

POLICIES AND PROCEDURES

Pension Benefits Committee

The following procedures have been approved by the Houston Firefighters' Relief and Retirement Fund Board of Trustees. The Board reserves the right to amend and add to these procedures. Amendments and additions to the Policies and Procedures Manual will be printed in the monthly minutes of the Board meetings. For the most current procedures, please contact the Fund office.

Board and Committee Procedures

14.00 Pension Benefits Committee

- 14.01 The Pensions Benefits Committee is delegated the authority by the Board of Trustees to act upon all applications, requests and/or matters regarding the granting, continuation, or discontinuation of pension benefits and of entrance or re-admission into the Fund; to review and act upon all applications for service, disability, and deferred retirements, including those service retirements represented by applications for participation in the Deferred Retirement Option Plan (DROP); and to receive and consider any and all accompanying documents, reports, or addenda thereto. Unless otherwise appealed under Section IV, 5.10 of these procedures, such actions of this Committee shall be final and noted at the next regular Board meeting.
- 14.02 The Pensions Benefits Committee shall, at least annually, review recommendations made by staff regarding the disability rolls. The Committee may, at any time, compel benefit recipients to undergo, at the Fund's expense, a physical examination to certify that the recipient is still disabled, and the level of disability or extent of such disability. The Committee may further make recommendations to the Board regarding the suspension, termination, or reduction of any recipient's benefit.
- 14.03 The Pension Benefits Committee shall review the employment activities and earnings reports filed annually by Section 6(c) disability retirees and beneficiaries who are eligible for survivor benefits because of their status as disabled individuals. The Committee may recommend to the Board that a recipient's benefits be suspended, reduced, or terminated on the basis of the report or on the basis of the recipient's failure to timely file such reports.
- 14.04 The Executive Director shall approve a report containing majority recommendations of the Pension Benefits Committee. This report shall be further approved by the Committee Chair before presentation to the full Board for its consideration and record.
- 14.05 The seven (7) Trustees comprising the Pension Benefits Committee shall be as follows: those Trustees described in Section 2(c) of the Statute as holding Positions I, II, III, IV, V, the Trustee holding the position described in Subsection 2(b) (4) of the Statute and one of the Trustees serving under Subsection 2(b) (5) of the Statute, which Trustee shall be appointed to the Committee by the Board Chair. A vacancy on the Pension Benefits Committee in any of positions I through V or the position described in Subsection 2(b)(4) of the Statute shall be filled when a Trustee succeeds to such position to fill the vacancy.
- 14.06 Any periodic reports from staff to the Committee which do not require any Board action may be listed together as sub-items under one agenda item and collectively noted by the Committee Chair for the Committee as received by the Committee, and there not need be separate discussion on such

items unless requested of the Committee Chair by a Committee Member, the Executive Director or the Chief Legal Officer, either prior to or during the meeting.

14.07 The following items, requiring a Committee action but which generally may be considered routine in nature may be approved collectively with a single motion and vote and for such purpose may be placed on a "Consent Agenda" within the regular agenda for a Committee meeting required to be posted under the Texas Open Meetings Act. For items on the Consent Agenda there need not be separate discussion and voting on such items unless requested by a Trustee, the Executive Director or the Chief Legal Officer or if required by applicable law. Upon such request to the Committee Chair or other presiding officer at the Committee meeting by one of the aforementioned persons whether prior to or during the meeting any such item shall not be voted upon as part of the Consent Agenda and instead shall be considered in the same manner as an item that is not on the Consent Agenda receiving opportunity for its own discussion motion and vote:

- (a) Applications for membership into the Fund, but only if a written staff report or submission to the committee indicates that each applicant has meet all the requirements and further indicates the appropriate pension entrance date relating to the applicants.
- (b) Applications for participation (entry) in DROP and PROP, but only if a written staff report or submission to the committee indicates that each applicant has met all requirements for participation in either DROP or PROP, as applicable to each applicant.
- (c) Applications for reinstatement into the Fund, but only if a written staff report or submission to the committee indicates that all requirements have been met as to each such applicant.
- (d) Applications for prior service credit, but only if a written staff report or submission to the committee indicates that all requirements have met as to each such applicant.

1.00 **Membership** - (Reference to Section 13 of the Statute)

1.01 All firefighters, as a condition of membership in the Fund, shall make an election on a form provided by the Board as to whether they elect to transfer under the provisions of Section 16 of the Statute, forfeit all credit from the system from which they transferred, or whether the provisions do not apply to them.

1.02 "Active Service" shall generally mean service as a full-time, fully paid, active, classified member of the Houston Fire Department. In computing the time or period for retirement for length of service, any time served in the armed forces of the nation during war or national emergency shall be construed as continuous service. (For additional information on military leave, see Section 17.00 of this policy.) Except for the military service described above, credit for prior service shall be given only if a member returns to the classified service within five years from the date of termination. (Reference to Section 11 of the Statute)

1.03 Contributions for members on leave pursuant to Section 1.02 shall be made by the member and the City of Houston during any time in which the employee is paid and shall be based on the amount paid to the member. (Reference to Section 13 of the Statute)

1.04 Contributions will not be required by the member or the City if such member is not being paid while on leave pursuant to Section 1.02.

- 2.00 **Applying for Service Retirement** - (Reference to Sections 4 and 5 of the Statute)
- 2.01 Applications for pensions must meet all requirements of the Statute and the Board of Trustees' Policies and Procedures.
- 2.02 Applications for pensions are to be submitted on approved forms to the Director of Member Services. However, a member who is entering DROP in conjunction with filing a pension application shall submit such application in accordance with Section 3.03 of this Policy.
- 2.03 Applicants may withdraw pension applications at any time before the earlier of Committee approval of the application or the date that the payment request is sent to the bank for payment. Requests to withdraw must be made in writing to the Fund.
- 2.04 For service retirements, the effective date of retirement shall be the day following the last day on the payroll of the Houston Fire Department unless the member chooses as an effective date the last day the member performs his/her duties as a firefighter.
- 2.05 Members approved for service retirement will receive a \$5,000 lump sum benefit payment as either a cash distribution, less applicable taxes, or as allowed in Section 14.00

3.00 **DROP Policies and Procedures**

3.01 Purpose

The purpose of this policy is to provide a coordinated and fully documented process for applicants to enter the Deferred Retirement Option Plan ("DROP") of the Houston Firefighters' Relief and Retirement Fund ("Fund") which system of pension benefits is set forth in the Statute. This policy is intended to provide those associated with the process (the Fire Department of the City of Houston, members of the Fund, members' statutory beneficiaries, the Fund's Board of Trustees ["Board"], and the Fund's staff) with a detailed outline of the steps, time frames, and rules regarding DROP and the processing of applications for participation in DROP. Policies relating to the DROP are only applicable to those members eligible for DROP participation under Tex. Civ. Stat. 6243e.2(1).

3.02 Delegation of Authority

The Pension Benefits Committee is delegated the authority by the Board of Trustees to review and act upon DROP applications, which includes a service retirement application.

3.03 Applying for DROP

- A. A member who desires information concerning DROP, but is not yet prepared to participate in DROP may:
request a non-binding verbal estimate of the amount of his or her DROP benefit; obtain a non-binding estimate on the Fund's website; and/or schedule an appointment with the Fund to discuss DROP, during which a non-binding estimate of the amount of his or her DROP benefit can be made.
- B. A member of the Fund who desires to participate in DROP must schedule DROP counseling with the Fund ("Appointment").

- C. The appointment must be scheduled prior to a member's date of participation in DROP. Participants will be advised that in order to complete necessary requirements when applying for the DROP, that the appointment must be scheduled not later than forty-five (45) calendar days prior to the member's intended effective date of participation in DROP.
- D. Attendance at the appointment is a mandatory condition of participation in DROP. It is recommended that a participant's spouse also attend the appointment.
- E. The appointment must be scheduled during the normal business hours of the Fund.
- F. A member must bring the following items to the appointment:

- a clear and legible document providing proof of the member's age;
 - if married, a clear and legible copy of his or her marriage certificate;

- the social security number and a clear and legible copy of the birth certificate for any child under the age of twenty-three (23), as well as the social security number, copy of the birth certificate, and documentation of disability for any child whom the member believes to be disabled and potentially entitled to survivor benefits from the Fund; the social security number for any parent of the member who is financially dependent on the member. The member must also provide proof that the parent is financially dependent on the member; and a certified copy of the member's divorce decree and/or property settlement agreement, if any; and a copy of the Fund's letter on the qualified status of the Domestic Relations Order (DRO).

- G. During the appointment, staff will: inform the member of the contents of this policy and provide an overview of the DROP program including a general description of the potential tax consequences and the irrevocable nature of the DROP election. The staff will also provide an application for participation in DROP ("Application"), and the DROP beneficiary election form ("DROP Beneficiary Form"); encourage the member to seek professional tax and/or legal guidance before entering the DROP; respond to any questions the member may have concerning the contents of this policy, the Statute, the Application, and the DROP Beneficiary Form; assist the member in completing the Application should the member voluntarily choose to elect to participate in DROP; accept the DROP Beneficiary Form; and for members who have QDRO's on file with the Fund, inform the member what impact the QDRO will have on his or her monthly retirement benefit and DROP account. The member's DROP election will not cause benefit payments to an Alternate Payee to commence under any QDRO applicable to the member. A QDRO will not affect applicable contributions to the member's DROP Account. However, a QDRO may affect the amount of any distribution the participant may receive from the DROP Account, but only to the extent that the QDRO specifically awards a dollar amount or a percentage of the member's DROP Account to an Alternate Payee.
- H. A member who elects to participate in DROP must sign the Application, initial every page, and must verify in writing that he or she: understands the terms and conditions of DROP, as expressed in this policy and as set forth in Section 5 of the Statute specifically, the irrevocable nature of the participant's election to enter DROP;

- in making the DROP election, has reviewed Section 5 of the Statute and this DROP policy and fully understands the terms and conditions of the DROP program;

- has reviewed and confirms that the monthly retirement benefit reflected in the pension calculation attached to the participant's DROP Application is correct.; has been advised by the

- Fund that he or she should consider seeking advice from a professional tax advisor; and understands that by electing to participate in DROP, he or she is also electing to take a distribution of that portion of his or her benefits from the Fund payable from the participant's DROP account, in a form other than a life annuity.
- I. DROP Applications must meet all requirements of the Statute and the Fund's Policies and Procedures.
 - J. Applications must be completed and submitted to the Fund at least thirty (30) days prior to the desired effective date of DROP participation.
 - K. A member's DROP Application will be reviewed by the Pension Benefits Committee.
 - L. Applicants may withdraw DROP applications at any time before the Committee has approved the application. Requests to withdraw must be made in writing to the Committee.
 - M. After the approval of the Application, the Fund will: notify the member of the approval of the Application including:
 - (a) the exact calculation of the original benefit amounts to be credited to the member's DROP account;
 - (b) the approved date of the member's DROP Application and the date on which the member shall begin receiving monthly credits to his or her notional DROP account.
 - N. In the event that an active member has a reasonable belief in the imminent possibility of the loss of his or her life (whether by reason of a medical condition or surgery), the member who is eligible to participate in DROP (and elects to do so) may forego the period of at least 45 days between scheduling a DROP appointment with the Fund (upon acceptance by Member Services) and the member's date of participation in the DROP {as required in Section 3.03 (C) of this policy}; and/or the period of at least 30 days to complete and submit the DROP application prior to the date of DROP participation. Once the member's application is approved by the Fund, the election to enter DROP is irrevocable.

