

**4 GCA PUBLIC OFFICERS & EMPLOYEES
CH 8 RETIREMENT OF PUBLIC EMPLOYEES**

**CHAPTER 8
RETIREMENT OF PUBLIC EMPLOYEES**

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NOTE: Public Law 23-42 (09/29/95) created a new *Defined Contributions Plan* for all government employees hired after October 1, 1995. Certain other employees also have the option to switch plans. This new plan was enacted as Article 3 of this Chapter, the Legislature having enacted "Sections 8101 through 8219" as Article 1. However, Article 1 only goes through § 8172. In conformance with the plan of the Guam Code Annotated, the Compiler has renumbered the sections in Article 2 from §83xx to §82xx.

NOTE: P.L. 26-35:IV:11-28 enacted a number of changes to 18104 ff. Of this Article. All had to do with investment practices. P.L. 26-58:10, for unstated reasons, repealed all of the above enactments and reenacted the sections as they appeared prior to the first set of amendments. P.L. 26-58:10 states:

"Section 10. Repeal of Modern Investment Practices. Sections 11 through 28 of Chapter IV of Public Law 26-35 are hereby repealed, and Sections 8104(d), 8139.2, 8139.1, 8141, 8143, 8144(c), 8145, 8146, 8147, 8148, 8149, 8150, 8151, 8152, 8154, 8155, 8156, 8157, 8158, 8159, 8160, 8161, and 8162 of Title 4 of the Guam Code Annotated in existence prior to the enactment of P.L. 26-35 are hereby reenacted."

§ 8101. Retirement Fund: Purpose.

The purpose of the Fund is to provide retirement annuities and other benefits for the employees of the government of Guam who become aged or otherwise incapacitated, and widows' annuities and other benefits to the dependents of such employees, thereby enabling the employees to accumulate reserves for themselves and their dependents to meet, without prejudice or hard ship, the hazards of old age, disability, death and termination of employment, with the objective of encouraging qualified personnel to enter and remain in the service of the Government, thus effecting economy and efficiency in the administration of the Government.

SOURCE: GC § 4200.

§ 8101.1. Statement of Legislative Concern.

(a) The actuarial valuation of the Government of Guam Retirement Fund issued October 9, 1992 by, Deloitte & Touche expressed concern that "the Fund benefit levels are excessive in comparison to most other government retirement systems. Benefit levels and retirement policy should be reviewed and benefits levels adjusted to match this policy. Because it may be difficult to decrease benefit levels for current members, it may be necessary to maintain current plan benefit levels for current government employees while establishing a new plan for all new members. In

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establishing benefit for a new plan, generally accepted retirement income level standards should be observed.” The Legislature finds that the concern expressed by the independent actuaries is a warning that the Fund may be jeopardized if the benefits it provides to its members are not reasonably related and restricted to the resources from which benefits may be paid. Delay in examining this issue may lead to implementation of a plan for new members with benefits sharply disparate from those provided to present members. The Legislature concurs with the recommendation of the actuaries that the Plan’s benefit levels and retirement policy should be reviewed and recommendations made to the Legislature for enactment of such statutory changes as may be necessary.

(b) No later than June 30, 1993, and not later than every two years thereafter, the Board shall submit to the Legislature its recommendations of amendments that need be made to the law establishing the Fund to protect and preserve the actuarial soundness of the Fund for the benefits of all its members.

SOURCE: Added by P.L. 22-06:12.

§ 8102. Same: Title.

The Fund hereby created shall be known as the *Government of Guam Retirement Fund*. In such name or for the account thereof, all of its business shall be transacted, all of its money invested and all of its cash, securities and other property shall be held.

SOURCE: GC § 4201.

§ 8103. Same: Operative Date.

The Fund shall become operative as of May 1, 1951.

SOURCE: GC § 4202.

§ 8104. Definitions.

