PART L

General Government Pension Plan[770]

Section 1201. Establishment. This amended and restated plan, executed on the date indicated at the end hereof, is made effective as of January 1, 2008, except as provided otherwise in Section 1202.d(2), by Borough of State College, a governmental agency of the Commonwealth of Pennsylvania.

This General Government Pension Plan shall not apply to individuals hired full time by the Borough of State College on or after January 1, 2011, who shall be eligible to participate in a 401 Governmental Money Purchase Plan. The applicable terms of the 401 Governmental Money Purchase Plan are contained in separate documents, including but not limited to an Administrative Services Agreement, 401 Governmental Money Purchase Plan & Trust Basic Documents and any amendments thereto, as well as any related Ordinances or Resolutions.[775]

The General Government Pension Plan shall not apply to individuals hired by the Centre Region Council of Governments on or after February 1, 2013, who shall be eligible to participate in a 401 Governmental Money Purchase Plan. The applicable terms of the 401 Governmental Money Purchase Plan are contained in separate documents, including but not limited to an Administrative Services Agreement, 401 Governmental Money Purchase Plan & Trust Basic Documents and any amendments thereto, as well as any related Ordinances or Resolutions

(Amended by Ordinance 1956, December 6, 2010, Section 1 and by Ordinance 2004, November 19, 2012, Section 1.)

Section 1202. Definitions.

a. References.

(1) Act 205 means the Municipal Pension Plan Funding Standard and Recovery Act, act of December 18, 1984, P.L. 1005 no. 205, as amended, 53 P.S. 895.101, et seq. as enacted by the Commonwealth of Pennsylvania.

(2) ERISA means the Employee Retirement Income Security Act of 1974, as amended.

(3) IRC means the Internal Revenue Code of 1986, as it may be amended from time to time.

b. Actuarial Equivalent.

(1) The present value of any benefit under the terms of this plan will be the actuarial equivalent of the accrued benefit in the normal form of benefit commencing at the participant's normal retirement date.

(2) To the extent that the Plan provides for a late retirement benefit, an early retirement benefit, or optional forms of benefit payment, the actuarial equivalent of the accrued benefit paid in the normal form commencing at the normal retirement date shall be determined as set forth below.

(a) Reserved.

(b) The **Early Retirement Benefit** as described in Section 1204.e is the accrued benefit adjusted by the early retirement factors set forth in Appendix E. In the event no factor is specified for the participant's age at which benefits are to commence, actuarial equivalence for the early retirement benefit shall be determined by adjusting the earliest retirement factor set forth in Appendix E using the following mortality and interest assumptions:

Mortality table: GA 1983 Table
Interest rate: 8.000%

The lump sum pension payment option shall be equal to the present value of the normal retirement benefit.

(c) The **Monthly Pension Payment Options** shall be determined by multiplying the amount of the normal form monthly pension by the factors set forth in Appendix O. In the event no factor is specified for the difference between the age of the participant and the age of his designated second annuitant under a joint and survivor annuity, actuarial equivalence for the monthly pension payment option shall be determined based on the following mortality and interest assumptions:

Mortality table: GA 1983 Table
Interest rate: 8.000%

(d) The **Lump Sum Pension Payment Option** shall be determined based on the following mortality and interest assumptions:

Mortality table: GA 1983 Table
Interest rate: 8.000%

(3) **Limitations on Benefits.** For the purpose of implementing the limitations on benefits of IRC section 415, actuarial equivalence shall be determined based on the following mortality and interest assumptions:

Mortality table: UP1984 Table
Interest rate: 5.00% per annum compounded annually

For the purpose of applying the limitations on benefits of Section 1208.a, the applicable mortality table is the applicable mortality table described in Treasury Regulation section 1.417(e)-1(d)(2) in effect for the plan year that contains the annuity starting date. The applicable interest rate is the annual rate of interest as determined under Treasury Regulation section 1.417(e)-1(d)(3) for the second month preceding the first day of the plan year that contains the annuity starting date.

c. <u>Compensation/Average Monthly Compensation</u>.

(1) (a) Compensation means any earnings reportable as W-2 wages for federal income tax withholding purposes, plus elective contributions, for the determination period. For this purpose, the determination period is the plan year. Picked-up contributions under IRC section 414(h)(2) shall be included in the participant's compensation. Such earnings shall include any amount contributed to a Roth elective deferral account under a qualified plan. However, compensation shall not include any earnings reportable as W-2 wages that are payable following the termination of employment pursuant to a severance agreement or paid in lieu of employer contributions to a deferred compensation plan.

Elective contributions are amounts excludable from the employee's gross income and contributed by the employer, at the employee's election, to:

- A cafeteria plan (excludable under IRC section 125 and as provided in Section
- 1208.a(5)(c));
- A tax sheltered annuity (excludable under IRC section 403(b));A deferred compensation plan (excludable under IRC section 457); or
- A IRC section 132(f)(4) qualified transportation fringe benefit plan.

Any reference in this plan to compensation shall be a reference to the definition in this Section 1202.c, unless the plan reference specifies a modification to this definition. The plan administrator shall take into account only compensation actually paid by the employer for the relevant period. A compensation payment includes compensation by the employer through another person under the common paymaster provisions in IRC sections 3121 and 3306. Compensation from a related employer that is not a participating employer under this plan shall be excluded.

(b) Exclusions From Compensation - Notwithstanding the provisions of Section 1202.c(l)(a), the following types of remuneration shall be excluded from the participant's compensation:

- Unused vacation, personal days, and sick pay paid on account of termination of employment.
- Any lump sum payment made upon termination of employment.

(2) **Limitations on Compensation**. For any plan year beginning after December 31, 2001, the plan administrator shall take into account only the first $200,000 (or beginning January 1, 2003, as adjusted for cost-of-living increases in accordance with IRC section 401(a)(17)(B)) of any participant's annual compensation in determining all benefits provided under the plan for a determination period. Annual compensation means compensation during the determination period as defined in Section 1202.c(1). The compensation dollar limitation in effect for a plan year shall be the limitation amount in effect on January 1 of the calendar year in which the plan year begins. In determining benefits in plan years beginning on or after January 1, 2002, the annual compensation limit for determination periods beginning before January 1, 2002, shall be $200,000. For any plan year beginning after December 31, 1995, the plan administrator shall take into account only the first $150,000 (or beginning January 1, 1995, as adjusted for cost-of-living increases in accordance with IRC section 401(a)(17)(B)) of any participant's compensation for determining all benefits provided under the plan for a determination period. If the plan should determine compensation on a period of time that contains less than 12 calendar months (such as for a short plan year), the annual compensation dollar limitation shall be an amount equal to the otherwise applicable annual compensation dollar limit for the plan year multiplied by the ratio obtained by dividing the number of full months in the period by 12.

Notwithstanding the preceding, in the case of an eligible participant, the annual compensation dollar limitation shall not apply to the extent that the application of the limitation would reduce the amount of compensation that is allowed to be taken into account under the plan below the amount that was allowed to be taken into account under this plan as in effect on July 1, 1993. For this purpose, an eligible participant is an individual who first became a participant in the plan during a plan year prior to the first day of the first plan year beginning after December 31, 1995.

(3) **Average Monthly Compensation** means 1/12 of the average of an employee's annual compensation over the highest 3-consecutive-year period during the employee's employment with the employer. If an employee's entire period of service for the employer is less than the specified period, compensation shall be averaged on an annual basis over the employee's entire period of service.

The annual compensation taken into account in determining average annual compensation shall be subject to the compensation dollar limitation described in Section 1202.c(2) as in effect for each particular year.

d. <u>Dates/Years</u>.

(1) **Accounting Date** means the last day of the plan year.

(2) The **Effective Date** of the plan is November 1, 1955.

The effective date of this amendment and restatement is January 1, 2008; provided, however that the plan provisions required to comply with the Tax Reform Act of 1986 (TRA '86), the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), and the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) shall generally be effective on the first day of the plan year beginning after December 31, 1988, except as specified otherwise in this plan or in TRA '86, OBRA '86, OBRA '87 or TAMRA for a government sponsored plan. The plan provisions required to comply with the 1989 Revenue Reconciliation Act shall generally be effective on the first day of the plan year beginning after December 31, 1989, except as specified otherwise in this plan or in said Act. The plan provisions required to comply with the Unemployment Compensation Amendments of 1992 shall be effective on January 1, 1993, except as specified otherwise for a government sponsored plan. The plan provisions required to comply with the Omnibus Budget Reconciliation Act of 1993 shall generally be effective on the first day of the plan year beginning after December 31, 1993, except as specified otherwise in said Act.

The plan provision required to comply with the Family and Medical Leave Act shall be effective August 5, 1993, the plan provisions required to comply with the Uniformed Services Employment and Re-Employment Rights Act of 1994 shall be effective December 12, 1994, the plan provisions required to comply with the Retirement Protection Act of 1994 shall generally be effective on the first day of the first limitation year beginning after December 31, 1994, the plan provisions required to comply with the Small Business Job Protection Act of 1996 shall generally be effective on the first day of the plan year beginning after December 31, 1996, the plan provisions required to comply with the Taxpayer Relief Act of 1997 shall generally be effective on the first day of the plan year beginning after August 5, 1997, the plan provisions required to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 shall generally be effective on the first day of the plan year beginning after December 31, 2001, the plan provisions required to comply with the Pension Funding Equity Act of 2004 (PFEA) shall be effective for distributions made during the plan year beginning on or after January 1, 2004 and the plan year beginning on or after January 1, 2005, and the plan provisions required to comply with the Pension Protection Act of 2006 that are effective prior to the first day of the first plan year beginning on or after January 1, 2008 shall be effective as of the first day of the first plan year beginning on or after January 1, 2006, except as specified otherwise in this plan or in said Acts for a government sponsored plan.

(3) **Plan Entry Date** means the participation date(s) specified in Section 1203.

(4) **Plan Year** means the 12-consecutive-month period beginning on January 1 and ending on December 31.

(5) **Limitation Year** means the plan year.

e. <u>Employee</u>.

(1) **Employee** means any person employed by the employer who is customarily employed for at least 40 hours per week throughout the year. The term employee shall include any employee of the employer maintaining the plan or of any other employer required to be aggregated with such employer under IRC sections 414(b), (c), (m) or (o), as such provisions may be interpreted to apply to a governmental entity by the Internal Revenue Service. The term employee shall also include any leased employee deemed to be an employee of any such employer as provided in IRC sections 414(n) or (o) and as defined in Section 1202.e(2). As set forth in section 1201, an Employee hired full-time on or after January 1, 2011, shall be eligible to participate in the 401 Governmental Purchase Plan established by the Borough of State College and shall not be eligible to participate in the General Government Pension Plan.

Notwithstanding the above, for purposes of this Plan, employees of the Centre Region Council of Governments shall be considered to be employees of the employer. As set forth in section 1201, an employee, hired full-time by the Centre Region Council of Governments on or after February 1, 2013, shall be eligible to participate in the 401 Governmental Money Purchase Plan established by the Borough of State College and shall not be eligible to participate in the General Government Pension Plan.