3.04 Participating in DROP

- A. The Fund will provide each DROP participant with a balance statement of his or her DROP account quarterly.
- B. The Fund will also advise the participant that he or she should consult with the appropriate Fire Department or City payroll personnel in order to make an informed decision about the advantages or disadvantages of particular dates for leaving the Houston Fire Department payroll.
- C. A member's DROP benefits will be accounted for separately by the Fund, although the member's assets will not physically be separated from other Fund assets until distribution. (Reference to Section 1(7) of the Statute) The monthly benefit and interest earnings will be credited to the notional DROP account on a monthly basis.
- D. A "DROP participant" is a DROP participant who has not yet left the Fire Department payroll. A "post-DROP participant" is a DROP participant who has left the Fire Department payroll

and participated in DROP. The DROP account of any post-DROP participant and of any DROP participant will be credited with the Fund's earnings at an annual rate equal to 65 percent of the compounded average annual return earned by the Fund over the preceding 5-year period with a minimum annual rate of 2.5% per the Statute.

- E. Applicable contributions to the member's DROP Account will not be affected by a QDRO applicable to the member.
- F. A DROP participant is still a member of the Fire Department, and as such remains eligible to vote with respect to Fund matters, including, but not limited to, the election of pension Board Members and any required vote pursuant to Section 10 of the Statute. In addition, pursuant to the Statute, any member of the Fire Department is eligible to serve on the Board of Trustees. A post-DROP participant is eligible to vote in such elections and serve as a Trustee pursuant only to Section 2 of the Statute.
- G. If a DROP participant remains in active service after the end of the participant's 13th year of DROP participation, after such 13 year period, the DROP participants monthly benefit will not be credited to the participant's DROP account. The participant will not be entitled to receive at any time, his or her monthly benefit attributed to the period of time between his or her 13th year of DROP participation and his or her termination of active service with the Fire Department. On or after July 1, 2017 a DROP participants contributions to the Fund shall not be credited to the member's DROP account, except as provided in Section 5(b-2) of the Statute.
- H. After the end of a DROP participant's 13th year of DROP, the DROP participant shall not be able to exercise a Back-DROP provision.

3.05 Terminating Active Employment

- A. Upon retirement a Distribution Form and a Special Tax Notice is provided to the member.
- B. Based on the election made by the post-DROP participant on the Distribution Election Form, a benefit equal to the member's DROP account balance will be distributed or maintained by the Fund, or partially distributed with the balance maintained by the Fund after the member terminates service with the Fire Department. (Reference to Section 5(e) and 5(f) of the Statute)
- C. If a member who participates in DROP terminates his or her employment with the Fire Department and is subsequently re-hired as a firefighter, he or she will not be entitled to a retirement pension during such period of re-hire. In addition, he or she may only re-join the Fund subject to all of the terms and conditions of his or her DROP election. This means that such re-hire will not accrue any additional pension service or compensation for retirement pension purposes and such re-hire shall be subject to the 13 year maximum participation limitation as outlined in Section 3.04.

3.06 Distributions from DROP

- A. By virtue of electing to participate in DROP, a participant is also electing to take a distribution of that portion of his or her benefits from the Fund payable from his or her DROP account in a form other than a life and survivor annuity, and a post-DROP participant's distribution options (or those of his or her eligible survivor or beneficiary, if applicable) with respect to his or her DROP account at the time of termination of employment, will be limited to the forms of distribution set forth in Section 3.06B.

- B. To the extent permissible under federal tax laws, payment of a post-DROP participant's DROP benefit can be made in the following forms: a single sum distribution of the balance in the DROP account (Reference to Section 5(e) of the Statute); or partial payments as the post-DROP participant may elect from time to time to receive, in writing, using such form or forms, and following such specific procedure or procedures, as the Fund may require. (Reference to Section 5(f) and (g) of the Statute). Such partial payments shall be subject to minimum distribution amounts as set by the Board and may be made:
- (1) up to four times a year on any Fund business day; and/or
 - (2) in recurring (i) monthly distributions; or (ii) quarterly distributions.
- C. A post-DROP participant can elect to receive his or her form of distribution by filing a completed Distribution Form with the Fund.
- D. The Fund will provide post-DROP participants with Distribution Forms upon request. From and after April 1 of the calendar year following the calendar year in which occurs the later of the post-DROP participant's attainment of age 70½ or his or her leaving the Fire Department's active service, a post-DROP participant's Distribution Form shall become irrevocable, except that a post-DROP participant may elect at any time to receive a single payment of his or her entire remaining unpaid DROP balance. (Reference to Section 5(e)-(h) of the Statute)
- E. DROP Distribution Forms will be processed by the Fund on a regular basis.
- F. No DROP benefit will be paid to a beneficiary (either statutory or designated) until such time as the Fund receives sufficient documentation of the DROP participant's death. A Death Certificate (or Pending Death Certificate) would be deemed "sufficient documentation" of a DROP participant's death. (Reference to Section 5(l) of the Statute)
- G. Pursuant to a QDRO, if an alternate payee is specifically awarded a dollar amount or a percentage of the member's DROP account, such amount or percentage will be distributed in the form specified in Subsection C above in accordance with the member's election. Any alternate payee entitled to distribution of a DROP benefit will be provided with a Tax Notice, Distribution Election Form, and Withholding Election Form (as applicable) and will be requested to complete and return the Forms prior to a distribution.
- H. Notwithstanding any other provision of this Policy, in connection with a post-DROP participant's attainment of age 70½ (or in connection with the commencement of benefits of a post-DROP participant who leaves the Fire Department's active service after his or her attainment of age 70½), the post-DROP participant must provide the Fund with a new DROP Distribution Form requesting the Required Minimum Distribution (RMD) for the calendar year (in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986). If the Fund does not receive a distribution form by December 1st, the Fund may distribute the RMD to the post-DROP participant's account or address on file with the Fund.

3.07 Beneficiary Designation for DROP Participants

- A. Should a DROP participant or post-DROP participant die before complete distribution of the member's DROP account, the member's DROP account balance may be paid to the member's eligible spouse, or retained in the Fund as outlined in Section 5(j) of the Statute. Other eligible survivors or designated beneficiaries must take a complete distribution of their DROP funds as

soon as administratively practicable after the member's date of death. A member may designate an adult child (or children) to receive DROP account balances as established in Section 5(j-1) of the Statute.

A member's parent may in some cases be an eligible survivor under Section 5(j) of the Statute, but only if the parent was dependent on the member immediately prior to the member's death. An applicant will be considered a dependent parent only if the applicant submits proof, satisfactory to the Board of Trustees, that:

the applicant is the father or mother of the member for purposes of the intestacy laws of the State of Texas, except that a father or mother by adoption must have legally adopted the member prior to the member's 18th birthday; and in the year immediately preceding the member's death, the member had claimed the applicant as a dependent on his/her federal income tax return. In the event the member did not make such claim, verification that at the time of the member's death, the member was providing at least one-half of the applicant's actual support beginning any time during the same tax year of the member's death may also be deemed sufficient proof of dependency. Support shall include, but not be limited to, the fair rental value of the applicant's dwelling (including utilities), the cost of clothing, food, medical and dental care, transportation, entertainment, and recreation.

In no instance shall DROP account balances payable after a member's death to a beneficiary other than a member's eligible spouse accrue interest or other increases after the member's date of death. *If the correctness of any person's status as a beneficiary or the amount of DROP account balance payable to a beneficiary is in question (as determined in the sole and sound discretion of the Fund's administration), whether explicitly or implicitly, due to a pending legal proceeding of which the fund has actual knowledge, then any portion of such balance to be paid to the eligible spouse that is not in dispute shall be distributed or retained per section 5(j) of the Statute. The remainder shall be held by the fund pending resolution of the issue in pending litigation and any remaining balance that has been resolved as payable to the eligible spouse shall be accorded interest up through such resolution as though the eligible spouse had elected to retain that remainder to the date of resolution as outlined in section 5(j).*

- B. A DROP participant may designate a beneficiary to receive, upon his or her death, the balance of his or her DROP account, in the event there is no eligible survivor. (Reference to Section 5 (j) of the Statute)
- C. Should a DROP participant or post-DROP participant desire to change his or her designated DROP beneficiary, the DROP participant or post-DROP participant must execute a new DROP Designation of Beneficiary Form, which will be provided, upon request, by the Fund. The effect of the DROP Designation of Beneficiary Form is to revoke all prior beneficiary designations for the DROP participant's or post-DROP participant's DROP benefits. The change in beneficiary designation will only be effective upon delivery of the new DROP Designation of Beneficiary Form to the Fund prior to the DROP participant's or post-DROP participant's death.
- D. A member should designate a contingent DROP beneficiary in the event the first DROP beneficiary dies prior to the member.
- E. Any survivor or beneficiary eligible for payment under this section must request and apply for such payment by completing forms required by the Fund in addition to providing the marriage and/or birth certificate(s) necessary to verify eligibility. No death benefit will be processed for

payment without a Death Certificate (or Pending Death Certificate) certifying the death of the member. In instances where payment is made through a trustee or to an estate, verifiable proof of trusteeship must also be provided or be on file.

3.08 DROP Distribution regarding Death or Disability

In the case of on-duty death or on-duty general disability of a participant with a DROP account, the death (100%) or disability benefit (75%) will be calculated as though the participant had not entered the DROP and will be paid to the eligible survivor(s) (in the case of on-duty death) or participant (in the case of on-duty general disability). In addition, the DROP account that had accumulated to date will be available to the eligible survivor(s) or designated beneficiaries as outlined in Section 3.07 (in the event of an on-duty-death) or participant (if member receives an on-duty general disability).

3.09 Back-DROP Provision

A DROP participant will have the option to exercise a Back-DROP provision for up to three years prior to his/her original DROP election date. The participant must have at least twenty years of pension service on the effective Back-DROP date, and this date cannot be before the inception of the DROP (September 1, 1995). The Back-DROP date may be for a period of one month to three years, but must be on the first of a month. If the Back-DROP provision is exercised, a DROP participant's initial benefit amount and entire DROP account will be re-calculated, with the DROP election date changed to the Back-DROP date. This provision of the DROP may be exercised one time only, unless you incur a catastrophic injury or illness which causes you to leave the Fire Department earlier than previously expected, and your previous election was less than 3 years. There will be a rescission period which shall be the earlier of ten business days from the date that the "Back-DROP Application" form is signed or the last date the member is on the fire department payroll. If the participant changes his/her decision during this period, he/she shall notify the Fund office in writing to cancel the Back-DROP election. This form must be received by the Fund during the rescission period in order to reverse the earlier decision.

3.10 Unused Leave Pay

For a post DROP participant the Fund shall credit to such participant's DROP account the amount of unused leave pay otherwise payable to the member and received as a contribution to the Fund from the City

4.00 **Procedures for Refund of Contributions** - (Reference to Section 8 of the Statute)

4.01 Upon proper completion of an application, a refund of a member's contributions will be issued and noted before the Pension Benefits Committee.

4.02 All members who have served in the fire department for a period of less than ten (10) years and who terminate their employment may receive a refund of their contributions without interest. If a refund pursuant to this Section 4.02, or any other distribution, is an "eligible rollover distribution" under Section 402(c)(4) of the Code and is in an amount that is more than \$1,000 and does not exceed \$5,000, and the member or survivor neither elects to have such refund transferred directly to an eligible retirement plan within the meaning of Section 14.02(B) of the Pension Benefit Policy nor to receive such distribution directly, then such amount shall be transferred to an individual retirement plan of a trustee or issuer selected by the Pension Benefits Committee and the member or survivor shall be notified in writing (either separately or as part of the notice under Section 402

(f) of the Internal Revenue Code) that the distribution may be transferred to another individual retirement account.

4.03 Refunds shall be noted in the minutes of the next regular Pension Benefits Committee meeting, following disbursement.

