

PART 154

STATE-ADMINISTERED DEFINED CONTRIBUTION SERVICE AWARD PROGRAMS FOR VOLUNTEER FIREFIGHTERS

(Statutory authority: General Municipal Law, §§ 214, 215, 216, 216-a, 216-b, 216-c,
217, 217-a, 218, 219-a, L. 2006, ch. 714, § 13)

Sec.

- 154.1 Scope
- 154.2 Definitions
- 154.3 Notice of adoption or transfer
- 154.4 Adoption or transfer agreement
- 154.5 Collection of personal information
- 154.6 Service credit and payment of contributions
- 154.7 Prior service contributions
- 154.8 Distributions
- 154.9 Notice of amendment or termination
- 154.10 Administration
- 154.11 Program document
- 154.12 Reports
- 154.13 Disclosure
- 154.14 Standards for selecting service providers
- 154.15 Acknowledgement
- 154.16 Solicitation, education and confidentiality

Section 154.1. Scope. Article 11-A of the General Municipal Law authorizes the establishment of defined contribution service award programs to provide municipally-funded, pension-like benefits for volunteer firefighters. In general, defined contribution volunteer firefighter service award programs may be adopted by political subdivisions for the volunteer firefighters of volunteer fire companies or volunteer fire departments which are either: (a) under the control of the governing board of the political subdivision; or (b) located in a fire protection district of the political subdivision and under contract with the governing board to provide service therein. Adoption of a defined contribution volunteer firefighter service award program requires the affirmative vote of at least 60 percent of the governing board of the political subdivision and the approval of a proposition at a referendum of the eligible voters of the political subdivision. Article 11-A requires defined contribution volunteer firefighter service award programs to be either: (a) administered by the political

subdivision; or (b) centrally administered by the State Comptroller or by service providers retained by the Comptroller. The Comptroller is required and authorized to adopt rules and regulations for defined contribution volunteer firefighter service award programs administered by the State. The rules and regulations must include standards for the selection of service providers, the method and timing of payments required to be made by the Sponsors, reporting requirements, matters relating to the preparation of a plan document, application procedures for transfer into the State-administered program, procedures and forms for the compilation and maintenance of the points accumulated by each volunteer firefighter, and any other matter relating to State-administered defined contribution volunteer firefighter service award programs. This Part contains the regulations governing such State-administered defined contribution volunteer firefighter service award programs.

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

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

(1) "Account" means the bookkeeping account established for a participant by the Administrator.

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

(3) "Administrator" means the State Comptroller or, if the Comptroller retains an administrative service agency or financial organization to perform the functions set forth in section 154.10 of this Part, such administrative service agency or financial organization.

(4) "Comptroller" means the New York State Comptroller.

(4) "Participant" means a volunteer firefighter who is eligible for a benefit under a State-administered defined contribution volunteer firefighter service award program.

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

(6) "Sponsor" means a county, city, town, town on behalf of a fire protection district, village, village on behalf of a fire service area, or fire district which adopts a State-administered defined contribution volunteer firefighter service award program.

(7) "State-administered defined contribution volunteer firefighter service award program" means a service award program for volunteer firefighters established or maintained as a defined contribution plan for which State administration has been selected pursuant to Article 11-A of the General Municipal Law.

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

154.3. Notice of adoption or transfer. (a) Cost estimates. Prior to consideration of a resolution authorizing adoption of a State-administered defined contribution volunteer firefighter service award program, or the transfer of a locally-administered defined contribution volunteer firefighter service award program to State administration, the governing board of a political subdivision shall obtain from the Administrator an estimate of the annual cost of the State-administered defined contribution volunteer firefighter service award program. In making such estimate, the Administrator shall calculate each separate component of the total estimated cost of a proposed State-administered defined contribution volunteer firefighter service award program. In the case of a transfer of a locally-administered defined contribution volunteer firefighter service award program to State administration, the Administrator shall also estimate the additional amount, if any, determined to be necessary to fully fund all existing obligations of such program, up to and including

contributions for credit for a year of firefighting service performed during the calendar year immediately preceding the year in which State administration is anticipated to commence and unfunded prior service costs. To enable the Administrator to make such estimates, the Sponsor and each volunteer fire company or volunteer fire department having members who are potential participants in the State-administered defined benefit volunteer firefighter service award program shall provide to the Administrator such information as the Administrator may require, and the Administrator may rely upon such information in making such estimates. The Administrator shall make such estimates using the methodology and assumptions that would be used to calculate the contributions payable by the Sponsor pursuant to section 154.6 of this Part. Before beginning to make such estimates, the Administrator shall disclose to the governing board in writing the fee for preparing such estimates. The fee for preparing the estimates shall not exceed the amount which the Administrator is permitted to charge for such service pursuant to an agreement between the Administrator and the Comptroller. The cost of such estimates shall be a charge against the Sponsor.