(2) **Leased Employee** means an individual (who otherwise is not an employee of the employer) who, pursuant to a leasing agreement between the employer and any other person, has performed services for the employer (or for the employer and any persons related to the employer within the meaning of IRC section 414(n)(6)) on a substantially full time basis for at least one year and such services are performed under the primary direction or control of the employer. If a leased employee is treated as an employee by reason of this Section 1202.e(2), compensation from the leasing organization that is attributable to services performed for the employer shall be considered as compensation under the plan. Contributions or benefits provided a leased employee by the leasing organization that are attributable to services performed for the employer shall be treated as provided by the employer.

f. <u>Employer</u>. Employer means Borough of State College, a political subdivision of the Commonwealth of Pennsylvania (or agency or authority thereof), or any successor entity that may assume the obligations of this plan with respect to its employees by becoming a party to this plan.

g. <u>Fiduciaries</u>.

(1) **Chief Administrative Officer** means the person appointed by the employer or the pension board as described in Section 1209.b who has primary responsibility for the execution of the administrative affairs of the plan.

(2) **Plan Administrator** means the Chief Administrative Officer.

(3) **Investment Manager** means a person or corporation other than a trustee appointed for the investment of plan assets.

h. <u>Participant/Beneficiary/Spouse</u>.

(1) **Participant** means an eligible employee of the employer who becomes a member of the plan pursuant to the provisions of Section 1203, or a former employee who has an accrued benefit under the plan.

(2) **Beneficiary** means a person designated by a participant who is or may become entitled to a benefit under the plan. The beneficiary may be someone other than the participant's spouse, but only to the extent that this plan provides for a benefit to be payable to a non-spouse beneficiary. A beneficiary who becomes entitled to a benefit under the plan remains a beneficiary under the plan until the trustee has fully distributed his benefit to him. A beneficiary's right to (and the plan administrator's, or a trustee's duty to provide to the beneficiary) information or data concerning the plan shall not arise until he first becomes entitled to receive a benefit under the plan.

(3) **Spouse** means the person married to the participant at the time of the determination as evidenced by a marriage license valid under the laws of the place of issuance.

i. <u>Plan</u>. Plan means Borough of State College General Government Employees Pension Plan as set forth herein and as it may be amended from time to time.

j. <u>Service</u>.

(1) **Service** means any period of time the employee is in the employ of the employer, including any period the employee is absent due to vacation, holidays, or sickness. Separation from service means that the employee no longer has an employment relationship with the employer.

(2) **Hour of Service** means each hour for which an employee is paid or entitled to payment for the performance of duties for the employer.

(3) **Break in Service** means any period of severance.

(4) **Period of Severance** means a continuous period of time during which the employee is not employed by the employer and is not credited with an hour of service. Such period begins on the date the employee retires, terminates service, or if earlier, the date on which the employee was otherwise first absent from service.

(5) **Credit for Military Service.** Any employee who entered into the military service of the United States before employment with the employer shall receive credit for each year of military service or fraction thereof for a period not to exceed four years. Such service shall not be credited if the employee fails to make the required payment. The required payment for such crediting shall be computed by: (a) multiplying 10% by the employee's average annual rate of compensation over the first 3 years of service and (b) multiplying the result by the number of years and fractional parts of years of creditable nonintervening military service being purchased together with interest at the rate of 4.75% compounded annually from the date of employment to the date of payment.

No service shall be credited under this Section 1202.j(5) if the employee is entitled to receive retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency with the exception of an employee eligible to receive military retirement pay earned by a combination of active duty and nonactive duty with a reserve or national guard component of the armed forces which retirement pay is payable only upon attainment of a specified age and period of service under 10 U.S.C. Ch 67 (relating to retired pay for non-regular service).

Notwithstanding the preceding, effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with IRC section 414(u) and the applicable Pennsylvania statutes. An employee reemployed after qualified military service shall not be treated as having incurred a break in service, for purposes of vesting and benefit accruals, solely because of an absence due to qualified military service.

Effective with respect to deaths occurring on or after January 1, 2007, in the case of a participant who dies while performing qualified military service, the beneficiary(ies) of the participant shall be entitled to any benefits payable under Section 1205.a that would have been payable had the participant resumed and then terminated employment on account of death. Years of vesting service shall be credited under this provision for purposes of determining the amount of any death benefit payable.

(6) **Other Service Credited.** If the employer is a member of an affiliated service group under IRC section 414(m) or a controlled group of corporations under IRC section 414(b), or any other entity required to be aggregated with the employer pursuant to IRC section 414(o) as these Internal Revenue Code provisions are applied to a governmental entity, service shall be credited for any employment for any period of time for any other member of such group. Service shall also be credited for any leased employee who is considered an employee for purposes of this plan under IRC section 414(n) or (o).

(7) (a) **Year of Service** means 12 months of service, excluding any breaks in service. For purposes of determining an employee's initial year of service upon his employment, the initial year of service shall commence on the employee's first day of employment. The first day of employment is the first day the employee performs an hour of service. The first day of re-

employment is the first day the employee performs an hour of service following a break in service. An initial year of service shall end on the day immediately preceding the first anniversary of the employee's date of hire or rehire. Any subsequent year of service shall commence on the day following the completion of the immediately preceding year of service.

(b) **Crediting Years of Service.** Service may be credited for the purpose of eligibility to participate, vesting, benefit accrual, or determining the benefit payable under the normal retirement benefit formula. Generally, no service shall be credited for periods during which the employee performs no services for the employer. Further, no more than one year of service will be credited for any 12-consecutive-month period.

(c) **Predecessor Service.** If the employer maintains the plan of a predecessor employer, service with such predecessor employer shall be treated as service for the employer. If the employer does not maintain the plan of a predecessor employer, then service as an employee of a predecessor employer shall not be considered as service under the plan, unless this plan is so amended.

k. Trust.

(1) **Trust** means the qualified trust created under the employer's plan. The trust shall be known as the Borough of State College General Government Employees Pension Fund.

(2) **Trustee** means the person or persons appointed by the employer to be the trustee of the trust, or any duly appointed successor trustee.

(Amended by Ordinance 1956, December 6, 2010, Section 2, and by Ordinance 2004, November 19, 2012, Section 2.)

Section 1203. **Participation**.

a. Eligibility Service. For purposes of determining an employee's initial or continued eligibility to participate in the plan, an employee shall receive credit for the aggregate of all time periods commencing with the employee's first day of employment or re-employment and ending on the date a break in service begins, except for periods of service disregarded under Section 2.4. The first day of employment or re-employment is the first day the employee performs an hour of service. Fractional periods of a year will be expressed in terms of days.

b. Plan Participation.

(1) **Eligibility.** An employee who is a member of the eligible class of employees shall be eligible for plan participation provided that he agrees to make the mandatory contributions as set forth in Section 1207.b.

(2) **Eligible Class of Employees.** All employees of the employer shall be eligible to be covered under the plan except for employees in the following category(ies):

- Individuals not directly employed by the employer as defined in Section 1202.f. An employee of an entity that is not a participating employer in this plan shall not participate in this plan.
- Employees employed as police officers.
- Individuals who are hired full-time by the Borough of State College on or after January 1, 2011.

Notwithstanding the above, for purposes of this Plan, employees of the Centre Region Council of Governments shall be considered to be employees of the employer.

Individuals who are hired full-time by the Centre Region Council of Governments on or after February 1, 2013.

(3) **Entry Date**. An eligible employee shall participate in the plan on the first day he performs one hour of service.

c. Termination of Participation. A participant shall continue to be an active participant of the plan so long as he is a member of the eligible class of employees and he does not terminate employment. He shall become an inactive participant immediately if he ceases to be a member of the eligible class of employees or terminates employment. He shall cease participation completely upon the later of his receipt of a total distribution of his nonforfeitable accrued benefit under the plan or the forfeiture of the nonvested portion of the accrued benefit.

d. Re-Participation.

(1) If a participant becomes an inactive participant, because he is no longer a member of the eligible class of employees; such inactive participant shall become an active participant immediately upon returning to the eligible class of employees. In the event an employee who is not a member of an eligible class of employees becomes a member of an eligible class, such employee shall participate immediately.

(2) If a participant incurs a break in service, he shall become an active participant immediately upon returning to employment.

(Amended by Ordinance 1956, December 6, 2011, Section 3, and by Ordinance 2004, November 19, 2012, Section 3.)

Section 1204. Retirement Benefits.

a. Service Rules.

(1) (a) **Year of Vesting Service**. For purposes of determining the nonforfeitable interest in the employee's accrued benefit, the employee shall receive credit for the aggregate of all time periods commencing with the employee's first day of employment or re-employment and ending on the date a break in service begins, except for periods of service disregarded below. The first day of employment or re-employment is the first day the employee performs an hour of service. One year of vesting service shall be credited for each 365-day period. Fractional periods of a year shall be expressed in terms of days.

(b) **Break in Service Rules.**

(i) **Vested Participant**. A former employee who had a nonforfeitable right to all or a portion of his accrued benefit derived from employer contributions at the time of his termination from service shall retain credit for all years of vesting service prior to a break in service.

(ii) **Nonvested Participant or Employee.** In the case of a former participant or employee who did not have any nonforfeitable right to his accrued benefit derived from employer contributions at the time of his termination from service, such employee shall retain credit for all years of vesting service prior to a break in service.

(2) **Year of Benefit Service.** For the purpose of determining the employee's benefit under the pension benefit formula, the employee shall receive credit for the aggregate of all time periods commencing with the employee's first day of employment or re-employment and ending on the date a break in service begins or the employee is no longer a member of an eligible class of employees, except for periods of service disregarded below. One year of benefit service shall be credited for each 365-day period. Fractional periods of a year shall be expressed in terms of days.
For purposes of determining years of benefit service, the determination shall exclude:

Years of service disregarded under Section 1206.c Cashout Distributions and Restoration.

b. <u>Normal Retirement</u>.

(1) (a) **Normal Retirement Age.** The normal retirement age of each participant shall be the day on which he attains age 62.

An actively employed participant's right to his normal retirement benefit shall be 100% vested and nonforfeitable upon attainment of the normal retirement age, notwithstanding the plan's vesting schedule.

(b) **Normal Retirement Date**. The normal retirement date of each participant shall be the first day of the month coincident with or next following the day on which he attains his normal retirement age as defined in Section 1204.b(1)(a).

(2) (a) **Normal Retirement Benefit.** The normal retirement benefit of each participant shall not be less than the largest periodic benefit that would have been payable to the participant upon separation from service at or prior to his normal retirement date under the plan exclusive of social security supplements, premiums on disability or term insurance, and the value of disability benefits not in excess of the normal retirement benefit, but taking into account any decrease in average monthly compensation. For purposes of comparing periodic benefits in the same form, commencing prior to and at his normal retirement date, the greater benefit shall be determined by converting the benefit payable prior to his normal retirement date into the same form of annuity benefit payable at his normal retirement date and comparing the amount of such annuity payments.

(b) **Normal Form of Payment.** The normal form of retirement benefit for each participant shall be a level monthly pension payable during the participant's lifetime, with payments commencing on his normal retirement date, and ceasing upon the later of:

(i) the participant's death, or
(ii) the completion of 120 monthly payments to the participant or his beneficiary.

(3) **Pension Benefit Formula.** Unless specifically stated otherwise hereunder, a participant's benefit shall be determined under the pension benefit formula in effect as of the date he is credited with his final hour of service for the employer or the last date as of which he is a member of the eligible class of employees, if earlier.

The monthly benefit for a participant as of his normal retirement age shall equal: 2.00% of average monthly compensation multiplied by the years of benefit service up to a maximum of 70.00% of average monthly compensation. No further benefit shall accrue under this formula once this maximum is satisfied.