5.00 **Disability Definitions/Procedures** - (Reference to Section 6 of the Statute)

A. For disability benefits requested by firefighters: Members shall not be eligible for disability benefits until the documents below have been provided to the Fund. Such documents shall include, but are not limited to:

1. Fitness for duty determination, Final order of the Commission from Civil Service Commission;
2. Fitness for duty determination letter from Fire Chief to City HR Director;
3. Any additional documents as required by the Fund.

B. Under no circumstances will the member be scheduled for the Fund physician's evaluation until HFRRF receives the documents specified above.

C. Fraud: The Board may take action to reduce or discontinue the disability benefit of a member who fraudulently applies for or fraudulently receives a disability benefit.

The member shall be responsible for obtaining an examination by the physician(s) treating the member for the condition(s) relevant to completing a submitted disability application. In such examination(s), the treating physician(s) shall examine the member for purposes of rendering a medical opinion based on consideration of the specific medical questions relative to the terms of the Statute, Sections 6(b), 6(c) or 6(e) for qualification purposes.

The Fund physician(s) shall also examine the member for purposes of rendering a medical opinion based on consideration of the specific medical questions relative to the terms of the Statute, Sections 6(b), 6(c), or 6(e) for qualification purposes. The Fund physician(s) and the member's treating physician(s) shall be provided with a copy of Section 6 of the statute, which copy shall highlight the various subsections of Section 6 under which disability retirement benefits may be granted. The Fund physician(s) and the member's treating physician(s) shall also be provided with a copy of the disability policies and procedures relevant to a submitted application. In the case of an application for benefits under sections 6(b) or 6(e) of the Statute, the physicians shall be provided with a copy of the job description for the applicant's current classification or the current position in which (s)he is serving.

If the member is incapable of being examined by the treating physician(s) for purposes of rendering a medical opinion based on consideration of the specific medical questions relative to the terms of the Statute, as described above, or if the treating physician(s) declines to render or is incapable of rendering such opinions, then the member may request that the application proceed on the basis of the examination and opinion of the Fund physician(s), any opinion of the treating physician(s) and any required, supplied, or adduced medical information. The Fund may also require the member to be examined by other physicians selected by the Fund, when deemed advisable by the Fund, for the purpose of establishing a further opinion when a treating physician's opinion is lacking.

An on-duty disability can be either an "occupational" or "general" disability. Off-duty disability benefits are based only on a determination of "occupational" disability.

- (1) "Occupational" on-duty disability and off-duty disability are provided for in Sections 6(b) and 6(e) of the Statute, respectively. The Fund physician(s) and the member's treating physician(s) shall base his/her opinions of whether or not the applicant is disabled and entitled to benefits under Section 6(b) or Section 6(e) on whether or not the applicant is capable of performing the usual and customary duties of the applicant's classification or position as a firefighter. "Occupational" disability under this provision exists only if such disability is likely to be permanent and is not the direct and proximate result of a pre-existing condition.
- (2) "General" on-duty disability is provided for in Section 6(c) of the Statute.
 - (a) "General" disability under this provision exists only if such disability is likely to be permanent and is not the direct and proximate result of a preexisting condition.
 - (b) The Fund physician(s) and the member's treating physician(s) shall base his/her opinion of whether or not the applicant is disabled and entitled to benefits under Section 6(c) on whether or not the applicant is capable of performing any substantial gainful activity. An applicant is incapable of any substantial gainful activity if (s)he is unable to perform all substantial and material acts necessary to the prosecution of some gainful business or occupation. Gainful business or occupation shall be interpreted as *any* remunerative occupation, and the following must be observed in all instances:
 - (i) Remunerative occupations are not restricted to manual labor occupations, with manual labor understood as work performed chiefly through muscular exertion, with or without tools or machinery;
 - (ii) The applicant must be considered unable to earn wages on a full-time (40 or more hours per week) basis;
 - (iii) Unless prevented by the disability, the applicant must ordinarily be considered able to learn some common and widespread skills used in employment positions;
 - (iv) The applicant's inability to continue to perform fire suppression or emergency medical technician duties shall not be considered relevant; and
 - (v) The permanency of a disability includes not only the irreversibility of an injury or illness through the rest of the applicant's lifetime, but also the prognosis for future management of its effects on the applicant's capabilities as well as the permanency of current treatment(s) of the disability (e.g. – particular pain medications or current movement restrictions) or similar treatments that at the time of examination are contributing to rendering the applicant incapable of performing substantial gainful activity.
 - (c) The applicant must apply for the general on-duty disability within thirty months of a treating physician's diagnosis of an injury or illness which is the basis for the application, unless the injury or illness is medically determined to have clearly worsened or the applicant has received a more serious diagnosis of the injury or illness during such thirty months. If a subsequent examination in the applicant's medical history reveals a

worsened condition as compared to the immediately preceding examination, then that subsequent examination shall constitute the relevant point of diagnosis for purposes of fulfilling the thirty months' requirement. In order to assist the Fund with fulfillment of this provision, the date of application shall be provided to the Fund's physician(s).

- (3) Once the Committee has ruled on an initial application and granted an "occupational" disability (under Section 6(b)), unless such ruling is appealed in the manner and within the time frame provided in these procedures and the Statute, no upgrade to "general" disability (under Section 6(c)) may be granted. Similarly, no upgrade from an off-duty to an on-duty disability of any type may be granted unless such ruling is appealed in the manner and within the time frame provided in these procedures and the Statute.
- D. For survivor benefits requested by disabled survivors of members:
The examining physician shall be supplied with a copy of Section 7 of the Statute, and a copy of the following definition, which clarifies the standard to be utilized in rendering an opinion whether an individual applicant is totally disabled. An applicant shall be totally disabled if, as a result of a physical or mental illness, injury or retardation, the individual is unable to perform all substantial and material acts necessary to the prosecution of some gainful business or occupation. Gainful business or occupation is defined as being capable of earning wages on a full-time (40 or more hours per week) basis.
- E. On-duty disability benefits due to heart or lung disease or cancer for active firefighters (with at least six years of service before becoming disabled) are provided for in Sec. 6 (d) of the statute.
- (1) Members who apply for disability benefits (or survivors who apply for death benefits) under this section must apply for benefits in accordance with sections 5.01 through 5.18 of the Pension Benefits Policy. The examining physician must render an opinion on whether there is clear and convincing evidence establishing that the presumption of on-duty disability is rebutted. If the examining physician renders an opinion that clear and convincing evidence demonstrates that the heart or lung disease or cancer was not related to the member's duties as a firefighter, the member may not be eligible for disability benefits under this section. Without such an opinion of clear and convincing evidence, the member may be eligible for this benefit based on the on-duty presumption. If the member is thus eligible, the examining physician must also render an opinion on whether the disability should be considered "occupational" or "general", as set forth in section "5.00 A." of the Pension Benefits Policy.

The Pension Benefits Committee shall review the report and opinion(s) of the examining physician for compliance with the standards of this policy. If there is clear and convincing evidence that the disability was not duty related, then the Committee shall determine that the on-duty presumption is rebutted. If there is an absence of clear and convincing evidence that the disability was not duty related, then the Committee shall determine that the on-duty presumption is not rebutted.

- (2) With respect to a member who was awarded disability benefits due to heart or lung disease or cancer prior to November 1, 1999 and whose determination was thus not subject to a rebuttable presumption concerning the work relatedness of a disability, the Pension Benefits Committee is authorized to conduct a review of a member's records relating to such disability. The Pension Benefits Committee shall, based upon the review of the records, make a determination of whether or not there is clear and convincing evidence that the disability was not work related. In any case in which the Pension Benefits Committee

finds that the historical file is insufficient to make the determination, supplemental evidence of a probative nature may be adduced and accepted, as necessary or desirable, in order to help make the determination.

The Committee may employ a physician, as it determines is needed, to help it evaluate the member's records and any evidence considered.

F. For pre-May 1993 Disability Determinations under former section 6(a), below:

- (1) The Pension Benefits Committee, on behalf of the Board, shall review, on a case-by-case basis, existing benefit payments to members (and survivors of deceased members) who retired with at least 20 Years of Service under the provision of the statute in effect prior to May 1, 1993:

“6(a) Whenever a member becomes physically or mentally disabled while in or as a consequence of the performance of his duty or becomes physically or mentally disabled for any cause whatsoever after he has participated in a fund for a period of 20 years or more, the board of trustees shall, on his request, or without a request, if they determine that the member is not capable of performing the usual and customary duties of his classification or position, retire the member on a monthly disability allowance of an amount equal to 50 percent of his average monthly salary for the highest 36 months during his participation, or so much thereof as he may have served.”

- (2) The review under this Policy and Procedures Section is to determine whether the member's disability was an “on duty” disability meeting the requirements of Section 6(b) of Texas Revised Civil Statutes Article 6243e.2(1), as ruled upon favorably by the Internal Revenue Service in its January 23, 2001 Ruling. Any determination that a member's disability was an “on-duty” disability as described above will: (1) apply only on a prospective basis beginning with the date of such determination; and (2) will not result in any additional benefits becoming payable to the member.
- (3) The determination by the Pension Benefits Committee under this Policy and Procedures Section is to be made on the basis of the medical evidence and any other relevant non-testimonial evidence that was previously submitted in connection with the prior application for benefits, except that in any case in which the Committee finds that the historical file is insufficient to make the determination, supplemental evidence of a probative nature may be adduced and accepted in order to help make the determination.
- (4) The Pension Benefits Committee may employ a physician or other persons with relevant expertise, as it determines is needed, to help it evaluate the member's records and any evidence in making a determination under this Section.

5.01 Each person who makes an application for a disability pension or survivor benefit as an individual qualifying due to disability (hereinafter collectively referred to as "disability benefits") shall be provided with a copy of the current procedures applicable to Disability Benefits, a copy of the applicable checklist for disability pension applicants, and the applicable checklist for physicians submitting reports to the Chair of the Pension Benefits Committee. In addition, a member participating in DROP shall be provided with a current copy of the DROP policy and shall comply with the terms of 3.08 of such Policy.

- 5.02 Members must apply for disability pensions at the Fund's office. The process may require sixty (60) or more days from time of application to action of the Pension Benefits Committee.
- 5.03 Applicants for disability benefits are required to provide to the Fund all doctors' reports that they have pertaining to their disability. The Fund may require that applicants are also required to provide all other information and forms in their personnel file that pertain to the on-duty injury.
- 5.04 (a) Applicants will be required to sign a statement and certificate of disability specific to the type of disability claimed. Furthermore, all applicants, and those disabled retirees and disabled survivors under current review (sometimes hereinafter referred to as "recipients") shall be required to sign a standard form that authorizes the release to the Board of medical and insurance records from any source and a release to discuss medical and insurance records in a public forum. Section 6(c) disabled retirees and disabled survivor beneficiaries who are presently eligible for survivor benefits because of their status as disabled individuals shall file with the Board, by no later than the 30th of April of each year, an annual employment activities and earnings report covering the preceding calendar year. Such report shall be filed on a form approved by the Board and made available to disability retirees and disabled beneficiaries for such purpose. (Reference to Section 9 of the Statute). The form should accompany the disabled retiree's or beneficiary's prior calendar year's federal tax return. Upon review of the submitted documents, if it is determined by the Board or Committee that the individual was employed on a full-time (40 or more hours per week) basis, or on a part-time basis, earning more in total wages during a tax year than 150% of the latest federal minimum wage for that year multiplied by a 40 hour week and a 52 week year, the individual would be sent to the Fund's physician to be re-determined as set forth in Section 5.03 of this policy.
- (b) Individuals on "general" disability or receiving benefits as a disabled survivor, must notify the Board in writing within 20 days following the date on which (s)he is capable of substantial gainful activity. A disabled individual's employment in substantial gainful activity is conclusive evidence that the individual is no longer "disabled" as defined in Section 5.00A(2) or 5.00B of these procedures.
- (Individuals on "occupational" disability (on-duty or off) must notify the Board in writing within 20 days following the date on which they are no longer "disabled" as defined in 5.00A(1) of these procedures.)
- (c) The Fund staff may inquire, investigate, or conduct research as to the work status and work activities of any member receiving a disability retirement, without prior consent of, or notice to the member, including, as appropriate in the sole discretion of the Fund, retaining a professional investigator for the purpose of such inquiry, investigation, or research.
- (d) By December 31st of each calendar year the Fund shall randomly select five (5) disability benefit recipients under the age of 65 for re-evaluation of such benefit to the extent allowed under the Statute. Such randomly chosen disability benefit recipients shall not include (i) any recipient who had originally been awarded a disability benefit within the preceding two calendar years, or (ii) any recipient who had been chosen for re-evaluation within the preceding two calendar years. Notwithstanding the foregoing, nothing in this policy shall deprive the Board of its authority under section 9 of the Statute to require a disability benefit recipient to undergo a reexamination at any time.
- 5.05 In the event a "general" disability retiree is gainfully employed, such retiree shall be obligated to refund to the Fund the difference between benefits received under a "general" disability and benefits to which (s)he was actually entitled (if any) under the Statute, from the date of such employment.