Words and phrases, wherever used in this Chapter, unless a different meaning is clearly indicated by the context, shall have the following meanings:

(a) *Fund* shall mean the Government of Guam Retirement Fund.

(b) *Board* shall mean the Board of Trustees provided for herein as the agency responsible for the direction and operation of the affairs and business of the system. Title to all assets of the Fund shall be held for the Fund by the Board or its qualified agents or custodians.

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(c) *Employee* shall mean any person in the employ of the Government, in all occupational classifications, including a person whose work is classified as casual or temporary.

(d) *Member* shall mean any employee included in the membership of the Fund.

(e) *Service* shall mean actual employment by the Government as an employee for salary or compensation or service otherwise creditable as herein provided.

(f) *Prior service* shall mean service rendered prior to the operative date.

(g) *Membership service* shall mean service rendered on or after the operative date.

(h) *Total service* shall mean prior service, membership service and military service.

(i) *Salary* shall mean the amount received by an employee for service which shall include allowances for maintenance at the prescribed rate and any territorial post differential.

(j) *Average annual salary* shall mean the average of the three (3) highest annual salaries received by a member during his years of credited service or Six Thousand Dollars (\$6,000) whichever is greater. The term average annual salary shall include contributions paid under § 8112 of this Title for employees who joined the Fund before June 1, 1989.

(k) *Regular interest* shall mean such rate as shall be fixed by the Board, provided that for the first five (5) years of operation of the Fund the rate shall be three per cent (3%) per annum, compounded annually.

(l) *Child*. The term child for the purpose of § 8134(a)(2) shall mean a member's unmarried child, by blood or adoption,

(1) under the age of eighteen (18) years, who lived in the same principal residence as the member who provided more than one-half (1/2) of the child's support;

(2) eighteen (18) years of age or older, but under twenty-four (24) years of age, attending high school *or* an accredited undergraduate educational institution full-time; *or*

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(3) disabled prior to age eighteen (18) years. To establish a child's disability, the Board must receive, *no later than* one (1) year following the death of a member, examination report(s) by two (2) licensed physicians pronouncing that prior to age eighteen (18) years the child was, and currently remains, physically, mentally and permanently disabled and incapable of self-support.

(m) *Agent* shall mean such person, firm or corporation, other than an employee or Board member that is engaged by the Board to perform services or to render advice.

(n) *Custodian* shall mean any agent that is qualified and has assumed the responsibility for the physical possession of Fund assets.

(o) *Investment Agent* shall mean any agent that is qualified and has been engaged by the Board to provide investment advice.

(p) *Uniformed Personnel* means Guam Police Department Officers; Guam Fire Department Firemen; Customs and Quarantine Officers in the Customs and Quarantine Agency; Conservation Officers, Commodity Inspectors, and Entomologist of the Department of Agriculture; Territorial Park Patrol Officers of the Department of Parks and Recreation; Corrections Officers of the Department of Corrections; Airport Police Officers and Security Personnel at the Antonio B. Won Pat International Airport Authority, Guam; Jose D. Leon Guerrero Commercial Port Security personnel; Marshals of the Supreme Court of Guam and the Superior Court of Guam; and Firefighters of the Antonio B. Won Pat International Airport Authority, Guam. In all matters involving the uniformed personnel at the Antonio B. Won Pat International Airport Authority, Guam, the Jose D. Leon Guerrero Commercial Port *or* the Department of Parks and Recreation, the Supreme Court of Guam and the Superior Court of Guam Marshals, and the Guam Police Department *shall* have concurrent jurisdiction with such personnel.

(q) *Join the Fund* means the act of the employee in making his or her first contribution to the Fund. If such employee separates from the government and withdraws his or her contribution, is later rehired by the government and repays his or her withdrawn contribution in the manner prescribed by this Title, join the Fund still means the original act of such employee in making his or her first contribution to the Fund when first hired.

