

PART 155

STATE-ADMINISTERED DEFINED BENEFIT SERVICE AWARD PROGRAMS FOR VOLUNTEER FIREFIGHTERS

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

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Section 155.1. Scope. Article 11-A of the General Municipal Law authorizes the establishment of defined benefit service award programs to provide municipally funded, pension-like benefits for volunteer firefighters. In general, defined benefit 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 benefit 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 the defined benefit volunteer firefighter service award programs to be either: (a) administered by the political subdivisions; 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 the 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 benefit volunteer firefighter service award programs. This Part contains the regulations governing such State-administered defined benefit volunteer firefighter service award programs.

155.2. 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) "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 155.15 of this Part, such administrative service agency or financial organization.

(2) "Benefit" or "benefit amount" means an amount equal to an annual payment of \$60, \$120, \$180, \$240 or \$360 for each year of firefighting service, as selected by the Sponsor.

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

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

(5) "Prior service costs" means the cost of granting prior service credit to volunteer firefighters.

(6) "Prior service credit" means credit for years of volunteer firefighter service for activities performed during the five calendar years immediately preceding the adoption of a defined benefit volunteer firefighter service award program.

(7) "Program Actuary" means the actuary designated by the Comptroller to perform the functions required to be performed by an actuary under Article 11-A of the General Municipal Law and this Part, as amended from time to time.

(8) "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 benefit volunteer firefighter service award program.

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

155.3. Actuarial cost estimates. Prior to consideration of a resolution authorizing adoption of a State-administered defined benefit volunteer firefighter service award program, or the transfer of a locally-administered defined benefit volunteer firefighter program to State administration, the governing board of a political subdivision shall obtain from the Program Actuary an estimate of the annual cost of the State-administered defined benefit volunteer firefighter service award program. In making such estimate, the Program Actuary shall calculate each separate component of the total estimated cost of a proposed State-administered defined benefit volunteer firefighter service award program. In the case of a transfer of a locally-administered defined benefit volunteer firefighter service award program to State administration, the Program

Actuary shall also estimate the additional amount, if any, determined by the Administrator 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 Program Actuary 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 Program Actuary such information as the Program Actuary may require, and the Program Actuary may rely upon such information in making such estimates. The Program Actuary shall make such estimates using the actuarial methodology and assumptions that would be used to calculate the contributions payable by the Sponsor pursuant to section 155.9 of this Part. Before beginning to make such estimates, the Program Actuary 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 Program Actuary is permitted to charge for such service pursuant to an agreement between the Program Actuary and the Comptroller. The cost of such estimates shall be a charge against the Sponsor.

155.4. Notice of adoption or transfer. For any defined benefit 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 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 benefit volunteer firefighter service award program or

transfer of a locally-administered defined benefit volunteer firefighter program to State administration and the vote thereon, and a certified copy of the resolution;

(2) a statement of the date on which the electors of the Sponsor approved the proposition authorizing adoption of the State-administered defined benefit volunteer firefighter service award program or transfer or a locally-administered defined benefit volunteer firefighter service award program to State administration 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 and Program Actuary 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 statutes as may be relevant; the resolution of the governing board of the Sponsor authorizing the adoption of the State-administered defined benefit volunteer firefighter service award program or transfer of a locally-administered defined benefit volunteer firefighter service award program to State administration; 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 benefit volunteer firefighter service award program or transfer of a locally-administered defined benefit volunteer firefighter service award program to State administration; and proof that the cost estimates prepared pursuant to section 155.3 of this Part 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 benefit volunteer firefighter service award program or to transfer a locally-administered defined benefit volunteer firefighter service award program to State administration;

(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 the State-administered defined benefit volunteer firefighter service award program.

155.5. Adoption or transfer agreement. (a) (1) State administration of a newly adopted defined benefit 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 benefit volunteer firefighter service award program.