(b) For any defined contribution volunteer firefighter service award program which, on or after June 1, 2007, is to be State-administered pursuant to voter approval of either (i) the adoption of such a program, or (ii) the transfer of administration of such a program to the State of New York, the chief executive officer of the Sponsor shall, within 30 days after the approval of a proposition authorizing the adoption or transfer, submit to the State Comptroller by e-mail or other method prescribed by the Office of the State Comptroller, a verified notice of adoption or transfer which shall contain the following:

(1) a statement of the date on which the governing board of the Sponsor approved the resolution authorizing adoption of the State-administered defined contribution volunteer firefighter service award program or transfer to the State of the administration of a defined contribution volunteer firefighter service award program and the vote thereon, and a certified copy of the resolution;

(2) a statement of the date on which the eligible voters of the Sponsor approved the proposition authorizing adoption of the State-administered defined contribution volunteer firefighter service award program or transfer to the State of the administration of a defined contribution volunteer firefighter service award program and the vote thereon, and a certified copy of the proposition;

(3) an opinion of legal counsel which shall:

(i) be addressed to the Sponsor;

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

(iii) state that in his or her capacity as legal counsel to the Sponsor, he or she has examined originals or true and complete copies of those records, documents and other instruments necessary to render his or her opinion, including, but not limited to, the provisions of Article 11-A of the General Municipal Law and such other laws as may be relevant; the resolution of the governing board of the Sponsor authorizing the adoption of the State-administered defined contribution service award program or the transfer to the State of the administration of a defined contribution volunteer firefighter service award program; proof of any posting and publication of required notice; the certificate certifying the result of the vote on the proposition authorizing the adoption of the State-administered defined contribution volunteer firefighter service award program or the transfer to the State of the administration of a defined contribution volunteer firefighter service award program; and proof that the cost estimates prepared pursuant to subdivision (a) of this section were disclosed in the Proposition; and

(iv) express his or her opinion that the Sponsor has undertaken all actions and proceedings required by law to adopt the State-administered defined contribution volunteer firefighter service award program or the transfer to the State of the administration of a defined contribution volunteer firefighter service award program;

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

(5) a statement of the name, address and telephone number of each volunteer fire company or volunteer fire department having volunteer firefighters who are potential participants in a newly established State-administered defined contribution volunteer firefighter service award program or participants in an existing defined contribution volunteer firefighter service award program being transferred to State administration.

154.4. Adoption or transfer agreement. (a) (1) State administration of a newly adopted defined contribution volunteer firefighter service award program shall not be effective until the Sponsor and the Administrator deliver to each other duly executed originals of an Adoption or Transfer Agreement setting forth the obligations of the Sponsor and the locally-determined features of the defined contribution volunteer firefighter service award program.

(2) No transfer to the State of responsibility for administration of a defined contribution volunteer firefighter service award program shall be effective until (i) the Sponsor and the Administrator deliver to each other duly executed originals of an Adoption or Transfer Agreement setting forth the obligations of the Sponsor and the locally-determined features of the defined contribution volunteer firefighter service award program, and (ii) the Sponsor pays in full to the Administrator the cash value of all program assets plus any additional amount determined by the Administrator to be necessary to fully finance all existing obligations of such program, up to and including contributions for credit for years of firefighting service performed during the calendar year immediately preceding the year in which State administration commences and any unpaid prior service costs payable in a lump sum pursuant to subdivision (a) of section 154.7 of this Part. Such payment shall be made in cash or cash equivalents acceptable to the Administrator, and the Administrator shall not be obligated to accept an insurance contract, a security, or any other asset that is not cash or a cash equivalent. Such payment shall be made at the time that the Adoption or Transfer Agreement is submitted to the Administrator pursuant to subdivision (c) of this section.

(3) An Adoption or Transfer Agreement shall include, but shall not be limited to, the following provisions:

(A) An original or copy of the notice of adoption or transfer submitted by the Sponsor pursuant to section 154.3 of this Part, together with a warranty by the Sponsor of the accuracy and completeness of the information set forth in such notice and an express agreement by the Sponsor to submit promptly to the Administrator such additional information as may be necessary to make the records of the defined contribution volunteer firefighter service award program accurate and complete;

(B) An express agreement by the Sponsor to pay to the Administrator on time and in full all required annual contributions, fees, charges, or assessments determined by the Administrator;

(C) In the case of a defined contribution volunteer firefighter service award program being transferred from local administration to State administration, a statement of the payment to be made to the Administrator by the Sponsor for the purpose of fully financing the obligations of the defined contribution volunteer firefighter service award program, together with an express agreement by the Sponsor to make such payment to the Administrator at the time that the Adoption or Transfer Agreement is submitted to the Administrator pursuant to subdivision (c) of this section, and an express agreement by the Sponsor to turn over to the Administrator in a timely manner such records as the Administrator deems necessary to effectuate such transfer;

(D) An express agreement by the Sponsor (i) that the Comptroller shall have the authority to suspend or terminate State administration of a defined contribution volunteer firefighter service award program at any time the Comptroller determines that the Sponsor has failed, for more than 30 days beyond the due date, to make any required payment or to satisfy any other material obligation of the Adoption or Transfer Agreement; (ii) that the Comptroller may elect, at his or her sole option, to collect any required payment or other material obligation owed by the Sponsor by delivering to the Sponsor a duly executed order specifying the overdue amount and requiring the Sponsor to pay such amount from any funds available therefor; (iii) that the Comptroller may

elect, at his or her sole option, to collect any required payment or other material obligation owed by the Sponsor by intercepting the requisite amount from any State aid payment or other amount otherwise due to the Sponsor from the State and applying the same to satisfy the overdue obligation; and (iv) that, notwithstanding such suspension or termination, the Sponsor shall continue to be obligated to make all required payments and to satisfy all other material obligations of the Adoption or Transfer Agreement;