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(r) *Beneficiary* shall mean a person other than the member, who is designated by a member or by the Fund to receive a benefit from the Fund.

(s) *Fiduciary* shall mean a person who:

(1) exercises any discretionary authority to manage a retirement system;

(2) exercise any authority to invest or manage assets of a system;

(3) provides investment advice for a fee or other direct or indirect compensation with respect to assets of a system or has authority or responsibility to do so; *or*

(4) is a trustee or a member of the Board of Trustees.

(t) *COLA Award shall* mean the Cost of Living Allowance awarded in connection with Superior Court Case No. SP0206-93.

(u) *COLA Awardee shall* mean a retiree of the Fund who is a member of the COLA Class designated in Superior Court Case No. SP0206-93 as entitled to receive a Cost of Living Allowance.

(v) *Surviving Spouse* means a living spouse of a deceased, active *or* retired member of the Fund, *or* of a deceased COLA Awardee, in a marriage legally recognized by Title 19, Chapter 3 of the Guam Code Annotated, *or* in a marriage recognized by the laws of the jurisdiction where the marriage was contracted. A domestic relations order may provide that a former spouse *shall* be treated as the current spouse of a deceased member for purposes of eligibility for surviving spouse benefits under § 8134.

SOURCE: GC § 4203; Subsection (c) amended by P.L. 11-135; Subsection (j) amended by P.L.'s 10-121, 19-19:59 and 20-4:7; Subsection (p) amended by P.L. 14-121 and by P.L. 20-201:5; Subsection (q) added by P.L. 17-66:11 and amended by P.L. 20-4:8. Subsection (p) amended by P.L. 24-4:2; repealed and reenacted by P.L. 26-140:6, amended by P.L. 30-055:XII:25(a) (Sept. 4, 2009), effective, Oct. 1, 2008, pursuant to P.L. 30-055:XII:12(b). Subsection (r) by P.L. 26-35:IV:12. Subsection (s) added by P.L. 26-35:IV:13. Subsection (d) repealed and reenacted by P.L. 26-35:IV:14. Subsections (t), (u) and (v) added by P.L. 29-004:10 (Sept. 6, 2007). Subsection (l) amended by P.L. 31-192:3 (Feb. 27, 2012). Subsection (v) amended by P.L. 31-192:4 (Feb 27, 2012).

§ 8105. Fund: Members.

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The following employees shall be members of the Fund and subject to the provisions hereof:

(a) All employees, regardless of age or length of service, in the service of the Government on the operative date, shall become members of the Fund by virtue of their employment.

Any person who shall be on an approved leave of absence on the operative date, on account of disability or military service, shall be subject to membership as of such date, as though he were in active service. If such leave of absence was for any other cause, such person shall be subject to membership as of the operative date only if the leave of absence shall have extended, in the aggregate, for less than one (1) year at the operative date.

(b) All persons becoming employees after the effective date, shall become members as a condition of employment, provided they are under the age of sixty (60) years on the original date of entry into service.

(c) Provided, that any person who, on or after August 1, 1954, becomes an employee only for a definite agreed term, or who at the time of employment is not domiciled in Guam, shall have the option of accepting or rejecting membership and shall become a member only upon submission of a written request to the Board for membership; and provided further that any employee who on August 1, 1954, is an employee only for a definite agreed term, or who is not domiciled in Guam and who on August 1, 1954, is a member, shall have the option of continuing or terminating his membership, but shall continue to be a member until he submits to the Board a written request for termination of his membership.

(d) An employee of a public corporation of the Government or of the University of Guam shall have the option of accepting or rejecting membership and shall become a member only upon submission of a written request to the Board for membership.

(e) Any employee of the government of Guam whose employment is purely temporary, seasonal, intermittent or part-time shall have the option of accepting or rejecting membership and shall become a member only upon submission of a written request to the Board for membership.

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SOURCE: GC § 4204; Subsection (b) amended by P.L. 18-48:24; Subsection (d) amended by P.L. 13-194; Subsection (e) added by P.L. 11-135.

