

**Manchester Employees' Contributory Retirement System**  
**Administrative Rules – September 2017 Edition**  
**Table of Contents**

<b>Part 1</b>	<b>Definitions</b>	<b>4</b>
<b>Part 2</b>	<b>Filing for Benefits</b>	<b>4</b>
2.1	Notice of Intent to Retire	4
2.2	Benefit Request	4
2.3	Ordinary or Non-Work-Related Disability	5
2.4	Work-Related Disability	5
2.5	Miscellaneous	6
2.6	Service Buybacks	8
2.7	Choices Under Contingent Annuity Option	8
<b>Part 3</b>	<b>Gainful Occupation</b>	<b>9</b>
3.1	Purpose	9
3.2	Gainful Occupation Information	9
3.3	Reduction of Retirement Allowance	9
3.4	Medical Examination	9
<b>Part 4</b>	<b>Hearings</b>	<b>10</b>
4.1	Petition	10
4.2	Notice of Hearing	11
4.3	Evidence	11
4.4	Briefs	11
4.5	Conduct of the Hearing	11
4.6	Decision	12
4.7	Rehearings	12
<b>Part 5</b>	<b>Petitions and Requests</b>	<b>12</b>
5.1	Submissions and Requests	12
5.2	Incomplete Applications and Petitions	12
5.3	Signatures	12
5.4	Computation of Time	12
5.5	Extensions of Time	13
5.6	Date of Filing	13
5.7	Continuances	13
5.8	Change in Time or Place	13
5.9	Time Requirement for Appeal to NH Supreme Court	13
<b>Part 6</b>	<b>Additional Employee Contributions</b>	<b>13</b>
6.1	Purpose	13
6.2	Additional Benefits	13
6.3	Calculation of Additional Contributions	13
6.4	Payment of Additional Contributions	14
6.5	Interest on Additional Contributions	14
6.6	Return of Additional Contributions	14
6.7	Miscellaneous	15

<b>6.8</b>	<b>COLA on Additional Contributions Portion of Monthly Benefit</b>	<b>15</b>
------------	--	-----------

<b>Part 7</b>	<b>Cost of Living Adjustments</b>	<b>15</b>
<b>7.1</b>	<b>Purpose</b>	<b>15</b>
<b>7.2</b>	<b>Annual Inflation Determination</b>	<b>15</b>
<b>7.3</b>	<b>Sufficient Funds Through Earnings</b>	<b>16</b>
<b>7.4</b>	<b>Amount of COLA</b>	<b>19</b>
<b>7.5</b>	<b>COLA with Approval of Board of Mayor and Alderman</b>	<b>19</b>
<b>7.6</b>	<b>Retired Member COLA Eligibility</b>	<b>19</b>
<b>7.7</b>	<b>COLA for Retirees Who Return to Active Membership</b>	<b>19</b>

<b>Part 8</b>	<b>Optional Service Upgrade Pursuant to Chapter 159 Laws of 2004</b>	<b>20</b>
<b>8.0</b>	<b>Optional Service Upgrade Pursuant to Chapter 159 Laws of 2004</b>	<b>20</b>
<b>8.1</b>	<b>Definition of Eligible Period</b>	<b>20</b>
<b>8.2</b>	<b>Members Eligible to Participate</b>	<b>20</b>
<b>8.3</b>	<b>Calculation of Contributions and Benefits</b>	<b>20</b>
<b>8.4</b>	<b>Cost Sharing Requirement and Payment Methodology</b>	<b>21</b>
<b>8.5</b>	<b>Non-Refundable Status of Purchase</b>	<b>21</b>
<b>8.6</b>	<b>Permissive Service Purchases Subsequent to Exercising Options under Chapter 159 Laws</b>	<b>21</b>
<b>8.7</b>	<b>Minimum Purchase Amounts</b>	<b>21</b>
<b>8.8</b>	<b>Return of Contributions in Lieu of an Annuity Upon Death of the Member Prior to Retirement</b>	<b>21</b>
<b>8.9</b>	<b>Interest on Member Portion of Service Upgrade</b>	<b>21</b>
<b>8.10</b>	<b>Prohibition on the Use of Tax Sheltered Funds</b>	<b>21</b>
<b>8.11</b>	<b>Limitation on Amount of Contributions</b>	<b>22</b>

<b>Part 9</b>	<b>Pension Portability, Service Buybacks</b>	<b>22</b>
<b>9.1</b>	<b>Acceptance of Funds</b>	<b>22</b>
<b>9.2</b>	<b>Subject to Provisions</b>	<b>22</b>
<b>9.3</b>	<b>Service Credit Purchases</b>	<b>23</b>
<b>9.4</b>	<b>Buybacks Disallowed</b>	<b>23</b>
<b>9.5</b>	<b>Applications</b>	<b>23</b>

<b>Part 10</b>	<b>Calculation of FAE &amp; Benefits with Less Than 3 Years of Service</b>	<b>23</b>
<b>10.1</b>	<b>Final Average Earnings Calculation Method</b>	<b>23</b>
<b>10.2</b>	<b>Calculation Methodology for Member with Less Than 3 Years of Service</b>	<b>23</b>

<b>Part 11</b>	<b>Recognition of Service Pursuant to Chapter 218:4, XIX</b>	<b>23</b>
<b>11.1</b>	<b>Determination of Periods to be Granted Service Credit</b>	<b>23</b>
<b>11.2</b>	<b>Measurement of Service</b>	<b>23</b>
<b>11.3</b>	<b>Qualification for Service</b>	<b>23</b>
<b>11.4</b>	<b>Non-Recognition of Breaks in Service for Educationally Related Members as a Result of Contract Duration.</b>	<b>23</b>

<b>Part 12</b>	<b>Assessment of Penalty For Failure To Remit Contributions</b>	<b>24</b>
<b>12.1</b>	<b>Interest Penalty</b>	<b>24</b>
<b>12.2</b>	<b>Abatement of Interest Penalty</b>	<b>24</b>

<b>Part 13</b>	<b>Compliance Addendum – IRS Voluntary Correction Program</b>	<b>24</b>
<b>13.1</b>	<b>Purpose and Definition</b>	<b>24</b>
<b>13.2</b>	<b>Limit on Compensation under Internal Revenue Code Section 415</b>	<b>24</b>
<b>13.3</b>	<b>Internal Revenue Service Code Section 401(a)(9)</b>	<b>25</b>
<b>13.4</b>	<b>Internal Revenue Service Code Section 401(a)(17)</b>	<b>27</b>
<b>13.5</b>	<b>Internal Revenue Service Code Section 401(a)(31)</b>	<b>27</b>
<b>13.6</b>	<b>Automatic Rollovers under IRC Section 401(a)(31)(B)</b>	<b>29</b>
<b>13.7</b>	<b>Internal Revenue Service Code Section 415</b>	<b>29</b>
<b>13.8</b>	<b>Internal Revenue Service Code Section 414(u)</b>	<b>31</b>
<b>13.9</b>	<b>Actuarial Assumptions</b>	<b>31</b>
<b>13.10</b>	<b>Internal Revenue Service Code Section 401(h)</b>	<b>31</b>

# CITY OF MANCHESTER EMPLOYEES' CONTRIBUTORY RETIREMENT SYSTEM

## ADMINISTRATIVE RULES

### **PART 1: DEFINITIONS**

All terms used in these rules shall have the same meaning as in Chapter 218, or as explicitly stated according to the policy making authority of the Board of Trustees.

- 1.1 **"Member"** means any individual so defined pursuant to Chapter 218:4, XI.
- 1.2 **"Retired Member"** means a Member who is in present receipt of periodic disability or superannuation (service) retirement benefits under the System.
- 1.3 **"Disability"** means a condition, sickness or disease which prevents an individual from performing the essential functions, with or without accommodation, of the position held prior to his/her condition, sickness or disease or from performing the essential functions, with or without accommodation, of a position comparable to the one held prior to his/her condition, sickness or disease.
- 1.4 **"Gainful Occupation"** and **"Gainful Employment"** mean the performance of labor or services for payment or compensation.
- 1.5 **"Earnings from Employment"** means gross wages, salaries, tips, commissions, and net income from self-employment. Earnings from Employment does not include income from retirement benefits, social security, workers' compensation, investment income, dividends, or wages received from City employment prior to retirement.
- 1.6 **"Final Average Earnings"** is the equivalent of "final average earnings" as defined in Article 218:4, X.
- 1.7 **"Normal Retirement Age"** is the sixtieth birthday of a Member.
- 1.8 **"Earnings"** means "Earnings as defined in Chapter 218:4 VIII.

### **PART 2: FILING FOR BENEFITS**

**2.1 Notice of Intent to Retire:** A Member shall provide notice of intent to retire by filing a written statement which has been duly attested by a competent witness, regardless of whether a Member is seeking a superannuation (service) retirement or an ordinary or work-related disability retirement. This statement must set forth the type of benefit requested and at what time subsequent to its filing, but no later than 60 days subsequent to its filing, the Member seeks to be retired; or the Board of Trustees may, at its option, retire any such eligible Member, furnishing him/her written notice thereof at least sixty calendar days in advance of the specified date of such retirement.

**2.1.1.** An oral statement of intent to retire shall not constitute notice of intent to retire.

**2.2 Benefit Request:** Each applicant shall file the appropriate form, which may be obtained at the Retirement System Office, for the type of benefit requested not less than 45 nor more than 60 days prior to the effective date of retirement.