(E) A statement that the Sponsor agrees to abide by the provisions of article 11-A of the General Municipal Law, the rules and regulations promulgated thereunder and the program document, as amended from time to time. The Adoption or Transfer Agreement shall be completed by incorporating the following locally-determined features of the State-administered defined contribution volunteer firefighter service award program:

(1) entitlement age;

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

(3) the amount to be contributed to the program by the Sponsor on behalf of each participant who is credited with a year of firefighting service;

(4) whether the Sponsor shall make prior service contributions and, if so, the number of years for which such contributions shall be made and, if such prior service contributions have not been fully paid prior to commencement of State administration, an irrevocable election to pay prior service contributions in the form of a single lump sum payment or in annual installments as provided in section 154.7 of this Part;

(5) the amount of any optional additional line of duty disability or death benefit;

(6) the date as of which the newly adopted State-administered defined contribution volunteer firefighter service award program shall take effect;

(7) if the State-administered defined contribution volunteer firefighter service award program is to take effect on a day other than the first day of January, a statement setting forth whether points toward a year of

firefighting service shall be granted for activities performed between the immediately preceding first day of January and the effective date of the State-administered defined contribution volunteer firefighter service award program; and

(F) A certification that, prior to the approval of a resolution by a governing board and the approval of a proposition by voters authorizing the transfer of a locally-administered defined contribution volunteer firefighter service award program to State administration, the Sponsor fully disclosed to each participant in the locally-administered program the estimated effects of such transfer on the value of such participant's defined contribution account, including, but not limited to, any investment losses incurred during local administration, any investment losses anticipated as a result of trading or liquidating program assets in order to acquire assets acceptable to the State program Administrator, and any fees and expenses incident to the transfer; and

(G) Such other provisions as the Comptroller may deem necessary and advisable to assure the proper financing and management of the State-administered defined contribution volunteer firefighter service award program.

(b) Within 30 days of receipt of the notice of adoption or transfer required by section 154.3 of this Part, the Administrator shall send to the chief executive officer of the Sponsor a copy of the program document and an Adoption or Transfer Agreement for the State-administered defined contribution volunteer firefighter service award program.

(c) Within 30 days of receipt of the Adoption or Transfer Agreement, the chief executive officer shall complete and execute two originals of the Adoption or Transfer Agreement, retain one executed original of the Adoption or Transfer Agreement and the program document and trust agreement as public records, and submit one executed original of the Adoption or Transfer Agreement to the Administrator. The chief executive officer shall also cause a copy of the Adoption or Transfer Agreement and program document and trust agreement to be provided to each volunteer fire company or volunteer fire department for which the State-administered defined

contribution volunteer firefighter service award program is adopted or for which the responsibility for administration is transferred to the Comptroller or service providers retained by the Comptroller.

(d) The Administrator shall rely on the information set forth in the Adoption or Transfer Agreement until such time as the chief executive officer of the Sponsor files a notice of amendment or a notice of termination with the Administrator as provided in section 154.9 of this Part.

154.5. Collection of personal information. (a) Except as provided in subdivision (b) of this section, annually, at such time and in such form as the Administrator may require, the chief executive officer of the Sponsor shall obtain from each volunteer fire company or volunteer fire department for which the State-administered defined contribution volunteer firefighter service award program is established for submission to the Administrator, and each volunteer fire company or volunteer fire department shall provide to the chief executive officer for such purpose, the following information for each volunteer firefighter of the volunteer fire company or volunteer fire department, whether or not such volunteer firefighter is a participant in the State-administered defined contribution volunteer firefighter service award program:

(1) name;

(2) address;

(3) social security number;

(4) date of birth;

(5) name of the volunteer fire company or volunteer fire department;

(6) beneficiaries; and

(7) such other information as the Administrator determines necessary for the administration of the State-administered defined contribution volunteer firefighter service award program.

(b) In lieu of requiring the chief executive officer of the Sponsor to obtain the information specified in subdivision (a) of this section for submission to the Administrator, the Administrator may request the chief

executive officer of a volunteer fire company or volunteer fire department to obtain and submit such information to the Administrator. In such case, the chief executive officer of the volunteer fire company or volunteer fire department shall provide a copy of the information submitted to the Administrator to the chief executive officer of the Sponsor.

(c) The chief executive officer of the Sponsor shall retain a copy of the information obtained pursuant to this section for use solely in connection with the administration of the State-administered defined contribution volunteer firefighter service award program.

(d) To the extent required by the Personal Privacy Protection Law, Article 6-A of the Public Officers Law, all personal information obtained pursuant to this section shall be protected from public disclosure.

154.6. Service credit and payment of contributions. (a) Each volunteer fire company or volunteer fire department for which a State-administered defined contribution volunteer firefighter service award program is in effect shall maintain at all times for each volunteer firefighter of the volunteer fire company or volunteer fire department, whether or not such volunteer firefighter is a participant in the State-administered defined contribution volunteer firefighter service award program, a record of the activities performed and points granted toward a year of firefighting service. The Administrator may prescribe the form and manner of compiling and maintaining such records.