Likewise, a beneficiary who is eligible for survivor benefits by virtue of his/her disability and who is gainfully employed, shall be obligated to refund to the Fund, all survivor benefits received from the date of such employment. (Reference to Section 9 of the Statute)

- 5.06 Applicants and benefit recipients under review will be sent, at the Fund's expense, for examination by the Board's physician.
- 5.07 Notwithstanding any statement or inference to the contrary in the Policy, Section 5, the Board's physician's report and opinion and all information that has been submitted will be considered by the Pension Benefits Committee along with staff recommendations(s) regarding the nature and the extent of the disability and the need for follow-up re-examination(s).
- 5.08 The Board of Trustees shall employ an advisory physician who will perform a medical examination, unless the Pension Benefits Committee determines the applicant is incapable of attending such examination, and act to review all medical information, including any reports of an examining physician and the Board's physician, regarding disability pension applicants and recipients under review whose examining physician's report conflicts with the Board's physician's report. The advisory physician will be selected jointly by the Board of Trustees' physician and the applicant's (recipient's) physician. The advisory physician will be instructed to provide the Pension Benefits Committee a definitive written recommendation as to whether it is his/her professional opinion that the doctor's reports suggest the applicant (recipient) is occupationally disabled, generally disabled, or not disabled as those terms are used in these procedures. (Reference to Section 3(b) (5) of the Statute).
- 5.09 Based on the Board's physician and/or the advisory physician's judgment, recommendations of staff and all relevant information contained in the applicant's (or recipient's) file including, but not limited to, the medical entrance examination and any medical history, and if applicable, the applicant's (recipient's) annual employment activities and earnings report, the Pension Benefits Committee is delegated the authority by the Board of Trustees to determine and act upon whether the applicant or recipient is disabled under the applicable sections of these procedures and the Statute. A member who has applied for disability benefits shall not be eligible for such benefits if the member has not completed the process for disability applicants 180 days from the later of:
- (a) December 13, 2016; or
 - (b) the date of the Final Order from the Civil Service Commission separating the member from active duty.

The 180 days may be extended by the Pension Benefits Committee for intervals of 90 days if the Pension Benefits Committee determines that the extension is warranted because extenuating circumstances apply. A member who is ineligible for disability benefits as described in this subsection shall automatically be granted, if eligible, a service retirement, subject to any proper and timely appeals allowed, and so long as all other requirements of the Statute, relevant policies, and forms for such retirement have been met.

- 5.10 If the Pension Benefits Committee acts so as to deny the application for disability benefits, grant a lesser benefit, or reduce or eliminate a previously awarded disability benefit, the applicant, disability retiree, or disabled beneficiary (whichever is applicable) shall be so notified by certified mail, and shall have ten (10) calendar days from the date of receipt to request, in writing, an appeal before the Board of Trustees.

- 5.11 At any time after a determination by the Pension Benefits Committee, but prior to a determination by the Board on an appeal to the Board, an applicant may re-apply and submit additional information which was not previously presented to the Pension Benefits Committee for consideration. A noticed appeal to the Board may be abated for the purpose of permitting a re-application with additional information. If an applicant re-applies, but additional information is not provided to the Committee, the Pension Benefits Committee will affirm its prior determination. If additional information is submitted to the Committee, it shall consider this and all prior information. Upon any appeal to the Board, however the Board shall consider only such information as was provided to the Committee.
- 5.12 Written documentation of any such appeal shall be kept of all relative discussion and action, exclusive of appropriate Executive Session.
- 5.13 The Board may affirm, reverse, or amend the subject action of the Pension Benefits Committee.
- 5.14 In the event the Board upholds the denial of an application for disability, grants a lesser benefit, or reduces or eliminates a previously granted disability benefit, the applicant, disabled retiree or disabled beneficiary, whichever is applicable, may appeal the Board's decision in the district court. All denied applicants and recipients whose disability benefits have been reduced or eliminated will be sent a letter that provides the procedures for appeal.
- 5.15 In cases where a disability benefit is granted subject to a re-examination at a future time, staff will routinely schedule the follow-up exam with the Fund physician as required and report findings and recommendations to the Pension Benefits Committee for review and action.
- 5.16 Staff will provide to the Pension Benefits Committee, no less than annually, a listing of all disability benefit recipients (or survivors) with a notation indicating re-examinations required by motion of the Board and with recommendations, if any, regarding the need and rationale for any other re-examinations that may be appropriate.
- 5.17 Signed physician(s) reports regarding disability pension applicants and individuals currently receiving disability benefits are to be submitted to the Director of Benefits for approval by the Pension Benefits Committee and/or the Board.
- 5.18 The Board's physician's reports will be available upon request to the applicant, the disability retiree, or disabled beneficiary, whichever is applicable.
- 5.19 Members approved for disability retirement will receive a \$5,000 lump sum benefit payment as either a cash distribution, less applicable taxes, or as a tax deferred rollover to another qualified plan.
- 6.00 Procedures for Death and Survivor Benefits, excluding DROP death benefits, governed by Section 3.07 of this Policy** (Reference to Section 7 of the Statute).
- 6.01 Survivor(s) eligible for payment under this section must request and apply for such payment by completing forms required by and available through the Fund in addition to providing the marriage and/or birth certificate(s) necessary to verify eligibility. No death benefit will be processed for payment without a death certificate or a Pending Death Certificate certifying the death of the member. In instances where payment is made through a trustee or to an estate, verifiable proof of trusteeship or status as appropriate representatives must also be provided or be on file.

- 6.02 A member may designate a trustee for his/her benefits by signing, before a notary, a "Testamentary Trustee" form provided by the Board. A trustee may be appointed in order to insure that the firefighters' benefits will be distributed to his/her dependent children or parents as (s)he intended.
- 6.03 If a member dies while there is no eligible beneficiary as enumerated in Section 11 of the Statute, and there is no designated beneficiary for the refund of contributions, the estate may file an application with the Board for any monies due.
- 6.04 Members entitled to a refund of contributions in accordance with statute may designate a beneficiary to receive, upon his/her death, the total contribution (s)he has made into the Fund by signing, before a notary, a "Designated Beneficiary" form approved by the Board. This Form is to be used only if there is no eligible beneficiary as enumerated in Section 7 of the Statute.
- 6.05 A member's parent may in some cases be an eligible survivor under Section 7 of the Statute, but only if the parent was dependent on the member immediately prior to the member's death. An applicant will be considered a dependent parent only if the applicant submits proof, satisfactory to the Board of Trustees, that:
- A. the applicant is the father or mother of the member for purposes of the intestacy laws of the State of Texas, except that a father or mother by adoption must have legally adopted the member prior to the member's 18th birthday, and
 - B. in the year immediately preceding the member's death, the member had claimed the applicant as a dependent on his/her federal income tax return. In the event the member did not make such claim, verification that at the time of the member's death, the member was providing at least one-half of the applicant's actual support beginning any time during the same tax year of the member's death may also be deemed sufficient proof of dependency. Support shall include, but not be limited to, the fair rental value of the applicant's dwelling (including utilities), the cost of clothing, food, medical and dental care, transportation, entertainment, and recreation. (Reference to Section 7 of the Statute)
- 6.06 Either partner in an informal marriage will be considered a spouse only in accordance with Texas Family Code, Sections 2.401 – 2.405. Proof of marriage, however, must be in the form of: (1) a declaration of marriage form that may be obtained through the clerk of court and signed as provided for in the Texas Family Code, or (2) a clear, final and non-appealable judicial declaration, issued by a Texas district court, that an informal marriage existed under Texas Family Code, Sections 2.401 – 2.405 at the time of death. The declaration of marriage form should be pre-filed (before the death of a Fund member) by the member with the Fund and any changes shall be reported to the Fund.
- 6.07 For purposes of meeting the requirement of enrollment in an accredited college or university per Section 1 (8) of the Statute concerning "eligible child", such requirement need not be met at the time of the member's death. A child of a member by birth or adoption, who ceased to meet all the enrollment requirements and thereby became ineligible, may become eligible again as long as all the criteria (under 23, unmarried, enrolled full time in accredited college or university) are re-established.
- 6.08 If a retiree or a retiree's eligible survivor dies with no eligible survivor of the retiree remaining, the monthly pension benefit that would have been distributed to the deceased retiree or eligible survivor had such retiree or eligible survivor lived shall be prorated according to the number of days of the month during which the deceased retiree or eligible survivor was alive divided by the number of

days in the month of death. The prorated amount shall be payable to the retiree's or eligible survivor's estate or to the retiree's or eligible survivor's court-approved small estate through its legal representative on application ("Application") by the estate or legal representative and distributions shall end with such pro-rated benefit distribution. No monies shall be payable under this section if the Application is not submitted to HFRRF within 180 days from the later of:

- (a) January 1st, 2018; or
- (b) the date the retiree or eligible survivor died.

Money payable under this subsection may not escheat to the state. This policy is effective as of July 1, 2009, the beginning of the current plan year, in which this policy was passed.

7.00 **Qualified Domestic Relations Order (QDRO) - Policies and Procedures**

Pursuant to Texas Government Code Ann. §804.002, the Board of Trustees of the Houston Firefighters' Relief and Retirement Fund has adopted Subchapters A and C of Chapter 804 of the Government Code, the "QDRO Statute." The Board is authorized pursuant to Texas Government Code Ann. §804.003(n) to promulgate the rules set forth herein for the purpose of implementing the QDRO Statute and to specify a procedure for determining whether or not a court order regarding distribution of a member's interest in the Houston Firefighters' Relief and Retirement Fund, is a "qualified domestic relations order." The Board of Trustees, as Plan Administrator, has designated the Director of Benefits as its Designee for purposes of receiving, reviewing, and ruling on whether a DRO is a QDRO, and for purposes of communicating such determination to the member or retiree and the alternate payees. The Designee may be changed at any time by resolution of the Board of Trustees.

