modification in order to ensure that the amount of state funds the employer receives is not affected by any such plan modification.

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

704. Modification of State Plan

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

- (a) A copy of the language of the proposed plan modification;

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

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

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

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

704.04. The following procedures shall govern the Member election:

- (a) Within 15 days of the date of mailing of the information required by the Rules, the employer shall provide each active Member of the state plan, a copy of the information set forth in Rule 704.01.
- (b) The Member election may commence at any time following the employer's receipt of the information required by Rules 704.01 and 704.02 and shall conclude no later than the 30th day from the date of such receipt;
- (c) The employer may prescribe rules for the return of ballots by Members including rules for absentee balloting as long as such rules ensure the confidentiality of the vote, do not permit voting by proxy, and are not inconsistent with FPPA Rules;
- (d) The employer shall exclude from voting any individuals on the roster provided by FPPA who terminate employment prior to the commencement of the vote and shall include state plan Members not reflected in FPPA's roster who were hired prior to the conclusion of the voting;
- (e) Within 60 days from the date of FPPA's mailing to the employer, an authorized representative of the employer must certify the results of the Member election, including:
 - (1) The vote count for and against the proposed modification;
 - (2) A roster of those Members receiving ballots and a list of those Members who actually submitted ballots;

- (3) A statement that, to the best of the employer's knowledge, all eligible Members timely received the information set forth in Rule 704.01; and
- (4) The election was conducted in a fair and impartial manner.

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

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

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

705. Availability of Records

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

705.02. For purposes of C.R.S. § 24-72-204, as amended, all documents, without regard to the form of transmission, received from or sent to, private equity investment managers and entities in which FPPA has made, or has contemplated making, private equity investments are deemed to contain trade secrets, privileged information, and confidential commercial information and shall therefore not be released, except as necessary for FPPA to conduct business and meet its fiduciary obligations, and except to the extent a document is specifically identified by the sender as being a document that may be made available in the public domain. FPPA shall offer for public inspection and copying periodic reports produced by FPPA for the Board of Directors which contain the return on investments and such periodic reports shall not be deemed to fall within the definition of trade secrets, privileged information, or confidential commercial information

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

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

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

706. Compliance with Domestic Relations Orders

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

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

706.03. The Board shall recognize only those domestic relations orders which seek to implement a written agreement between a Member of a retirement plan administered by FPPA and the Member's former spouse. The Board shall approve a standardized form of agreement which must be used by the parties in this regard. The Board shall also approve a standard judicial “order” which incorporates and approves the terms of the written agreement.

706.04. Any written agreement concerning the division of benefits in a retirement plan administered by FPPA shall be submitted to FPPA within 90 days after entry of the decree and the permanent orders regarding property distribution in the proceeding for the dissolution of marriage, legal separation, or declaration of invalidity of marriage. The order approving the agreement shall be certified by the clerk of the court and submitted to and received by FPPA at least 30 days before the plan may make its first payment.

706.05. Alternate Payee Severed Benefit Option. An alternate payee and the Member may designate that the alternate payee receive the actuarial equivalent of the alternate payee's portion of the defined benefit under the Statewide Defined Benefit Plan, Statewide Hybrid Plan, or death and disability plan paid out over the lifetime of the alternate payee. The alternate payee and the Member shall make such designation prior to the first payment of benefits. After the benefit payments have begun, if the alternate payee predeceases the Member, the severed benefit payable to the alternate payee shall terminate and shall not be restored to the Member.

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

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

707. Deferred Retirement Option Plan (“DROP“)

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

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

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

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

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

707.04. If the Member dies during the period of the Member's participation in the DROP and the Member's designated beneficiary is the Member's surviving spouse to whom the Member was legally married at the time of the Member's death, the Member's designated beneficiary shall be entitled to select one of the distribution methods set forth in Rule 707.01, subject to the provisions of Rule 707.02.

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

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

708 Delinquent Contributions

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

708.02. The Chief Executive Officer, the Chief Operations Officer, or the Chief Benefits Officer may waive a penalty where he or she finds the amount to be de minimus or where a good faith effort has been made to comply with the deadline.

708.03 The Board may waive the statutory interest charge mandated by § 31-31-402(4), C.R.S. as amended, for new accounts in hardship cases. An account is established when an employer, who is a new participant within the Statewide Defined Benefit Plan, has an employee first enrolled as a Member within the plan. An account qualifies as “new” for a period of six months from the date of establishment. “Hardship cases” are limited to instances in which the employer has paid erroneously into the federal social security system or another retirement benefits provider instead of FPPA. The period for which interest may be waived shall begin on the latter of the first date on which an employee of the new participant enrolls as a Member with FPPA or the date on which the employer applies for a refund of contributions erroneously paid to the federal social security system or another retirement benefits provider, and shall continue until the date on which FPPA receives the erroneously paid contributions and any earnings or interest that have been refunded to the employer. The employer shall provide documentation satisfactory to FPPA of its efforts to collect all amounts erroneously paid to the federal social security system or another retirement benefits provider.