(2) No transfer to the State of responsibility for administration of a defined benefit 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 benefit 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 Program Actuary to be necessary to fully finance 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 commences and any unpaid prior service costs payable in a lump sum pursuant to subdivision (c) of section 155.8 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 155.4 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 and Program Actuary such additional information as may be necessary to make the records of the defined benefit 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 contributions, fees, charges, or assessments determined by the Administrator;

(C) In the case of a defined benefit volunteer firefighter service award program being transferred from local administration to State administration, a statement of the payments required by subdivision (a) of this section to be made by the Sponsor to the Administrator as a condition precedent to the commencement of State administration, together with an express agreement by the Sponsor to make such payments at the time that the Adoption or Transfer Agreement is submitted to the Administrator pursuant to subdivision (c) of this section, and 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 the operation of any State-administered 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 benefit 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 benefit under the State-administered defined benefit volunteer firefighter service award program;

(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 155.8 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 benefit volunteer firefighter service award program shall take effect;

(7) if the State-administered defined benefit 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 benefit volunteer firefighter service award program; and

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

(b) Within 30 days of receipt of the notice of adoption or transfer required by section 155.4 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 benefit volunteer firefighter service award program.

(c) Within 30 days of receipt of the Adoption or Transfer Agreement, the chief executive officer of the Sponsor 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 file one executed original of the Adoption or Transfer Agreement with the Administrator. The chief executive officer shall also cause a copy of the Adoption or Transfer Agreement and the program document and trust agreement to be provided to each volunteer fire company or volunteer fire department for which the State-administered defined benefit 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) Upon receipt of the executed original of an Adoption or Transfer Agreement, the Administrator shall forward a copy of the Adoption or Transfer Agreement to the Program Actuary.

(d) The Administrator and the Program Actuary shall rely on the information set forth in the Adoption or Transfer Agreement until such time as the Administrator and Program Actuary receive a copy of an amended Adoption or Transfer Agreement or notice of termination as provided in Section 155.14 of this Part.

155.6. Collection of personal information. (a) Except as provided in subdivision (b) of this section, annually, and at such other times 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 benefit 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 benefit 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 in which he or she is a volunteer firefighter;

(6) beneficiaries; and

(7) such other information as the Administrator deems necessary for the administration of the State-administered defined benefit 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 benefit 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.

155.7. Service credit. (a) Each volunteer fire company or volunteer fire department for which a State-administered defined benefit volunteer firefighter service award program is adopted shall maintain at all times for each volunteer firefighter of the volunteer fire company or volunteer fire department, whether or not a participant in the State-administered defined benefit volunteer firefighter service award program, a record of the activities performed and points granted toward a year of firefighting service.

(b) On or before March thirty-first of each year, each volunteer fire company or volunteer fire department for which a State-administered defined benefit 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 benefit volunteer firefighter service award program as provided in subdivision (g) 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 thirty (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 may appeal to the governing board of the Sponsor to have his or her name added to the list as having qualified for credit for a year of firefighting service during the preceding calendar year. 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 credit for the preceding calendar year, shall order the volunteer firefighter's name to be added to the approved list.

(e) On or before July first 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) The Administrator shall retain such list and shall promptly forward a copy of such list to the Program Actuary.

(g) Any volunteer firefighter not wishing to participate in the State-administered defined benefit 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 benefit volunteer firefighter service award program.

(h) Notwithstanding the provisions of subdivisions (b) through (e) of this section, 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 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 155.5 of this Part.

155.8. Prior service credit and costs. (a) In the event that a State-administered defined benefit volunteer firefighter service award program provides prior service credit, each volunteer fire company or volunteer fire department for which the State-administered defined benefit volunteer firefighter service award program is adopted shall identify on the certified list created pursuant to section 155.7 of this Part those participants who, by virtue of earning such credit, became entitled to one or more years of prior service credit and the number of years of prior service credit to which each such participant is entitled. Any participant who is denied prior service credit 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 section 155.7 of this Part. Except as provided in subdivisions (b) or (c) of this section, prior service costs attributable to such prior service credit shall be paid to the Administrator in a

single lump sum in the year in which a participant is determined to be entitled to such credit. Such prior service cost shall be calculated by the Program Actuary.

(b) In the case of a State-administered defined benefit volunteer firefighter service award program that is initially established as a State-administered defined benefit volunteer firefighter service award program, the governing board of the Sponsor may elect to pay prior service costs 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 cost 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.