## **2.3 Ordinary or Non-Work-Related Disability:**

**2.3.1.** Ordinary disability applications shall be considered by the Board only after an Ordinary Disability Retirement Application Form and an Attending Physician's Statement Form are both filed with the Board. The Ordinary Disability Retirement Application Form and the Attending Physician's Statement shall be filed with the Board while a Member is in service or within 60 days of the termination date of the Member's service. In the event that eligibility for Ordinary Disability could not conclusively be determined within the 60 day period, the applicant may, by virtue of a formal written request to the Board of Trustees inclusive of supporting evidence, request a waiver of the 60 day filing requirement. Upon approval by the Board of Trustees, the effective date of retirement for the commencement of payments shall be the first of the month following the latter of the member's date of termination from employment or the month in which the applicant filed for receipt of retirement benefits.

**2.3.2.** A physical examination shall be performed by at least two impartial physicians selected by the Board of Trustees to determine whether disability is permanent and whether it is total.

**2.3.3.** The Board of Trustees shall dispose of the applicant's request based on proof of total and permanent incapacity to perform the duties of the position held or comparable to the position held, medical reports, Attending Physician's Statement and the recommendation of the impartial physicians selected by the Board.

## **2.4 Work-Related Disability:**

**2.4.1.** Work-related disability applications shall be considered by the Board only after the Work-related Disability Retirement Application Form and Attending Physician's Statement Form are both filed with the Board. These forms shall be filed with the Board while the Member is in service or within 60 days of the termination date of the Member's service. In the event that eligibility for Work-related Disability could not conclusively be determined within the 60 day period cited above, the applicant may, by virtue of a formal written request to the Board of Trustees inclusive of supporting evidence, request a waiver of the 60 day filing requirement. Upon approval by the Board of Trustees, the effective date of retirement for the commencement of payments shall be the first of the month following the latter of the member's date of termination from employment or the month in which the applicant filed for receipt of retirement benefits.

**2.4.2.** A physical examination shall be performed by at least two impartial physicians selected by the Board of Trustees to determine whether disability is permanent and whether it is total.

**2.4.3.** The Board of Trustees shall dispose of the applicant's request based on proof of total and permanent incapacity to perform the duties of the position held or comparable to the position held, medical reports, attending physician's statement and the recommendation of the impartial physicians selected by the Board.

**Sections 2.4.4 through 2.4.5 ceased prospectively on June 20, 2008 with the repeal of Chapter 218:15, VI, per Chapter 90 Laws of 2008.**

~~2.4.4. Any amounts received by any Member or Retired Member under the provisions of the worker's compensation statute on account of any disability relating to employment by the City of Manchester shall be deducted from the disability retirement benefits received on account of the same disability. Such deduction shall be made only for the indemnity or wage portion of the workers' compensation benefits including attorney's fees, and shall not include workers' compensation benefits relating to medical expenses.~~

~~2.4.5. Whenever a Member or Retired Member arrives at a lump sum settlement in connection with a workers' compensation claim arising out of employment by the City of Manchester, and such lump sum settlement is approved by the New Hampshire Department of Labor, a copy of the approved lump sum settlement shall be provided to the Board. No disability retirement pension payments shall be made until the monthly disability retirement pension payments that would have been made but for the lump sum settlement have reached the dollar value of the lump sum settlement award attributable to wages, which includes that part of the lump sum award which the member chooses to pay his/her attorney.~~

~~Disability retirement benefit payment beneficiaries will receive, on an annual basis, a Workers Compensation Lump Sum Status Report which will state the amount of the lump sum settlement including attorneys' fees, the annual disability retirement pension payment, and the number of years that must elapse before disability retirement pension payments commence. Cost of living adjustments shall be reflected on the report form.~~

## **2.5 Miscellaneous:**

**2.5.1.** In the event a Member who has completed more than five (5) years but less than fifteen years of service becomes disabled not during the performance of duties, such Member shall be entitled to a vested deferred benefit commencing at age 60, or shall be entitled to a refund of the Member's contributions together with regular interest thereon to the date of termination of employment, and such refund shall be in lieu of all other rights and benefits of the Member under the plan. The System will mail to the Member the Termination with Vesting form if the Member is vested. The System will mail to Non-vested and Vested members the Federal Income Tax Withholding/Direct Rollover form to be completed if the Member elects to have his/her contributions refunded or if he/she elects to roll over his/her distribution to another qualified plan or IRA. The Member should make every effort to complete and return the form(s) to the System by no later than on the 30th day after receiving the form(s).

If the vested Member fails to return the form, the Member is automatically deferred and will receive retirement benefits commencing at age 60. At any time thereafter, but before age 60, a Member may request a refund of his/her contributions plus accumulated interest in lieu of any further benefits, and then all vested rights in the Plan are lost.

(Amended 11-22-94 and 08-13-13.)

**2.5.2.** In the event a Member who has completed less than fifteen years of service becomes disabled not during the performance of duties and dies before requesting the refund of

contributions in writing, the administrator of the deceased employee's estate has a period of one year after the original grant of administration within which to file a written request for a refund of decedent's contributions together with regular interest thereon. In any event the limitation period set forth herein shall be the same as the period allowed by RSA 556:7, as amended from time to time.

**2.5.3.** In the event a Member who has completed five years of service and has not yet reached normal retirement date, and is not entitled to an early retirement pension or a disability retirement pension, is terminated then such a Member shall be entitled either to a refund of the Member's contributions together with regular interest thereon to date of payment, or an annual pension, commencing on the Member's normal retirement date, which is equal to his/her normal accrued pension. The election of a refund of contributions or of an annual pension is made as follows. The System will mail to the Member the Termination with Vesting form to make the election and the Federal Income Tax Withholding/Direct Rollover form to be completed if the Member elects to have his/her contributions returned or, if he/she elects to roll over his/her distribution to another qualified plan or IRA. The Member should make every effort to complete and return these forms to the System by no later than on the 30th day after receiving the forms.

If the Member does not request a refund within thirty (30) days of receiving the forms, then the Member will be automatically deferred and will receive retirement benefits commencing at age 60. At any time thereafter, but before age 60, a Member may request a refund of his/her contributions plus accumulated interest in lieu of any further benefits, and then all vested rights in the Plan are lost. A Member making such a request will be supplied with the two forms referred to in this Section 2.5.3. (Amended 11-22-94 and 08-13-13.)

**2.5.4.** In the event a Member who has completed five years of service has not yet reached normal retirement date, and is not entitled to an early retirement pension or a disability retirement pension, and dies at a time when the Member would not otherwise have been eligible to commence receiving retirement benefits, the administrator of the deceased employee's estate has a period of one year after the original grant of administration within which to request a refund of decedent's contributions together with regular interest thereon. In any event the limitation period set forth herein shall be the same as the period allowed by RSA 556:7, as amended from time to time.

**2.5.5.** In the event a Member who has completed five years of service has reached normal retirement date and dies before giving notice of intent to retire, at a time when the Member would otherwise have been eligible to commence receiving retirement benefits, the administrator of the deceased employee's estate has a period of one year after the original grant of administration within which to request dependents' benefits. In any event the limitation period set forth herein shall be the same as the period allowed by RSA 556:7, as amended from time to time.

**2.5.6.** Any Member whose employment is terminated prior to the completion of five years of service and who is not entitled to a disability retirement pension shall receive a refund of contributions together with regular interest thereon to date of his/her payment, or such a Member may elect a rollover. Contributions and interest will be automatically refunded and federal income tax will be withheld if the Member does not complete and return to the System the "Federal Income Tax Withholding/Direct Rollover Form" by no later than the 30th day after receiving the form. (Amended 11-22-94)

**2.6 Service Buybacks:** Service buybacks allowed pursuant to Chapter 218:10, V, must conform to the following requirements:

**2.6.1 Minimum Quantity of Service Purchase Allowable:** Under no circumstance shall any period of service purchased pursuant to Chapter 218:10, V, be for less than six months. Periods of less than six month shall be deemed ineligible for purchase. However, nothing in this requirement shall prohibit the buyback of temporary periods short than six months under the provisions of Chapter 218:7, II for temporary service or for worker compensation cases.

**2.6.2 Order in which Service is Purchased:** In the event that a member does not elect to procure all of the time eligible for purchase in a single transaction, such increments must be purchased beginning with the most recent increment with subsequent purchases working regressively in time.

**2.6.3 Service Purchases in Anticipation of Retirement:** All service buybacks pursuant to this section shall be requested of the Retirement System no less than sixty days prior to the commencement of retirement benefits in order to afford sufficient time for the proper execution of the transaction.

**2.6.4 Proof of Employment:** For the purpose of this section, proof of employment shall consist of copies of documents originally prepared by various City departments which clearly identify the member, the period of time, rate of compensation and the category of eligible participation. Such copies will be accompanied by certification from the original department attesting to their authenticity. In the event that such documentation is simply unavailable, the Board of Trustees reserves the right to waive this requirement in part or in whole, by a majority vote of the Board at any of its regularly scheduled meetings.

**2.7 Choices Available Under the Contingent Annuitant Option:** Chapter 218 Laws of the MECRS allow for the election of a Contingent Annuitant Option whereby the amount payable to the annuitant is reduced in order to provide continued payments to a Contingent Annuitant named at the time of retirement. In the event that the Contingent Annuitant predeceases the Annuitant, the benefit level “pops up” to the level which would have been paid had the annuitant not selected the option. This Contingent Annuitant Option available pursuant to Chapter 218:17 shall be limited to the following choices:

**2.7.1 50% “Pop-up” Feature:** This option provides a reduced benefit to the annuitant with an amount equal to 50% of that benefit level payable to the named Contingent Annuitant upon the death of the retired member. Terms and restriction of this option are detailed in Chapter 217:17.