Definitions:

- 7.01 A. Fund: The Houston Firefighters' Relief and Retirement Fund.
 - B. Domestic Relations Order or "DRO": is any judgment, decree, or order including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a member or retiree, and is made pursuant to a domestic relations law, including a community property law of the State of Texas or of another state.
 - C. Alternate Payee: is a spouse, former spouse, child, or dependent of a member or retiree who is recognized by a DRO as having a right to receive all or a portion of the benefits payable by the Fund with respect to such member or retiree.
 - D. Qualified Domestic Relations Order or "QDRO": is any DRO approved by the Fund which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member or retiree of the Fund, which directs the Fund to disburse benefits to the alternate payee, and which meets the requirements of Sections 7.02, 7.03, and 7.06 below.
- 7.02 In determining whether a Domestic Relations Order satisfies the requirements of a Qualified Domestic Relations Order, a DRO must satisfy all requirements of this 7.02, and must not violate the restrictions of Section 7.03. To constitute a QDRO, a DRO must:

- A. clearly provide the name, social security number, and last known mailing address, if any, of the member or retiree and each alternate payee covered by the order;
- B. specify the amount or percentage of the member's or retiree's benefits to be paid by the Fund to each alternate payee, or the manner in which such amount or percentage is to be determined;
- C. specify the number of payments or period for which payment is required;
- D. clearly provide that it applies to the Houston Firefighters' Relief and Retirement Fund;
- E. not provide for a type or form of benefit or option not provided for by the Fund;
- F. not provide for payment of increased benefits (determined actuarially);
- G. not require payment of benefits to an alternate payee which are already designated to another alternate payee under a prior QDRO;
- H. not require payment of a benefit to an alternate payee, prior to the date the participant retires, receives a refund of contributions, or receives any other distribution required by law;
- I. be signed by a Judge or incorporated as part of the decree; and
- J. provide for proportional reduction in the amount awarded in the event of the member's retirement prior to twenty (20) years of service.

7.03 A DRO is not a QDRO if:

- A. it requires selection of a particular benefit payment or option;
- B. it does not clearly provide for each possible benefit distribution from the Fund (service retirement, disability retirement, refund of contributions, and DROP Account distribution);
- C. it requires the Fund to act contrary to its governing statute, policies, and procedures;
- D. it eliminates, adds, or modifies conditions of eligibility for benefits from the Fund;
- E. it attempts to award any future benefit increases provided or required by the legislature;
- F. it does not provide for proportional reduction of the award in the event benefits available to members are reduced by law.
- G. it attempts to designate or treat the former spouse (or some other ineligible alternate payee) as an eligible survivor for purposes of entitlement to survivor benefits pursuant to Section 7 or 5(l) of the Statute.

7.04 The Fund Staff will provide a Form QDRO to each and every member or retiree who requests information on the disposition of retirement benefits in the event of divorce. The Fund Summary Plan Description will include information about QDROs and the availability of a Form QDRO. The Form is provided as a convenience to members, but members or alternate payees may submit for ruling, any DRO which meets the requirements of Sections 7.01, 7.02, and 7.03.

Procedures to Follow Upon Receipt of a Domestic Relations Order:

- 7.05A. Upon receipt of a certified copy of a DRO, the Designee will promptly notify the member or retiree and each alternate payee of its receipt of the DRO and will provide a copy of the Fund's procedures for determining whether the DRO is a QDRO.
- B. During any period in which the status of a DRO is being determined by the Designee, the Board, or a court of competent jurisdiction, the Designee shall direct that any benefits currently in pay status, and which are in dispute, be held in suspense pending resolution.
 - C. The Designee will review the DRO and complete the appropriate form to determine whether it is a QDRO. The Designee shall complete this review and rule on the qualification of the DRO within 90 days of receipt of such DRO. Notice of the Designee's ruling with respect to the status of the DRO shall be provided in writing to the member and each identified alternate payee, within 90 days following initial receipt of the DRO. Thereafter, the Designee shall compute and disburse the escrow funds, if any, and any current benefits to the person(s) entitled to such funds, unless the decision with respect to the status of the DRO is appealed in writing to the Board of Trustees by the aggrieved member or alternate payee within 45 days following receipt of the notice of ruling by the party filing the appeal.
 - D. If a participant is a retired member of the Fund and the DRO is determined not to be a QDRO, or if 18 months have expired since the Designee's receipt of the DRO, and the issue of the DRO's status as a QDRO is not resolved, then the Fund shall pay the suspended amounts without interest to the individual who would have been eligible to receive such benefits if there had been no order. A determination that such DRO is a QDRO, after the close of the 18 month period shall be applied prospectively only. If a participant is an active member of the Fund and the issue of the DRO's status as a QDRO is not resolved within 18 months, no determination will be issued on the status of that particular DRO and that submission will no longer be reviewable. A review of a subsequently submitted DRO, even if identical to the DRO previously submitted or containing changes prescribed by the Designee as to the DRO previously submitted, would be needed at a later date if the parties are re-seeking the qualification of a DRO.
 - E. An alternate payee may designate a representative to receive copies of notices sent to him/her with respect to a DRO. Any designation of a representative must be in writing and sent to the Board or the Designee.
 - F. For notice purposes, any notice shall be deemed received on the postmark date if sent properly addressed by registered or certified mail.
 - G. Alternate Payees will be treated as beneficiaries for notice and reporting requirements, which includes distribution of Summary Plan Descriptions and Summary Annual Reports.
 - H. The amounts distributed directly to Alternate Payees shall be reported accordingly by the Fund on Forms 1099-R, or such other form as may be designated by the Internal Revenue Service, from time to time.
 - I. A proposed DRO may be submitted in order to obtain advance guidance as to whether the proposed DRO will meet the QDRO requirements of the Fund. The review criteria, fees, and the timing for review shall all be as set forth for review of an actual DRO. Provided however, that if a proposed DRO is submitted for review and ruling, any ruling on the proposed DRO

shall be conditional. The DRO will not be a QDRO until (1) the Board (or Designee) receives a certified copy of the DRO accompanied by (2) a sworn statement from the submitting party that the DRO is identical to the proposed DRO for which conditional approval was previously given; and (3) the Designee issues a letter ruling on the QDRO status of such DRO. The member and all alternate payees shall receive a copy of such final ruling. A second review fee shall not be charged for issuance of a final letter, so long as the DRO is submitted for ruling within 180 days of the Designee's issuance of a conditional approval letter and the DRO is in fact identical to the conditionally approved DRO.

Responsibility to Cover Administrative Costs of Review and Payment

7.06 The administrative fee for reviewing a proposed QDRO submitted for ruling under 7.05 above shall be nonrefundable and paid in advance by the member or alternate payee who submits the DRO for review and ruling. Payment of such administrative costs does not in any manner guarantee a favorable ruling.

- A. The administrative fee for review and ruling shall be \$25 if the DRO essentially mirrors the Fund's Form QDRO provided in accordance with 7.04, and the Designee is not required by the submitting party, to review and rule on the qualified status of the DRO within a time period other than that permitted by Section 7.05 of these procedures.
- B. If the DRO essentially mirrors the Fund's Form QDRO, but the Designee is requested to review and rule on the QDRO in an expeditious manner, and the Designee does review and rule within such shorter time period, then the administrative cost for such review shall be \$50.
- C. If the DRO does not mirror the Fund's Form QDRO then the administrative cost for such review shall be \$100 with an additional fee of \$50 payable in the event that an expeditious review is requested.
- D. A fee of \$5 shall be deducted from each monthly benefit payment made to an alternate payee. This \$5 fee shall not apply to child support payments to alternate payees.
- E. The fees set forth above may be modified from time to time to reflect the administrative costs of reviewing the DROs and for making benefit payments to alternate payees.
- F. The Fund waives the administrative fee for review of a DRO if such DRO relates solely to child support obligations and such DRO is:
 - (1) submitted for review or qualification by an agency, department or commission of the State of Texas, including the Office of the Texas Attorney General, or a local Texas governmental office, including the office of a Texas district or county attorney; and
 - (2) such agency, department or commission, or local governmental office, cites to the Fund its legal authority to submit a DRO for the Fund's review or qualification.

8.00 Policy Governing Re-entry into the Fund

General Re-Entry Provisions

8.01 Each firefighter shall receive a copy of Section 8.00 and shall sign an acknowledgment as to the effect of such rules, all as a condition of such firefighter's re-entry into the Fund.

- 8.02 A candidate for re-entry into the Fund under Section 8.03 must successfully complete a thorough medical examination as a condition of the applicant's re-entry into the Fund, and must meet the medical requirements otherwise applicable for initial eligibility. A candidate for re-entry into the Fund under Section 8.03 or 8.04 is considered to have fulfilled any age qualification for re-entry, provided that the candidate had previously entered the Fund before the age of 36 in accordance with Section 13(a) of the Fund's statute

Re-Entry After Refund

- 8.03 **With Repayment:** If a firefighter wishes to re-enter the Fund after receiving a refund, and wishes to repay his or her refunded contributions, the Board requires the repayment of the member's total refunded contribution, plus interest, prior to such re-entry into the Fund. The interest shall be the actuarially assumed rate for return on investment plus two (2) percent and shall be compounded annually until the amount of repayment is remitted in full. A candidate for re-entry to the Fund wishing to repay his or her previously refunded contributions shall have one-hundred and twenty (120) calendar days to repay the aforementioned refund of contributions from the date of application for re-entry into the Fund. If the firefighter repays the refunded contributions with interest as provided above, then for purposes of computing the firefighter's benefits or benefits payable to such firefighter's beneficiaries as provided under the Statute, participation in the Fund shall include the years of service accrued prior to the date of refund of contributions, but will not include the period of time during which the firefighter was not a participant in the Fund. For purposes of this policy section re-hire into the Houston Fire Department and receipt of appropriate employer and employee contributions by the Fund shall be deemed an application to re-enter the Fund and shall start the one-hundred and twenty (120) calendar day period.
- 8.04 **Without Repayment:** If a firefighter wishes to re-enter the Fund after having received a refund of contributions, and that firefighter will not be repaying such refunded contributions as provided for in Section 8.03 above, such firefighter may nevertheless re-enter the Fund. Such firefighter, seeking to re-enter the Fund without repayment must satisfy all the eligibility requirements provided for in Section 13 of the Statute, at the time of proposed re-entry, subject to all the clarifications, restrictions and limitations set forth in in Sections 8.01 and 8.02, above, including any clarification related to age requirements. For purposes of computing such firefighter's benefit as provided under the Statute, participation in the Fund for all purposes shall be counted from the re-entry date, and all participation in the Fund accruing prior to that re-entry date, for which the firefighter previously received a refund of contributions, shall be disregarded. For purposes of this policy section re-hire into the Houston Fire Department and receipt of employee and employee contributions by the Fund shall be deemed an election by the re-hired firefighter to re-enter the Fund.

READMISSION TO THE FIRE DEPARTMENT PURSUANT TO COURT ORDER:

Re-Entry Following Commencement of Pension Payments Without DROP Participation

- 8.05 If a firefighter is reinstated or re-employed in classified service with the Fire Department following such firefighter's retirement and commencement of monthly pension payments and such firefighter has never elected to participate in the DROP, then all monthly pension payments to or on account of such firefighter shall be suspended, regardless of whether or not the firefighter is reinstated as an active member of the Fund. Furthermore, such firefighter shall have no right or interest in the amounts so suspended.

- 8.06 If a firefighter is re-employed in classified service with the Fire Department, pursuant to a Court Order, mandating re-employment by the City of Houston, such firefighter may be readmitted to the Fund, subject to the conditions and requirements set forth in Sections 8.01, and 8.05 of this policy and in accordance with rules set forth below. If the firefighter is readmitted to the Fund, then such firefighter's service benefits or benefits payable to such firefighter's beneficiaries shall be computed as follows:
- A. All pre-retirement service shall be included in computing the monthly pension benefit to which the firefighter will be entitled at the time of his/her subsequent retirement, only as set forth below.
 - B. The firefighter's final monthly pension benefit (or the survivors benefit) payable upon retirement (or death), shall be computed in two pieces, which when added together shall constitute the firefighter's monthly pension benefit at the time (s)he again retires. The first benefit piece shall be computed by applying the pre-retirement service credits to the benefit formula in effect on the firefighter's initial date of retirement. The second benefit piece shall be computed by applying the service credits earned following reinstatement to the benefit formula in effect on the firefighter's subsequent retirement date. Provided, however, that both pre-retirement and post reinstatement compensation may be considered in determining the "average monthly salary".