(4) **IRC Section 415 Limitation on Benefits.** Notwithstanding the benefits set forth in this Section, the annual benefit otherwise payable to a participant under this plan at any time shall be limited as provided in Section 1208.a.

c. <u>Accrued Benefit</u>. A participant's accrued benefit at any time equals the amount computed in accordance with the normal retirement pension formula in Section 1204.d(3), but based upon his compensation and years of benefit service to date.

If a participant begins receiving benefits at a time other than his normal retirement date, the participant's benefit will be determined in accordance with Section 1204.e if benefits

commence after his normal retirement date and in accordance with Section 3.5 if benefits commence before his normal retirement date.

d. <u>Late Retirement</u>.

(1) **Nonforfeitability**. If a participant remains employed after his normal retirement date, his benefits shall remain 100% vested and nonforfeitable. Payment of benefits shall not commence until his actual retirement date.

(2) **Suspension of Benefits Until Payment**. Payment of normal retirement benefits shall be suspended for each calendar month during which the participant remains employed after his normal retirement date. The amount of benefits that are paid later than his normal retirement date shall be computed under the pension benefit formula. The participant's pension benefit shall be determined on the basis of the participant's years of service for benefit accrual completed before and during the period of suspension; and the participant's compensation with the employer during the period of suspension shall be included in any relevant determination of average monthly compensation.

e. <u>Early Retirement</u>. If a participant satisfies the requirements for early retirement, the participant's accrued benefit shall be 100% vested and nonforfeitable. Such participant may retire before his normal retirement date without the consent of the employer and receive early retirement benefits from the plan. The early retirement date of each participant shall be the first day of the month coincident with or next following the day on which he satisfies the early retirement benefit requirement(s).

In the case of a participant who has attained age 55 and completed 5 years of vesting service before his normal retirement date, the early retirement benefit shall be equal to the actuarial equivalent (as determined under Section 1202.b) of the normal retirement benefit accrued as of his early retirement date. If a participant separates from service before satisfying the age requirement for this early retirement provision, but has satisfied the service requirement, the participant shall be entitled to elect this early retirement benefit upon satisfaction of such age requirement.

In the case of a participant who has completed 35 years of vesting service before his normal retirement date, the early retirement benefit shall be equal to the benefit accrued as of his early retirement date, without actuarial reduction.

f. <u>Disability Retirement</u>. If an actively employed participant becomes disabled prior to his normal retirement date such that he is eligible for Social Security disability benefits, he may retire under the plan. A disabled participant's right to his accrued benefit as of his date of disability shall be 100% vested and nonforfeitable. Such disabled participant shall be entitled to a monthly pension equal to the benefit accrued to the date of disability. The participant may elect

the form of payment as described in Section 1204.g. In the administration of this Section, all employees shall be treated in a uniform manner in similar circumstances.

g. <u>Benefit Distribution</u>.

(1) **Commencement of Benefits.** Subject to the limitations of this plan, the benefit distribution shall commence as soon as administratively feasible after the later of the participant's termination of employment or his satisfaction of the normal retirement date requirements, provided that he files a written application for the retirement benefit.

(2) **Optional Forms of Payment.** A participant may elect to receive distribution of his accrued benefit in one of the optional forms of payment outlined below, provided that such distribution complies with the Distribution Requirements of Section 1208.b. The participant shall file a written request for benefits with the plan administrator before payments will commence. Optional forms of payment include:

(a) **Lifetime Pension.** A monthly pension payable for the lifetime of the participant with payments guaranteed for the first 0, 60, 120, or 180 months.

(b) **Joint & Survivor Pension.** A monthly pension payable as long as the participant or his designated survivor annuitant live. The amount of monthly pension continued after the participant's death during the lifetime of the survivor annuitant may be 100%, 75%, 66 2/3%, or 50% of the actuarially adjusted amount payable during the participant's lifetime. The plan administrator shall reject the designation of a survivor annuitant if the age of such person would cause a monthly pension to violate the Distribution Requirements of Section 1208.b(3)(a).

(c) **A Lump Sum Payment**. If the present lump sum value of the vested accrued benefit is no more than $5,000, this shall be the sole payment option. This form of payment may not be elected if such vested present value exceeds such dollar amount. Distributions in excess of $1,000 will only be made with the participant's consent. If the distribution is equal to or less than $1,000, benefits will automatically be paid in a lump sum. For the purpose of determining the present lump sum value of the participant's vested accrued benefit, prior distributions shall be disregarded provided they did not commence under another optional form of payment. A lump sum benefit payment shall be made in cash from the fund.

(3) **General Payment Provisions.**

(a) If any person entitled to receive benefits hereunder is physically or mentally incapable of receiving or acknowledging receipt thereof, and if a legal representative has been appointed for him, the plan administrator may direct the benefit payment to be made to such legal representative.

(b) At the direction of the plan administrator, the trustee may make pension payments directly from the fund or may take such steps as may be required to purchase an annuity contract from an insurance company for the participant, provided that the annuity contract purchased on behalf of such participant shall be sufficient to provide the benefits to which the participant is entitled. The ownership of the annuity contract shall remain with the trustee, unless the plan administrator determines otherwise. Any annuity contract distributed herefrom shall be non-transferable. The application and directions to the insurance company for such annuity contract shall be made by the plan administrator. The terms of any such annuity contract purchased by the plan shall comply with the requirements of this plan. Any dividend, refund, or recovery on an annuity contract shall be used to reduce subsequent employer contributions.

(c) The benefits due any participant on account of his most recent period of employment shall not duplicate any benefits due the same participant under this plan on account of previous employment with the employer.

(d) The participant's election of a form of benefit payment shall be irrevocable as of the annuity starting date, subject to the notice requirements contained in Section 1204.g(6).

(4) **Eligible Rollover Distribution.** Effective for distributions made on or after January 1, 1993, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any eligible portion of a lump sum distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover payment.

(a) **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 to the extent such distribution is required under IRC section 401(a)(9) and the portion of any distribution that is not includable in gross income; and any other distribution(s) that is reasonably expected to total less than $200 during a year.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be transferred only to: (A) an individual retirement account or annuity described in IRC section 408(a) or (b); (B) for taxable years beginning after December 31, 2001 and before January 1, 2007, to a qualified defined contribution plan described in IRC section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable; or (C) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in IRC section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately

accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

(b) **Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in IRC section 408(a), an individual retirement annuity described in IRC section 408(b), an annuity plan described in IRC section 403(a), an annuity contract described in IRC section 403(b), an eligible plan under IRC 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 and that agrees to separately account for amounts transferred into such plan from this plan, or a qualified plan described in IRC section 401(a), that accepts the distributee's eligible rollover distribution.

Effective for distributions made on or after January 1, 2008, an eligible retirement plan includes a Roth individual retirement account (Roth IRA) described in IRC section 408A. However, for distributions before January 1, 2010, a distributee shall not be allowed to make a qualified rollover contribution to a Roth IRA from the plan if, for the taxable year of the distribution to which such contribution relates the distributee's adjusted gross income exceeds $100,000, or the distributee is a married individual filing a separate return.

(c) **Distributee.** A distributee includes an employee or former employee. In addition, 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 IRC section 414(p), are distributees with regard to the interest of the spouse or former spouse. Effective for death benefit distributions made on or after January 1, 2007, a distributee shall include a nonspouse beneficiary but only with respect to a direct transfer to an inherited individual retirement account or annuity that is established on his behalf and that will be treated as an inherited individual retirement account or annuity pursuant to the provisions of IRC section 402(c)(11).

(d) **Direct Rollover.** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(5) **Unclaimed Benefits.**

(a) **Forfeiture.** The plan does not require the trustee or the plan administrator to search for, or to ascertain the whereabouts of, any distributee. At the time the distributee's benefit becomes distributable under the plan, the plan administrator, by certified or registered mail addressed to his last known address of record, shall notify any distributee that he is entitled to a distribution under this plan. If the distributee fails to claim his distributive share or make his whereabouts known in writing to the plan administrator within twelve months from the date of mailing of the notice, the plan administrator shall treat the distributee's unclaimed payable accrued benefit as forfeited. A forfeiture under this Section 1204.g(5) shall occur at the end of the notice period or, if later, the earliest date applicable federal Treasury regulations would

permit the forfeiture. These forfeiture provisions apply solely to the distributee's accrued benefit derived from employer contributions.

(b) **Restoration.** If a distributee who has incurred a forfeiture of his accrued benefit under the provisions of this Section 1204.g(5) makes a claim, at any time, for his forfeited accrued benefit; the plan administrator shall restore the distributee's forfeited accrued benefit to the present value of the accrued benefit forfeited. The plan administrator shall make the restoration during the plan year in which the distributee makes the claim. If necessary, the employer shall make a contribution to the plan to satisfy the restoration. The plan administrator shall direct the trustee to distribute the distributee's restored accrued benefit to him not later than 60 days after the close of the plan year in which the plan administrator restores the forfeited accrued benefit.

(6) **Special Rule Relating to Time for Written Explanation.** Effective for distributions made on or after January 1, 1993, for any distribution in excess of $200 that may be paid in the form of a lump sum, the plan administrator shall give the participant written notice of his eligible rollover distribution rights as required under IRC section 402(f) no less than 30 days and no more than 180 days (90 days for notices issued before January 1, 2007) before the annuity starting date with respect to the distribution. Effective for distributions made on or after January 1, 1994, such distribution may commence less than 30 days after the notice is given, provided that:

(a) The participant is provided with information that clearly states that the participant has a right to a period of at least 30 days after receiving the written explanation and notice to consider the decision of whether or not to elect a distribution;

(b) The participant, after receiving the written notice, affirmatively elects a distribution.

h. <u>Suspension of Benefits</u>. Subject to the requirements of Section 1208.b, benefits in pay status shall be suspended if a participant returns to employment in the eligible class of employees. If the participant accrues an additional benefit, the plan shall offset the actuarial value of the distributions made to the participant by the last day of the preceding plan year against the benefit accrual for the current plan year.

i. <u>Distributions Under Domestic Relations Orders</u>. Nothing contained in this plan prevents the trustee, in accordance with the direction of the plan administrator, from complying with the provisions of an acceptable domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a participant under the plan.

A distribution under an acceptable domestic relations order will not be made to an alternate payee until the participant is entitled to a distribution under this plan and commences

such distribution. Nothing in this Section permits the alternate payee to receive a form of payment not otherwise permitted under the plan.

The plan administrator shall establish reasonable procedures to determine the acceptability of a domestic relations order in accordance with IRC section 414(p). Upon receiving a domestic relations order, the plan administrator promptly will notify the participant and any alternate payee named in the order, in writing, of the receipt of the order and the plan's procedures for determining the acceptability of the order. Within a reasonable period of time after receiving the domestic relations order, the plan administrator shall determine the acceptability of the order and shall notify the participant and each alternate payee, in writing, of its determination. The plan administrator shall provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

If any portion of the participant's nonforfeitable accrued benefit is payable during the period the plan administrator is making its determination of the acceptability of the domestic relations order, the plan administrator shall make a separate accounting of the amounts payable. If the plan administrator determines the order is an acceptable domestic relations order within 18 months of the date amounts first are payable following receipt of the order, it shall direct the trustee to distribute the payable amounts in accordance with the order. If the plan administrator does not make its determination of the acceptability of the order within the 18-month determination period, it shall direct the trustee to distribute the payable amounts in the manner the plan would distribute if the order did not exist and will apply the order prospectively if it later determines the order is an acceptable domestic relations order.