**2.7.2 66 2/3% “Pop-up” Feature:** This option provides a reduced benefit to the annuitant with an amount equal to 66 2/3% of that benefit level payable to the named Contingent Annuitant upon the death of the retired member. Terms and restriction of this option are detailed in Chapter 217:17.

**2.7.3 100% “Pop-up” Feature:** This option provides a reduced benefit to the annuitant with an amount equal to 100% of that benefit level payable to the named Contingent Annuitant upon the death of the retired member. Terms and restriction of this option are detailed in Chapter 217:17.



## **PART 3: GAINFUL OCCUPATION**

**3.1 Purpose:** The purpose of this rule is to provide guidance regarding the administrative processes used to ensure compliance with Chapter 218:15, IV and V. In accordance with Chapter 218:15, IV disability recipients may be required to undergo an examination to be made by or under the direction of a physician or physicians designated by the board. Furthermore, in accordance with Chapter 218:15, V disability recipients “shall, until his or her normal retirement date, submit a report each year to the retirement board indicating earnings from employment.”

**3.2 Gainful Occupation Information:** It shall be the responsibility of every disability recipient who is subject to the Gainful Occupation provisions of Chapter 218:15, V to annually, on or before June 30 provide the Board of Trustees with Gainful Occupation information for the previous calendar year:

**3.2.1.** Earnings from Employment information shall be reported on the Gainful Occupation Form and shall include all Earnings from Employment as defined in Section 1.5. The Form must also include the names of the disability recipient's employer/s during the past year and a description of the disability recipient's job duties for each employer.

**3.2.2.** A copy of the disability recipient's federal income tax return shall be attached to the Gainful Occupation Form if the recipient is required to file a federal income tax return.

**3.2.3.** If not employed during the previous year, a statement to that effect must be designated on the Gainful Occupation Form.

**3.2.4.** If a disability recipient fails to submit annually the Gainful Occupation Form together with other required documents by June 30 of each calendar year, the Board shall suspend payments of a permanent disability pension until the forms are received or the normal retirement date is reached, whichever occurs first. In the event that a member's disability payments are halted pursuant to this Section and that member subsequently satisfies both the monetary and informational requirements of Section 3.2, then the member's disability payments, net of required reductions shall be paid retroactive to the date of benefit suspension.

**3.3 Reduction of Retirement Allowance:**

**3.3.1.** Disability recipients whose income exceeds the limits established in Part 3.1.1 of these Rule and pursuant to Chapter 218:15, V shall have their disability retirement benefits reduced in accordance with the method contained in that section of law.

**3.3.2.** The amount of the reduction shall, at the option of the disability recipient, be paid either by certified or bank check or money order made payable to the System and delivered to the System no later than 30 days after the date of the notification letter, or shall be paid by means of a cessation of disability retirement benefits until repayment to the System has been made in full. In the event neither a certified or bank check nor money order is received within the specified 30 day period, the System will cease making the recipient's disability retirement benefit payments until repayment to the System has been made in full. (Amended 11-22-94)

**3.4 Medical Examination:** Disability recipients who have not reached normal retirement age may be required by the Board to undergo medical examination, as described in Section 3.4.1, to determine their eligibility for continued permanent disability benefits as authorized pursuant to

Chapter 218:15, IV. Medical examinations shall be administered in accordance with the following provision:

**3.4.1** Each year the Board will select two (2) disability recipients to undergo medical examination. Medical examinees will be selected at random from among all current disability recipients. In addition, the Board may require, at its sole discretion, that a disability recipient undergo examination in either of the following circumstances: (1) when the self-reported Earnings from Employment data and/or job description data provided pursuant to Section 3.2 indicates to the Board that the disability recipient may no longer be disabled under Chapter 218:15, I or (2) when the Board becomes aware of any other information suggesting that a disability recipient is no longer disabled under Section 218:15, I.

**3.4.2** Medical examination shall be made by or under the direction of a physician or physicians designated by the Board. In order to accomplish a full and fair medical evaluation, the disability recipient shall provide written authorization to release his or her intervening medical history and records to the physician. The costs of the medical examination and the production of the intervening medical history and records shall be paid by the System. Should such a disability recipient refuse to submit to such a medical examination or to provide authorization for release of intervening medical history and records, then the disability recipient's pension may be discontinued by the Board until the disability recipient withdraws such refusal. No retroactive payment will be made for pension benefits withheld during any period in which a disability recipient refuses to comply with the requirements of this provision. If such refusal continues for one year, all rights of the disability recipient in and to a disability retirement pension shall be revoked by the Board. (Amended 11-14-1995)

## **PART 4: HEARINGS**

### **4.1 Petition:**

**4.1.1.** Any Member aggrieved by a decision of the Board of Trustees or its designee denying benefits under Chapter 218 may request a hearing by filing a written petition no later than 45 days after the date of the decision denying benefits.

**4.1.2.** Such petition shall include:

- (a) name and address of petitioner
- (b) the specific denial of benefits being contested
- (c) any documentation, exhibits, or other information not previously submitted to the Board of Trustees
- (d) a statement of the legal basis on which the denial of benefits is being contested
- (e) name and address of attorney, if any, who is representing the petitioner.

**4.1.3.** No disability appeal hearing or rehearing stemming from new medical evidence shall be scheduled until the new medical evidence submitted has been reviewed by the Board's medical advisor.

## **4.2 Notice of Hearing:**

**4.2.1.** The Board of Trustees shall give written notice of a hearing by first-class mail to the petitioner at least 14 days in advance.

**4.2.2.** The notice shall contain a statement of time, date, place and nature of the hearing and any other information required by RSA 541-A:31, III.

## **4.3 Evidence:**

**4.3.1.** The Board shall hear all material and relevant evidence bearing on the petition. The Board shall consider such material and relevant evidence in a manner as to establish a thorough investigation of the specific issues contained in the petition for a full, objective and fair hearing. Letters or other supportive documents of any person or persons not present at any hearing shall be admissible, but shall have only the probative value as the Board assigns them.

**4.3.2.** To avoid unduly repetitive and cumulative evidence, the Board may limit the number of witnesses for testimony on a particular issue in the course of any hearing.

## **4.4 Briefs:**

**4.4.1.** Briefs as to facts and law may be filed in any proceeding, but are not required to be filed by any party. The day for filing briefs shall be designated by the Board during or upon the conclusion of the hearing. If submitted, an original and 8 copies shall be filed with the Board. If designated by the Board in writing, Briefs may be submitted electronically. If submitted electronically, an original and 1 copy shall suffice. Briefs shall contain a summary of the facts at issue, the relevant laws and a description of how the law applies to the facts supporting each party's position. Each brief shall be written on good quality, non-clinging paper 8 ½ by 11 inches in size and shall have a minimum margin of one inch. Each brief shall consist of standard sized typewriter characters or size 12 font produced on one side of each page only. The text shall be double spaced. Except by permission of the Retirement System received in advance, no brief shall exceed 35 pages, exclusive of pages containing the table of contents, tables of citations, and any addendum containing pertinent texts of statutes, rules, regulations, and other appendices.

## **4.5. Conduct of the Hearing:**

**4.5.1.** The petitioner or his/her attorney shall be allowed to present evidence through the production of witnesses, documents, and exhibits. At the close of each witness' testimony, opportunity shall be afforded the Board to cross-examine said witness.

**4.5.2.** The Board shall produce any witnesses, documents or other evidence deemed necessary to an understanding and determination of the issues. The petitioner or his/her attorney shall have an opportunity to respond to any evidence so produced and may cross-examine any witness called.

**4.5.3.** After all the evidence is submitted, the petitioner or his/her attorney shall be given the opportunity to make a closing statement to summarize the evidence and to make legal arguments.

#### **4.6 Decision:**

**4.6.1.** The Board shall make its decision solely on the evidence presented at the hearing, including information submitted in briefs, and the applicable law.

**4.6.2.** Any decision adverse to the petitioner shall be made in writing and shall include both findings of fact and conclusions of law upon which it is based.

**4.6.3.** Any decision in favor of the petitioner shall be transmitted in summary form to the petitioner, stating the reason for the decision.

**4.6.4.** The Board's written decision shall be sent to the parties by certified mail, return receipt requested, within 45 days after the hearing.

#### **4.7 Re-hearings:**

**4.7.1.** Within 30 days after the date of any order or decision by the Board, the petitioner or his/her attorney may apply for a rehearing on any matter determined in the proceeding or covered or included in the order. The Board shall rule on the motion for rehearing at a regularly scheduled meeting of the Board. Requests for rehearing shall be placed on the next regularly scheduled meeting of the Board provided that the request is received in the offices of the Retirement System no less than 10 days prior to the meeting date.

**4.7.2.** A motion for rehearing shall set forth every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.

**4.7.3.** The Board may grant rehearing if, in its opinion, such motion conclusively establishes an unlawful or unreasonable action by the Board.