Re-Entry Following Commencement of Pension Payments with DROP Participation

- 8.08 If a firefighter is re-employed in classified service with the Fire Department pursuant to court order mandating re-employment following such firefighter's participation in DROP and retirement and commencement of monthly pension payments, then such firefighter's re-entry shall be strictly limited by the conditions of DROP, specifically Section 3.05C of this Policy.

RE-ADMISSION TO THE FIRE DEPARTMENT AFTER SERVICE RETIREMENT:

- 8.09 If a firefighter retired with a service or deferred pension benefit is re-employed in classified service with the Fire Department following retirement and commencement of monthly pension payments, whether such firefighter ever participated in DROP, and such re-employment is not made pursuant to a court order mandating re-employment, such firefighter shall not be reinstated as an active member of the Fund. Such firefighter shall not accrue additional service, average monthly compensation shall not be recomputed, and the applicable benefit formula shall be that formula in effect at the time that the firefighter initially terminated active membership in the Fund and active service with the Fire Department, or the DROP effective date, whichever is applicable. All monthly pension payments to or because such firefighter shall be suspended effective as of the date of re-employment, and such firefighter shall have no right or interest in the amounts so suspended. Monthly pension payments, or as applicable, survivor benefits shall recommence, when such firefighter again terminates classified service with the Fire Department.

REINSTATEMENT FROM A DISABILITY RETIREMENT:

- 8.10 If a firefighter who is receiving an on-duty or off-duty disability from the Fund obtains reemployment with the Fire Department, in order for the firefighter to be reinstated as an active Fund member it will be necessary for the Fund to determine and validate that the original incapacitating disability no longer exists and that the firefighter is able to return to full, active, and unrestricted duty. Reinstatement to Fund active membership shall result in the discontinuation of

the benefit being received. When such a reinstatement is being sought, the reinstatement shall only occur after five conditions are met:

First, the Fund must receive written notification from the Fire Department that a reemployment effort is in progress and that a Fire Department physical examination has been passed.

Second, the candidate must provide the Fund with a release from his/her personal physician stating that the applicant is able to return to work and is able to return to active duty without restriction.

Third, the candidate must sign an acknowledgement that a finding of a disability no longer being present shall result in the discontinuation of the benefit being received.

Fourth, the candidate must undergo an examination by the Fund's physician to determine whether the original incapacitating disability still exists.

Fifth, the Fund's physician will submit a report to the Pension Benefits Committee stating whether the original disability still exists and whether the firefighter has the capacity to return to work and to full, active, and unrestricted duty.

Based on the above, the Pension Benefits Committee will determine eligibility for reinstatement to the Fund.

- A. The Pension Benefits Committee will review the findings of the Fund physician's report, and all other relevant information, and shall act to continue or discontinue the disability benefit. Notification of that action will be forwarded to the Fire Department.
- B. If the Pension Benefits Committee acts so as to discontinue a benefit, it will be discontinued effective immediately. A firefighter whose benefit is so discontinued will not be re-admitted into the Fund unless and until reinstated employment with the Fire Department is actually effected.
- C. Regardless of the action taken by the Pension Benefits Committee to continue or discontinue a benefit, the candidate for reinstatement will be notified of the action by certified mail, and shall have ten (10) calendar days from the date of receipt to request, in writing, an appeal hearing before the Board of Trustees as called for in Section IV 5.10 of these procedures.

9.00 Cost of Living Adjustments (COLA) and Supplemental Payments - (Reference to Sections 11 and 10A of the Statute)

9.01 Eligible benefit payments shall be increased in October of each year in accordance with Section 11 of the Statute.

9.02 Supplemental payments to retirees or survivors pursuant to Section 10A of the Statute shall be distributed each January. The aggregate amount of \$5 million will be distributed to all eligible retirees and survivors. The amount of any such supplemental payment will be determined according to the factors and method as set forth in Section 10A of the Statute. Staff will provide the Fund's custodian bank the data necessary to process the supplemental payments as soon as practicable.

10.00 **When Checks are Processed**

- 10.01 Pensioner and beneficiary checks will be mailed three (3) business days prior to the end of the month. Monthly pension benefits credited to a member's DROP Account shall be credited as of the first of the following month.
- 10.02 Refunds of contributions will be issued approximately ten (10) days following the later of 1) the member's receipt of his/her final payroll check from The Houston Fire Department, or 2) completion of his/her application for a refund of contribution. (Reference to Section 8 of the Statute)
- 10.03 Members who are separating from the service of the Fire Department will have a "Refund of Contribution" check mailed only after the amount of contributions has been verified and the "Application for Refund" form has been properly completed. (Reference to Section 8 of the Statute)
- 10.04 "Retro/Special" checks will be issued for partial month payments or ad hoc payments as needed.

11.00 **Lost/Undelivered/Forged Checks**

- 11.01 The Fund will not take any action with respect to a lost check before the first day of the month.
- 11.02 If a member or beneficiary claims (s)he has lost a check or has not yet received his/her check, from the Fund, a stop payment order will be requested and a new check will be issued in accordance with the bank's procedures.
- 11.03 The Fund will notify the Custodian Bank of the lost check by telephone and request that a stop payment order be placed on the check. In such notification, the Fund will specify the name of the payee, the amount of the check, and the date of the check. The Fund will promptly confirm in writing the request for a stop payment order, which must be received by the Custodian Bank within fourteen (14) days of the initial phone call.
- 11.04 Unless the agreement with the Custodian Bank provides for a shorter or longer period of time to act, with respect to stop payment order, the Fund will wait two (2) full business days before sending a new check to the member or beneficiary or requesting the bank to send a new check to the member or the beneficiary. To insure that the member or beneficiary does not confuse the check on which payment has been stopped with the replacement check, the replacement check will be dated other than the last day of the month.
- 11.05 If the cause of the loss is not attributable to the Fund, its agents or the Custodian Bank, the Fund has the right to charge a member or beneficiary for any expense incurred by the Fund in causing a new check to be issued and stopping payment on the original check. The Fund's current policy is to not charge the participant a fee.
- 11.06 In the event that a claim is made against the Fund in respect to a check on which payment was stopped, the Fund will pursue an investigation of fraud. If the Fund determines it should honor the check on which payment was stopped, a new check will be issued in exchange for the old check, and the amount of such check will be withheld from future payments to the participant.
- 11.07 If a signature is forged on a member or beneficiary benefit check, the member or beneficiary will be required to sign an affidavit attesting to such forgery. The affidavit and the original check are to be returned to the Custodian Bank for assistance in returning the money to the Fund account.

12.00 **Address Changes**

- 12.01 Written requests for address changes and/or changes in insurance status for a pensioner or his/her beneficiary must be received by the Fund Office by the 10th of the month for the change to be effective that month.
- 12.02 Requests for address or insurance changes by benefit recipients must be submitted on an address change request form or an applicable insurance form.

13.00 **Deductions**

- 13.01 The Fund may deduct amounts from participants' regular monthly pension checks for any purpose required by law or deemed appropriate by the Board of Trustees, provided however, that the deduction purpose must be directly affiliated with the City of Houston, state or federal government, or HPPFA Local #341 and board approved exempt organization under 501(c) of the Internal Revenue Service Code.
- 13.02 The deduction purposes approved by the Board are as follows: federal income tax, City of Houston provided health, dental, vision, and life insurance, Local #341 sponsored supplemental life, dental, and vision insurance, Relative Assistance Fund, Hospital Fund, Houston Fire Museum membership dues and Dennis W. Holder Scholarship Fund. It is further recognized that the Fund is required by law to withhold Internal Revenue Service levies and child support through Qualified Domestic Relations Orders.

14.00 **Eligible Rollover Distributions**

- 14.01 Notwithstanding any other provision of the Fund, a distributee may elect, at any time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- 14.02 Definitions.

(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 that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; or any distribution to the extent such distribution is required under section 401(a)(9) of the Code. A portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution includable in gross income and the portion of such distribution that is not so includable.

(B) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code (in either case, commonly referred to as an "IRA") an employer sponsored plan qualified under Section 401(A) of the Code, including a qualified 401(k) plan, profit-sharing plan,

defined bonus benefit pension plan, stock bonus plan, or money purchase plan, an employer-sponsored annuity plan under Section 403(a) of the Code, a tax-sheltered annuity of a charitable or state educational employer under Section 403(b) of the Code, and an eligible deferred compensation plan of a governmental employer under Section 457(b) of the Code.

(C) Distributee: A distributee includes a Firefighter or former Firefighter. In addition, the Firefighter's or former Firefighter's surviving spouse and the Firefighter's or former Firefighter's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. A distributee following the death of the Firefighter or former Firefighter may also include a person who is not the Firefighter's or former Firefighter's surviving spouse or the Firefighter's or former Firefighter's spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Section 414(p) of the Code (i.e., a "non-spouse beneficiary"), but in such a case the term "eligible retirement plan" includes only an individual retirement account that the distributee has established for the purpose of receiving the distribution and, if the distributee is a trust, the trust must satisfy the requirements established under Section 402(c)(11)(B) of the Code.

(D) Direct rollover: A direct rollover is a payment by the Fund to the eligible retirement plan specified by the distributee.

15.00 **Plan and Limitation Years**

15.01 The Fund's "Plan Year" is the 12 consecutive month period ending June 30. The Board may change the Fund's plan year by a written amendment to the plan, in accordance with applicable Treasury regulations.

15.02 The Fund's "Limitation Year" for purposes of Section 415 of the Internal Revenue Code shall be the calendar year. The Board may change the Fund's "limitation year" by written resolution, in accordance with applicable Treasury regulations.

16.00 **Proportional Retirement Benefits**

This program went into effect on December 1, 2001.

- A. "Combined service credit" means the combined sum of an eligible participant's service credit in each participating retirement system in which the participant has service credit and for which the total satisfies the 20 year requirement for a service retirement or under 20 years for a deferred retirement, disability retirement, or proportional retirement.
- B. "Eligible participant" means a person who is employed by the city and who 1) was eligible to receive a benefit from the Fund on his/her date of termination from the Fund; 2) has been covered by a participating retirement system under their respective statutory authority, 3) is or has been a member of the Fund; and 4) was still employed by the City on or after the effective date of the proportional retirement program (December 1, 2001)."
- C. "Participating retirement system," means a retirement system established by the Statute, Article 6243g, or 6243g-4 of Vernon's Texas Civil Statutes, or a successor statute to any of those laws.

- D. "Service credit" means the number of years that a person has participated in the Fund by making contributions required by this article.
- E. For the purposes of determining eligibility for service retirement benefits only, the combined service credit will apply. However, a person may not receive credit for service in a participating retirement system for the same period of time. Participation in the Deferred Retirement Option Plan (DROP) is limited to active firefighters with 20 years of service in the Houston Firefighters' Relief and Retirement Fund.
- F. For the purpose of determining a disability retirement for eligible participants under the proportional retirement program only, when disabled in a participating retirement system, a person is entitled to an amount equal to 1.7 percent of the member's average monthly salary multiplied by the amount of the member's years of participation.
- G. For the proportional retirement program only, an eligible participant with service credit less than 10 years of participation, is entitled to an amount equal to 1.7 percent of the member's average monthly salary multiplied by the amount of the member's years of participation.
- H. Participants retiring under the proportional retirement program are only eligible for the same benefit enhancements as a deferred retirement.
- I. The Fund will verify (upon request) credited pension service for any member who was once a member of the Fund and subsequently became a member of another participating retirement system.
- J. To apply for proportional retirement benefits, a person must contact the Fund to request an Application for Proportional Retirement Benefits. This form must be completed and returned to the Fund within 60 calendar days of the date that the individual is no longer an employee of the City of Houston.
- K. Benefits are not payable under this section until the individual is no longer an employee of the City of Houston.