(c) In the case of a State-administered defined benefit volunteer firefighter service award program that was initially established as a locally-administered defined benefit volunteer firefighter service award program, the Program Actuary shall compute the amount of any unpaid prior service costs at the commencement of State administration. The amount of such unpaid prior service costs shall be paid to the Administrator in a single lump sum as a condition precedent to the commencement of State administration, or the governing board of the Sponsor may elect to pay such prior service costs in annual installments over the five-year period beginning with the calendar year in which State administration commences.

(d) The prior service costs of a State-administered defined benefit volunteer firefighter service award program for the volunteer firefighters of a special fire company or department shall be apportioned and paid by the political subdivisions jointly sponsoring the program in accordance with the agreement among such political subdivisions; provided, however that unless any such agreement provides otherwise, the portion of the prior service costs of a State-administered defined benefit volunteer firefighter service award program allocated to a political subdivision in accordance with such agreement shall be paid in full by a political subdivision even if

the political subdivision ceases to contract with the volunteer fire company or volunteer fire department after a State-administered defined benefit volunteer firefighter service award program is adopted.

(e) Notwithstanding the provisions of subdivision (a) of this section, if, as of the effective date of the conversion of the locally-administered defined benefit volunteer firefighter service award program into a State-administered defined benefit 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 qualifying for such credit, are entitled to one or more years of prior service credit in substantial compliance with the procedures referred to in subdivision (a) of this section, the list prepared pursuant to section 155.7 of this Part shall identify such participants and the number of years for which each participant is entitled to prior service credit. A participant who is denied prior service credit 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 155.7 of this Part.

155.9. Sponsor contributions. (a) Commencing on November 15th of the year in which State administration begins, and each November 15th thereafter, the Program Actuary shall estimate the amount that each Sponsor is required to contribute to a State-administered defined benefit volunteer firefighter service award program for the current calendar year, including the actuarially determined normal cost of the program, any prior service contributions required to be paid in such year pursuant to section 155.8 of this Part, and any additional amounts determined by the Program Actuary 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 Program Actuary may recalculate the contribution, and, in such case, the Administrator shall 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 Program Actuary 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.

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

(c) The actuarial methodology and assumptions used by the Program Actuary to calculate such contributions shall be the same for all State-administered defined benefit volunteer firefighter service award programs.

(d) 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 subdivision (a) of this section. The interest rate or rates used to calculate such interest shall be the greater of:

(i) the investment return rate (or rates) assumed by the Program Actuary in the calculation of the normal cost component of such unpaid contribution; or

(ii) the actual investment return rate earned by the volunteer firefighters' defined benefit service award program trust fund during the calendar year (or years) in which such unpaid contributions were due to be paid.

(e) 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.

(f) In the event that a Sponsor does not submit to the Administrator an approved list in accordance with section 155.7 of this Part, 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 Program Actuary equal to the estimated contribution due during such year. Such estimated contribution shall be calculated by the Program Actuary 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 section 155.7 of this Part. Payment of such contribution shall be made in accordance with subdivisions (b) and (d) of this section as if the Program Actuary's cost calculations were based upon the actual certified listings prepared in accordance with section 155.7 of this Part. Upon receipt by the Administrator of the actual approved certified list prepared in accordance with section 155.7 of this Part, the Program Actuary shall estimate 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 subdivision (d) of this section. 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 or the Program Actuary. The assessment of any extra additional administration charges payable by the Sponsor to either the Administrator or the Program Actuary because of the failure to comply with section 155.7 of this Part shall be in accordance with the contract(s) between the Comptroller and the Administrator/Program Actuary.

(g) Forfeitures shall be treated by the Program Actuary as an actuarial gain in the program cost calculations in the same manner as any other forfeiture of a service award. The funds accumulated to pay the participant or the participant's beneficiary shall remain within the defined benefit service award program trust fund as if such funds were the accumulated funds associated with the forfeiture of a non-vested service award. Should the person to whom service award payments are owed subsequently file an application for payment with the Administrator, the Administrator shall determine and pay the amount of the service award owed to the person and the actuarial liability for such payments shall be included in subsequent actuarial calculations of the

Sponsor's funding costs of the State-administered defined benefit volunteer firefighter service award program by the Program Actuary.

155.10. Forfeitures. (a) 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.

(b) 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 (g) of section 155.11 of this Part.

(c) In the event that a person whose service credit was forfeited in accordance with paragraph (b) of this section 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 benefit volunteer firefighter service award program in which he or she formerly was a participant.