(b) On or before March thirty-first of each year, each volunteer fire company or volunteer fire department for which a State-administered defined contribution volunteer firefighter service award program is adopted shall prepare and submit to the governing board of the Sponsor a list of all the volunteer firefighters of the volunteer fire company or volunteer fire department which identifies all those who have qualified for credit for a year of firefighting service during the preceding calendar year. Such list shall be certified under oath by the president, secretary and chief or comparable officers of the volunteer fire company or volunteer fire department and shall be accompanied by such membership records or records of point accumulations as the

governing board may require to substantiate the accuracy of the list. Such list shall also identify those volunteer firefighters who have waived participation in the State-administered defined contribution volunteer firefighter service award program as provided in subdivision (f) of this section.

(c) On or before May first of each year, the governing board of the Sponsor shall review each such certified list and may delete the name of any person who was not a volunteer firefighter during the preceding calendar year or disallow the service credit of any volunteer firefighter who did not earn or otherwise receive fifty (50) points during the preceding calendar year or whose point accumulation has not been adequately documented. Thereafter, the governing board shall approve each such certified list of volunteer firefighters and each volunteer firefighter named thereon shall be credited with a year of firefighting service. Upon approval, the governing board shall cause a copy of each list to be returned to the appropriate volunteer fire company or volunteer fire department and each volunteer fire company or volunteer fire department shall, immediately upon receipt, post the list in a conspicuous place at its principal headquarters for at least thirty (30) days and maintain a record of the date on which the list is posted; provided, however, that no personal identifying information shall be included in the list that is posted except the names of the firefighters credited with a year of firefighting service.

(d) Not later than 30 days after the approved list is posted by the volunteer fire company or volunteer fire department, any volunteer firefighter whose name does not appear on the list as having qualified for credit for a year of firefighting service may appeal to the governing board of the Sponsor to have his or her name added to the list. The appeal shall be in writing and mailed to the clerk or secretary of the governing board of the Sponsor. The governing board shall investigate all appeals and upon finding that such a volunteer firefighter has qualified for a year of firefighting service for the preceding calendar year, shall order the volunteer firefighter's name to be added to the approved list.

(e) On or before July 1st of each year, the governing board of the Sponsor shall cause a certified copy of the approved list to be filed with the Administrator.

(f) Any volunteer firefighter not wishing to participate in the State-administered defined contribution volunteer firefighter service award program may waive participation by filing with the chief executive officer of the volunteer fire company or volunteer fire department, the chief executive officer of the political subdivision and the Administrator a written notice of waiver of participation. Such waiver shall remain effective until withdrawn in the same manner. During the period such a waiver remains effective, a volunteer firefighter shall not earn service credit, nor be entitled to a distribution from the State-administered defined contribution volunteer firefighter service award program.

(g) Notwithstanding the provisions of subdivisions (b) through (e) of this section, if, as of the effective date of the conversion of the locally-administered defined contribution volunteer firefighter service award program into a State-administered defined contribution volunteer firefighter service award program, the governing board of a Sponsor has approved a certified list of volunteer firefighters qualified for credit for a year of firefighting service rendered during the preceding calendar year in substantial compliance with the procedures set forth in subdivisions (b) through (d) of this section, excepting the dates set forth therein, the governing board shall comply with the filing requirement of subdivision (e) of this section no later than 30 days after the chief executive officer of the Sponsor files a completed and executed copy of the Adoption or Transfer Agreement with the Administrator pursuant to section 154.4 of this Part.

(h)(1) Commencing on November 15th of the year in which State administration begins, and each November 15th thereafter, the Administrator shall estimate the amount that each Sponsor is required to contribute to a State-administered defined contribution volunteer firefighter service award program for the current calendar year, including any prior service contributions required to be paid in such year pursuant to section 154.7 of this Part, and any additional amounts determined by the Administrator to be necessary to fully

finance all existing obligations of such program. The Administrator shall submit to the fiscal officer of each Sponsor a statement of the amount so payable, plus any administrative costs payable by the Sponsor. For good cause shown, the Administrator may recalculate the contribution and issue a corrected statement. If, as a result of the amount determined to be paid for any calendar year, a Sponsor overpaid its actual obligation for that year, the amount to be determined by the Administrator for the next succeeding November 15th shall reflect the amount of the overpayment, plus interest, as a reduction in the amount otherwise required to be paid by such Sponsor.

(2) Within sixty (60) days after the date of a statement issued pursuant to paragraph one if this subdivision, the Sponsor shall pay to the Administrator the total amount due as shown on such statement.

(3) Interest shall accrue and be paid by the Sponsor on all amounts due, but not received by the Administrator within sixty (60) days after the date of the statement issued pursuant to paragraph one of this subdivision. The interest rate or rates used to calculate such interest shall be the actual investment return rate earned by the volunteer firefighters' defined contribution service award program trust fund during the calendar year (or years) in which such unpaid contributions were due to be paid.

(4) The Administrator shall notify the Comptroller of any amounts remaining unpaid more than 90 days after the date of the statement issued pursuant to subdivision (a) of this section.