17.00 **Military Leave Policy**

Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

A member who is engaged in active duty in any of the military services of the United States will receive credited pension service for the period of the military service, provided he/she returns to employment with the Houston Fire Department ("HFD") with an honorable discharge within the period required by the Uniformed Services Employment and Reemployment Act of 1994 ("USERRA"), and the period of military service does not exceed the period entitled to by that Act.

A member should notify the Fund in writing prior to leaving for military service.

Upon returning to active service with the HFD, a member requesting credit for military service must provide the Fund with documentation of the period of military service and proof of his/her honorable discharge.

The notional DROP account of a member on military leave under the terms of USERRA will be continued in accordance with Section 5 of the Statute.

If a member sustains an injury while on military leave under the terms of USERRA, pension benefits will be payable based on the off-duty disability benefit provisions as described in Section 6(e) of the Statute. In the event of a member's death while on military leave under the terms of USERRA, death benefits will be payable to eligible survivors based on the off-duty death benefits described in Section 7 of the Statute.

This section is intended to be in compliance with the provisions of USERRA.

18.00 General Provisions for Determination of Benefits

18.01 Staff correction of certain calculation errors

Confirmed and obvious administrative errors pertaining to calculation of a member's benefit, that results in underpayment to the member or members beneficiaries, may be corrected at any time within four years of the time the member or his legal successor could file a claim to correct the error. These corrections will be made by the Fund administration by distributing or crediting to the member, in any appropriate portions or intervals, the full amount the member would have received but for the error. Each such correction of an error is to be reported to the Pension Benefits Committee at the earliest possible time following the correction. (Procedures regarding overpayments to benefit recipients may be found in Section 11(o) of the Statute).

18.02 Submission of all applications to the committee

Staff shall process and submit all applications for retirement (including disability retirement pensions) to the Pension Benefits Committee within a reasonable amount of time, in the normal course of business. The Committee shall accordingly determine the application status, enabling any appeal to such determination that a member may exercise under these policies and the Statute.

18.03 Revocation of prior applications

A member's submission of any retirement application, including one for a disability retirement pension, revokes all applications previously submitted by the member.

18.04 Avoiding Trustee provisions of, or reliance on, individual advice

No Trustee of the Fund may give advice to, discuss with, or comment to individual Fund members on individual retirement situations, benefits, or eligibility. Any Trustee should instead refer members to Member Services. No member may rely on any comments, directions or advice of a Trustee regarding individual issues. This policy does not apply to board or committee deliberations which may require discussion with members regarding their applications.

18.05 Member elections available for pension effective dates

The election described and available under Section 11(f) of the Fund's statute: "to receive a benefit beginning after the date the member ceases to carry out the member's regular duties as a firefighter," is construed to mean that solely for purposes of calculating the initial pension distribution, the member (or eligible survivor) shall receive the same total amount of distribution as if the member had left active service beginning the day after the member ceased to carry out

his/her regular duties as a firefighter. This election must be no later than ten business days after the date that the Pension Benefits Committee approves or notes the member's retirement application. Under no circumstances are distributions made to a member while in active service.

An election "to receive a benefit beginning after the date the member ceases to carry out the member's regular duties as a firefighter," is not intended to and does not provide an earlier retirement or change employment status and shall not be construed to have such an effect. The availability of the election is limited to members (or eligible survivors) that apply for a disability benefit or that experience an involuntary suspension or separation from active service that becomes final, as the chief purpose of the election is to address the situations of those members (or eligible survivors) who experience a period of indeterminate final status due to injury or illness or involuntary suspension or separation awaiting final resolution. Members (or eligible survivors) to whom the election is not available shall receive an initial distribution based upon the effective date of the member's termination of active service.

For purposes of this Section of this policy, "pension effective date" shall mean either the day after the date the member ceases to carry out his/her regular duties as a firefighter or the day after the effective date of the member's termination of active service, but in the case of the former, is not the date of retirement.

In the event that a Deferred Retirement Option Plan (DROP) participant has made an election to base his/her pension effective date on the day after his/her performance of firefighter duties ceased, the DROP statement will be adjusted to only reflect interest after that pension effective date. If an individual makes this election, he/she cannot make a back-DROP election during the period between the date the individual ceased to perform the duties of a firefighter, and the date the individual left active service. Back-DROP elections can only be made before the individual's pension effective date.

A member (or eligible survivor) who has made an election to receive a benefit beginning after the date the member ceases to carry out the member's regular duties as a firefighter may request to make a one-time only change to this election, and elect the day after the date of the member's termination of active service to be the pension effective date. In order to request such change, that individual has within 30 calendar days after the date the member has made the initial election to deliver to the Fund in writing, a request to change the initial election. If the 30th calendar day falls on a Fund holiday or a weekend, the Fund will accept this one-time only change election on the next Fund business day. This election is not intended to and does not change employment status and shall not be construed to have such an effect.

If pension benefits have been paid in response to an election to make the benefit effective after the member ceased to carry out his/her regular duties as a firefighter, and the member (or eligible survivor) changes his/her election in accordance with this policy section, the total sum of money paid must be returned to the Fund within 30 calendar days of the date the revocation election is made, and before any other pension benefits can be paid. This policy will be effective at the beginning of the plan year in which it was adopted, July 1, 2010, and no member (or eligible survivor) may take any action under this policy which would have effects going back prior to that date.

If the individual was a DROP participant, the DROP account will be restored with monthly benefit postings, bi-weekly employee contributions, and earnings up to the date the member leaves active service.

Nothing herein or in Section 11(f) of the Statute shall be construed to qualify the member (or eligible survivor) for a type of benefit for which the member (or eligible survivor) would not otherwise be eligible.

Any election required or permitted under the Statute or these Pension Benefits Policies to make a member's pension effective on the date the member ceases to carry out the member's regular duties as a firefighter (or any similarly worded choice or election) shall be applied only to allow a pension effective date that is the first day of a period in which the member never returns to work as a firefighter in any position or capacity on a full-time basis prior to leaving employment with the City of Houston Fire Department. Additionally, such an election shall be applied only to allow a pension effective date that is a maximum of two years prior to the date of the election.

18.06 Compensation Limit Under Internal Revenue Code

In determining the amount of any member's Fund benefits, the amount of compensation taken into account with respect to such member for any Plan Year under any provision of the Plan shall not exceed the \$200,000 annual limit of Section 401(a) (17) (A) of the Internal Revenue Code as such amount may be increased from time to time under Section 401(a) (17) (B) of the Internal Revenue Code.

19.00 Designation of Overtime Pay to Pay Periods

At the end of 2005, the City of Houston, through its Fire Department (HFD), represented to the Fund that it will, in accordance with its regular payroll practices, officially and promptly provide data to the Fund allocating or designating member overtime paid to the HFD pay period in which it was actually earned. As long as the foregoing City of Houston payroll practice shall be in place, the Fund shall, upon receipt of reliable data, proceed to assign, making all associated adjustments, the overtime worked to the pay period in which it was earned. The assignment of overtime to *the pay period in which it was earned* shall be effective for all purposes of determining, under the Statute, the amount of pay counted for a pay period, in order to credit such overtime pay (for pension purposes), to the extent applicable under the statute, on an accrual basis to pay periods, regardless of the pay period in which the overtime was actually paid to the member by the City of Houston.

20.00 [Reserved for Future Additions]

21.00 Post Retirement Option Plan (PROP) Policies and Procedures

21.01 Introduction

The purpose of this policy is to provide a coordinated and fully documented outline of the general rules for applicants electing to participate in the Post Retirement Option Plan ("PROP") of the Houston Firefighters' Retirement and Relief Fund ("Fund") as provided in Section 5A of the Statute. This policy is intended to provide those associated with the process (members of the Fund, members' surviving spouses, the Fund's Board of Trustees ["Board"], and the Fund's staff) with a detailed outline of the steps, time frames, and rules regarding PROP.

Participation in PROP involves complicated tax implications, therefore members (or surviving spouses) who elect to participate in PROP should seek professional advice concerning their participation in PROP from their personal tax advisor, financial planner, attorney, or other professional who is knowledgeable about the rules for required minimum distributions ("RMDs") at age 70-1/2, and taxation of distributions from tax qualified governmental plans. Failure to obtain competent legal and tax advice pertaining to your

individual circumstances prior to the PROP election or during the period of PROP participation can lead to severe and adverse financial consequences.

Notwithstanding any provision of this policy, as of July 1, 2017 a PROP participant may not have any additional amounts credited to his or her PROP account, nor shall any member be allowed to elect to participate in the PROP if such member was not already a PROP participant on July 1, 2017.

21.02 PROP Eligibility

The following persons may elect to participate in the PROP:

- A. A member who terminates active service after participating in the DROP and who is eligible to receive a service pension or other taxable benefits under Section 5 of the Statute; or
- B. A retired member, whether or not that member was a DROP participant, who is eligible to receive a service pension or other taxable benefits under Section 4 of the Statute (this includes a member who receives taxable disability benefits); or
- C. A surviving spouse of a member who elects and is eligible to participate in the PROP by continuing a deceased member's PROP account or by establishing a PROP account in which to receive credits from all or part of the surviving spouse's survivor benefits. This includes surviving spouses of members who received (or would have received) taxable benefits as defined in 21.02(A) and 21.02(B).

21.03 PROP Election Process

A. A member of the Fund (or a surviving spouse) who desires to participate in PROP must schedule an appointment with a Member Services Representative of the Fund forty-five (45) calendar days or more prior to the individual's intended effective date of participation in PROP, which must be on the first of a month. (It is recommended that a member's spouse also attend the appointment.)

B. During this appointment, staff will:

- 1) provide the member (or surviving spouse) with a copy of this policy and Section 5A of the Fund's statute pertaining to PROP;
- 2) review the contents of this policy and provide an overview of the PROP program including a general description of the potential tax consequences;
- 3) provide an application for participation in PROP ("Application"), and the PROP beneficiary election form ("PROP Beneficiary Form");
- 4) encourage the member to seek professional tax and/or legal guidance before entering the PROP;
- 5) respond to any questions the member may have concerning the contents of this policy, the Statute, the Application, and the PROP Beneficiary Form;
- 6) assist the member in completing the Application should the member voluntarily choose to elect to participate in PROP;
- 7) accept the PROP Beneficiary Form; and

8) for members who have QDROs on file with the Fund, inform the member what impact the QDRO will have on his or her monthly retirement benefit and PROP account.

C. A member who elects to participate in PROP must sign the Application, initial every page, and must verify in writing that he or she: understands the terms and conditions of PROP, as expressed in this policy and as set forth in Section 5A of the Statute; in making the PROP election, has reviewed Section 5A of the Statute and this PROP policy and fully understands the terms and conditions of the PROP program; has elected an amount of his or her monthly taxable pension benefit and/or other taxable benefits that are to be credited to the PROP account; has been advised by the Fund that he or she should consider seeking advice from a professional tax advisor; and understands that by electing to participate in PROP, he or she is thereby electing to take a future distribution of that portion of his or her benefits from the Fund payable from the participant's PROP account in a form other than a life annuity.

D. PROP Applications must meet all requirements of the Statute and the Fund's Policies and Procedures.

E. Applications must be completed and submitted to the Fund at least thirty (30) days prior to the intended effective date of PROP participation.

F. An applicant's PROP Application will be reviewed by the Pension Benefits Committee.

G. Applicants may withdraw PROP applications at any time before the Committee has approved the application. Requests to withdraw must be made in writing to the Deputy Director of Member Services.

21.04 Other Credits to PROP Accounts

The PROP account of any PROP participant will be credited monthly in the same manner as the calculation for DROP accounts as described in section 3.04(D) of these policies.