155.11. Distributions. (a) Unless a participant elects to be paid his or her service award in an optional actuarially equivalent form on the written application for distribution he or she files with the Administrator, the service award shall be paid to the participant in the form of a monthly payment straight life annuity. The amount of the monthly straight life annuity payment shall be one-twelfth (1/12) of the benefit amount times the years of firefighting service credited to the participant as of the effective date of the commencement of payment of his or her service award.

(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 attained the entitlement age. A written application for distribution must be received by the Administrator from a participant before payments shall commence to the participant. The participant shall, on such written application, specify the date as of which payment shall commence and shall select the form of payment of his or her service award. The date as of which payment shall commence may be the first day of any month commencing within the ninety (90) day period immediately following the date the written application is received by the Administrator. A participant may file an application for distribution of his or her service award within the ninety (90) day period immediately preceding the date on which he or she will attain the entitlement age and specify the date as of which payment shall commence, which date shall be:

(i) no earlier than the date of attainment of the entitlement age and acquiring a nonforfeitable right to a Service award, and

(ii) no later than ninety (90) days after the date of attainment of the entitlement age and acquiring a nonforfeitable right to a service award.

(c) The date as of which payment of a service award shall commence shall not be on or before the last day of the first calendar year for which a participant qualified for a year of firefighting service credit.

(d) The Administrator shall approve an application for distribution based on the terms of the Sponsor's Adoption or Transfer 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.

(e) The number and types of optional forms of payments of a service award available under a State-administered defined benefit volunteer firefighter service award program shall be at the sole discretion of the Administrator subject to the approval of the Comptroller. Program Sponsors and volunteer fire companies or volunteer fire departments whose volunteer firefighters participate in a State-administered defined benefit volunteer firefighter service award program shall be promptly notified by the Administrator in writing of any changes in the optional forms of payment. Participants shall then be promptly notified about such changes by the volunteer fire company or volunteer fire department.

(f) For determining the payments of a service award to a participant under an actuarially equivalent form of payment, the Program Actuary shall use the actuarial assumptions used to calculate the annual program costs payable by the Sponsor during the calendar year in which the payments of the service award to the participant or the participant's beneficiary shall commence.

(g) (1) 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 his or her service award regardless of whether the participant has reached the entitlement age or acquired a nonforfeitable right to a service award. The participant may select one of the optional forms of payment available under the State-administered defined benefit volunteer firefighter service

award program in case of disability. The value of the service award shall be determined on the basis of the years of volunteer firefighter service credited to the participant as of the effective date of commencement of payment of the service award. The amount of payments shall be calculated so as to be actuarially equivalent to the present value of the payments as if they commenced at the entitlement age.

(2) If a State-administered defined benefit 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 a service award equal to the amount of additional benefits that the participant would have been entitled to had he or she continued to earn years of firefighting service through his or her entitlement age if the rate of benefits being provided under the State-administered defined benefit service award program at the time of disability continued to be provided through the entitlement age.

(h) (1) 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 any portion of his or her 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. The applicant may select one of the optional forms of payment available under the State-administered defined benefit volunteer firefighter service award program in case of death. The value of the service award shall be determined on the basis of the years of volunteer firefighter service credited to the participant as of the effective date of commencement of payment of the service award. The amount of the payments shall be calculated so as to be actuarially equivalent to the present value of the payments as if they commenced at the entitlement age.

(2) If a State-administered defined benefit 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 shall be entitled to apply for and receive distribution of a service award in an amount equal to the amount of such optional additional death benefit.

155.12. Program amendment. (a) Once a State-administered defined benefit volunteer firefighter service award program has been adopted, the Sponsor may amend the program in the manner provided by section 216 or section 216-a of the General Municipal Law. All amendments to a State-administered defined benefit volunteer firefighter service award program shall take effect on January first next succeeding the completion of the process of adopting the amendment provided by section 216 or section 216-a.