Section 1205. Death Benefits.

a. Preretirement Death Benefit. If a participant dies prior to his annuity date (as defined in Section 1208.a(5)(l)), a death benefit shall be payable as follows:

(1) **Preretirement Survivor Annuity Benefit.** If a vested participant who has been married for at least one year dies after the plan's earliest retirement age, the participant's surviving spouse shall receive the same benefit that would be payable if the participant had retired with an immediate joint and 50% survivor annuity on the day before the participant's date of death.

The surviving spouse may elect to commence payment under such annuity as of the first day of any month within a reasonable period after the participant's death, but in no event later than December 1 of the later of: (A) the calendar year containing the participant's normal retirement date; or (B) the calendar year containing the first anniversary of the participant's death. The actuarial value of benefits that commence later than the date on which payments would have been made to the surviving spouse under a joint and survivor annuity in accordance with this provision shall be adjusted to reflect the delayed payment. This adjustment shall be made using the interest rate and mortality table set forth in Section 1202.b(2)(c).

If a vested participant who has been married for at least one year dies on or before the plan's earliest retirement age as described in Section 1204.e, the participant's surviving spouse shall receive the same benefit that would be payable if the participant had:

- separated from service on the date of death (or on the date of separation from service, if earlier),
- been vested strictly in accordance with the vesting schedule,
- survived to the earliest retirement date,
- retired with an immediate joint and 50% survivor annuity at the earliest retirement date, and
- died on the day after the earliest retirement date.

For purposes of the preceding sentence, a surviving spouse shall begin to receive payments at the participant's earliest retirement date unless such surviving spouse elects a later date. Benefits commencing after the earliest retirement date will be the actuarial equivalent of the benefit to which the surviving spouse would have been entitled if benefits had commenced at the participant's earliest retirement date under an immediate joint and 50% survivor annuity using the interest rate and mortality table set forth in Section 1202.b(2)(c).

In determining this benefit, the employee-provided accrued benefit is 100% vested. If the surviving spouse dies before the plan has commenced distribution or before the pension payments made to the surviving spouse equal the present value of the spouse's portion of the accumulated contributions as described in Section 1207.b as of the annuity starting date, the excess over the payments made shall be payable to the surviving spouse's estate.

The survivor benefit set forth above shall not be payable unless the participant and spouse have been married throughout the one-year period ending on the date of the participant's death. The participant's spouse cannot waive receipt of this benefit to the extent that this benefit is an employer-provided accrued benefit. To the extent that this benefit is an employee-provided benefit under Section 1207.b, the participant may designate another beneficiary in accordance with the provisions of Section 1208.b and Section 1205.a(3). This benefit shall be paid in one lump sum if the actuarially equivalent present value of the benefit is equal to $5,000 or less. Distributions in excess of $1,000 will only be made with the consent of the participant’s spouse before the date a distribution is required under Section 1208.b. If the distribution is $1,000 or less, the benefit will automatically be paid in a lump sum following the distribution election period.

If there is an acceptable domestic relations order in force with respect to the participant, the alternate payee shall be treated as the surviving spouse to the extent provided in the order. However, no order shall be accepted if it provides that the alternate payee shall be the surviving spouse with respect to benefits accrued as a result of years of benefit service credited after the termination of the marriage.

(2) **Employee Contributions.** The participant's accumulated contributions as described in Section 1207.b shall be payable under this Section 1205.a(2) to the extent not payable under Section 1205.a(1). In the case of a participant who dies prior to becoming vested in any employer-provided accrued benefit or prior to being married for at least one year, such employee-provided benefit shall be payable to the participant's named beneficiary.

(3) **Beneficiary Designation.** With respect to his accumulated contributions, the participant shall have the right to designate his beneficiaries, including a contingent beneficiary, and shall have the right at any time to change such beneficiaries. The designation shall be made in writing on a form supplied by the plan administrator. No designation shall be effective until filed with the plan administrator. If the participant fails to designate a beneficiary, or if the designated person or persons predeceases the participant, "beneficiary" shall mean the spouse, children, parents, brothers and sisters, or estate of the participant, in the order listed.

For purposes of this Section 1205.a, if a spouse or beneficiary of the participant dies simultaneously with the participant, the participant shall be deemed to be the survivor and to have died subsequent to such spouse or beneficiary. Likewise, if a beneficiary named by a designated beneficiary dies simultaneously with a designated beneficiary, the designated beneficiary shall be deemed to be the survivor and to have died subsequent to the beneficiary named by the designated beneficiary.

If a participant completes or has completed a beneficiary designation form in which the participant designates his spouse as the beneficiary and the participant and such spouse are legally divorced subsequent to the date of such designation; then, the designation shall be administered as if such spouse had predeceased the participant unless the participant, subsequent to the legal divorce, reaffirms the designation by completing a new beneficiary designation form.

In the absence of a beneficiary designation form duly filed with the plan administrator by the designated beneficiary for any preretirement death benefit, if such designated beneficiary dies before the plan has commenced distribution of the death benefit to the designated beneficiary, the death benefit shall be paid to such person's estate in one lump sum by the date required under Section 1208.a.

If the deceased designated beneficiary is not the participant's surviving spouse, distribution shall be completed by the December 31 of the fifth year following the participant's date of death. If the deceased designated beneficiary is the participant's surviving spouse, distribution shall be completed by the December 31 of the fifth year following the beneficiary's date of death.

(4) **Form and Manner of Payment.** The accumulated contribution death benefit payable to the participant's beneficiary shall be payable in a lump sum.

b. Postretirement Death Benefit. Upon the death of a participant after his annuity starting date, no death benefit shall be payable, except such benefit as is provided by the particular form of pension payment under which pension benefits are being distributed.

Notwithstanding the preceding, if the total payments received under the terms of the elected form of pension payment by the participant and any designated survivor annuitant or beneficiary are less than the present value of the participant's accumulated contributions as of the annuity starting date, monthly payments shall be made until this amount has been distributed.

Section 1206. Termination of Employee Benefits.

a. Vesting. If a participant separates from the service of the employer other than by retirement, disability, or death, he shall be entitled to a vested deferred pension equal to the benefit accrued to the date of termination multiplied by the vesting percentage, based upon his years of vesting service to the date of termination. His vesting percentage shall be determined by the vesting schedule set forth below:

Years of Service	Vesting Percentage
0–4 Years	0%
5 or More Years	100%

b. Payment of Benefits.

(1) **Payment as of Normal Retirement Date**. If the participant terminates his employment on or before his normal retirement date, payment of the vested accrued pension may begin at his normal retirement date. If payments do not commence until after his normal retirement date, distribution must begin by the required beginning date for minimum required distributions and the amount of the benefit payable shall be determined as provided in Section 1204.d. The vested accrued pension shall be payable in the same optional forms and in the same manner as described in Section 1204.g.

(2) **Payment as of Early Retirement Date.** Upon the request of the terminated participant, payment of the vested accrued pension may begin after he has satisfied the plan's early retirement date requirement(s). In the event of such earlier commencement of benefits, the benefit shall be paid pursuant to the early retirement provisions of Section 1204.e in the same optional forms and in the same manner as described in Section 1204.g.

(3) **Payment Prior to Early Retirement Date.** Generally, no payment shall be made prior to retirement, death, or disability. However, if the present lump sum value of the vested accrued benefit is no more than $5,000 exclusive of his accumulated employee contributions, the benefit may be distributed in a lump sum payment after severance of employment. Distributions in excess of $1,000 shall only be made with the participant's consent. For these purposes, present

value shall be calculated as specified in Section 1202.b. Further, the participant may elect to have paid to him an amount equal to his accumulated employee contributions as soon as administratively possible after severance of employment as provided in Section 1207.b(4).

(4) **Death Before Retirement**. If a participant terminates employment and dies before beginning to receive retirement benefits, a preretirement death benefit may be payable, to the extent provided under Section 1205.

(5) **Forfeiture for Malfeasance.** Notwithstanding any other provision of this plan, a participant who is convicted or pleads guilty to engaging in criminal misconduct which constitutes a "crime related to public office or public employment," as that phrase is defined in Pennsylvania Pension Forfeiture Act, 43 P.S. 1311-1314 and interpreted thereunder, shall forfeit his right to receive a pension benefit under this plan. In such a case, the participant shall only be entitled to receive the contributions, if any, he made under Section 1207.b, without interest.

c. <u>Cashout Distributions and Restoration</u>.

(1) **Cashout Distribution.** If an employee terminates service and receives a distribution of the present value of the entire vested portion of his accrued benefit, the nonvested portion will be treated as a forfeiture. For purposes of this section, if the present value of an employee's vested accrued benefit is zero, he shall be deemed to have received a distribution of such vested accrued benefit as of his separation from service.

In determining the participant's accrued benefit after the occurrence of such a distribution, the plan shall disregard all year of benefit service performed by such employee before the date of distribution. In the case of a participant who elects to receive a partial distribution, the plan shall disregard a portion of his accrued benefit equal to his total nonforfeitable accrued benefit immediately prior to the partial distribution multiplied by a fraction, the numerator of which is the amount of the distribution and the denominator of which is the present value of his total nonforfeitable accrued benefit immediately prior to such distribution.

(2) **Restoration.** If a participant receives a distribution pursuant to this Section of his accrued benefit and if he resumes covered employment under the plan; he shall have the right to restore his accrued benefit under Section 1204.b upon the repayment to the plan of the full amount of the distribution plus interest, compounded annually from the date of distribution at the rate set forth in Section 1207.b(3). In order to make a total or partial repayment, the employee may transfer to the plan the account balance of the individual retirement account or annuity to which the distribution being repaid was transferred, provided that the employee has made no other contribution to the account or annuity and both transfers are accomplished in compliance with IRC Section 408(d). Such repayment must be made within five years after the participant returns to active participation.

If a participant is eligible to restore his employer-derived accrued benefit, but such restoration has not been made; then, the participant's accrued benefit shall be equal to his total accrued benefit offset by the accrued benefit attributable to the distribution. For the purpose of determining years of benefit service, years of service before the employee's break-in-service shall not be disregarded.

If a nonvested participant is deemed to receive a distribution pursuant to this Section and if he resumes employment covered under this plan, upon his reemployment, the employer-derived accrued benefit shall be restored to the amount of such accrued benefit on the date of the deemed distribution. For the purpose of determining years of benefit service, years of service before the employee's break-in-service shall not be disregarded.

(3) **Forfeitures.**

(a) **Time of Forfeiture.** If a participant terminates employment before his accrued benefit under Section 1204.b is fully vested, his accrued benefit shall be forfeited on the earlier of:

(i) The date the participant receives his entire vested accumulated contributions.

(ii) The date the participant terminates employment or ceases to be a member of the eligible class of employees.

(b) **Disposition of Forfeiture**. Forfeitures shall serve to reduce subsequent employer contributions under the plan.