§ 8106. Same: Ineligible Persons.

The following employees shall not be eligible for membership:

- (a) Persons whose services are compensated on a fee basis.
- (b) Independent contractors.
- (c) Persons whose employment is for a specific project.

(d) Persons who are employed in the Senior Citizens Community Employment Program.

SOURCE: GC § 4205, amended by P.L. 11-135; further amended by P.L. 16-109.

§ 8107. Prior Service Credit.

Each person becoming a member on the operative date shall be entitled to prior service credit for service rendered the Government. In the case of any employee who shall have been a member of the Civil Service Retirement Fund of the United States Government and shall have received a refund or refunds of contributions made to such fund, the allowance of prior service credit shall be conditioned upon such person making a contribution to the fund of the full amount of refund or refunds received by such employee.

Payment of such contribution shall be due as of the operative date and shall be made in a lump sum, or in installments under rules prescribed by the Board. Regular interest thereon shall begin to accrue from the operative date, which shall become a part of the principal sum to be paid by any such person.

In the case of any employee who shall be a member of the Civil Service Retirement Fund of the United States Government at the operative, whether in an active or inactive status, prior service credit shall be granted only when such employee definitely terminates his membership in such fund and receives a refund of his accumulated contributions therefrom and makes a payment to this fund of the full amount thereof, including regular interest from the date of such termination, if subsequent to the operative date, to the date of payment.

Each member entitled to prior service credit shall file with the Board, on a form prescribed by the Board and under such rules as it may adopt, a detailed statement of all such prior service for which the member claims credit. Such claim shall be verified by the Board as soon as practicable after

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the filing thereof. Upon such verification, the Board shall cause to be issued a statement of prior service, certifying to the member the length of prior service for which credit has been granted. Such statement shall be final and conclusive for the purposes of the Fund as to such service, except for the purposes of the Fund as to such service, except for the correction of error, provided that any member may, within one (1) year from the date of original issuance of such certificate, request the Board to modify or correct such prior service certificate. Such certificate shall become null and void upon the death of a member, and shall be canceled automatically upon receipt by a member of a refund of his contributions prescribed by the provisions of this Chapter. Any employee who shall not be in service on the operative date or who is on an approved leave of absence on such date, for disability, military leave or other cause, shall be entitled to receive credit for prior service only when such employee shall have completed at least three (3) years of contributing membership service subsequent to the operative date.

SOURCE: GC § 4206, as amended by P.L. 10-188.

§ 8108. Same: Credit for Service With Armed Forces.

(a) Prior Service. Prior Service credit shall be granted any employee who served in the Armed Forces of the United States prior to his employment with the government of Guam as though such service was rendered for the government of Guam, provided the employee shall not be receiving a pension or annuity, other than a disability pension or annuity, from the United States Government on account of such prior service or is eligible to receive such pension or annuity on account of such prior service.

(b) Subsequent Service. An employee shall be allowed credit for any active service in the Armed Forces of the United States subsequent to May 1, 1951, not to exceed five (5) years, provided that if the employee entered the Armed Forces while employed by the government of Guam and re-enters its employ within the period of one (1) year following his discharge from said Armed Forces under conditions other than dishonorable, or if upon said discharge, completes his education under the provisions of the various Acts of Congress extending educational benefits to veterans and re-enters its employ within six (6) months after completing such education, such employee may obtain said retirement credit (not to exceed five (5) years) without making contribution to the Fund, provided that the contribution of both the employee and the employer for such service shall be made by the government of Guam or the employer involved.