### **PART 5: PETITIONS AND REQUESTS**

**5.1 Submissions and Requests:** All submissions and requests for retirement benefits or other entitlement or considerations allowed in Article 218 and any petitions for hearings, re-hearings, or other generally related administrative business, shall be submitted to the Board of Trustees in writing, through the Executive Director at his/her office at 1045 Elm Street, Suite 403, Manchester, NH 03101-1824, or wherever his/her office may from time to time be located. All filings submitted for consideration of the full Board shall include an original and 8 copies of any petition or other document.

**5.2. Incomplete Applications and Petitions:** The Board shall reject any application or petition for failure to comply with these rules or any other board rules. The Board shall notify the applicant or petitioner of deficiencies in any filed application or petition and upon such notification the applicant or petitioner shall have 20 days in which to correct the application or petition. Otherwise, the application or petition shall be rejected for lack of proper submission.

**5.3 Signatures:** Every application, notice, motion, petition, complaint, brief and memorandum shall be signed by the filing person or by one or more attorneys in their individual names on behalf of the filing person.

**5.4 Computation of Time:** Computation of any period of time referred to in these rules shall begin with the first day following the day on which the act which initiates the period of time occurs. The last day of the period so computed shall be included unless it is a day on which the office of the Executive

Director is closed during its normal business hours, in which event the period shall run until the end of its next following business day.

**5.5 Extensions of Time:** A request to extend any time-limit prescribed by these rules shall be made in writing, shall state the petitioner's name, address, time limit to be extended, and the specific reason for such extension. Such a written request must be filed before the expiration of the time period originally prescribed or previously extended. The Board shall consider the merits of such a request and shall notify the petitioner of the Board's decision by certified mail within 20 days subsequent to any Board meeting convened on the second Tuesday of the month.

**5.6 Date of Filing:** All orders, decisions, findings of fact, correspondence or material issued by the Board shall be deemed to have been issued on the issue date.

All petitions or material filed by petitioners, parties or other persons shall be deemed to have been filed on the date of receipt by the Executive Director.

**5.7 Continuances:** Continuances shall be requested 7 days before the date of hearing, and shall not be granted if requested less than 7 days before the hearing unless a petitioner or his/her attorney can conclusively demonstrate by written notice to the Board that the absence of pertinent information, representation, evidence or a witness or witnesses would prejudice the outcome of the petitioner's request to the Board. No hearing shall be continued more than twice.

**5.8 Change in Time or Place:** The Board may on its own motion change the time and place of any hearing if in its view the time and place previously set for a hearing is unable to appropriately accommodate attendees. The Board shall give petitioner or his/her attorney 7 days notice of changes; it is the responsibility of the petitioner to notify witnesses or relevant attendees for the petitioner of the change in time and/or place.

**5.9 Time requirement for Appeal to NH Supreme Court:** Pursuant to RSA 541:6 claimants have 30 days following the issuance of a decision by the Board to file an appeal to the New Hampshire Supreme Court.

## **PART 6: ADDITIONAL EMPLOYEE CONTRIBUTIONS**

**6.1 Purpose:** Chapter 218:9, III as enacted by the Legislature in the 2003 session, provides that subject to the adoption of administrative rules and approval of the Trustees, Members may make additional contributions to the Retirement System prior to termination of active service with the employer to fund an additional annuity benefit or offset the actuarial reduction for early retirement. The purpose of this rule is for the Retirement System to provide for the orderly administration of additional contributions by Members for the purposes set forth above.

**6.2 Additional Benefits:** The maximum benefit that can be purchased is a benefit that combined with the Member's regular annuity will equal up to 50% of the Member's Average Final Earnings at the selected retirement date. Alternatively, a Member can purchase a benefit that will offset the actuarial reduction for early service retirement set forth in Chapter 218:14, I. Members must select either the increased Final Average Earnings Benefit or the early service retirement offset benefit. Members may not purchase additional service. If a Member's additional contributions result in the Member receiving a benefit at retirement that exceeds the limit described above, the excess contributions will be refunded to the Member with regular interest.

**6.3 Calculation of Additional Contributions:** Upon written request by means of an Additional Contribution Request form, the Retirement System will determine the additional contribution to be made

by the Member if the Member desires to receive the maximum benefit or to offset the early retirement reduction. The additional contribution will be actuarially determined based on the Member's age, base rate of pay, years of service and other information available at the time of the Member's request. Members will be informed that the actual benefit that the Member will receive if additional contributions are made will differ from the initial projections because at the time of retirement, actual compensation levels and interest rates will differ from the assumptions used in the actuarial calculations. The Retirement System will not automatically recalculate the amount of additional contributions needed to fund the additional benefit. A Member must contact the Retirement System for a recalculation if actual wages differ materially from anticipated levels used in an original calculation. Members will be required to pay an administrative fee to offset the actuarial cost incurred by the Retirement System to calculate the additional contributions. This fee will consist of an initial payment of fifty dollars (\$50) which will be used to determine the amount a member would have to contribute to achieve their desired benefit level. Before a member is allowed to formally commence such payments, an additional fee of one hundred dollars (\$100) will also be required of the member. The payment of the additional one hundred dollars (\$100) shall entitle the member to free recalculations but not to exceed one per plan year.

**6.4 Payment of Additional Contributions:** A Member must complete an Additional Contribution Request form to deposit additional contributions, and file it with the Retirement System. Additional Contributions made by the Member cannot be paid with tax deferred money and rollovers from tax deferred plans are not allowed. Additional contributions, unlike the regular employee contribution, must be made on an after-tax basis. A Member may choose to contribute a lesser amount of additional contributions, or not at all, but not a greater amount. Upon approval by the Board of Trustees, the Retirement System will mail the Member a statement of additional contributions identifying the maximum annual amount that a Member may contribute between January 1 and December 31 of the year. A Member may remit additional contributions through payroll deductions if the City of Manchester is agreeable. Members must provide the City with a copy of their statement of additional contributions. Members whose additional contributions are not remitted through payroll deduction will need to include a voluntary additional contribution form with each of their payments. The Retirement System will not send reminder notices to Members. If the contributions are remitted through payroll deduction, the Member must also notify the City payroll department of the change. Payments for Additional Contributions are limited at active contributing members. Vested deferred members are prohibited from enrolling in the Additional Contribution program or from adding to their account balance after they become vested deferred members.

**6.5 Interest on Additional Contributions:** Additional contributions will earn regular interest as defined in Chapter 218:4, XIV. The regular interest rate (currently 5.0%) is subject to change, which will affect the funding of an additional annuity through additional contributions.

**6.6 Return of Additional Contributions:** At retirement, the Member may choose to receive the additional contributions as an additional annuity, or, the Member may withdraw the additional contributions in cash, plus credited interest, in lieu of an additional monthly annuity. Members also are entitled to receive a return of additional contributions at any time after termination of employment. Both the regular contributions and additional contributions must be withdrawn if the Member chooses to take a refund of contributions. However, Members may not withdraw additional contributions or interest earnings, or collect an additional annuity prior to termination of employment. If a Member is awarded a work-related disability under Chapter 218:15, III, the additional contributions will be refunded with regular interest. If death benefits are paid under Chapter 218:16, I, the additional contributions will be refunded with regular interest. If death benefits are paid under Chapter 218:16, II, the additional contributions will be used to increase the service retirement allowance as described in Chapter 218:16, II(b). If regular contributions are refunded in connection with a death benefit described in Chapter

218:16, or in any other situation addressed by Chapter 218:16, the additional Member contributions will also be refunded with regular interest.

**6.7 Miscellaneous:** Because all additional contributions are made on an after-tax basis, the additional contributions will not be reported as taxable income to the Member at Retirement unless by special arrangement, not otherwise prohibited by law, the employer consents to make such payments on behalf of the employee. However, interest earnings on additional contributions will become taxable income to the Member when received from the Retirement System as a lump-sum distribution or an additional annuity.

**6.8 COLA on Additional Contribution Portion of Monthly Benefits:** When a member elects to retire and further elects to receive the payment of any additional contributions in the form of an additional monthly annuity, and following that election, at such time as the Board of Trustees are successful in granting a cost of living adjustment for retirees otherwise qualified to receive such increases pursuant to Chapter 218:20 and Administrative Rule 7, then the application of the said COLA shall not apply to the additional contribution portion of the monthly benefit in effect. The cost of COLAs have been included in the cost calculation provided by the Actuary for the purchase of additional benefits under the provisions of Chapter 218:9,III and have been based upon an assumption of a 3% annualized COLA. Whereas this 3% COLA is pre-funded, it shall be automatically applied to the additional contribution portion of that monthly benefit after the completion of one year from the effective date of retirement. Under no circumstances shall any COLA be awarded on additional contribution amounts withdrawn as a lump sum at the time of retirement.

## **PART 7: COST OF LIVING ADJUSTMENTS**

**7.1 Purpose:** Chapter 218:20 as amended by the Legislature in the 2003 session, provides that the Board of Trustees may adjust the payment to retirees to maintain their incomes at the approximate level with their real incomes at the time of retirement. The Trustees may grant a cost of living adjustment ("COLA") provided that sufficient funds are available to fund any additional benefits either through earnings of the retirement fund or through such special appropriation by the City as may be approved by the Board of Mayor and Aldermen. The purpose of this administrative rule is to set forth the criteria the Trustees will use to determine whether inflation has adversely impacted retirees and whether there are sufficient funds to allow the Trustees to grant the payment of a COLA. This rule also describes when COLA determinations will be made and when they will be effective, how the Trustees will determine the amount of the COLA, and to whom COLA increases are to be applied.