Section 1207. Contributions.

a. Employer Contributions. The Chief Administrative Officer of the plan shall determine the financial requirements of the plan on the basis of the most recent actuarial report and shall determine the minimum obligation of the employer with respect to funding the plan for any given plan year after taking into account any contribution to be made by the Commonwealth of Pennsylvania and any participant contributions. The Chief Administrative Officer shall submit the financial requirements of the plan and the minimum obligation of the employer to the employer (or its governing body) annually and shall certify the accuracy of such calculations and their conformance with Act 205. The employer shall be obligated to make such contribution to the trust by annual appropriations.

b. Mandatory Employee Contributions.

(1) **Mandatory Contribution Amount.** As a condition of participation in this plan, each active participant must contribute up to 4.00% of his compensation each year on an after-tax

basis. Such rate of contribution shall be determined annually by the governing body of the employer.

(2) Effective January 1, 1999, the employer shall contribute an amount equal to the mandatory employee contribution amount set forth in Section 1207.b(1) as a pick-up contribution (pursuant to IRC section 414(h)(2)) in lieu of the prior mandatory employee contribution. The contribution shall be made on a pre-tax basis, and there shall be a corresponding reduction in compensation paid to the participant.

(3) **Determination of Accrued Benefit.** The accrued benefit derived from a participant's mandatory employee contributions as of any applicable date is an annual benefit, in the form of a life annuity with a 120-month guaranteed period (without ancillary benefits) commencing at his normal retirement date, equal to the actuarial equivalent of the participant's accumulated contributions. The participant's accumulated contributions shall be equal to his mandatory employee contributions with interest. The interest rate to be credited shall be 5.000% per annum. Such interest shall be credited annually in the form of a compound interest rate.

A participant shall be 100% vested in his accumulated contributions.

If this plan or a prior plan is or has been amended so as to no longer require employee mandatory contributions, the participant's employee-provided accrued benefit and employer-provided accrued benefit shall be determined as if the plan required contributions of the employee as a condition of participation at the time of termination of employment. This Section, however, shall not apply to the extent the contributions the participant has made to the plan (or prior plan) have been refunded to him.

(4) **Withdrawal of Accumulated Contributions.** Employee contributions shall generally be payable at the same time and under the same conditions as provided for the payment of the employer-provided accrued benefits. Notwithstanding the above, upon separation from service, a participant may withdraw an amount that is no more than an amount equal to his total accumulated contributions.

In no event may an amount in excess of such accumulated contributions be withdrawn or distributed until the participant's retirement, disability, death or termination of employment, regardless of the income tax accounting treatment required by IRC section 72(e)(8)(D). If the total accumulated employee contributions are paid to the participant upon retirement, disability, or termination of employment, his accrued benefit shall be reduced to an amount equal to the employer-provided accrued benefit.

If the present lump sum value of the remaining employer-provided accrued benefit is $5,000 or less, the participant may also elect payment of the employer-provided accrued benefit.

(5) **Forfeiture.** A participant's accrued benefit derived from mandatory employee contributions shall be nonforfeitable at all times. No forfeitures shall occur solely as a result of a participant's withdrawal of employee contributions. The death benefit payable under Section 1205 shall not be less than the participant's accumulated contributions.

c. Rollover/Transfer Contributions. Rollover and transfer contributions shall not be permitted under this plan and there shall be no rollover/transfer account.

Section 1208. Additional Qualification Rules.

a. Limitation on Benefits Under IRC Section 415. The limitations of this Section 1208.a shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein.

(1) **Annual Benefit Limitation.** The annual benefit otherwise payable to a participant at any time under the plan shall not exceed the maximum permissible benefit.

(2) **Limitations on Employee Contributions.** If a participant has made mandatory employee contributions, under the terms of this plan, the amount of such contributions shall be treated as an annual addition to a qualified defined contribution plan.

(a) If the mandatory employee contribution the participant would otherwise make in a limitation year would exceed the maximum permissible annual addition, the contribution shall be limited to a contribution that does not exceed the maximum permissible annual addition.

(i) Prior to determining the participant's actual compensation for the limitation year, the employer may determine the maximum permissible annual addition for a participant on the basis of a reasonable estimation of the participant's compensation for the limitation year, uniformly determined for all participants similarly situated.

(ii) As soon as is administratively feasible after the end of the limitation year, the maximum permissible annual addition for the limitation year will be determined on the basis of the participant's actual compensation for the limitation year.

(b) In any limitation year in which the employee contributions otherwise contributable under this plan would exceed the maximum permissible annual addition because of contributions otherwise allocable under a defined contribution plan that the employer also sponsors, the contribution under such plan(s) shall be limited to a contribution that does not exceed the maximum permissible annual addition reduced by the mandatory employee contribution required under this plan.

(3) **Combined Limitations: Other Defined Benefit Plans**

(a) If a participant is, or has ever been, a participant in another qualified defined benefit plan maintained by the employer or a predecessor employer, the sum of the participant's annual benefits from all such plans may not exceed the maximum permissible benefit. If the maximum permissible benefit is exceeded solely due to the benefit payable under a frozen or terminated defined benefit plan, the annual benefit otherwise payable under this plan shall be reduced so that the maximum permissible benefit is not exceeded.

(b) Where the participant's employer-provided benefits under all qualified defined benefit plans ever maintained by the employer (determined as of the same age) would exceed the maximum permissible benefit applicable at that age, the method by which the plans will limit a participant's annual benefit otherwise payable in such cases shall be as provided in Section 1204.b(6).

(4) **Protection of Accrued Benefit.** In the case of an individual who was a participant in one or more defined benefit plans of the employer as of the first day of the first limitation year beginning after December 31, 1986, the application of the limitations of IRC section 415 shall not cause the maximum permissible benefit amount for such individual under all such defined benefit plans to be less than the individual's Tax Reform Act of 1986 (TRA '86) accrued benefit. The preceding sentence applies only if all such defined benefit plans met the requirements of IRC section 415, for all limitation years beginning before January 1, 1987.

The application of the provisions of this Section 1208.a shall not cause the maximum permissible benefit for any participant to be less than the participant's accrued benefit under all the defined benefit plans of the employer or a predecessor employer as of the end of the last limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to IRC section 415 in effect as of the end of the last limitation year beginning before July 1, 2007, as described in Treasury Regulation section 1.415(a)-1(g)(4).

(5) **Definitions (IRC Section 415 Limitations)**

(a) **Annual Additions.** The sum of the following amounts credited to a participant's account for the limitation year: (A) employer contributions; (B) employee contributions; (C) forfeitures; (D) allocations under a simplified employee pension; and (E) amounts allocated, after March 31, 1984, to an individual medical account that is part of a pension or annuity plan maintained by the employer. Also amounts derived from contributions paid or accrued after December 31, 1985 (in taxable years ending after such date), that are attributable to post-retirement medical benefits, allocated to the separate account of a key employee (as defined in IRC section 419A(d)(3)) under a welfare benefit fund.

For limitation years beginning before January 1, 1987, employee contributions shall only be taken into account for this purpose up to the lesser of the amount of employee contributions in excess of 6% of compensation for the limitation year, or one-half of the employee contributions for that year. Picked-up contributions under IRC section 414(h)(2) shall not be included as an annual addition with respect to a participant.

(b) **Annual Benefit**. A benefit under the plan that is payable annually in the form of a straight life annuity. The annual benefit shall include any picked-up contributions made by the employer under IRC section 414(h)(2). Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Section 1208.a. For a participant who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section 1208.a as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Treasury Regulation section 1.401(a)-20, Q&A 10(d), and with regard to Treasury Regulation section 1.415(b)-1(b)(1)(iii)(B) and (C).

No actuarial adjustment to the benefit is required for (A) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the participant's benefit were paid in another form; (B) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); and (C) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to IRC section 417(e)(3) and would otherwise satisfy the limitations of this Section 1208.a, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this Section 1208.a applicable at the annuity starting date, as increased in subsequent years pursuant to IRC section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the annual benefit shall take into account social security supplements described in IRC section 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Treasury Regulation section 1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to employee contributions or rollover contributions.

Effective for distributions in plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with Section 1208.a(5)(b)(i) or Section 1208.a(5)(b)(ii).

(i) **Benefit Forms Not Subject to IRC Section 417(e)(3).** The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this Section 1208.a(5)(b)(i) if the form of the participant's benefit is either (i) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the participant (or, in the case of a preretirement survivor annuity, the life of the surviving spouse), or (ii) an annuity that decreases during the life of the participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the annual benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in IRC section 401(a)(11)).

a. **Limitation Years beginning before July 1, 2007.** For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity shall be equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using whichever of the following produces the greater annual amount: (a) the interest rate and the mortality table (or other tabular factor) stated in Section 1202.b(2) for adjusting benefits in the same form; and (b) a 5% interest rate assumption and the applicable mortality table defined in Section 1202.b(3) for that annuity starting date.

b. **Limitation Years beginning on or after July 1, 2007.** For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of: (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 participant's form of benefit; and (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 participant's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table defined in Section 1202.b(3) for that annuity starting date.

(ii) **Benefit Forms Subject to IRC Section 417(e)(3).** The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this paragraph if the form of the participant's benefit is other than a benefit form described in Section 1208.a(5)(b)(i). In this case, the actuarially equivalent straight life annuity shall be determined as follows:

a. **Annuity Starting Date in Plan Years Beginning After 2005.** If the annuity starting date of the participant's form of benefit is in a plan year beginning after December 31, 2005, the actuarially equivalent straight life annuity shall be equal to the greatest of: (a) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) stated in Section 1202.b(2) for adjusting a lump sum pension payment; (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 participant's form of benefit, computed using a 5.5% interest rate assumption and the applicable

mortality table defined in Section 1202.b(3); and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using the applicable interest rate and the applicable mortality table as defined in Section 1202.b(3), divided by 1.05.

b. **Annuity Starting Date in Plan Years Beginning in 2004 or 2005.** If the annuity starting date of the participant's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity shall be equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greater annual amount: (a) the interest rate and the mortality table (or other tabular factor) specified stated in Section 1202.b(2) for adjusting benefits in the same form; and (b) a 5.5% interest rate assumption and the applicable mortality table as defined in Section 1202.b(3).

Notwithstanding the preceding, if the annuity starting date of the participant's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this Section 1208.a(5)(b)(ii)b shall not cause the amount payable under the participant's form of benefit to be less than the benefit calculated under the plan, taking into account the limitations of this Section 1208.a, except that the actuarially equivalent straight life annuity shall be equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greatest annual amount:

1. the interest rate and the mortality table (or other tabular factor) specified stated in Section 1202.b(2) for adjusting benefits in the same form;

2. the applicable interest rate and the applicable mortality table as defined in Section 1202.b(3); and

3. the applicable interest rate defined in Section 1202.b(3) (as in effect on the last day of the last plan year beginning before January 1, 2004) and the applicable mortality table defined in Section 1202.b(3).

(c) **Compensation.** A participant's earned income and any earnings reportable as W-2 wages for federal income tax withholding purposes that are paid by the employer. W-2 wages means wages as defined in IRC section 3401(a) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed. Picked-up contributions under IRC section 414(h)(2) shall not be included in the participant's compensation.

For limitation years beginning after December 31, 1991, for purposes of applying the limitations of this Section 1208.a, compensation for a limitation year is the compensation

actually paid or includable in gross income during such limitation year. Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated employees, and no compensation is included in more than one limitation year.

In order to be taken into account for a limitation year, compensation must be paid or treated as paid prior to severance from employment with the employer. Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition. Further, effective for limitation years beginning on or after January 1, 2008, compensation in excess of the limitations of Section 1202.c(2) shall not be taken into account.