(b) The resolution authorizing the adoption of an amendment to a State-administered defined benefit volunteer firefighter service award program shall include:

(i) the name of each volunteer fire company or volunteer fire department having volunteer firefighters who are participants in the State-administered defined benefit volunteer firefighter service award program;

(ii) a description of the amendment;

(iii) except in the case of a change to the activities for which points shall be granted toward a year of firefighting service credit, a statement of the effect, if any, as determined by the Program Actuary, that the amendment would have on the annual cost of the State-administered defined benefit volunteer firefighter service award program including a statement of the current and estimated future annual cost of the State-administered defined benefit volunteer firefighter service award program.

(iv) except in a case of a change to the activities for which points shall be granted toward a year of firefighting service, the date on which the proposition authorizing the adoption of the amendment shall be submitted to referendum.

(c) The proposition authorizing adoption of an amendment to a State-administered defined benefit volunteer firefighter service award program shall identify the State-administered defined benefit volunteer firefighter service award program and shall include:

(i) a brief description of the amendment;

(ii) an estimate of the effect, if any, as determined by the Program Actuary, that the amendment would have on the annual cost of the State-administered defined benefit volunteer firefighter service award program, including the current and estimated future annual cost of the State-administered defined benefit volunteer firefighter service award program; and

(iii) in the case of a service award program for a special fire company or department, the portion of any change in the estimated annual cost of the State-administered defined benefit volunteer firefighter service award program to be borne by one or more other political subdivisions.

(d) In computing the amount of a service award, an amendment changing the State-administered defined benefit volunteer firefighter service award program benefit amount shall be applied only to the service awards payable to participants who earn at least one year of firefighting service credit for activities performed on and after the effective date of such amendment.

155.13. Program termination. (a) A State-administered defined benefit volunteer firefighter service award program may be terminated by the Sponsor in the manner provided by section 216 or section 216-a of the General Municipal Law. The termination of a State-administered defined benefit volunteer firefighter service award program shall take effect on the December thirty-first (31st) next succeeding approval by voters of the proposition to terminate the State-administered defined benefit volunteer firefighter service award program.

(b) The resolution authorizing the termination of a State-administered defined benefit volunteer firefighter service award program shall:

(i) list the name of each volunteer fire company or volunteer fire department having volunteer firefighters who are participants or in the State-administered defined benefit volunteer firefighter service award program to be terminated;

(ii) state the estimated one-time cost of terminating the State-administered defined benefit volunteer firefighter service award program, as determined by the Program Actuary; and

(iii) indicate the date on which the proposition authorizing the termination shall be submitted to referendum.

(c) The proposition authorizing the termination of a State-administered defined benefit volunteer firefighter service award program shall identify the State-administered defined benefit volunteer firefighter service award program and include:

(i) a statement that the State-administered defined benefit volunteer firefighter service award program shall be terminated; and

(ii) an estimate of the one-time cost of terminating the State-administered defined benefit volunteer firefighter service award program as determined by the Program Actuary.

(d) Upon the termination of a State-administered defined benefit volunteer firefighter service award program, all participants who have earned nonforfeitable rights to a service award or beneficiaries of such participants, including those then receiving payment of their service awards, shall be paid a single-sum equal to the actuarial present value of the unpaid balance of their earned service awards as of the date of program termination. Payment shall be made within one year of the effective date of termination.

(e) The Program Actuary shall determine the actuarial present value single-sum distributions to participants and beneficiaries using the same actuarial assumptions he or she used to calculate the annual

program funding cost payable during the calendar year in which voters approved the proposition to terminate the State-administered defined benefit volunteer firefighter service award program.

(f) The one-time cost to terminate the program shall be calculated by the Program Actuary. Such costs shall include the difference between the total cost of the single-sum distributions to participants and beneficiaries calculated by the Program Actuary, and the program assets. Such costs shall also include administrative costs. When the Comptroller is not the Administrator, the administrative costs shall be determined in accordance with the service agreement or agreements between the Comptroller and the Administrator or the Program Actuary or both. The total one-time cost to terminate the program shall be paid by the Sponsor to the Administrator within one hundred eighty (180) days after the effective date of termination of the State-administered defined benefit volunteer firefighter service award program.

(g) In the event that the State-administered defined benefit volunteer firefighter service award program assets exceed the total single-sum distributions to participants and beneficiaries, all or a portion of the administrative costs of terminating the program may be paid, at the discretion of the Sponsor, from the program assets.