**7.2 Annual Inflation Determination:** It is expected that the Board will consider whether to grant a COLA on an annual basis, after the annual actuarial report has been finalized and delivered. Because the purpose of a COLA under Chapter 218:20 is to “maintain the economic value of a member’s retirement income on a parity with the value of the monthly payments at the time of retirement, and to offset the impact of inflation in reducing the real income of the member’s retirement payment” a COLA should not be granted unless inflation has occurred.

Therefore, the Board’s first step in determining whether to grant a COLA is the examination of an objective standard designed to determine the approximate measure of the impact of inflation on retirees’ benefits. One acceptable objective standard is the U.S. City Average Consumer Price Index for all items as published by the Bureau of Labor Statistics of the U.S. Department of Labor (the “CPI-U”). If such index is no longer available, the Board should consult with the Retirement System actuary to select a similar urban index as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

Utilizing the CPI-U or other similar index (a “Price Index”), the Board should determine the percentage difference (the “Inflation Rate”) between the Price Index for the measuring month (typically December of each year) and the Price Index for the same month in the preceding year.

The following is an illustration of how to determine the Inflation Rate:

CPI for December 2003	184.3
Less CPI for December 2002	180.9
Equals index point change	3.4
Divided by previous period CPI	180.9
Equals	0.0188
Result multiplied by 100	0.0188 x 100
Equals percent change (the Inflation Rate)	1.88

In the event the current Price Index reflects an increase over the Price Index for the measuring month of the prior year, then inflation has occurred and the Board should determine whether there are sufficient funds to grant a COLA. In the event a COLA was not granted the prior year(s), the Board may also determine the Inflation Rate from the last time a COLA was granted.

### 7.3 Sufficient Funds Through Earnings:

**7.3.1 General.** Provided inflation has occurred, as determined by the Board in accordance with Rule 7.2, a COLA may be granted if the Retirement System has “sufficient funds.” Chapter 218:20 provides no specific guidance as to how to determine whether “sufficient funds” exist. However, Chapter 218:6,I states that the Trustees are fiduciaries of the Retirement System and its members and beneficiaries. As such, in determining whether sufficient funds exist to grant a COLA, the Trustees shall “act solely in the interests of the Retirement System, the members, and the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” (Chapter 218:6,I)

In upholding their duties and obligations as fiduciaries, the Board must consider whether the total assets of the Retirement System will be adequate to satisfy System liabilities by a reasonable, prudent measure, notwithstanding that the asset performance for any given year or period of years could exceed the assumed long term rate of return. If granting a COLA (or multiple successive annual COLAs) increases contribution rates to a level that becomes unaffordable or unsustainable for the City such that the City acts to limit or reduce future benefits, then the Board may not be acting in a manner consistent with their fiduciary duties. Therefore, in deciding whether there are sufficient funds to grant a COLA, the Board must consider a combination of fund assets compared to liabilities and investment performance.

The guidelines set forth below (the “COLA Guidelines”) are designed to assist the Board in weighing some of the factors that they, as fiduciaries of the Retirement System, must consider. Because of the fiduciary nature of this decision, the COLA Guidelines should not be considered in a vacuum and just because one or more of the COLA Guidelines is met it does not necessarily mean that there are sufficient funds to pay a COLA; the Board must exercise discretion and take into account other matters which may exist that impact the overall health of the Retirement System, including the sustainability of the employer contribution.



In applying the COLA Guidelines the Board should look to the most recent Annual Actuarial Valuation Report for the following measures: (1) the Recognized Rate of Return (the “**RRR**”); and (2) the ratio of the actuarial value of assets (“**AVA**”) for pensions to the present value of actuarial accrued liability (“**AAL**”) for pensions (assets and liabilities for post-retirement health insurance would be excluded) (“**AVA/AAL**”). The COLA Guidelines assume, based on advice from the Retirement System actuary, that the Retirement System is at a “strong” funded status when the AVA/AAL is equal to or greater than 80%.

The COLA Guidelines require the Board to establish the Retirement System’s target rate of return (“**TRR**”) which may be different than the System’s assumed rate of return. It is expected that the TRR may change from time to time based upon input from the System’s actuary and investment consultant. The COLA Guidelines also require the Board to establish the Maximum Gain Sharing Percentage which is the overall limit on actuarial gains (as further defined below) that may be used to pay a COLA greater than the actuarially assumed level of 1.25% if the Retirement System’s AVA/AAL is equal to 100%. The Guidelines adjust the Maximum Gain Sharing Percentage based upon the Retirement System’s AVA/AAL. The adjusted Maximum Gain Sharing Percentage is referred to in the Guidelines as the Adjusted Gain Sharing Percentage. It is expected that the Maximum Gain Sharing Percentage may change from time to time based upon input from the System’s actuary and investment consultant. The current Maximum Gain Sharing Percentage is 15% if the Retirement System’s AVA/AAL equals 100%.

### **7.3.2 COLA Guidelines:**

#### **7.3.2(a) AVA/AAL is less than 80.00%**

1. If AVA/AAL is less than 80% and the RRR is equal to or greater than the TRR as of the most recently completed valuation report, the Trustees may award a COLA up to the actuarially assumed level of 1.25%.
2. If AVA/AAL is less than 80% and the RRR is equal to or greater than the TRR as of the most recently completed valuation report and the market rate of return for the current year and the preceding year is greater than the TRR, the Trustees may award a COLA up to the actuarially assumed level of 1.25% plus an additional COLA no greater than the Adjusted Gain Sharing Percentage times the actuarial gain generated on assets attributable to retirees from the RRR that is in excess of the TRR. .
3. If AVA/AAL is less than 80% and the RRR is less than the TRR as of the most recently completed valuation report, the Trustees may award a COLA up to the actuarially assumed level of 1.25% so long as the market rate of return for the current year and the preceding two years is greater than the TRR.
4. If AVA/AAL is less than 80% and the RRR is less than the TRR as of the most recently completed valuation report, the Trustees may award a COLA up to the actuarially assumed level of 1.25% if based on a consideration of all the relevant facts and circumstances the Trustees, in exercising their fiduciary discretionary powers and duties, determine that it would be prudent to award a COLA.

**7.3.2(b) AVA/AAL is greater than or equal to 80.00%**

1. If AVA/AAL is greater than or equal to 80% and the RRR is equal to or greater than the TRR as of the most recently completed valuation report and the market rate of return for the current year and the preceding year is greater than the TRR, the Trustees may award a COLA up to the actuarially assumed level of 1.25% plus an additional COLA no greater than the Adjusted Gain Sharing Percentage times the actuarial gain generated on assets attributable to retirees from the RRR that is in excess of the TRR.
2. If AVA/AAL is greater than or equal to 80% and the RRR is less than the TRR as of the most recently completed valuation report, the Trustees may award a COLA up to the actuarially assumed level of 1.25% so long as the market rate of return for the current year and the preceding year is greater than the TRR.
3. If AVA/AAL is greater than or equal to 80% and the RRR is less than the TRR as of the most recently completed valuation report, the Trustees may award a COLA up to the actuarially assumed level of 1.25% if based on a consideration of all the relevant facts and circumstances the Trustees, in exercising their fiduciary discretionary powers and duties, determine that it would be prudent to award a COLA.

The following is an illustration of how to calculate the COLA award on account of the additional COLA permitted under 7.3.2(a)2 and 7.3.2(b)1:

<b>Step</b>	<b>Variable or Factor</b>	<b>Value</b>	<b>Comment</b>
1	AVA (Pension Only)	\$145,933,282	Value from page A-5 of Valuation Report
2	AAL (Pension Only)	\$234,039,084	Value from page A-5 of Valuation Report
3	Ratio (AVA/AAL)	62.35%	
4	RRR:	10.325%	Value from page A-4 of Valuation Report
5	TRR:	8.000%	Adopted by the Board
6	Maximum Gain Sharing Percentage	15.000%	Adopted by the Board for use when AVA/AAL is equal to 100%
7	Adjusted Gain Sharing Percentage ((3)*(6)):	9.353%	Value equals Step 3 multiplied by Step 6; cannot be greater than Step 6
8	Retiree Liability (prior year):	\$89,530,493	Value from page A-5 of Valuation Report
9	Estimated Gain% (RRR - TRR):	2.325%	Value equals Step 4 minus Step 5
10	Estimated Gain Dollars (8) * (9):	\$2,081,584	Value equals Step 8 multiplied by Step 9

11	Maximum Gain Sharing ((7) *(10)):	\$194,693	Value equals Step 7 multiplied by Step 10
12	Retiree Liability (current year):	\$92,657,605	Value from page A-5 of Valuation Report
13	Maximum COLA purchased by Gain ((11)/(12)):	0.21%	Value equals Step 11 divided by Step 12
14	Actuarially Assumed COLA	1.25%	
15	Maximum Total COLA	1.46%	Value equals Step 13 plus Step 14

**7.4 Amount of COLA:** If the Board determines that inflation has occurred, and there are “sufficient funds,” either through earnings of the Retirement System (discussed in detail in Rule 7.3) or through a special appropriation of the Board of Mayor and Aldermen, a COLA may be awarded or awarded contingent on a special appropriation by the Board of Mayor and Aldermen (as described in Section 7.4). Many of the COLA Guidelines limit the COLA that may be awarded. The Board should consider the limit in the applicable COLA Guideline and also consider whether there are any other factors that weigh in favor of awarding a COLA that is less than the Inflation Rate. Depending on the earnings of the Retirement System, the assets of the Retirement System, and the liabilities of the Retirement System, among other factors discussed in more detail above in Rule 7.3, it may be inappropriate for the Board to award a COLA that equals the Inflation Rate. The Board may seek the advice of the Retirement System actuary or other professional advisors in making this inquiry. In no event, shall the Trustees grant a COLA that is greater than the Inflation Rate. To illustrate, if the Inflation Rate, as determined in accordance with Rule 7.2, is 2%, then the COLA shall be limited to 2%. Likewise, if COLAs less than the Inflation Rate have been awarded for multiple consecutive years and the Board determines that the Inflation Rate from the last year in which a full COLA was granted to the current year is 3.5%, the COLA shall be limited to 3.5%.