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If the employee was not employed by the government of Guam upon entering the Armed Forces he may obtain said retirement credit (not to exceed three (3) years) only upon making payment to the Fund of two (2) times the appropriate member contribution based on the period of credit sought to be obtained and the average salary paid the employee by the Armed Forces during that period ending with the termination of his military service which is equal to the period of credit sought to be obtained; provided, that while any employee may claim and pay in for such credit, no such credit shall be counted until and unless the employee has actually, subsequently worked for the government of Guam, its autonomous instrumentalities or agencies, for whatever time is otherwise required by law for vesting. For purposes of this Section, salary means (1) basic pay, and (2) any special pay which was taxable under federal income tax law.

SOURCE: GC § 4207; Repealed and reenacted by P.L. 12-151; Subsection (b) amended by P.L. 12-180 and Repealed and reenacted by P.L. 19-19:54.

NOTE: Please see NOTE following § 8136 regarding computation of interest at time of repayment to the Fund.

§ 8109. Same: Credit for Excluded Service.

Any person who has been required or is hereafter required to become a member as a condition of employment and who has performed service for which he rejected membership in accordance with § 8105(c) or for which he was ineligible for membership under the provisions of § 8106 may claim credit for such excluded service by paying to the Fund the contributions which he would have paid had such service not been excluded, together with regular interest thereon from the date on which such contributions would have been made had such service not been excluded to the date of actual payment.

SOURCE: GC § 4207.5.

§ 8110. Same: Subsequent Federal Service.

Any employee who shall have been employed by the government of Guam for a period of ten (10) years or more and who is a member of the Fund, who is appointed for a position within the United States Government which requires his continued residence within Guam and who has not terminated his membership in the Fund may be allowed credit for such federal service, provided he does not become a member of the Civil Service Retirement System and provided further that he pays to the Fund during the years for which he claims credit as a federal employee the contributions

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which he would have paid had his employment been with the government of Guam, together with regular interest thereon from the date on which such contributions would have been made had such service not been with the Federal Government to the date of actual payment.

SOURCE: GC § 4207.6.

§ 8110.1. Same: Previous Federal Service.

Any current member of the Fund who is active or retired and who has been appointed to a federal position and detailed to serve with the Government of Guam in the Governor's Office, after the effective date of the Organic Act until the inauguration date of the first elected governor of the territory of Guam, may claim credit for such service provided he does not become a member of the U.S. Civil Service Retirement System and provided further that he pays to the Fund the contributions which he would have paid at his employment then with the Government of Guam, together with regular interest thereon from the date on which such contributions would have been made had such service not been with the federal government to the date of actual payment.

SOURCE: Section added by P.L. 20-65:17 (eff. 9/14-89).

§ 8110.2. Same: Subsequent Service in an International or Regional Organization.

Any employee who shall have been employed by the government of Guam for a period of ten (10) years or more and who is a member of the Fund, who is appointed for a position within an international or regional organization of governments under the United Nations system and who has not terminated membership in the Fund, may be allowed credit for such service, provided that the individual pays to the Fund during the years for which he or she claims credit as an international or regional employee the employer and employee contributions which he or she would have paid had employment been with the government of Guam, together with regular interest thereon from the date on which such contributions would have been made had such service not been with the international or regional organization to the date of actual payment.

This Section shall apply to all persons who are employed by an international or regional organization under the United Nations system since 1990.

SOURCE: Added by P.L. 24-59:IV:26.

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§ 8111. Same: Credit for Educational Training Service.

Any person who was employed by the government of Guam prior to June 1, 1989, who takes leave of absence without pay or terminates from such employment in order to further his education may, when returning to employment with the government of Guam, claim retirement credit for such time so spent in furthering his education by paying to the Fund the contributions which he would have paid had such time so spent on education not been excluded by virtue of his leave of absence without pay or termination, together with regular interest thereon, from the date on which such contributions would have been made, had such time so spent not been excluded, to the date of actual payment; provided, however, that this Section shall apply only to those persons who resume employment in the government of Guam within two (2) years after completing their studies.

SOURCE: GC § 4207.7, amended by P.L. 20-4:5.

§ 8112. Same: Credit For Subsequent Civil Service.