(5) In the event that a Sponsor does not submit to the Administrator an approved list in accordance with subdivision (e) or (g) of this section, the Administrator shall bill the Sponsor for the contribution due for the calendar year in which the list should have been submitted in an amount calculated by the Administrator equal to the estimated contribution due during such year. Such estimated contribution shall be calculated by the Administrator as if all volunteer firefighters named on the latest year's approved list received by the Administrator continued to be volunteer firefighters and all such persons earned a year of service credit during the calendar year for which the list should have been prepared in accordance with subdivision (e) or (g) of this

section. Payment of such estimated contribution shall be made in accordance with paragraphs one through three of this subdivision as if the Administrator's estimate was based upon the actual approved lists prepared in accordance with subdivisions (a) through (e) of this section. Upon receipt by the Administrator of the actual approved list prepared in accordance with subdivisions (a) through (e) of this section, the Administrator shall recompute the contributions due for such calendar year. In the event that additional contributions are owed by the Sponsor (including any additional administration costs), the Administrator shall bill the Sponsor for such additional amounts. Interest shall be paid by the Sponsor on all additional amounts owed and shall accrue from the due date of the payment of the estimated contribution billed to the Sponsor by the Administrator with such interest calculated in accordance with paragraph three of this subdivision. Any excess of the estimated contributions over the actual contributions shall be treated as an overpayment by the Sponsor in the manner provided in subdivision (a) of this section. The amount of such overpayment shall be reduced by any related additional administration costs charged by the Administrator. The assessment of any extra additional administration charges payable by the Sponsor to the Administrator because of the failure to comply with subdivisions (a) through (e) of this section shall be in accordance with the contract between the Comptroller and the Administrator.

(i) (1) Forfeitures shall be used to reduce contributions for other service award participants.

(2) In the event that two years have elapsed since an inactive volunteer firefighter participant or a participant's designated beneficiary becomes eligible to apply for a service award and the Administrator does not receive an application for distribution, the Administrator, the Sponsor and the volunteer fire company or volunteer fire department in which the participant was a member shall attempt to notify the person or persons to whom the service award would be paid. In the event that the Administrator, in his or her sole discretion, determines that a reasonable attempt has been made to contact such person or persons without success, the

service award payable shall then be considered as forfeited for the purpose of determining future contributions payable by the Sponsor.

(3) A participant who ceases to be a volunteer firefighter before he or she has earned a nonforfeitable right to a service award shall forfeit his or her service credit upon receipt by the Administrator of notice from the Sponsor and the appropriate volunteer fire department or volunteer fire company that the individual has ceased to be a volunteer firefighter. The provisions of this subdivision shall not apply to a volunteer firefighter who is determined to be totally and permanently disabled in accordance with subdivision (d) of section 154.8 of this Part.

(4) In the event that a person whose service credit was forfeited in accordance with paragraph (3) of this subdivision resumes being a volunteer firefighter within the five-year period beginning immediately after the calendar year in which he or she ceased to be a volunteer firefighter, such person's forfeited service credit shall be restored as of December thirty-first of the first calendar year for which he or she again qualifies for a year of firefighting service credit and again becomes a participant in the State-administered defined contribution volunteer firefighter service award program in which he or she formerly was a participant.

154.7. Prior service contributions. (a) In the event that a State-administered defined contribution service award program provides for prior service contributions, each volunteer fire company or volunteer fire department for which the program is adopted shall identify on the list prepared pursuant to subdivision (b) of section 154.6 of this Part those participants who are entitled to one or more prior service contributions and the number of years for which each participant is entitled to such prior service contributions. Any participant who is denied a prior service contribution for one or more years may appeal to the governing board at the same time, in the same manner, and with like effect as provided in subdivision (d) of section 154.6 of this Part. Except as provided in subdivisions (b) or (d) of this section, prior service contributions shall be paid to the Administrator in a single lump sum.

(b) In the case of a State-administered defined contribution volunteer firefighter service award program that is initially established as a State-administered defined contribution volunteer firefighter service award program, the governing board of the Sponsor may elect to pay service contributions over the five-year period beginning with the calendar year in which the program first takes effect; provided, however, that if a volunteer firefighter first qualifies for a year of firefighting service for a calendar year later than the first calendar year in which the program first takes effect, and thereby becomes a participant entitled to prior service credit, then any prior service contribution attributable to such prior service credit shall be paid over the five-year period beginning with the calendar year for which the volunteer firefighter first qualified for a year of firefighting service. Where such an election is made, the first annual installment shall be paid to the Administrator at the same time that the first contribution on behalf of a participant is made pursuant to section 154.6 of this part. Each subsequent annual installment shall be paid in each of the four years immediately succeeding the year in which the first installment is paid, together with interest at the rate determined pursuant to subdivision (c) of this section on the unpaid balance of the prior service contribution as of the date of such payment; provided, however, that in the event that the Administrator notifies the Sponsor that a participant has been determined eligible for a distribution of a service award prior to the payment of the fifth annual installment, the governing board of the Sponsor shall cause payment to be made to the Administrator of an unscheduled prior service contribution within 30 days of receiving such notice. The unscheduled prior service contribution shall equal the unpaid balance of the participant's prior service contribution plus interest at the rate determined pursuant to subdivision (c) of this section on such unpaid balance.

(c) On or before March 31st of each year the Administrator shall determine the rate of interest to be paid on the unpaid balance of prior service contributions. The rate of interest shall equal the rate of return on program assets during the preceding calendar year. The Administrator shall notify Sponsors of the rate of interest by inclusion in, or enclosure with, the report required by subdivision (a) of section 154.12 of this Part.