**7.5 COLA with Approval of Board of Mayor and Aldermen:** If the Board determines that there are not sufficient funds to grant a COLA and that a COLA of 1% or more is appropriate based on examination of inflation in accordance with Rule 7.2, then the Board may provide documentation of the recommended COLA along with actuarially determined cost estimates and seek the approval of the Board of Mayor and Aldermen for a special appropriation in the ensuing City budget so that retired members may receive a COLA.

**7.6 Retired Member COLA Eligibility:** In accordance with Chapter 218:20, the Trustees shall determine whether each COLA granted will be applicable to all retired members or applicable only to members who have retired after a certain date. Unless the Trustees specify otherwise in granting a COLA, no member will receive the benefit of a COLA until completion of one calendar year after the member’s retirement date.

**7.6 Retired Member COLA Eligibility:** In accordance with Chapter 218:20, the Trustees shall determine whether each COLA granted will be applicable to all retired members or applicable only to members who have retired after a certain date. Unless the Trustees specify otherwise in granting a COLA, no member will receive the benefit of a COLA until completion of one calendar year after the member’s retirement date.

**7.7 COLA Administration for Retirees Who Return to Active Membership:** A member who has commenced receiving benefits from the retirement system ceases to receive benefits as a result of

returning to active employment and subsequently retires again and receives benefits pursuant to Chapter 218:13 (a “re-retiree”) shall be subject to this Part 7.7.

**7.7.1 Reinstatement of COLAs Awarded While Previously Retired:** All cumulative COLAs received by a re-retiree during a period or periods when he or she was receiving benefits prior to returning to active employment shall be reinstated upon the re-commencement of the re-retiree’s benefits.

**7.7.2 Treatment of COLAs Awarded After Return to Active Membership:** Any COLA awarded to retired members during a period in which a re-retiree was eligible to participate in the retirement system and was not receiving benefits due to active employment, shall not be applied to the re-retiree’s benefit upon the re-commencement of the re-retiree’s benefits.

**7.7.3 Waiting Period for COLA Eligibility Upon Re-Retirement:** A re-retiree’s most recent date of retirement shall be used to determine whether the one year period described in Part 7.6 has been satisfied with respect to the waiting period for COLAs awarded after the re-retiree’s most recent retirement date.

## **PART 8: OPTIONAL SERVICE UPGRADE PURSAUNT TO CHAPTER 159 LAWS OF 2004**

**8.0 Optional Service Upgrade Pursuant to Chapter 159 Laws of 2004:** In accordance with Chapter 218:12 VI, members with creditable service earned prior to January 1, 1999 at the rate of 1 ½ % per year may optionally upgrade all or certain portions of such time by an additional 1/2% to bring the benefit factor in line with the 2% level being earned since January 1, 1999.

**8.1 Definition of Eligible Periods:** The period of service which can be upgraded to the 2% level shall be limited to those periods where the member earned service credit at the 1 ½% rate unless the member made a permissive service credit purchase under Chapter 218:10. The period of time involved for all members ranges between January 1, 1974 and December 31, 1998. Service prior to 1974 where the member never contributed is not eligible for upgrade to the 2% level. . Time purchased pursuant to Chapter 218:7, III by members who did not opt for participation in the plan on January 1, 1974 and who now request to do so in accordance with that Chapter will be credited at the 1 ½% rate for the years in question. Such members seeking to receive credit at the 2% level for such time must subsequently upgrade any eligible years at additional expense as stipulated in Chapter 218:12, VI.

**8.2 Members Eligible to Participate:** Only active members shall be eligible to participate in this benefit upgrade program prior to their termination of employment. Members who are receiving benefits under Chapter 218:12 or 218:14, members who have terminated employment and are eligible for benefits under Chapter 218:11, members who are receiving disability benefits under Chapter 218:15 and all other members who are not actively employed shall not be eligible to participate in this benefit upgrade program.

**8.3 Calculation of Contributions and Benefits:** The cost to the member associated with the upgrade of eligible time shall be calculated by the Retirement system based upon actuarial methods and assumptions adopted by the Retirement System Board of Trustees. The mortality, interest rate and other assumptions adopted shall be set forth in Section C of the annual valuation report of the Retirement System. The Trustees may change the actuarial assumptions as set forth in Section C of the annual valuation report of the Retirement System without amending Rule 8.0. The calculation shall be made using the member’s base yearly salary. The Retirement System shall have discretionary and final authority to determine the amount of the member’s contribution. All purchases of pre January 1, 1999 time under this program must be completed by eligible members prior to the first day of the month in

which retirement benefits commence. A member shall request a calculation of the amount necessary to purchase the enhanced benefit on a form developed by the Retirement System for this purpose.

**8.4 Cost Sharing Requirement and Payment Methodology:** An eligible member shall be required, pursuant to Chapter 218:12, VI Laws of 1974, as amended, to pay 50% of the cost of the benefit upgrade. Payment by the member shall be made from after tax dollars in an amount determined by the Retirement System. Payment shall be made in single lump sum in accordance with instructions contained on a form developed by the Retirement System for this purpose and the member's share must be paid within the timeframe indicated on the written cost calculation provided to the member by the system. The Retirement System shall pay the cost of all calculations of the benefit enhancement program.

**8.5 Non-Refundable Status of Purchase:** The members' contributions used to purchase an upgrade of service earned between January 1, 1974 and December 31, 1998 at the 2% rate shall not be refundable or transferable prior to a member's termination of employment. Any member whose employment is terminated may, in lieu of all benefits under this benefit enhancement program, elect at any time prior to the member's retirement date to receive a cash refund of the member's contributions together with regular interest as defined in Chapter 218:4 XIV. A member who elects to receive a cash refund of the member's required contributions under Chapter 218:11 III shall automatically receive a refund of the member's contributions under this benefit enhancement program together with regular interest. There shall be no refund to any member of the Retirement System contributions made on behalf of members as part of the benefit enhancement program as described in Rule 8.4.

**8.6 Permissive Service Purchases Subsequent to Exercising Options Under Chapter 159 Laws:** Any permissive service purchases made pursuant to Chapter 218:10 Laws of 1974 as amended, subsequent to having exercised the option to participate in this benefit enhancement program shall also be upgraded to the 2% service credit level.

**8.7 Minimum Purchase Amounts:** Service time earned at the 1 ½% rate which is upgraded to the 2% level shall be done in increments of no less than one year, except that any remaining partial plan years after such purchase may also be purchased at their fractional amounts.

**8.8 Return of Contributions in Lieu of an Annuity Upon Death of the Member Prior to Retirement:** The member's contributions used to purchase an upgrade of service earned between January 1, 1974 and December 31, 1998 to the 2% rate with regular interest shall be refunded to the beneficiary on file in the event of a member's death prior to retirement in any case where a beneficiary is not entitled to an annuity option or when that beneficiary elects a lump sum distribution in lieu of a monthly annuity benefit.

**8.9 Interest on Member Portion of Service Upgrade:** The member portion of the cost to upgrade service earned between 1974 and 1999 to the 2% rate shall be eligible for regular interest as defined in Chapter 218:4,XIV.

**8.10 Prohibition on the Use of Tax Sheltered Funds:** The member portion of the cost to upgrade service credit pursuant to Chapter 219:12, VI shall consist of after tax dollars in compliance with IRS regulations. Rollovers from other tax sheltered plans shall not be permissible in accordance with a Private Letter Ruling provided to the System by the IRS. Furthermore, members shall complete and submit a Chapter 159 Contribution Limit Worksheet provided by the System in order to ensure compliance with other provisions of the tax code which establish a ceiling on certain voluntary member contributions in any particular tax year.

**8.11 Limitations on Amount of Contributions:** The annual additions that may be contributed or allocated on behalf of a member for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 and the related Treasury regulations are hereby incorporated by reference. As of the effective date of this Section 8.11, this limit is the lesser of: (a) \$40,000 as adjusted for increases in the cost-of-living under Code Section 415(d), or (b) 100 percent of the member's compensation, within the meaning of Code Section 415(c)(3), for the limitation year.

The compensation limit described above shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code Section 419(f)(2)), if any, otherwise treated as an annual addition.

For the purpose of calculating the limits of Code Section 415, the Retirement System shall determine compensation based on a member's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the City. Compensation shall include any elective deferral (as defined in Code Section 402(g)(3)) and any amount which is contributed or deferred by the City at the election of the member and which is not includable in the gross income of the member by reason of Code Section 125, 403(b) or 457.