708.04 The statutory interest charge mandated by § 31-31-402(4), C.R.S., as amended, shall be compounded on an annual basis.

709. Investment Options for DROP

709.00 Self Directed Investment Fund

709.01. Old hire plans may be amended to provide for the self direction of Vested DROP assets and contributions by allocating such assets of the plan to the police and fire Members’ self directed investments fund subject to the terms of Rule 709 herein. Any such amendment must remove all of its Members’ DROP assets from the police and fire Members’ total fund to the police and fire Members’ self directed investments fund and all DROP retirees who are currently in pay status shall be included.

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

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

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

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

709.05. FPPA, or its Recordkeeper, shall adopt procedures governing the calculation and allocation of earnings and losses under the various investment alternatives that it may offer, the transfer of assets

between funds under each alternative, the allocation of a Member's account between investment alternatives, and such other matters as may be necessary to its administration and management of the fund.

709.06. The FPPA Board shall be the trustee of the fire and police Members' self directed investments fund subject to the Members' allocation of moneys in their accounts to the alternatives offered by the FPPA Board. A Member who exercises control over the plan assets in the Member's account shall not be deemed to be a fiduciary of the fund by reason of such exercise of control, and neither the FPPA Board nor the FPPA shall be liable for any loss that results from such exercise of control.

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

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

709.09. The FPPA Board shall submit an annual audit of the fire and police Members' self directed investment fund to the general assembly and to each employer that has active or retired Members with balances in the fund. Each employer shall make the audit and study available for review by its Members.

710. Short-Term Investment Fund Option

710.01. A Member who participates in an old hire plan DROP program, the assets of which are not subject to self-direction pursuant to Rule 709, may, at the time of commencement of participation in the DROP, irrevocably elect to invest all contributions to his/her DROP account in either the FPPA Total Fund or in a short-term investment fund selected by the FPPA Board. The short-term investment fund selected by the Board shall have as one of its objectives the preservation of principal invested in the fund. The short-term investment fund shall be subject to an administrative fee necessary to cover the cost of administration.

711. Employer Contributions To Unfunded Old Hire Plans

711.01. Pursuant to C.R.S. § 31-30.5 306, actuarial studies of the unfunded state-assisted old hire plans are required to determine the amount of unfunded liability that accrues as a result of suspension of state contributions. This will be accomplished as set forth in Rules 711.02 through 711.07.

711.02. An allocation of hypothetical state contributions shall be determined as of September 30, 2003, September 30, 2004, and September 30, 2005 under the assumption that the suspension of state contributions pursuant to § 31-30.5-307(5)(a) were not in effect.

711.03. Such allocated contributions shall be credited to a hypothetical account for each old hire plan.

711.04. Interest shall be added to these hypothetical accounts at the actuarial rate.

711.05. An allocation of state contributions made as of April 30, 2006 and each April 30 thereafter through April 30, 2012 shall result in an interest reduction to these hypothetical account balances, based on the payment amount and the actuarial rate.

711.06. Hypothetical account balances shall be added to actual fund account balances for purposes of determining the unfunded liability for purposes of each department's determination of their required department contribution.

711.07. The sum of these hypothetical account balances for each plan is the total unfunded liability in accordance with § 31-30.5-307(5)(b).

712. **REPEALED**

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

714. Election To Establish a Statewide Healthcare Defined Benefit Plan

714.01. Whenever the FPPA Board of Directors proposes a statewide health care defined benefit plan pursuant to its authority under C.R.S. § 31-31-904, a vote is required of the Members. FPPA shall provide to each employer employing active Members to be covered by the statewide health care defined benefit plan the following information to be distributed by the employer to each such Member:

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

714.02. In addition to the Member information set forth in Rule 714.01, FPPA shall provide each employer a list of the active Members of the statewide plan employed by the employer as reflected in FPPA records.

714.03. FPPA will forward the information required by Rules 714.01 and 714.02 by certified mail or hand-delivery to the applicable Department Chief or Chiefs for each employer unless the employer designates a different individual in writing to FPPA; or the employer may pick up the information in the FPPA offices. In cases of delivery by other than certified mail, the employer shall provide FPPA with a written receipt for such information.