(d) Notwithstanding the provisions of subdivisions (a) and (b) of this section, if, as of the effective date of the conversion of the locally-administered defined contribution volunteer firefighter service award program into a State-administered defined contribution volunteer firefighter service award program, the governing board of a Sponsor has not approved a certified list of volunteer firefighters qualified for credit for a year of firefighting service rendered during the preceding calendar year which identifies those participants who, by virtue of earning such credit, became entitled to one or more prior service contributions in substantial compliance with the procedures referred to in subdivision (a) of this section, the list prepared pursuant to section 154.6 (g) of this Part shall identify such participants and the number of years for which each participant is entitled to prior service contributions. A participant who is denied a prior service contribution for one or more years may appeal to the governing board of the Sponsor at the same time, in the same manner, and with like effect as provided in section 154.6(d) of this Part. Payment of prior service contributions shall be made in a single lump sum or in installment payments as provided in subdivision (b) of this section.

(e) If, as of the effective date of the conversion of a locally administered defined contribution volunteer firefighter service award program into a State-administered defined contribution volunteer firefighter service award program, the governing board of a Sponsor has approved a certified list of volunteer firefighters qualified for credit for a year of firefighting service rendered during the preceding calendar year which identifies those participants who, by virtue of earning such credit, became entitled to one or more prior service contributions in substantial compliance with the procedures referred to in subdivision (a) of this section, the Sponsor shall pay such prior service contributions in a single lump sum or in installment payments as provided in subdivision (b) of this section.

154.8. Distributions. (a) A service award shall equal a participant's account balance as of the valuation date immediately succeeding application for distribution of the service award plus any unscheduled prior service contributions received by the Administrator pursuant to section 154.7 of this Part. A service award shall

be paid in the form of a lump sum distribution or in such other manner selected by the participant in his or her application for distribution of the service award as may be permitted by the terms and conditions of the program document.

(b) Except as otherwise provided in this section, a participant shall be entitled to apply for and receive distribution of a service award only when the participant has reached entitlement age.

(c) A service award shall be payable only after an application for distribution is filed with the Administrator and the Administrator approves the application, and shall be paid as soon as practicable following approval of the application and the valuation date next succeeding the date the application is received by the Administrator. The Administrator shall determine whether to approve an application based on the terms of the Sponsor's adoption agreement, the records maintained by the Administrator and, in the case of disability or death, such additional records or information as the Administrator may require. The Administrator, in its sole discretion, may require the Sponsor, the appropriate volunteer fire company or volunteer fire department or the participant to verify or supply any information the Administrator deems necessary to determine entitlement to distribution of a service award.

(d) In the event that a participant becomes totally and permanently disabled as certified by the workers' compensation board or by any other competent authority approved by the Administrator, and the disability prevents the participant from pursuing his or her normal occupation, the participant shall be entitled to apply for and receive distribution of a service award regardless of whether the participant has reached entitlement age or has acquired a nonforfeitable right to a service award. If a State-administered defined contribution volunteer firefighter service award program includes an optional additional disability benefit that the Sponsor has elected to provide for a participant who becomes disabled during the course of service as an active volunteer firefighter while actively engaged in providing a line of duty service, then, in the event that a participant becomes totally and permanently disabled as a result of such cause and such total and permanent

disability is certified by the workers' compensation board or by any other competent authority approved by the Administrator, the participant shall be entitled to apply for and receive distribution of such optional additional disability benefit in the form of a monthly payment for life in the amount stated in the referendum authorizing such benefit.

(e) In the event of the death of a participant who has acquired a nonforfeitable right to a service award and who has not previously received distribution of all or any portion of a service award, the beneficiary or beneficiaries designated by the participant or, if no beneficiary has been designated, the participant's estate, shall be entitled to apply for and receive distribution of the participant's service award regardless of whether the participant had reached entitlement age before death. If a participant dies after receiving distribution of less than the full amount of the service award, the remaining portion, if any, shall be paid in accordance with the distribution option selected by the participant in his or her application for distribution of the service award made pursuant to this section. If a State-administered defined contribution volunteer firefighter service award program includes an optional additional death benefit that the Sponsor has elected to provide for a participant who dies during the course of service as an active volunteer firefighter while actively engaged in providing a line of duty service, then, in the event that a participant dies as a result of such cause, the beneficiary or beneficiaries designated by the participant or, if no beneficiary has been designated, the participant's estate, shall be entitled to apply for and receive distribution of such additional optional death benefit in the amount stated in the referendum authorizing such benefit.

(f) In the event that the Sponsor has elected to pay prior service contributions in installments as provided in section 154.7 of this Part and the Administrator determines that a participant is eligible for a distribution of a service award prior to the payment of all annual installments of the participant's prior service contribution, the Administrator shall promptly notify the Sponsor of the amount of the unscheduled prior service contribution which must be paid to the Administrator.

154.9. Notice of amendment or termination. (a) Once a State-administered defined contribution volunteer firefighter service award program has been adopted, the Sponsor may amend or terminate its participation in the State-administered defined contribution volunteer firefighter service award program in the manner provided by article 11-A of the General Municipal Law.