If a member's annual additions for any year exceed the Section 415 limitations ("excess contributions"), the Retirement System shall, to the extent permitted by Code Section 415 and the regulations promulgated there under, reduce the amounts contributed by the member to the Retirement System so that the member's annual additions shall comply with Section 415 by returning the member's excess contributions as follows: (a) voluntary contribution under 218:8,II, will be returned to the member until the excess contributions have been reduced to zero or all voluntary contributions are returned; and, to the extent necessary, (b) if after the application of (a) excess contributions still exist, voluntary contributions made under 218:12,VI will be returned to the member in an amount necessary to reduce the excess amount to zero or all voluntary contributions are returned. If excess contributions still remain, the Retirement System shall contact the City and advise the City that a reduction is necessary in the member's tax-deferred accounts in order to reduce excess contributions to zero.

For purposes of this rule, "annual additions" means the sum of the following amounts credited to a member during the year (a) member contributions made under Chapter 218:9,III; (b) member contributions made under Chapter 218:12,VI; (c) member contributions made to any City plan described in Section 403(b) or 457(b); (d) amounts credited to a member under any individual medical account amounts described in section 415(1)(2) and 419A(d)(2) of the Code, if any and (e) other such amounts as required by Code Section 415 and the related Treasury Regulations.

## **PART 9: PENSION PORTABILITY, SERVICE BUYBACKS**

**9.1 Acceptance of Funds:** For the purposes of funding a service buyback in accordance with Chapter 218:10,III, 218:10, IV and Administrative Rule 2.6, the Manchester Employees' Contributory Retirement System may accept a trustee to trustee transfer of funds from a retirement plan that is tax-qualified as described in Section 401(k), 403(b) or 457 of the United States Internal Revenue Code of 1986, as amended. Any such transfers shall be limited to the amount necessary for a service buyback as determined by the retirement System in accordance with Chapter 218:10,VI.

**9.2 Subject to Provisions:** The provisions of this section shall be subject to all provisions of Chapter 218 Laws of 1974, as amended, in conformity with applicable provisions of the United States Internal Revenue Code of 1986, as amended.

**9.3 Service Credit Purchases:** Service credit purchased under this section shall be creditable service for the purpose of eligibility for retirement and other benefits under Chapter 218 Laws of 1974, as amended.

**9.4 Buybacks Disallowed:** A service buyback will not be allowed if the service buyback would violate Section 415(n) of the Internal Revenue Code of 1986, as amended.

**9.5 Applications:** Service buybacks made pursuant to this rule shall comply with all informational requirements appearing on the “Application for Acceptance of Tax Sheltered Funds for Service Buybacks” which is provided by the Retirement System.

## **PART 10: CALCULATION OF FINAL AVERAGE EARNINGS FOR DETERMINATION OF BENEFIT FOR MEMBERS WITH LESS THAN THREE YEARS OF SERVICE**

**10.1. Final Average Earnings Calculation for Members with less than 3 Years of Service.** Chapter 218:4 X defines “final average earnings” and determines the calculation methodology for that value. That section assumes that the member has completed at least 3 years of creditable service prior to attaining “normal retirement age”. A member may qualify for receipt of a retirement benefit solely upon attainment of the “normal retirement age”. In such cases, the following methods shall be used to calculate the “final average earnings” unless otherwise prescribed by Chapter 218:15 in instances of disability or Chapter 218:16 in instances of death.

**10.2. Calculation Methodology for Members with less than 3 years of service applying for a Normal Service Retirement.** A member eligible for a retirement benefit as a result of having achieved “normal retirement age” but with less than 3 years of service credit shall have their “final average earnings” multiplier determined as follows: Total service credit shall consist of months beginning with the effective date of membership and ending with last eligible month of service credit prior to termination from employment. All earnings received within the range of months for which service credit was earned shall be aggregated, divided by the number of months for which service credit was earned, and then multiplied by 12 to determine “final average earnings”.

## **PART 11 RECOGNITION OF SERVICE PURSUANT TO CHAPTER 218:4, XIX**

**11.1 Determination of Periods to be Granted Service Credit.** Chapters 218:4, XIX and 218:10, I respectively define “Service” as “employment with the city until termination of employment” and “full normal working time in a period of 12 consecutive months”... as “one year of service credit” but do not define “employment” for service credit purposes. Monthly periods that are to be considered for Service purposes shall therefore be determined in accordance with the sections below:

**11.2 Measurement of Service.** All service shall be measured in whole months and shall be subject to minimum participation standards in Chapter 218:7, IV(a) & (b).

**11.3 Qualification for Service.** A month of service credit shall be awarded for any period in which contributions are remitted for the full calendar month. Any full time probationary work periods preceding the commencement of deductions which are not punctuated by a break in service shall be eligible for service credit under the provisions of Chapter 218:10,IV to the extent that such time extends back to the beginning of a previous month.

**11.4 Non-Recognition of Breaks in Service for Educationally Related Members as a Result of Contract Duration.** Members employed by the Manchester School District who work a 180 day contract year shall receive recognition for unbroken service despite summer months without contributions so long as they are in compliance with the minimum participation standards in Chapter

218:7, IV(a) & (b). For the purposes of retirement service credit, members with 10 months of contractual service shall be deemed to have earned a year of service for benefit calculation purposes.

## **PART 12: ASSESSMENT OF PENALTY FOR FAILURE TO REMIT CONTRIBUTIONS WITHIN PRESCRIBED TIME ALLOTMENT.**

**12.1 Interest Penalty.** Any member contributions deducted by the employer in accordance with Chapter 218:9, Laws of 1974, as amended, along with any employer contributions due in the same time period, which are not transmitted to the retirement board within 3 business days following the payment date shall incur an interest penalty on the total amount due at the rate of 1 percent for each month or fraction thereof from the date the contribution payment was withheld to the date payment is actually received by the retirement system.

**12.2 Abatement of Interest Penalties.** (a) The Executive Director may waive late remittance penalties assessed pursuant to section 12.1 for interest penalties of less than \$100.00 if an employer's operational circumstances prevented timely remittance of contributions due to its excessive staffing shortfalls or turnover or an event beyond an employer's control and where no recent employer remittance abuse has occurred.

(b) The Executive Director shall not waive interest penalties except upon a showing that the employer had not willfully, intentionally, through gross negligence or through a pattern of negligence failed to remit contributions.

(c) The Board of Trustees may, for "reasonable cause" waive all or any part of interest penalties assessed pursuant to Section 12.1.

(d) "Reasonable cause" shall include any unforeseeable circumstance beyond the employer's control which prevents the employer from complying with the contribution remittance deadline.

(e) The Board of Trustees shall not waive interest penalties except upon a showing that the employer had not willfully, intentionally, through gross negligence or through a pattern of negligence failed to remit contributions.

(f) Uncollectible penalty assessments may, at the discretion of the Board of Trustees, be brought by the Board of Trustees as claims in the courts of the State of New Hampshire.

## **PART 13: Compliance Addendum to Manchester Employees' Contributory Retirement System Administrative Rules**

**13.1 Purpose and Definitions.** This new Part 13, Compliance Addendum has been approved by the board of trustees of the City of Manchester Employees' Contributory Retirement System to satisfy the terms of the Voluntary Correction Program compliance statement issued by the Internal Revenue Service on September 24, 2016, and the Determination Letter issued by the Internal Revenue Service on February 21, 2017. The Retirement System will satisfy the qualification requirements in Internal Revenue Code Section 401, as applicable. In order to meet those requirements, the Retirement System is subject to the following provisions, notwithstanding any other provision of New Hampshire law.

### **Definitions**

(a) "Plan year" means the calendar year.

### **13.2 Limit on Compensation under Internal Revenue Code Section 415**



For purposes of determining “Earnings” and “Final average earnings” as defined in Chapter 218:4,VIII, and X, in the final 12 months of service ending with the termination of employment of a Member shall include amounts paid after separation from service only if such amounts are paid by the later of 2½ months after an employee's severance from employment or the end of the plan year that includes the date of the employee's severance from employment and if:

- a) the payment is regular compensation for services during the Member's regular working hours, or compensation for services outside the Members regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or
- b) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

### **13.3 Internal Revenue Code Section 401(a)(9)**

Effective as of January 1, 1989, the Retirement System will pay all benefits in accordance with a good faith interpretation of the requirements of Internal Revenue Code Section 401(a)(9) and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Internal Revenue Code Section 414(d). All distributions required under this Section 13.3 will be determined and made in accordance with Sections 1.401(a)(9)-1 through 1.401(a)(9)-9 of the Treasury regulations under Section 401(a)(9) of the Code. Notwithstanding the other provisions of this Section 13.3, other than the regulations cited above, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA. Notwithstanding any other provision of this Compliance Addendum and Chapter 218, effective on and after January 1, 2002, the Retirement System is subject to the following provisions:

Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which he or she reaches 70½ years of age or April 1 of the calendar year following the calendar year in which he or she terminates employment, whichever is later, the board of trustees will begin distributing the benefit as required by this Rule. The member's entire interest must be distributed over the member's life or the lives of the member and a designated Beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated Beneficiary.

The life expectancy of a member, the member's spouse, or the member's Beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

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

If a member dies before required distribution of the member's benefits has begun, the member's entire interest must be either (i) distributed (in accordance with federal regulations) over the life or life expectancy of the designated Beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death, or (ii) distributed within five years of the member's death.

The amount of an annuity paid to a member's Beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Internal Revenue Code Section 401(a)(9)(G), and effective for any annuity commencing on or after January 1, 2008, the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2.