For limitation years beginning after December 31, 1997, compensation shall include elective contributions. Elective contributions are amounts excludable from the employee's gross income and contributed by the employer, at the employee's election to a cafeteria plan excludable under IRC section 125, a IRC section 401(k) arrangement (excludable under IRC section 402(e)(3)), a simplified employee pension (excludable under IRC section 402(h)), a tax sheltered annuity (excludable under IRC section 403(b)), a deferred compensation plan (excludable under IRC section 457(b)), a IRC section 501(c)(18) plan, or a IRC section 132(f)(4) qualified transportation fringe benefit plan.

Elective contribution amounts under a cafeteria plan excludable under IRC section 125 shall include any amounts not available to a participant in cash in lieu of group health coverage because the participant is unable to certify that he has other health coverage (deemed section 125 compensation). An amount will be treated as an amount under IRC section 125 only if the employer does not request or collect information regarding the participant's other health coverage as part of the enrollment process for the health plan.

In order to be taken into account for a limitation year, compensation must be paid or treated as paid prior to severance from employment with the employer. Effective for limitation years beginning on or after July 1, 2007, an includable payment shall be treated as paid prior to severance from employment if it is paid by the later of 214 months after severance or the last day of the calendar year that includes the severance date. For this purpose, includable payments are those that absent the severance would have been paid and are regular compensation for services during regular working hours or outside working hours (such as overtime or shift differentials), commissions, bonuses, or other similar compensation.

For limitation years beginning after December 31, 2008, compensation for a limitation year shall include amounts paid as differential wages to a participant on qualified

military service leave of more than 30 days and otherwise meeting the requirements of the IRC section 3401(h)(2).

(d) **Projected Annual Benefit**. The annual benefit as defined in Section 1208.a(5)(ii), to which the participant would be entitled under the terms of the plan assuming:

(i) the participant will continue employment until his normal retirement date under the plan (or current age, if later), and

(ii) the participant's compensation for the current limitation year and all other relevant factors used to determine benefits under the plan will remain constant for all future limitation years.

Straight life annuity means an annuity payable in equal installments for the life of the participant that terminates upon the participant's death.

(e) **Defined Benefit Dollar Limitation.** Effective for limitation years ending after December 31, 2001, the defined benefit dollar limitation is $160,000, automatically adjusted under IRC section 415(d), effective January 1 of each year, in such manner as the Secretary of the Treasury shall prescribe, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year for which the adjustment applies, but a participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment of the defined benefit dollar limitation under IRC section 415(d) shall apply to participants who have had a separation from employment.

(f) **Employer.** For purposes of this Section 1208.a, employer shall mean the employer that adopts this plan and any entity required to be aggregated with the employer pursuant to regulations.

(g) **Excess Annual Addition.** The excess of the participant's annual additions for the limitation year over the maximum permissible annual addition.

(h) **Limitation Year.** The 12-consecutive-month period defined in Section 1202.d(5).

(i) **Maximum Permissible Annual Addition.** The maximum annual addition that may be contributed or allocated to a participant's account under a plan for any limitation year shall not exceed the lesser of:

(i) the defined contribution dollar limitation, that is $40,000, as adjusted under IRC section 415(d) for limitation years beginning after December 31, 2002, or

(ii) 100% of the participant's compensation for the limitation year.

If a short limitation year is created because of an amendment changing the limitation year to a different 12-consecutive-month period, the maximum permissible annual addition will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short limitation year}}{12}$$

(j) **Maximum Permissible Benefit.** The maximum permissible benefit is the defined benefit dollar limitation.

(i) **Adjustment for Less Than 10 Years of Participation or Service.** If the participant has less than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction: (i) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the plan, and (ii) the denominator of which is 10.

This Section 1208.a(5)(j)(i) shall not apply to disability benefit paid in accordance with Section 3.6 or to benefits payable under Section IV.

(ii) **Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or After Age 65.** Effective for benefits commencing in limitation years ending after December 31, 2001, the defined benefit dollar limitation shall be adjusted if the annuity starting date of the participant's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the defined benefit dollar limitation shall be adjusted under Section 1208.a(5)(j)(ii)a, as modified by Section 1208.a(5)(j)(ii)c. If the annuity starting date is after age 65, the defined benefit dollar limitation shall be adjusted under Section 1208.a(5)(j)(ii)b, as modified by Section 1208.a(5)(j)(ii)c.

a. **Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62.**

1. **Limitation years beginning before July 1, 2007.** If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is an annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Section 1208.a(5)(j)(i) for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and the mortality table (or the tabular factor) specified in Section 1202.b(2) for an early retirement benefit; or (2) a 5% interest rate assumption and the applicable mortality table as defined in Section 1202.b(c).

2. **Limitation years beginning on or after July 1, 2007.**

a. **Plan does not have immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement.** If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Section 1208.a(5)(j)(i) for years of participation less than 10, if required) with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table for the annuity starting date as defined in Section 1202.b(3) (and expressing the participant's age based on completed calendar months as of the annuity starting date).

b. **Plan has immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement.** If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the participant's annuity starting date is the lesser of the limitation determined under Section 1208.a(5)(j)(ii)a2a. and the defined benefit dollar limitation (adjusted under Section 1208.a(5)(j)(i) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this Section 1208.a.

3. This Section 1208.a(5)(j)(ii)a shall not apply to disability benefit paid in accordance with Section 1204.f or to benefits payable under Section IV.

a. **Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65.**

1. **Limitation years beginning before July 1, 2007.** If the annuity starting date for the participant's benefit is after age 65 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Section 1208.a(5)(j)(i) for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate and the mortality table (or other tabular factor) specified in Section 1202.b(2) for a late retirement benefit; or (2) a 5% interest rate assumption and the applicable mortality table as defined in Section 1202.b(3).

2. **Limitation years after July 1, 2007.**

a. **Plan does not have immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement.** If the annuity starting date for the participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Section 1208.a(5)(j)(i) for years of participation less than 10, if required), with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table for that annuity starting date as defined in Section 1202.b(3) (and expressing the participant's age based on completed calendar months as of the annuity starting date).

b. **Plan has immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement.** If the annuity starting date for the participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the participant's annuity starting date is the lesser of the limitation determined under Section 1208.a(5)(j)(ii)b.2. and the defined benefit dollar limitation (adjusted under Section 1208.a(5)(j)(i) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this Section 1208.a. For this purpose, the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date is the annual amount of such annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical participant who is age 65 and has the same accrued benefit as the participant.

3. Notwithstanding the other requirements of this Section 1208.a(5)(j)(ii), no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a participant's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the participant prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon a participant's death if the plan does not charge participants for providing a qualified preretirement survivor annuity upon the participant's death.

(iii) **Minimum Benefit Permitted.** Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a participant under this plan shall be deemed not to exceed the maximum permissible benefit if:

a. The retirement benefits payable for a plan year under any form of benefit with respect to such participant under this plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by the employer do not exceed $10,000 multiplied by a fraction: (1) the numerator of which is the participant's number of years (or parts thereof, but not less than one year) of benefit service (not to exceed 10) with the employer; and (2) the denominator of which is 10; and

b. The employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the participant participated. For this purpose, mandatory employee contributions shall not be considered a separate defined contribution plan maintained by the employer. Similarly, individual medical accounts under IRC section 401(h) and accounts for postretirement medical benefits established under IRC section 419A(d)(1) shall not be considered a separate defined contribution plan.

(k) **Year of Participation.** For the purpose of this Section 1208.a, a participant shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) the participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, and (2) the participant is included as a participant under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the participant shall equal the amount of benefit accrual service credited to the participant for such accrual computation period. A participant who is permanently and totally disabled within the meaning of IRC section 415(c)(3)(C)(i) for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a participant to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event will more than one year of participation be credited for any 12-month period.

(l) **Annuity Starting Date.** The first day of the first period for which an amount is paid as an annuity or in any other form.

b. <u>Distribution Requirements</u>. The requirements of this Section 1208.b shall apply to any distribution of a participant's interest. With respect to distributions under the plan made on or after January 1, 2005 for calendar years beginning on or after January 1, 2005, the plan will apply the minimum distribution requirements of IRC section 401(a)(9) as set forth in this

Section 1208.b. Distributions made prior to January 1, 2005 are subject to the provisions of the plan as in effect before this amendment and restatement of the plan.

(1) **Time and Manner of Distribution.**

(a) **Required Beginning Date.** The entire interest of a participant must be distributed or begin to be distributed no later than the participant's required beginning date.

(b) **Limits on Distribution Periods.** As of the first distribution calendar year, distributions to a participant, if not made in a single-sum, may only be made over one of the following periods (or a combination thereof):

(i) the life of the participant,
(ii) the joint lives of the participant and a designated beneficiary,
(iii) a period certain not extending beyond the life expectancy of the participant, or
(iv) a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary.

(c) **Death of Participant Before Distributions Begin.** If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later. If this plan provides in Section IV for a lump sum death benefit and the surviving spouse so elects, the participant's entire interest will be distributed to such designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(ii) If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died. If this plan provides in Section IV for a lump sum death benefit and the designated beneficiary so elects, the participant's entire interest will be distributed to such designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(iii) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death or if a lump sum death benefit is otherwise payable, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(iv) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this Section 1208.b(1)(c), other than Section 1208.b(1)(c)(iii), will apply as if the surviving spouse were the participant if this plan otherwise provides for the payment of a death benefit.

For purposes of this Section 1208.b(1)(c) and Section 1208.b(4), distributions are considered to begin on the participant's required beginning date (or, if Section 1208.b(1)(c)(iv) applies, the date distributions are required to begin to the surviving spouse under Section 1208.b(1)(c)(i)). If annuity payments irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 1208.b(1)(c)(i)), the date distributions are considered to begin is the date distributions actually commence.

If the deceased designated beneficiary is not the participant's surviving spouse, distribution shall be completed by the December 31 of the fifth year following the participant's date of death. If the deceased designated beneficiary is the participant's surviving spouse, distribution shall be completed by the December 31 of the fifth year following the beneficiary's date of death.

(d) **Forms of Distribution.** Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Section 1208.b(2), (3), and (4). If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of IRC section 401(a)(9) and Regulation section 1.401(a)(9)-6.

Any part of the participant's interest that is in the form of an individual account shall be distributed in a manner satisfying the requirements of IRC section 401(a)(9) and the regulations thereunder. To the extent the participant has accumulated contributions containing after-tax contributions for which there is separate accounting; such funds shall be distributed first before any taxable distribution is made to satisfy the minimum distribution requirement.

(2) **Determination of Amount to Be Distributed Each Year.**

(a) **General Annuity Requirements** – If the participant's interest is to be paid in the form of annuity distributions under the plan, payments under the annuity shall satisfy the following requirements:

(i) The annuity distribution must be paid in periodic payments made at intervals not longer than one year;

(ii) The distribution period must be over a life (or lives) or over a period certain not longer than the period described in Section 1208.b(3) or (4);

(iii) Once payments have begun over a period certain, the period certain may only be changed as permitted under Regulation section 1.401(a)(9)-6, A-13;

(iv) Payments must either be nonincreasing or increase only as follows:

a. by an annual percentage that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

b. to the extent of the reduction to 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 described in Section 1208.c(3) dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of IRC section 414(p);

c. to provide cash refunds of employee contributions upon the participant's death;

d. to pay increased benefits that result from a plan amendment; or

e. to the extent increases are permitted in accordance with Regulation section 1.401(a)(9)-6, A-14(c) or (d).