(b) Within 30 days after the amendment of any of the terms of a State-administered defined contribution volunteer firefighter service award program set forth in the Adoption or Transfer Agreement, or the termination of the Sponsor's participation in a State-administered defined contribution volunteer firefighter service award program, the chief executive officer of the Sponsor shall file with the Administrator a verified notice of amendment or notice of termination which shall contain the following:

(1) a statement of the date on which the governing board of the Sponsor approved the resolution authorizing the amendment or termination of participation in the State-administered program and the vote thereon, and a certified copy of the resolution;

(2) in the case of termination, or in the case of an amendment requiring submission of a proposition to the eligible voters of the Sponsor, a statement of the date on which the eligible voters approved the proposition authorizing the amendment or termination and the vote thereon, and a certified copy of the proposition; and

(3) an opinion of legal counsel which shall:

(i) be addressed to the Sponsor;

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

(iii) state that in his or her capacity as legal counsel to the Sponsor, he or she has examined originals or true and complete copies of those records, documents and other instruments necessary to render his or her opinion, including, but not limited to, the provisions of Article 11-A of the General Municipal Law and such other laws as may be relevant, the resolution of the governing board of the Sponsor authorizing the amendment or termination of the program, proof of any posting and publication to give required notice and the certificate

certifying the result of the vote on the proposition authorizing the amendment or termination of the State-administered defined contribution volunteer firefighter service award program; and

(iv) express his or her opinion that the Sponsor has undertaken all actions and proceedings required by law to amend or terminate the State-administered defined contribution volunteer firefighter service award program.

(c) Within 30 days of the receipt of a notice of amendment, the Administrator shall send to the chief executive officer of the Sponsor two copies of an amended form of Adoption or Transfer Agreement. The chief executive officer shall complete the copies of the amended form of Adoption or Transfer Agreement by incorporating the terms of the amendment, and shall execute, retain, file, and provide a copy of the amended Adoption or Transfer Agreement to each volunteer fire company or volunteer fire department, in the same manner as the original Adoption or Transfer Agreement.

(d) Any amendment to the program by the Sponsor shall only take effect as of January 1st of the calendar year following the amendment and shall only apply prospectively.

154.10. Administration. (a) State-administered defined contribution volunteer firefighter service award programs shall be administered by the State Comptroller unless the Comptroller retains an administrative service agency or financial organization to administer the programs. Upon receipt of a notice of adoption or transfer of a defined contribution volunteer firefighter service award program the Office of the State Comptroller shall notify the chief executive officer of the Sponsor of the name, address and telephone number of the Administrator and, if the Administrator is not the State Comptroller, forward one copy of the notice of adoption or transfer to the Administrator. In the event that there is a change in the identity of the Administrator, the Office of the State Comptroller shall notify the chief executive officer of each Sponsor of a State-administered defined contribution volunteer firefighter service award program of the identity of the new Administrator.

(b) The Administrator shall:

(1) prepare a standard form of program document which shall be utilized by all program Sponsors;

(2) prepare all forms necessary for the administration of the program;

(3) compile and maintain all records required for the administration of the program, including records of participant account balances;

(4) prepare and distribute to participants, volunteer fire companies or volunteer fire departments and Sponsors reports and program summaries as required by this Part;

(5) if the Comptroller is not the Administrator, prepare and furnish to the Comptroller such reports as the Comptroller may require;

(6) record and process contributions made by program Sponsors;

(7) approve applications for distributions of service awards;

(8) record and process distributions of service awards;

(9) withhold all taxes and prepare all tax reporting forms required by federal, state and local law; and

(10) perform such other functions as may be required by or pursuant to Article 11-A of the General Municipal Law and this Part.

(c) The Comptroller may designate himself or herself as the Program Trustee or the Comptroller may contract with a financial organization or administrative service agency to serve as Program Trustee. The Program Trustee shall:

(1) hold the assets of the programs in trust;

(2) receive and process contributions to the trust in a timely manner;

(3) invest the assets of the trust;

(4) annually determine the fair market value of the trust estate;

(5) make payments approved by the Administrator to program participants and their beneficiaries, and other approved disbursements from the trust fund;

(6) provide the Administrator with such information as may be necessary to enable the Administrator to prepare the annual reports for Sponsors and annual participant statements provided for in this Part and program agreement, including the reports and statements required for calendar year 2007;

(7) provide the Administrator with such information as may be necessary to enable the Administrator to withhold all appropriate taxes and prepare and file all tax reporting forms required by federal, state and local law; and

(8) cooperate with the Administrator and the Comptroller to ensure the effective and efficient operation of the programs. In furtherance of this purpose, the Program Trustee shall provide in a timely manner such information as the Administrator may require to exercise and perform the Administrator's powers and duties under the General Municipal Law, this Part and the program agreement. The Program Trustee shall also provide in a timely manner such information as the Comptroller may require to monitor the operation of the programs.

(d) If the Comptroller is not the Administrator or the Program Trustee, the fee for providing such services shall be a charge against the Sponsor and not exceed the amount or amounts which the Administrator or Program Trustee is permitted to charge pursuant to an agreement between the Administrator or Program Trustee and the Comptroller.

154.11. Program document. The Administrator shall prepare and may amend a single State-administered defined contribution volunteer service award program document setting forth the obligations of Sponsors, the rights of volunteer firefighters and participants, and standards and procedures for the administration of State-administered defined contribution volunteer firefighter service award programs. The program document and any amendments thereto shall be consistent with the provisions of Article 11-A of the

General Municipal Law and the provisions of this Part, as amended. If the program document is prepared by an administrative service agency or financial organization, the program document and any amendments to the program document shall not take effect until approved by the State Comptroller.