(h) After payment of the one-time cost to terminate the program, the Program Trustee, upon notification by the Administrator, shall transfer the remaining program assets to the Sponsor.

(i) A participant or beneficiary may waive payment of any service award payable to him or her from a terminated program by filing a written waiver of payment with the Administrator.

155.14. Notice of amendment or termination. (a) Within thirty (30) days after the amendment of any of the terms of a State-administered defined benefit volunteer firefighter service award program as set forth in the Adoption or Transfer Agreement, or the termination of the Sponsor's participation in a State-administered defined benefit volunteer firefighter service award program, the chief executive officer of the Sponsor shall file

with the Comptroller in Albany, New York, two copies of 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 the State-administered defined benefit volunteer firefighter service award program and the vote thereon, and a certified copy of the resolution;

(2) in the case of termination, or if the amendment requires submission of a proposition to the electors of the Sponsor, a statement of the date on which the electors 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 statutes as may be relevant; the resolution of the governing board of the Sponsor authorizing the amendment or termination of the program; proof that the Program Actuary calculated the estimated annual cost of the amended program including administration costs or the additional costs, if any, of terminating a program; proof of any posting and publication of required notice and the certificate certifying the result of the vote on the proposition authorizing the amendment or termination of the 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 program.

(b) Upon receipt of a notice of amendment or a notice of termination, the Office of the State Comptroller shall forward one copy thereof to the Administrator and one copy to the Program Actuary. Within

thirty (30) days after the receipt of a notice of amendment or a notice of termination, the Administrator shall send to the chief executive officer of the Sponsor two copies of an amended Adoption or Transfer Agreement. The Sponsor's legal counsel shall review such Adoption or Transfer Agreement for consistency with the resolution of the Sponsor's governing body authorizing the amendment and, if applicable, the proposition submitted to electors authorizing the amendment. The chief executive officer shall then 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.

155.15. Administration. (a) State-administered defined benefit volunteer firefighter service award programs shall be administered by the State Comptroller unless the Comptroller retains or designates an administrative service agency, financial organization, and/or an actuary to administer the State-administered defined benefit volunteer firefighter service award programs.

(b) 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 benefit volunteer firefighter service award program of the change.

(c) The Administrator shall:

(1) prepare standard forms of a program agreement and Adoption or Transfer Agreement which shall be utilized by all program Sponsors;

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

(3) compile and maintain all records required for the administration of the program, including records of participant accrued benefit amounts;

(4) prepare and distribute to participants, volunteer fire companies or volunteer fire departments and Sponsors, the 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) cooperate with the Program Actuary and Program Trustee to ensure the effective and efficient operation of the State-administered defined benefit volunteer firefighter service award programs, including the provision in a timely manner of such information as the Program Actuary and Program Trustee may require to exercise and perform their powers and duties;

(8) approve applications for distributions of service awards;

(9) record and process distributions of service awards;

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

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

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

155.16. Program actuary. (a) The Comptroller may designate a member of his or her staff or contract with an actuary to serve as the Program Actuary.

(b) The Program Actuary shall calculate:

(i) the estimated annual cost and the components thereof of all proposed State-administered defined benefit volunteer firefighter service award programs and amendments to existing State-administered defined benefit volunteer firefighter service award programs;

(ii) the estimated costs to terminate a State-administered defined benefit volunteer firefighter service award program;

(iii) for each calendar year during which a State-administered defined benefit volunteer firefighter service award program is in effect, the actual cost of the State-administered defined benefit volunteer firefighter service award program, including all components of such actual cost;

(iv) the amount of all actual distributions of service awards, including all amounts payable under actuarially equivalent forms of payment of service awards;

(v) any other amounts, costs or actuarial present values related to a State-administered defined benefit volunteer firefighter service award program requested by the Comptroller, the Program Trustee or required by law, rule or regulation or by generally accepted actuarial or accounting practices applicable to State-administered defined benefit volunteer firefighter service award programs.

(c) The Program Actuary shall disclose the actuarial assumptions and actuarial methodology used to calculate the estimated and annual costs of a State-administered defined benefit volunteer firefighter service award program to the Comptroller and the Program Trustee. In addition, the Program Actuary shall upon request calculate and/or disclose any other information to the Program Trustee or the Comptroller.