(b) **Amount Required to be Distributed by Required Beginning Date.**

(i) The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under Section 1208.b(1)(c)(i) or (ii)) shall be the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

(ii) In the case of a lump sum distribution of the participant's accrued benefit on or before the participant's required beginning date, the minimum required distribution shall be determined by expressing the participant's benefit as a pension payable in the normal form of payment with an annuity starting date as of the first day of the distribution calendar year and multiplying the monthly benefit by 12. If the distribution is being made before the April 1

required beginning date but in such year, both the first and second years required minimum distribution shall be determined and shall not be eligible for rollover.

(c) **Additional Accruals After First Distribution Calendar Year.** Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(3) **Requirements For Annuity Distributions That Commence During Participant's Lifetime.**

(a) **Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse.** If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Regulation section 1.401(a)(9)-6, A-2(c)(2), in the manner described in A-2(c)(1) to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(b) **Period Certain Annuities.** Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Regulation section 1.401(a)(9)-9, A-2 for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Regulation section 1.401(a)(9)-9, A-2 plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this Section 1208.b(3)(a), or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Regulation section 1.401(a)(9)-9, A-3, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(4) **Requirements For Minimum Distributions After the Participant’s Death.**

(a) **Death After Distributions Begin.** If the participant dies after distribution of his interest has begun in the form of an annuity meeting the requirements of this Section 1208.b, the remaining portion of such interest will continue to be distributed over the remaining period over which distributions have commenced.

(b) **Death Before Distributions Begin.**

(i) **Participant Survived by Designated Beneficiary.** If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in Section 1208.b(1)(c)(i) or (ii), over the life of the designated beneficiary or over a period certain not exceeding:

a. Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

b. If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(ii) **No Designated Beneficiary.** If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(iii) **Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.** If the participant dies before the date distribution of his interest begins, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 1208.b(4) will apply as if the surviving spouse were the participant, except that the time by which distributions must begin will be determined without regard to Section 1208.b(1)(c)(i).

(5) **Definitions (IRC Section 401(a)(9) Requirements).**

(a) **Designated Beneficiary.** The individual who is designated as the beneficiary under the plan and is the designated beneficiary under IRC section 401(a)(9) and Regulation section 1.401(a)(9)-4.

(b) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first

distribution calendar year is the calendar year immediately preceding the calendar year that contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 1208.b(1)(c) above.

(c) **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Regulation section 1.401(a)(9)-9, A-1.

(d) **Required Beginning Date.** The required beginning date of a participant is the later of: (i) the first day of April of the calendar year following the calendar year in which the participant attains age 70½ and (ii) the first day of April of the calendar year following the calendar year in which the participant retires.

(6) **TEFRA Section 242(b)(2) Elections.**

(a) This plan was originally effective prior to January 1, 1984 and permitted participants to make elections under Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) section 242(b)(2); therefore, notwithstanding the other requirements of this Section 1208.b, distribution on behalf of any employee may be made in accordance with all of the following requirements (regardless of when such distribution commences).

(i) The distribution by the plan is one which would not have disqualified such trust under IRC section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(ii) The distribution is in accordance with a method of distribution designated by the employee whose interest in the plan is being distributed or, if the employee is deceased, by a beneficiary of such employee.

(iii) Such designation was in writing, was signed by the employee or the beneficiary, and was made before January 1, 1984.

(iv) The employee had accrued a benefit under the plan as of December 31, 1983.

(v) The method of distribution designated by the employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the employee's death, the beneficiaries of the employee listed in order of priority.

A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the employee.

(b) For any distribution that commences before January 1, 1984, but continues after December 31, 1983, the employee, or the beneficiary, to whom such distribution is being made will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in Section 1208.b(6)(a)(i) and (v).

(c) If a designation is revoked any subsequent distribution must satisfy the requirements of IRC section 401(a)(9) and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed that would have been required to have been distributed to satisfy IRC section 401(a)(9) and the regulations thereunder, but for the election made under Tax Equity and Fiscal Responsibility Act of 1982 section 242(b)(2). For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Regulation section 1.401(a)(9)-8, A-14 and A-15 shall apply.

Section 1209. Administration of the Plan.

a. Fiduciary Responsibility.

(1) **Management and Control of Plan Assets.** The governing body of the employer shall designate the persons responsible for the management and control of plan assets. Such persons shall discharge their duties with respect to the plan in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the applicable provisions of the Internal Revenue Code.

(2) A fiduciary of this plan is required to exercise the judgment and care under the circumstances then prevailing that men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(3) **Allocation of Responsibility.**

(a) When the plan administrator is required to follow the directions of the trustee or the trustee is required to follow the directions of the plan administrator, they shall not be deemed to share such responsibility. Instead, the responsibility of the person giving the directions shall be deemed to be his sole responsibility and the responsibility of the person receiving directions shall be to follow those directions insofar as such instructions on their face are proper under applicable law.

(b) The plan administrator or trustee under this plan may employ one or more persons, including independent accountants, attorneys, and actuaries to render advice with regard to any responsibility such person has under the plan.

(4) **Liability and Indemnification.** Subject to Act 205, no past, present, or future officer of the employer nor of any participating employer shall be personally liable to any participant, beneficiary, or other person under any provision of the plan or trust or any insurance policy or contract issue pursuant thereto. No individual fiduciary shall be liable for any act or omission of any other fiduciary. Unless resulting from the gross negligence, willful misconduct or lack of good faith on the part of the fiduciary, the employer shall indemnify and save harmless such fiduciary from, against, for and in respect of any and all damages, losses, obligations, liabilities, liens, deficiencies, costs and expenses, including without limitation, reasonable attorney's fees and other costs and expenses incident to any suit, action, investigation, claim or proceedings suffered in connection with his acting as a fiduciary under the plan.

b. <u>Chief Administrative Officer</u>.

(1) **Appointment of Chief Administrative Officer.** The governing body of the employer shall be responsible for the administration of the plan. It shall appoint the chief administrative officer. The employer shall review at regular intervals the performance of the person appointed to be the chief administrative officer and shall re-evaluate the appointment of such chief administrative officer.

(2) **Duties and Powers of Chief Administrative Officer.** The chief administrative officer shall be the plan administrator and as such shall have the following duties and discretionary powers and such other duties and discretionary powers as relate to the administration of the plan:

(a) To determine in a non-discriminatory manner all questions relating to the eligibility of employees to become participants.

(b) To determine in a non-discriminatory manner eligibility for benefits and to determine and certify the amount and kind of benefits payable to participants.

(c) To authorize all disbursements from the fund.

(d) To appoint or employ, upon approval of the employer, any independent person to perform necessary plan functions and to assist in the fulfillment of administrative responsibilities as he deems advisable, including the retention of a third party administrator, custodian, auditor, accountant, actuary, or attorney.

(e) When appropriate, to select an insurance company and annuity contracts that, in his opinion, will best carry out the purposes of the plan.

(f) To construe and interpret any ambiguities in the plan and to make, publish, interpret, alter, amend or revoke rules for the regulation of the plan that are consistent with the terms of the plan and with the applicable provisions of the Internal Revenue Code.

(g) To prepare and distribute, in such manner as determined to be appropriate, information explaining the plan.

(3) **Miscellaneous Provisions.**

(a) **Expenses.** The chief administrative officer shall serve without compensation for service as such. All reasonable expenses of the chief administrative officer shall be paid by the plan.

(b) **Examination of Records.** The chief administrative officer shall make available to any participant for examination during business hours such of the plan records as pertain only to the participant involved.

(c) **Information to the Chief Administrative Officer.** To enable the chief administrative officer to perform the administrative functions, the employer shall supply full and timely information to the chief administrative officer on all participants as the chief administrative officer may require.

c. <u>Claims Procedure</u>.

(1) **Notification of Claim Determination.** The chief administrative officer shall notify each participant in writing of his determination of benefits. If the chief administrative officer denies any benefit, such written denial shall include:

- The specific reasons for denial;
- Reference to provisions on which the denial is based;
- A description of and reason for any additional information needed to process the claim; and

- An explanation of the claims procedure.

(2) **Appeal.** The participant or his duly authorized representative may:

- Request a review of the participant's case in writing to the employer;
- Review pertinent documents;
- Submit issues and comments in writing.

The written request for review must be submitted no later than 60 days after receiving written notification of denial of benefits.

(3) **Review**. The employer must render a decision no later than 60 days after receiving the written request for review, unless circumstances make it impossible to do so; but in no event shall the decision be rendered later than 120 days after the request for review is received.

(4) **Limitation on Time Period for Litigation of a Benefit Claim.** Following receipt of the written rendering of the employer's decision under Section 1209.c(3), the participant shall have 365 days in which to file suit in the appropriate court. Thereafter, the right to contest the decision shall be waived.

d. <u>Trust Fund</u>.

(1) **Creation and Maintenance of the Fund**. The trust fund shall be created and maintained in the following manner:

(a) All funds on deposit and held for pension or retirement benefits of the participants shall continue to be part of the trust fund created and maintained hereby subject to any liabilities that may exist against such fund.

(b) The employer shall allocate to the fund the payments made by the Treasurer of the Commonwealth of Pennsylvania from monies received from taxes paid upon premiums by foreign casualty insurance companies and foreign fire insurance companies pursuant to the General Municipal Pension System State Aid Program.

(c) The employer shall also allocate to the fund any mandatory employee contributions received in accordance with the plan.

(d) The fund shall accept and maintain any payments made by other gifts, grants, devises, or bequests to the fund.

(e) The employer shall contribute to the fund such other payments as may, from time to time, be authorized to be made from the general revenue of the employer.

All such payments received shall be part of the trust fund and shall not be applied to any other account or disbursed in any manner except as provided by this plan. Payments required under the plan shall be a charge only upon the trust fund and not upon other monies or funds of the employer.

(2) **Appointment of Trustee.** The employer, or its delegee, shall appoint a trustee for the proper care and custody of all funds, securities and other properties in the trust, and for investment of plan assets (or for execution of such orders as it receives from an investment manager appointed for investment of plan assets). The duties and powers of the trustee shall be set forth in a trust agreement executed by the employer, that is incorporated herein by reference. The employer shall review at regular intervals the performance of the trustee and shall re-evaluate the appointment of such trustee. After the employer has appointed the trustee and has received a written notice of acceptance of its responsibility, the responsibility with respect to the proper care and custody of plan assets shall be considered as the responsibility of the trustee. Unless otherwise allocated to an investment manager, the responsibility with respect to investment of plan assets shall likewise be considered as the responsibility of the trustee.

(3) **Appointment of Corporate Custodian.** The employer, or its delegee, may appoint a corporate custodian to hold and invest the fund. The corporate custodian shall carry out its responsibilities in accordance with the terms of the custodial agreement and the investment policy and guidance as the employer shall, from time to time provide. The employer shall review at regular intervals no less frequently than annually, the performance of such corporate custodian and shall re-evaluate the appointment of such corporate custodian.