21.05 PROP Retained Within Fund Assets Until Distribution; Statement

A. A member's PROP account will be accounted for separately by the Fund in a notional account, and the member's (or surviving spouse's) assets will not physically be separated from other Fund assets until distribution. The designated portion of the retiree's or surviving spouse's monthly benefit and earnings will be credited to the notional PROP account on a monthly basis.

B. The Fund will provide each PROP participant with a balance statement of his or her PROP account on a quarterly basis.

21.06 Distributions from PROP

A. By virtue of electing to participate in PROP, a participant is also electing to take a distribution of that portion of his or her benefits from the Fund payable from his or her PROP account in a form other than a life and survivor annuity, and a PROP participant's distribution options (or those of his or her eligible survivor or beneficiary, if applicable), will be limited to the forms of distribution set forth below.

B. To the extent permissible under federal tax laws, the Statute and these policies and procedures concerning PROP, as may be amended from time to time, payment of a PROP participant's PROP account can be made by means of:

1) a single sum distribution of the balance in the PROP account; or

2) partial payments as the PROP participant may elect in writing from time to time to receive, using such form or forms as are approved by the Fund, and following such specific procedure or procedures, as the Fund may require. Such partial payments shall be subject to minimum distribution amounts as determined by the Fund and may be made:

- (1) up to four times a year on any Fund business day; and/or
- (2) in recurring (i) monthly distributions; or (ii) quarterly distributions.

C. Once a total distribution of the PROP account balance has been made to the PROP participant, no additional contributions to a PROP account for that individual will be allowed.

D. A PROP participant can elect to receive his or her form of distribution by filing a completed PROP Distribution Form with the Fund.

E. The Fund will provide PROP participants with PROP Distribution Forms upon request. A PROP participant may elect at any time to receive a single distribution of his or her entire remaining unpaid PROP balance, and such request must be made at least five Fund business days from the desired date of distribution.

F. PROP Distribution Forms will be processed by the Fund on a regular basis, three to five business days from the date that the Fund receives the form.

G. No PROP benefit will be paid to a beneficiary (either statutory or designated) until such time as the Fund receives sufficient documentation of the PROP participant's death. A Death Certificate (or Pending Death Certificate) would be deemed "sufficient documentation" of a PROP participant's death.

H. Pursuant to a QDRO, if an alternate payee is specifically awarded a dollar amount or a percentage of the member's PROP account, such amount or percentage will be distributed in the form specified in Subsection "B" above in accordance with the member's election. Any alternate payee entitled to distribution of a PROP benefit will be provided with a Tax Notice, Distribution Election Form, and Withholding Election Form (as applicable) and will be requested to complete and return the Forms prior to a distribution.

I. Notwithstanding any other provision of this Policy, in connection with a PROP participant's attainment of age 70½, the PROP participant must provide the Fund with a PROP Distribution Form requesting the Required Minimum Distribution (RMD) for the calendar year (in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986). If the Fund does not receive a distribution form by December 1st, the Fund may distribute the RMD to the PROP participant's account or address on file with the Fund.

21.07 Beneficiary Designation for PROP Participants

A. Should a PROP participant die before complete distribution of the member's PROP account, the member's PROP account balance may be paid to the member's eligible spouse, or retained in the Fund as outlined in Section 5A(h) of the Statute. Other eligible survivors or designated beneficiaries must take a complete distribution of their PROP funds as soon as administratively practicable after the member's date of death.

In no instance shall PROP account balances payable after a member's death to a beneficiary other than a member's eligible spouse accrue interest or other increases after the member's date of death. *If the correctness of any person's status as a beneficiary or the amount of PROP account balance payable to a beneficiary is in question (as determined in the sole and sound discretion of the Fund's administration), whether explicitly or implicitly, due to a pending legal proceeding of which the fund has actual knowledge,*

then any portion of such balance to be paid to the eligible spouse that is not in dispute shall be distributed or retained per section 5(j) of the Statute. The remainder shall be held by the fund pending resolution of the issue in pending litigation and any remaining balance that has been resolved as payable to the eligible spouse shall be accorded interest up through such resolution as though the eligible spouse had elected to retain that remainder to the date of resolution as outlined in section 5(j).

B. A PROP participant may designate a beneficiary to receive, upon his or her death, the balance of his or her PROP account, in the event there is no eligible survivor.

C. Should a PROP participant desire to change his or her designated PROP beneficiary, the PROP participant must execute a new PROP Designation of Beneficiary Form, which will be provided, upon request, by the Fund. The effect of the PROP Designation of Beneficiary Form is to revoke all prior beneficiary designations for the PROP participant's PROP benefits. The change in beneficiary designation will only be effective upon delivery of the new, original PROP Designation of Beneficiary Form to the Fund prior to the PROP participant's death.

D. A member should designate a contingent PROP beneficiary in the event the first PROP beneficiary dies prior to the member.

E. Any survivor or beneficiary eligible for payment under this section must request and apply for such payment by completing forms required by the Fund and available by contacting the Fund and asking for a Member Services Representative through the pension office in addition to providing the marriage and/or birth certificate(s) necessary to verify eligibility. No death benefit will be processed for payment without a Death Certificate (or Pending Death Certificate) certifying the death of the member. In instances where payment is made through a trustee or to an estate, verifiable proof of trusteeship must also be provided or be on file.

21.08 The Combination of PROP and DROP accounts is not permitted

A. DROP balances are not permitted to be placed into or combined with PROP balances;

B. PROP balances are not permitted to be placed into or combined with DROP balances.

21.09 Changes to PROP at Discretion of the Fund

(A) The Board or an appropriate committee of the Board may change the rules, policies and procedures concerning PROP participation to protect the interests and well-being of the Fund. By participation, the participant expressly consents to any future changes in PROP rules, policies and procedures. Examples of possible changes include, but are not limited to the following:

(1) The Board, or the appropriate HFRRF committee, may set a date after which additional members or surviving spouses will not be allowed to elect to participate in the PROP.

(2) The Board, or the appropriate HFRRF committee, may set a date after which the crediting of additional benefits of a member or a surviving spouse to a PROP account is not allowed.

(3) The Board, or the appropriate HFRRF committee, may limit the number of distribution transactions for all PROP participants or for any category of PROP participants.

21.10 Taxation of PROP Credits

Amounts credited to the PROP account are not included in the participant's gross income until distributed to the Participant by the Fund as described in the section 21.05 above, thus deferring the federal income tax on such amounts. This is one of the primary advantages to PROP. There are certain tax implications on distributions from a qualified plan prior to the age of 59-1/2 and after the age of 70-1/2. **These tax implications can have severe adverse financial consequences (see Section 21.01).**

- 21.11 Beginning at the inception of the year in which the Fund member reaches age 70 and 1/2, no portion of the member's monthly pension benefit may be elected as a contribution to the member's PROP account. If the member died before the year in which he or she would have attained age 70 and 1/2, no portion of the surviving spouse's monthly survivor benefit may be elected as a contribution to the surviving spouse's PROP account beginning with the inception of the year in which the member would have reached age 70 and 1/2 if he or she had survived until then.

22.00 Membership Publications and Annual Benefit Statements

- 22.01 The Fund shall distribute or make available to each member (active and retired) and eligible survivors, a summary plan description booklet that includes any significant change that is made in statutes governing the Fund that affects contributions, benefits or eligibility.
- 22.02 The Fund shall provide a summary plan description booklet to all new members of the Fund.
- 22.03 The Fund shall provide to each active member an annual statement of the amounts of the member's accumulated contributions and the total accumulated service credit on which benefits may be based. Such statements are to be sent within the first two months of the calendar year.

23.00 Retiree Directories

- A. Directories of certain information concerning retired members may be published to the extent permitted by section 17(e) of the Fund Statute, with reasonable allowance for retirees to timely opt out, and information concerning survivors that specifically and timely provide their written consent to inclusion or request in writing to be included may also be included in such a Retiree Directory.
- B. The Retiree Directory or pages of the Retiree Directory may contain whichever form or wording appears reasonable to help protect the information of the persons listed in the Retiree Directory from being used for inappropriate purposes.
- C. The electronic file containing past or current retiree and survivor information for use in publishing a Retiree Directory or that constitutes the electronic form of the Retiree Directory shall be provided only to a retiree [or survivor receiving benefits from the Fund] who attests by sworn, notarized statement that s/he is visually impaired and that only voice recognition software requiring access to an electronic file will allow the retiree [or survivor receiving benefits from the Fund] to access the information in the Retiree Directory. Such a retiree [or survivor receiving benefits from the Fund] shall provide a signed, sworn and notarized statement, the form of which shall be provided by the Fund, attesting to the need for the electronic file for the reason described above and also that the retiree [or survivor receiving benefits from the Fund] will take the steps identified in the form for protection of the information in the electronic file. Prior to provision of an electronic file, the attesting retiree [or survivor receiving benefits from the Fund] shall also obtain and provide to the Fund a brief treating physician's statement verifying the visual impairment and inability to effectively review the printed pages of the Retiree Directory.

24.00 Provisions Regarding Nonforfeitability of Benefits as Required Under Internal Review Code

24.01 *Nonforfeitability of Benefits Upon Attainment of Normal Retirement Age*

A member's accrued Fund benefits shall be, and are, fully nonforfeitable (i.e., "vested") as determined under the Code, United States Treasury regulations and Internal Revenue Service rulings and notices applicable to public retirement systems, no later than the member's attainment of "normal retirement age," as such age is stated in Section 1(13-a) of Article 6243e.2 (1).

24.02 *Nonforfeitability of Benefits to the Extent Funded Upon Fund Termination or Partial Termination*

A member's accrued Fund benefits shall, to the extent funded, be, and are fully nonforfeitable (i.e., "vested,") upon the Fund's termination or partial termination, as the terms "termination" and "partial termination" are defined under the Code, United States Treasury Department regulations and Internal Revenue Service rulings and notices applicable to public retirement systems.

25.00 Designation of Fund Benefits Pending Resolution of Disputed Conservatorship

During any period in which the status of conservatorship, guardianship or other status of a person who claims to be responsible for receipt of Fund benefits payable to a minor or disabled survivor on behalf of such minor or disabled survivor is being determined by the Designee, the Board, or a court of competent jurisdiction, the Designee shall direct that any benefits that may otherwise be in pay status and which are in dispute, be held in suspense pending resolution. Such suspense shall not affect eligibility or the amount of benefit ultimately distributed. (For the policy and procedures relating to suspense of disputed benefits in the context of determination of a Domestic Relations Order please see section 7.05B of these Pension Benefits Policies).

26.00 Provisions Regarding Section 415 of the Internal Revenue Code

26.01 Incorporation of Section 415 by Reference

Pursuant to Section 14(a) of Article 6243e.2 (1) (Section 14(a) of the "Statute") and the Treasury's final Section 415 regulations (Treas. Reg. § 1.415(a)-1(d)(3)), the Fund incorporates Section 415 of the Code by reference.

26.02 Meaning of "Accrued" For Governmental Plans Under Final Section 415 Regulations

In keeping with the special rule for governmental pension plans under Section 414(d) of the Code contained in the Treasury's final Section 415 regulations (Treas. Reg. § 1.415(b)-1(a)(7)(iii)), a benefit will be treated as having accrued for purposes of Section 14(a) of the Statute only to the extent it is payable.

26.03 Limitation Year

The Fund's limitation year is the calendar year, beginning each January 1 and ending the next December 31. [Also as stated per section 15.02 of this policy]

26.04 Increases in Section 415 Limit After Separation From Service

Pursuant to Treas. Reg. § 1.415(a)-1(d)(3)(v)(C), the Fund specifies that it will apply annual increases pursuant to Section 415(d) of the Code in the dollar limit of IRC § 415(b)(1)(A) to members who have separated from service, as well as to those who have not.