(d) The Program Actuary shall cooperate with the Administrator and Program Trustee to ensure the effective and efficient operation of the State-administered defined benefit volunteer firefighter service award programs, including the provision in a timely manner of such information as the Administrator and Program Trustee may require to exercise and perform their powers and duties.

(e) The fee for providing such services and any other services provided by the Program Actuary shall be a charge against the Sponsor and not exceed the amount or amounts which the Program Actuary is permitted to charge pursuant to an agreement between the Program Actuary and the Comptroller.

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

(b) The Program Trustee shall:

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

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

(iii) invest the assets of the trust;

(iv) determine the fair market value of the trust estate as of each valuation date as defined in the program agreement, commencing with December 31, 2007;

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

(vi) provide the Administrator and Program Actuary with such information as may be necessary to enable the Administrator and Program Actuary 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;

(vii) 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

(viii) cooperate with the Administrator, Program Actuary 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 and Program Actuary may require to exercise and perform their 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.

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

155.18. Program document. (a) The Administrator shall provide the chief executive officer of each Sponsor with a copy of the State-administered defined benefit volunteer firefighter service award program document. Such program document shall include a copy of the trust agreement and the Adoption or Transfer Agreement, as amended.

(b) The Administrator shall prepare, maintain and may amend the program document. The program document shall set forth the rights and obligations of Sponsors, volunteer firefighters, participants and beneficiaries of participants, and procedures for the administration of State-administered defined benefit 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 a financial organization, the program document and any amendments thereto shall not take effect until approved by the Comptroller.

(c) The Comptroller shall prepare and/or amend the trust agreement pursuant to section 216-c of the General Municipal Law. The Comptroller may, however, direct the program trustee to prepare and/or amend the trust agreement subject to review and approval by the Comptroller. The Comptroller shall provide to the Administrator a copy of the trust agreement and any amendments thereto.

(d) The Adoption or Transfer Agreement shall be prepared by the Administrator and the Sponsor as provided in Section 155.5 of this Part.

155.19. 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 Sponsor for the preceding calendar year:

- (1) the total value of program assets as of January 1st;
- (2) the total amount contributed to the program by the Sponsor;
- (3) the total amount of trustee expenses charged against program assets;
- (4) the total amount of administrative expenses charged against program assets;
- (5) the total amount of interest and investment earnings credited to program assets;
- (6) the total amount of investment losses charged to program assets;
- (7) the total amount of distributions;
- (8) the total amount of forfeitures;
- (9) the total value of program assets as of December thirty-first 31st;
- (10) the actuarially determined normal cost and prior service cost for the preceding calendar year;
- (11) the names of persons paid service awards during the preceding calendar year as well as the amount paid to each person during such year;
- (12) the names and earned service credit of all persons who were participants in the program, including those in pay status or pending pay status, as of December 31st of such preceding calendar year along with a statement setting forth each person's status in the program as of such date;
- (13) the names of those active volunteer firefighters who were not participants as of December 31st of such preceding calendar year; and
- (14) the projected annual program costs for each year within the five calendar year period next following the current calendar year.

(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) number of years of volunteer firefighter service credited as of December 31st;

(6) the amount of any death or disability benefit payable as of December 31st to the participant or the participant's beneficiary;

(7) whether the participant had a nonforfeitable right to a service award as of December 31st;

(8) a statement as to the number of years of volunteer firefighter service required for the participant to acquire a nonforfeitable right to a service award;

(9) name(s) of the beneficiaries designated by the participant;

(10) a description of the Sponsor report;

(11) the name and address of the person to whom the Sponsor report was mailed from whom the participant may obtain a copy of such report;

(12) the name of the person in the volunteer fire company or volunteer fire department who submitted information about the participant to the Administrator; and

(13) the procedure for correcting information shown on the statement.

155.20. Disclosure. (a) Not later than six months after a volunteer firefighter becomes a participant in a State-administered defined benefit 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 program's provisions as adopted by the Sponsor of the program.

(b) In the event that a State-administered volunteer firefighter defined benefit service award program is amended, the Administrator shall provide to each volunteer fire company or volunteer fire department a copy of the amendment and a written non-technical explanation of such amendment within six (6) months after the date on which the amendment takes effect and promptly thereafter each volunteer fire company or volunteer fire department shall provide a copy of the amendment and explanation to each participant who is a volunteer firefighter of the volunteer fire company or volunteer fire department.