(4) **Appointment of Investment Manager.** The employer, or its delegee, may appoint an investment manager who is other than the trustee, which investment manager may be a bank or an investment advisor registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940. Such investment manager, if appointed, shall have sole discretion in the investment of plan assets, subject to the funding policy. The employer shall review at regular intervals no less frequently than annually, the performance of such investment manager and shall re-evaluate the appointment of such investment manager. After the employer has appointed an investment manager and has received a written notice of acceptance of his responsibility, the responsibility with respect to investment of plan assets shall be considered as the responsibility of the investment manager.

(5) **Funding Policy.** The employer, or its delegee, shall determine and communicate in writing to the person responsible for investment of plan assets the funding policy for the plan. The funding policy shall set forth the plan's short-range and long-range financial needs, so that said person may coordinate the investment of plan assets with the plan's financial needs.

(6) **Valuation of the Fund.** The fund shall be valued by the trustee as of the last day of each plan year and as of any interim accounting date determined by the plan administrator.

The valuation shall be made on the basis of the current fair market value of all property in the fund.

e. Actuarial Valuation and Funding.

(1) **Actuarial Valuation.** In compliance with Act 205, the actuarial valuation report shall be prepared and filed under the supervision of the chief administrative officer of the municipality or of the association of municipalities cooperating pursuant to the Intergovernmental Cooperation Act and named as the sponsoring employer of this plan. The actuary shall perform an actuarial valuation at least biennially. Each biennial actuarial valuation report shall be made as of the beginning of such plan year and shall be prepared and certified by an approved actuary. An approved actuary means a person who has at least five years of actuarial experience with public pension plans and who is either enrolled as a member of the American Academy of Actuaries or enrolled as an actuary pursuant to ERISA.

If the employer is applying or has applied for Supplemental State Assistance pursuant to Section 603 of the Act, the actuarial valuation report shall be made annually.

(2) **Allowable Administrative Expenses.** The expenses attributable to the preparation of any actuarial valuation report or investigation required by Act 205 or any other expense that is permissible under the terms of Act 205 and that are directly associated with administering the plan shall be an allowable administrative expense payable from the assets of the trust.

(3) **Benefit Modifications.** Prior to the adoption of any benefit plan modification by the employer, the chief administrative officer of the plan shall provide to the employer a cost estimate of the proposed benefit plan modification prepared by an approved actuary. Such estimate shall disclose to the employer the impact of the proposed benefit plan modification on the future financial requirements of the plan and the future minimum obligation of the employer with respect to the plan.

Section 1210. Amendment and Termination of Plan.

a. Right to Discontinue and Amend. It is the expectation of the employer that it will continue this plan indefinitely and make the payments of its contributions hereunder, but the continuance of the plan is not assumed as a contractual obligation of the employer and the right is reserved by the employer, at any time, to reduce, suspend, or discontinue its contributions hereunder.

b. Amendments. Except as herein limited, the employer shall have the right to amend this plan at any time to any extent that it may deem advisable. Such amendment shall be stated in writing and shall be by ordinance or resolution of the governing body of the employer. The employer's right to amend the plan shall be limited as follows:

(1) No amendment shall be adopted in violation of the laws of the Commonwealth of Pennsylvania.

(2) No amendments shall have the effect of vesting in the employer any interest in or control over any contracts issued pursuant hereto or any other property in the fund.

(3) No amendment to the vesting schedule adopted by the employer hereunder shall deprive a participant of his vested portion of his employer-derived accrued benefit to the date of such amendment.

c. Protection of Benefits in Case of Plan Merger. In the event of a merger or consolidation with, or transfer of assets or liabilities to any other plan, each participant will receive a benefit immediately after such merger, consolidation or transfer (if the plan then terminated) that is at least equal to the benefit the participant was entitled to immediately before such merger, consolidation or transfer (if the plan had terminated).

d. Termination of Plan.

(1) **When Plan Terminates.** This plan shall terminate upon the legal dissolution of the employer or the termination of the plan by the amendment action of the employer. Subject to the provisions of the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, Act 205 of 1984) governing financially distressed municipalities, the liability of the employer to make contributions to the plan shall automatically terminate upon liquidation or dissolution of the employer, upon its adjudication as bankrupt, or upon the making of a general assignment for the benefit of its creditors.

(2) **Allocation of Assets.** Upon termination or partial termination, the accrued benefit of each affected participant who is an active participant or who is not an active participant but has not incurred a one-year break in service shall be 100% vested and nonforfeitable; however, no participant or other individual shall have recourse towards the satisfaction of any benefit accrued under the plan other than from the fund. The amount of the fund assets shall be allocated to participants and beneficiaries subject to provisions for expenses of administration of liquidation. The allocation of assets shall be in accordance with the following (to the extent assets are sufficient).

(a) There shall be allocated an amount equal to that portion of each individual's accrued benefit that is derived from the participant's voluntary contributions.

(b) There shall be allocated an amount equal to that portion of each individual's accrued benefit that is derived from the participant's mandatory contributions.

(c) (i) There shall be allocated amounts sufficient to provide the pension of each participant or beneficiary who was receiving such a benefit three years before the date of termination.

(ii) There shall likewise be allocated amounts sufficient to provide the normal form of pension for each participant who was eligible to retire three years before the date of termination but had not done so.

In both cases, the benefits shall be based upon the plan provisions in effect during the five years before the date of termination under which such benefits would be the least.

(d) There shall be allocated amounts sufficient to provide all vested benefits due participants.

(e) There shall be allocated amounts sufficient to provide all other benefits of the plan.

If assets are insufficient to provide all benefits within any one of the above paragraphs (1) through (5), they shall be allocated pro rata among the participants or beneficiaries within that paragraph on the basis of the present value of such benefits.

The allocation of assets, when determined by the actuary, may be implemented through the continuation of the existing fund or through the purchase of insurance company annuity contracts, or by a combination of these media. If the allocations produce a lump sum actuarial value of less than $5,000 for any participant, such participant may be paid, in lieu of a pension, a lump sum in satisfaction of his full interest in the plan.

(3) **Remaining Fund Balance.** Notwithstanding any provision in this plan to the contrary, upon the termination of the plan, but only after all liabilities to the participants and their respective beneficiaries have been satisfied, the employer shall be entitled to any balance of the net assets of the fund that shall remain by reason of erroneous actuarial computations or overpayments during the life of the plan.

However, if any assets of the plan attributable to employee contributions remain after satisfaction of all liabilities described in Section 1210.d(2), such remaining assets shall be equitably distributed to the participants who made such contributions or their beneficiaries (including alternate payees). For this purpose, the portion of the remaining assets that are attributable to employee contributions shall be an amount equal to the product derived by multiplying the market value of the total remaining assets, by a fraction – (i) the numerator of which is the present value of all portions of the accrued benefits with respect to participants that are derived from participants' mandatory contributions, and (ii) the denominator of which is present value of all benefits with respect to which assets are allocated under items (2) through (7) of Section 1210.d(2). A participant for this purpose shall include an individual who has received,

during the 3-year period ending with the termination date, a distribution from the plan of such individual's entire nonforfeitable benefit in the form of a single sum distribution or in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit, if all or part of the nonforfeitable benefit with respect to such person is or was attributable to a participant's mandatory contributions.

Section 1211. Miscellaneous Provisions.

a. Exclusive Benefit - Non-Reversion. The plan is created for the exclusive benefit of the employees of the employer and shall be interpreted in a manner consistent with its being a qualified plan as defined in IRC section 401(a). The corpus or income of the trust may not be diverted to or used for other than the exclusive benefit of the participants or their beneficiaries. Notwithstanding the above, any contribution made by the employer because of a mistake of fact must be returned to the employer within one year of the contribution. Further, a reversion to the employer is permissible upon plan termination in accordance with Section 1210.d(3).

b. Inalienability of Benefits. No benefit or interest available hereunder including any annuity contract distributed herefrom shall be subject to assignment or alienation, either voluntarily or involuntarily. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, unless such order is determined to be an acceptable domestic relations order as defined in IRC section 414(p), or any domestic relations order entered before January 1, 1985.

c. Employer-Employee Relationship. This plan is not to be construed as creating or changing any contract of employment between the employer and its employees, and the employer retains the right to deal with its employees in the same manner as though this plan had not been created.

d. Binding Agreement. This plan shall be binding on the heirs, executors, administrators, successors and assigns as such terms may be applicable to any or all parties hereto, and on any participants, present or future.

e. Inconsistency or Conflict of Prior Ordinances or Resolutions. Any ordinance or resolution with an effective date prior to the adoption date of this amendment and restatement of the plan shall be of no effect.

f. Separability. If any provision of this plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof and this plan shall be construed and enforced as if such provision had not been included.

g. Construction. The plan shall be construed in accordance with the laws of the Commonwealth of Pennsylvania and with the applicable portions of the Internal Revenue Code.

h. <u>Copies of Plan</u>. This plan may be executed in any number of counterparts, each of which shall be deemed as an original, and said counterparts shall constitute but one and the same instrument that may be sufficiently evidenced by any one counterpart.

i. <u>Interpretation</u>. Wherever appropriate, words used in this plan in the singular may include the plural or the plural may be read as singular, and the masculine may include the feminine.

APPENDIX E

ACTUARIAL EQUIVALENCE FACTORS FOR EARLY RETIREMENT

Number of Years Before Normal Retirement Date*	Early Retirement Factor
1	.9700
2	.9400
3	.9100
4	.8800
5	.8500
6	.8200
7	.7900
8	.7600
9	.7300
10	.7000

*Interpolate for partial years

APPENDIX O

ACTUARIAL EQUIVALENCE FACTORS FOR MONTHLY PENSION OPTIONS

(Normal Form – 10 C&C)

Participant Retirement Age (NBD)	Life Only	5 C&C	15 C&C	J&50%S	J&66-2/3%S	J&75%S	J&100%S
70+	1.130	1.080	.9000	1.0150	.9833	.9675	.9200
69	1.120	1.075	.9060	1.0100	.9783	.9625	.9160
68	1.110	1.070	.9120	1.0050	.9733	.9575	.9120
67	1.100	1.065	.9180	1.0000	.9683	.9525	.9080
66	1.090	1.060	.9240	.9950	.9633	.9475	.9040
65	1.080	1.055	.9300	.9900	.9583	.9425	.9000
64	1.075	1.050	.9340	.9850	.9533	.9375	.9000
63	1.070	1.045	.9380	.9800	.9483	.9325	.9000
62	1.065	1.040	.9420	.9750	.9433	.9325	.9000
61	1.060	1.035	.9460	.9700	.9433	.9325	.9000
60	1.055	1.030	.9500	.9650	.9433	.9325	.9000
59	1.050	1.025	.9540	.9650	.9433	.9325	.9000
58	1.045	1.020	.9580	.9650	.9433	.9325	.9000
57	1.040	1.020	.9620	.9650	.9433	.9325	.9000
56	1.035	1.020	.9660	.9650	.9433	.9325	.9000
55 or younger	1.030	1.020	.9700	.9650	.9433	.9325	.9000

Adjustment to J&S for age difference between Participant and Survivor annuitants:

.0050	.0050	.0060	.0075

Add for each whole year by which Survivor annuitant is older than Participant annuitant. Subtract for each whole year by which Survivor annuitant is younger—up to a maximum of 30 years. If Survivor is more than 30 years younger, actuarial equivalence shall be determined on the basis of the mortality table and interest rate assumptions as specified in Section 1103.b(2).

Maximum Factor	1.130	1.080	.9700	1.0400	1.0183	1.0075	.9750