Any person who was a member of the Civil Service of the United States of America after May 1, 1951 and who prior to June 1, 1989 was employed by the government of Guam, shall be entitled to credit for services rendered the United States Government after May 1, 1951, not to exceed five (5) years. In the case of any such person who was a member of the Retirement Fund of the United States government, credit shall be granted only when he:

- (a) definitely and finally terminates his membership in such Fund;
 - (b) definitely and finally renounces any future benefits due him thereunder;
 - (c) receives a refund of his accumulated contributions therefrom;
- and
- (d) makes a payment to the Fund of the equivalent of the amount paid to the federal fund by him and his employer during the last five (5) years of his employment in the Civil Service or during the period ending with the termination of said employment which is equivalent to the period for which he seeks credit if less than five (5) years, including regular interest from the date of such termination to the date of payment.

SOURCE: GC § 4207.8 added by P.L. 12-180 and amended by P.L. 20-4:5.

§ 8113. Early Retirement Credit.

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Any person who is a current member of the Fund may apply for and receive up to five (5) years of retirement credit provided that:

(a) the person apply for such credit within six (6) months of the effective date of this Act;

(b) the person pay into the Retirement Fund an amount equal to their annual employee's contribution to the Fund at the time of their application, multiplied by the number of years of credit they are applying for, or sign a promissory note at an interest rate *not* exceeding the actuarially determined required rate of return to pay such amount in full within three (3) years of the date of the note;

(c) the person is a member of the Defined Benefit Plan *or* the Defined Contribution Plan;

(d) the employee has never previously retired under the Defined Benefit Plan *or* the Defined Contribution Retirement System;

(e) no employee shall be permitted to actually retire under this Early Retirement Credit any sooner than ninety (90) days *after* notifying the Director of the Retirement Fund of one's intent to retire under this Act;

(f) the person complies with this Section and all other provisions of this Act, and retires on a service retirement annuity within six (6) months after applying and qualifying for the early retirement credit; *and*

(g) the person has *any* of the following:

(i) twenty (20) years of service credit for retirement purposes *prior to* the purchase of additional retirement credit pursuant to this Act; *or*

(ii) fifteen (15) years of service credit for retirement purposes prior to the purchase of additional retirement credit pursuant to this Act, and is a member of the uniformed services of the government of Guam.

SOURCE: Repealed by P.L. 18-46:2. Added by P.L. 24-327:2. Amended by P.L. 25-002:2. Amended by P.L. 25-003:2.

§ 8113.1. Failure to Fulfill Promissory Note Disqualifies.

A qualified applicant, meeting the time requirements set forth in § 8113 of this Title who fails to pay in full the amounts described in a promissory

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note to the Retirement Fund within three (3) years of the date of the note shall lose eligibility to purchase retirement credit under the provisions of § 8113 of this Chapter. The Retirement Fund in such cases shall refund to the applicant those amounts paid against the promissory note.

SOURCE: Added by P.L. 18-46:1; Repealed and reenacted by P.L. 19-19:52 and amended by P.L. 20-4:6. Repealed and reenacted by P.L. 24-327:3.

NOTE: Please see note following § 8136 regarding computation of interest at time of repayment to the Fund.

§ 8113.2. Payment in Full Must be Received Prior to Use of Credit for Retirement Purposes.

Employees eligible to retire who opt to do so *prior* to payment of the full cost of the employee's share of the early retirement credit pursuant to the terms of the promissory note under § 8113(b) of this Chapter shall receive credit on a year by year basis as each full year of credit is paid for.

SOURCE: Added by P.L. 19-19:53. Repealed and reenacted by P.L. 24-327:4.

§ 8113.3. Employer Shares for Employees Applying for Early Retirement Credit.