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

Once payments have commenced over a period, the period may only be changed in accordance with Q&A-13 of Section 1.401(a)(9)-6 of the Treasury regulations under the following circumstances, or as may be expressly permitted in other IRS guidance under Section 401(a)(9) of the Internal Revenue Code, if permitted under applicable provisions of Chapter 218: (a) at the time the Participant retires or in connection with termination of the Plan; (b) where distribution prior to the change is being made in the form of a period-certain-only annuity without life contingencies; or (c) where the annuity payments after the change are paid under a joint and survivor Annuity over the joint lives of the Participant and a designated beneficiary, the Participant's spouse is the sole designated beneficiary, and the change occurs in connection with the Participant becoming married to such spouse.

If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements: (a) the annuity distributions will be paid in periodic payments made at intervals not longer than one year; (b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 13.3 below; (c) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted; and (d) payments will either be non-increasing or increase only as follows:

- (i) by an annual percentage increase that does not exceed the annual percentage increase in an eligible cost-of-living index, as defined in Q&A-14(b) of Section 1.401(a)(9)-6 of the Treasury regulations, for a 12-month period ending in the year during which the increase occurs or the prior year, that is based on prices of all items and issued by the Bureau of Labor Statistics;
- (ii) by a percentage increase that occurs at specified times, such as at specified ages, and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index as defined in clause (i) above since the Annuity Starting Date or, if later, the date of the most recent percentage increase, provided that in cases providing such a cumulative increase an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;
- (iii) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Internal Revenue Code;
- (iv) to pay increased benefits that result from a Plan amendment;
- (v) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single-sum distribution upon the employee's death; or
- (vi) to the extent increases are permitted in accordance with paragraph (c) or (d) of Q&A-14 of Section 1.401(a)(9)-6 of the Treasury regulations.

### **13.4 Internal Revenue Code Section 401(a)(17)**

(1) Effective January 1, 1996, in accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), except as provided in this section, the annual compensation the Retirement System takes into account for any purpose, including contributions or benefits, may not exceed the amount allowed by Internal Revenue Code Section 401(a)(17) as of the first day of the plan year.

(2) The annual compensation of each member taken into account in determining benefits or contributions for any plan year beginning on or after January 1, 1996, and prior to January 1, 2002, may not exceed \$150,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B).

(3) Effective only for the 1996 plan year, the rules of Internal Revenue Code Section 414(q)(6) will apply in determining the annual compensation limitation, except that a member of the family group will include only the spouse of the member and any lineal descendant of the member who has not attained age nineteen (19) before the close of the year. If the annual compensation of a member and his family members is so limited, the annual compensation of the member and each such family member will be equal to the compensation of each such individual determined without regard to Internal Revenue Code Sections 401(a)(17) and 414(q)(6) divided by such annual compensation for all such individuals as so determined and the quotient multiplied by the applicable Internal Revenue Code Section 401(a)(17) limitation amount, as described above.

(4) The annual compensation of each member taken into account in determining benefits or contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B).

(5) For purposes of paragraphs 13.4(1) through 13.4(4), annual compensation means compensation during the plan year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

(6) The limits referenced in paragraph 13.4(1) through 13.4(5) above apply only to plan years beginning on or after January 1, 1996, and only to individuals who first become members in plan years beginning on and after January 1, 1996. Individuals who become members before plan years beginning on and after January 1, 1996, are not subject to the limits of Internal Revenue Code Section 401(a)(17). Pursuant to Section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that section, the annual compensation in effect under Internal Revenue Code Section 401(a)(17) does not apply to any such member in any year.

### **13.5 Internal Revenue Code Section 401(a)(31):**

This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this Compliance Addendum, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to

have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a) or to a qualified plan described in Internal Revenue Code Section 403(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(2) Eligible retirement plan: An eligible retirement plan is: (a) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan from the Retirement System, (b) an individual retirement account described in Internal Revenue Code Section 408(a), (c) an individual retirement annuity described in Internal Revenue Code Section 408(b), (d) an annuity plan described in Internal Revenue Code Section 403(a), (e) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b), f. a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distribution, or g. effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

(3) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Internal Revenue Code Section 414(p).

(4) Distributee: A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p). Effective January 1, 2007, it further includes a non-spouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(5) Direct rollover: A direct rollover is a payment by the Retirement System to the eligible retirement plan specified by the distributee.

### **13.6 Automatic Rollovers under Internal Revenue Code Section 401(a)(31)(B):**

Effective January 1, 2006, in the event of a mandatory distribution greater than \$1,000, if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by the member in a direct rollover or to receive the distribution directly, the board of trustees will pay the distribution in a direct rollover to an individual retirement plan designated by the board of trustees in accordance with Internal Revenue Code Section 401(a)(31)(B) and IRS Notice 2005-5.

### **13.7 Internal Revenue Code Section 415:**

(1) General. Effective as of January 1, 1989, post-tax contributions paid to, and retirement benefits paid from, the Retirement System may not exceed the annual limits on contributions and benefits, respectively, allowed by Internal Revenue Code Section 415 and the regulations thereunder. The foregoing section of the Code and the regulations thereunder are incorporated herein by reference. Notwithstanding the foregoing, effective January 1, 2004, the Plan shall comply with the provisions of the Pension Funding Equity Act of 2004 modifying the rules set forth in Section 415 of the Code, to the extent applicable.

(2) Applicable Compensation. For purposes of applying the limits under Internal Revenue Code Section 415 for purposes of this Section 13.7 and Section 8.11, the definition of compensation where applicable will be compensation as defined in Treasury Regulation Section 1.415(c)-2(d)(3), or successor regulation; provided, however, that the definition of compensation will exclude member contributions picked up under Internal Revenue Code Section 414(h)(2), and for limitation years beginning after December 31, 1997, compensation will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Internal Revenue Code Section 125 or 457, and for limitation years beginning on and after January 1, 2001, Internal Revenue Code Section 132(f)(4). For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if: (a) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or (b) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

#### (3) Defined Benefit Limits:

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

(b) On and after January 1, 1995, in no event shall a member's annual benefit payable under the Retirement System in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity starting date or adjusting the

form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that takes into account the death benefits under the form of benefit:

- (i) For a benefit paid in a form to which section Internal Revenue Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit which is the greater of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):

- (A). The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant, or

- (B). The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years beginning on or after January 1, 2009, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)); or

- (ii) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit which is the greatest of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date which is the least of when adjusted in accordance with the following assumptions):

- (A). The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

- (B). The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years beginning on or after January 1, 2009, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)); or

- (C). the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treas. Reg. §1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years beginning on or after January 1, 2009, the applicable mortality tables described in Internal Revenue Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Internal Revenue Code Section 417(e)(3)(B)), divided by 1.05.

### **13.8 Internal Revenue Code Section 414(u):**

Effective December 12, 1994, notwithstanding any other provision of Chapter 218, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.

Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), death benefits shall be provided by the Retirement System Chapter 218:16 to the survivors of a member to the extent required by Internal Revenue Code Section 401(a)(37). A deceased member's period of qualified military service must be counted for vesting purposes.

Beginning January 1, 2009, to the extent required by Internal Revenue Code Sections 3401(h) and 414(u)(12), any differential wage payments to a member from an employer (while the individual is performing qualified military service (as defined in chapter 43 of title 38, United States Code)) shall be treated as compensation for purposes of applying the limits on annual additions under Internal Revenue Code Section 415 as described in Section 13.7 and Section 8.11 and for purposes of determining “Earnings” and “Final average earnings” as defined in Chapter 218:4,VIII, and X.

### **13.9 Actuarial Assumptions:**

For purposes of calculating benefits of equivalent value, the following are the actuarial assumptions used in the Plan: 1983 Group Annuity Mortality Table (unisex blend) and 7.5% interest.

Regular interest as defined in Chapter 218:4,XIV is taken into account in several sections of Chapter 218 including in connection with additional contributions made pursuant to Chapter 218:9, III, death benefits under Chapter 218:16, the refund of contributions under Chapter 218:11 for employees who terminate employment prior to being vested after 5 years of service and who is not entitled to a disability retirement pension. The regular interest rate (currently 5.0%) is subject to change by the Board of Trustees. The regular interest rate is also set forth in Section 6.5 of the Administrative Rules.

### **13.10 Internal Revenue Code Section 401(h):**

At any time after the later of the adoption or effective date of Section 218:28 of the Plan providing for certain retiree medical benefits, in accordance with Code Section 401(h) and Treasury Regulation § 1.401-14(c)(1)(i), aggregate actual contributions for the payment of group health insurance premiums for members pursuant to Section 218:28 of the Plan are limited to 25 percent of the total actual contributions made to the Plan pursuant to Section 218:8, Section 218:9, and Section 218:28 of the Plan (but not including contributions made pursuant to Section 218:10 of the Plan to fund past service credits).

**End of Document...**

<b>History</b>	Adopted December 14, 1993	Revised November 22, 1994	Revised November 14, 1995	Revised June 8, 2004
Revised December 14, 2004	Revised March 8, 2005	Revised August 9, 2005	Revised September 13, 2005	Revised December 13, 2005
Revised February 14, 2006	Revised April 10, 2007	Revised January 8, 2008	Revised June 10, 2008	Revised May 12, 2009
Revised June 7, 2010	Revised July 10, 2012	Revised June 11, 2013	Revised August 13, 2013	Tech Corrections Oct 2013
Revised May 12, 2015	Tech Corrections July 2015	Revised February 21, 2017	Revised September 12, 2017	