154.12. Reports. (a) On or before September 30th of each year, the Administrator shall provide to each Sponsor a report which shall include, but not be limited to, the following information for the preceding calendar year for the Sponsor:

(1) the total value of participant account balances as of January 1st;

(2) the total amount contributed to the State-administered defined contribution volunteer firefighter service award program by the Sponsor;

(3) the total amount of administrative expenses charged against participant account balances;

(4) the total amount of interest, earnings and gains credited to participant account balances;

(5) the total amount of losses charged to participant account balances;

(6) the total amount of distributions;

(7) the total value of forfeitures; and

(8) the total value of participant account balances as of December 31st.

(b) On or before September 30th of each year, the Administrator shall provide to each volunteer fire company or volunteer fire department, and immediately thereafter each volunteer fire company or volunteer fire department shall provide to each participant who is a member of the volunteer fire company or volunteer fire department, a confidential statement for the preceding calendar year which shall include, but shall not be limited to, the following information for the participant:

(1) name;

(2) address;

(3) social security number;

- (4) date of birth;
 - (5) account balance as of January 1st;
 - (6) amount contributed by the Sponsor on behalf of the participant;
 - (7) administrative expenses charged against the account balance;
 - (8) interest, earnings and gains credited to account balance;
 - (9) losses charged to account balance;
 - (10) distributions;
 - (11) account balance as of December 31st;
 - (12) total number of years of volunteer firefighter service required to obtain a nonforfeitable right to a service award;
 - (13) total number of years of volunteer firefighter service credited to the participant;
 - (14) entitlement age; and
 - (15) designated beneficiaries.
- (c) Within 30 days of the conversion of a locally-administered defined contribution volunteer firefighter service award program into a State-administered defined contribution volunteer firefighter service award program, the Administrator shall provide to each participant a statement of the participant's account balance as of the date on which the State administration commenced.

154.13. Disclosure. (a) Not later than six months after a volunteer firefighter becomes a participant in a State-administered defined contribution volunteer firefighter service award program, the Administrator shall provide to the volunteer fire company or volunteer fire department of which the participant is a member, and promptly thereafter the volunteer fire company or volunteer fire department shall provide to the participant, a summary of the State-administered defined contribution volunteer firefighter service award program's

provisions as adopted by the Sponsor of the State-administered defined contribution volunteer firefighter service award program.

(b) In the event that a material modification is made to a State-administered defined contribution volunteer firefighter service award program, the Administrator shall provide to each volunteer fire company or volunteer fire department a copy of the modification within six months after the date on which the modification is adopted or the date on which the modification takes effect, whichever is later, and promptly thereafter each volunteer fire company or volunteer fire department shall provide a copy of the modification to each participant who is a member of the volunteer fire company or volunteer fire department.

154.14. Standards for selecting service providers. Service providers shall be selected after competitive proposals are solicited.

(a) When selecting an administrative service agency or a financial organization to serve as Administrator, the following standards shall be utilized, with each standard to be weighted at the discretion of the Comptroller:

- (1) the entity's experience with defined contribution programs;
- (2) the capitalization of the entity;
- (3) the entity's creditworthiness;
- (4) the entity's ability to perform the required duties; and
- (5) the cost of services to be provided by the entity.

(b) When selecting an administrative service agency or financial organization to serve as trustee or a financial organization to invest program funds the following standards shall be utilized, with each standard to be weighted at the discretion of the Comptroller:

- (1) the standards set forth in subdivision (a) of this section;
- (2) the entity's investment expertise;

- (3) the capitalization of the entity;
- (4) the entity's creditworthiness;
- (5) the entity's investment sophistication and flexibility;
- (6) the entity's familiarity with similar programs;
- (7) the entity's ability to procure or provide suitable investments; and
- (8) the entity's ability to perform the required duties in recognition of the fiduciary nature of its responsibilities.

154.15. Acknowledgement. Each administrative service agency or financial organization selected to provide services in connection with State-administered volunteer firefighter defined contribution service award programs shall contractually agree to discharge its duties as a fiduciary solely in the interest of the participants and beneficiaries of the State-administered defined contribution volunteer firefighter service award programs. The fiduciary standard of care, which shall be an express provision of any contract with an administrative service agency or financial organization, shall permit the fiduciary to accept, hold, invest in and retain only such investments as would be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

154.16. Solicitation, education and confidentiality. (a) No financial organization or administrative service agency nor any of their agents shall use information obtained by reason of its appointment as a financial organization or administrative service agency to solicit volunteer firefighters to purchase any product made available by such financial organization or administrative service agency.

(b) Educational materials designed to acquaint volunteer firefighters with the benefits of the program may be provided by the financial organization or administrative service agency upon prior approval by the Office of the State Comptroller. In addition, at the time of distribution of a service award, an administrative

service agency or financial organization may include with a distribution written information concerning the potential tax consequences of the distribution and generic categories of investment options. Such information may contain a statement indicating that additional information may be obtained from the administrative service agency or financial organization or their agents and from other financial institutions, but in all cases such information shall also contain a clear and prominent statement that the Office of the State Comptroller does not review, approve, endorse or recommend any such information, and is not in any way affiliated with, any financial instrument, product or service offered by or acquired through an administrative service agency, financial organization or their agents, or any other financial institution.

(c) Except as otherwise provided by law, all information obtained under the State-administered defined contribution volunteer firefighter service award program by the Sponsor, a volunteer fire company or volunteer fire department, an administrative service agency or a financial organization shall be confidential and shall be used exclusively for purposes relating to the program.