The government of Guam shall pay to the Retirement Fund in full all employer's share of retirement contributions due for each applying employee within two (2) years of the date upon which the employee applied. The amount due from the government for each employee shall be equal to the annual employer's share of the retirement contribution for the employee at the time of application multiplied by the number of years of credit the employee is applying for.

SOURCE: P.L. 19-19:55, enacted August 22, 1988, codified by Compiler. Repealed and reenacted by P.L. 24-327:5.

NOTE: Retirement Law sections affected by P.L. 19-19 were 4 GCA §§ 8113.1, 8113.2 and 8113.3, 8108(b), 8137(d), 8137.1, 8104(j), 8130 and 8135(a)(1).

§ 8114. Same: Computation.

In the computation of credit for service for the purpose of the Fund, twelve (12) days or more of service during any month shall constitute a month of service, and service between six (6) and twelve (12) days during any month shall constitute one-half (1/2) month of service. Service of less than six (6) days during any month shall be disregarded. Nine (9) months of service or more during any year shall constitute a year of service. Not more than one (1) month of service shall be creditable on account of service

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rendered during any month and not more than one (1) year service shall be creditable on account of service rendered during any year.

SOURCE: GC § 4208.

§ 8115. Same: Service Prior to Operative Date.

Credit shall also be granted to any employee for services rendered after the operative date for which contributions shall have been made this Fund.

SOURCE: GC § 4209.

§ 8116. Same: Credit for Sick and Annual Leave Not Utilized.

Any person employed by the government of Guam and a member of the Fund who has unused accumulated sick or annual leave upon the day of his retirement or disability may claim credit for every day of such leave to which he was entitled which he did not utilize, provided, that in the case of annual leave only, he makes the appropriate member contribution to the Fund for the period to be credited, such contribution to be deducted from the lump-sum payment made to the employee for such accumulated leave. If an employee does not desire to claim such credit, the lump-sum payment shall be made to him without such deduction. In calculating credit for purposes of this Section, twelve (12) days of accumulated leave shall constitute a month of service, between six (6) and twelve (12) days of accumulated leave shall constitute one-half (1/2) month of service and less than six (6) days shall be disregarded.

SOURCE: GC § 4209.1, as amended by P.L. 14-140.

§ 8117. Same: Credit for Casual or Temporary Employment.

Each person becoming a member of the Fund by virtue of that provision of Subparagraph (c) of § 8104 of this Chapter which defines "employee" to include certain casual or temporary employees, shall be entitled to excluded service credit for casual or temporary service rendered to the Government. The procedure set out in § 8107 of this Chapter shall apply to persons seeking excluded service credit under the provisions of this Section; provided, however, that all persons claiming such excluded service credit shall be entitled to make contributions for such excluded service in equal installments over a period of not to exceed ten (10) years; and further provided that if the year of the employee's retirement occurs prior to the expiration of the ten (10) year period, all such contributions shall be made in equal installments over the period prior to the date of retirement.

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SOURCE: GC § 4209.2, as added by P.L. 11-135.

§ 8118. Prohibition Against Double Credit for Same Period of Time.

Should a member, for a specific period of time, be entitled to more than one of the types of credit authorized by this Chapter, he shall be allowed to obtain for said period of time only one type of credit, according to his election.

SOURCE: GC § 4209.3, as added by P.L. 12-180.

§ 8119. Retirement.

With respect to any member who joined the Fund prior to October 1, 1981:

(a) He or she may retire on a service retirement annuity, upon written application to and approval by the Board; provided that such member shall have attained at least sixty (60) years of age or fifty-five (55) years of age in the case of a member of the uniformed personnel and shall have completed at least ten (10) years of total service;

(b) If he or she is a member of the uniformed personnel, he or she shall, upon retirement, be placed on rank grade above that held by him on the date of retirement;

(c) If he or she has completed twenty-five (25) years of service, he or she may retire and shall be entitled to full retirement annuity;

(d) Any retired employee who has previously elected to retire and who has completed at least twenty-five (25) years of service shall be eligible for full retirement benefits on and after the effective date of this Act;

(e) At his option, whether active or inactive, he or she may retire after twenty (20) years of service regardless of age. The retirement annuity for any employee or member described in this Paragraph shall be reduced one quarter (¼) of one percent (1%) of each month such employee or member is under the age of sixty (60) years, from the amount determined for such employee or member as hereinafter provided.