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

(a) When selecting an administrative service agency or 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 benefit programs;
- (2) the entity's ability to perform the required duties; and
- (3) the cost of services to be provided by the entity.

(b) When selecting an administrative service agency or financial organization to serve as program 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; and

(5) the entity's ability to perform the required duties in recognition of the fiduciary nature of its responsibilities.

(c) When selecting the Program Actuary, the following standards shall apply, 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 professional credentials of the person applying to be appointed as the Program Actuary.

155.22. Acknowledgment. Each actuary, administrative service agency or financial organization selected to provide services in connection with State-administered volunteer firefighter defined benefit 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 benefit volunteer firefighter service award programs. The fiduciary standard of care, which shall be an express provision of any contract with an actuary, 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.

155.23. Solicitation, education and confidentiality. (a) No financial organization, administrative service agency or actuary, nor any of their agents, shall solicit a volunteer firefighter to purchase any products made available by such financial organization, administrative service agency or actuary other than in connection with the State-administered defined benefit volunteer firefighter service award program, nor use information obtained by reason of its appointment as a financial organization, administrative service agency, or actuary to solicit volunteer firefighters with respect to such other products.

(b) Educational materials designed to acquaint volunteer firefighters with the benefits of the State-administered defined benefit volunteer firefighter service award program may be provided by the financial organization, administrative service agency, or actuary 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, financial organization, or actuary may include with the 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, financial organization, or actuary 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, and is not in any way involved with, any financial instrument, product or service offered by or acquired through, an administrative service agency, financial organization, or actuary or their agents, or any other financial institution.

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

155.24. Optional forms of payment of service awards. (a) There shall be two forms available for payment of service awards commencing on or after attainment of the entitlement age:

(1) a monthly payment straight life annuity (standard form);

(2) a five or ten year continuous and certain monthly payment life annuity which is actuarially equivalent to the monthly payment straight life annuity (standard form).

(b) There shall be two forms available for payment to participants who upon application to the Administrator have been determined by the Administrator to be totally and permanently disabled:

(1) monthly payment straight life annuity; or

(2) a single lump sum.

Both forms of payment shall be actuarially equivalent to the monthly straight life annuity (standard) form of payment that would have commenced to the participant on the first day of the month following or coinciding with the participant's 65th birthday.

(c) Forms available for payment of service awards to beneficiaries of deceased participants.

(1) If the beneficiary is the participant's estate, payment shall be a single lump-sum which shall be actuarially equivalent to the monthly straight life annuity (standard) form of payment that would have commenced to the participant on the first day of the month following or coinciding with the participant's 65th birthday or actuarially equivalent to any continuing payments to the participant's designated beneficiary had the participant been being paid a service award at the time of his or her death and had the participant designated a person (or persons) to be his or her beneficiary.

(2) If the participant died before the effective date of the commencement of payment of his or her service award, the payments to the participant's designated beneficiary, which shall be actuarially equivalent to the monthly straight life annuity (standard) form of payment that would have commenced to the participant on the first day of the month following or coinciding with the later of the participant's 65th birthday or the participant's date of death, shall be in one of the following forms:

(i) monthly payment straight life annuity; or

(ii) a single, lump-sum.

(3) If the participant died after the effective date of the commencement of payment of his or her service award, the participant's designated beneficiary shall have the option to be paid:

(i) the remaining monthly service award payments due to the designated beneficiary under the optional form of payment selected by the participant; or

(ii) a single, lump-sum which is actuarially equivalent to the remaining monthly service award payments due to the designated beneficiary under the optional form of payment selected by the participant.

(d) In all cases where the monthly payments to a participant or a beneficiary under a monthly payment straight life annuity form of payment option shall be less than \$50, payment shall be made in an actuarially equivalent single, lump-sum to the participant or the participant's designated beneficiary (applies to subdivisions (a), (b) and (c) of this section).

(e) In any case where a deceased participant's designated beneficiary dies before having received all service award payments that would have been made to such designated beneficiary had he or she survived, the remaining payments shall be made to the estate of such designated beneficiary in an actuarially equivalent lump-sum.