714.04. The following procedures shall govern the Member election:

- (a) Within 15 days of the date of mailing of the information required by the Rules, the employer shall provide each active Member of the state plan, a copy of the information set forth in Rule 714.01.
- (b) The Member election may commence at any time following the employer's receipt of the information required by Rules 714.01 and 714.02 and shall conclude no later than the 30th day from the date of such receipt;
- (c) The employer may prescribe rules for the return of ballots by Members including rules for absentee balloting as long as such rules ensure the confidentiality of the vote, do not permit voting by proxy, and are not inconsistent with FPPA Rules;
- (d) The employer shall exclude from voting any individuals on the roster provided by FPPA who terminate employment prior to the commencement of the vote and shall include state plan Members not reflected in FPPA's roster who were hired prior to the conclusion of the voting;

- (e) Within 60 days from the date of FPPA's mailing to the employer, an authorized representative of the employer must certify the results of the Member election, including:
- (1) The vote count for and against the proposed plan;
 - (2) A roster of those Members receiving ballots and a list of those Members who actually submitted ballots;
 - (3) A statement that, to the best of the employer's knowledge, all eligible Members timely received the information set forth in Rule 714.01; and
 - (4) The election was conducted in a fair and impartial manner.

714.05. The FPPA Board shall certify the results of the elections held pursuant to Rule 714.04, breaking out the vote totals for each employer. The Board shall mail a copy of the certification to each employer within in ten days after the certification. If less than a majority of an employer's eligible Members vote in favor of participating in the plan, the employer, on behalf of its Members, may elect not to participate in the plan. Such an employer election shall be made by the governing body of the employer within 90 days of the FPPA Board's certification of the election results. The employer shall submit a certified copy of the minutes, resolution or other action evidencing the governing body's decision within 15 days of the date of the decision in order for said election to be effective and for the Members to be excluded from the plan.

714.06. Within 120 days from the date of FPPA's mailing to employers, the Chief Executive Officer for FPPA shall certify the results of the Member and employer elections to the Board of directors. If at least 65 percent of the active Members approve the proposed plan, the Board will consider final approval at a subsequent meeting of the Board. The effective date of the proposed plan will be such date as may be prescribed by the Board.

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

714.08. Members entering the FPPA Defined Benefit System:

Departments entering the FPPA Defined Benefit System subsequent to the statewide Member election held pursuant to Rule 714.04 shall conduct a local Member election to determine participation in the Statewide Health Care System. If less than a majority of the eligible Members approve participation in the Statewide Health Care Plan, the Employer, on behalf of its Members, may elect not to participate in the plan. The process and timeline for conducting this local Member election and the subsequent certification process shall be established for each Employer by FPPA after consultation with the Employer. FPPA shall give notice of all Employer deadlines to the Employer.

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

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

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

718. Certification of Members of Affiliated Social Security Employers by Counties.

718.01. Prior to affiliation by a County under C.R.S. § 31-31-704, the County shall certify to FPPA a list of positions which constitute salaried employees whose duties are directly involved with the provision of law enforcement or fire protection.

719. Administrative Pension Approvals and Overpayment Recoveries

719.01. The Chief Executive Officer and the Chief Benefits Officer shall have the authority to approve the following applications and certifications on behalf of the Board

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

719.02. Actions approved by the Chief Executive Officer and the Chief Benefits Officer are subject to the following requirements:

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

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

720. Distributions to Members and Beneficiaries.

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

720.02 Under the FPPA Defined Benefit System and the Statewide Death and Disability Plan, benefits shall be paid through the end of the month in which the member or beneficiary passes away. Subsequent beneficiary benefits will begin in the month following the month through which the preceding benefits are paid.

800 PENSION PROTECTION ACT OF 2006

801 Payment of Distributions for Health Insurance Premiums

801.01 This FPPA Rule 801 shall apply to all Members of plans within the FPPA defined benefit system, the Statewide Money Purchase Plan, "Old Hire" Plans administered by FPPA, the Statewide Death and Disability Plan and affiliated local money purchase plans who qualify as eligible public safety officers under the Pension Protection Act of 2006.

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

(b) Upon adoption and implementation of the process necessary to administer such distributions, distributions from monthly pension benefits from defined benefit plans for the payment of health insurance premiums to other health insurance plans are authorized and shall be subject to the \$3000 exclusion from federal taxable gross income on an annual basis to the extent allowed by the federal Pension Protection Act of 2006 and shall be reported as such. The FPPA staff may adopt procedures, forms, and requirements as necessary to ensure compliance with the applicable laws.

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

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

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

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