SOURCE: GCA § 4210, Repealed and reenacted by P.L. 16-9.

§ 8120. Same.

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With respect to any member who joined the Fund on or after October 1, 1981:

(a) He or she may retire on a service retirement annuity, upon written application to and approval by the Board; provided that such member shall have attained at least sixty (60) years of age or fifty-five (55) years of age in the case of a member of the uniformed personnel and shall have completed at least fifteen (15) years of total service;

(b) If he or she is a member of the uniformed personnel, he or she shall, upon retirement, be placed one rank grade above that held by him on the date of retirement;

(c) If he or she has completed thirty (30) years of service, he or she may retire and shall be entitled to full retirement annuity;

(d) At his option, whether active or inactive, he or she may retire after twenty-five (25) years of service regardless of age. The retirement annuity for any employee or member described in this Paragraph shall be reduced one quarter (1/4) of one percent (1%) for each month such employee or member is under the age of sixty (60) years, from the amount determined for such employee or member as hereinafter provided.

SOURCE: GC § 4210.1, as added by P.L. 16-9.

§ 8120.1. Same.

With the exception of members of the Fund prior to the effective date of this Section, any member of the Fund may retire:

(a) On a service retirement annuity, upon written application to and approval of the Board; provided that such member shall have attained at least sixty-five (65) years of age or sixty (60) years of age in the case of a member of the uniformed personnel, and shall have completed at least fifteen (15) years of total service;

(b) if he or she is a member of the uniformed personnel he or she shall, upon retirement, be placed one rank grade above that held by him on the date of retirement;

(c) if he or she has completed thirty (30) years of service he or she may retire and shall be entitled to full retirement annuity.

(d) at his option, whether active or inactive, he or she may retire after twenty-five (25) years of service regardless of age. The retirement

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annuity for any employee or member described in this Paragraph shall be reduced one quarter (¼) of one percent (1%) for each month such employee or member is under the age of sixty-five (65) years, from the amount determined for such employee or member as hereinafter provided.

SOURCE: GC § 8120.1 added by P.L. 17-66:8.

§ 8121. Same. Suspension of Annuity Payment.

(a) A retired member who subsequently becomes an employee eligible for membership under §8106 of this Title *prior* to January 1, 1999, *shall*, upon becoming so employed, have that member's right to receive payment of that member's annuity suspended for the duration of that member's employment, but all other rights pertaining to that member's annuity provided by this Article, including automatic increases therein, *shall* be retained by that member. The provisions of this Section *shall not* be applicable to any retired Judge or Justice designated and assigned by the Chief Justice to perform judicial duties in the courts of Guam as provided for in §6115 of Title 7 GCA, or any person employed by the Department of Education in Guam schools, as a substitute teacher or as a Certified Augmentation Teaching Service (CATS) employee as that term is defined by Title 17 GCA § 3127(b). Such employment *shall* be subject to the provisions of Subsection (d) of this Section.

The provisions of this Section *shall not* be applicable to any certified, registered or licensed health care professional, or ancillary service personnel, employed by the Guam Memorial Hospital Authority, the Department of Mental Health and Substance Abuse, the Department of Public Health and Social Services, academic faculty positions at the University of Guam and the Guam Community College, or a limited term police officer employed by the Guam Police Department to include Police Officers I, II, III and Sergeant I & II, performing duties such as patrol officers, narcotic officers, criminal investigators and school resource officers; provided, that such person(s) occupies such positions for which *no* other qualified/certified applicants was available, and that such employment *shall* be on a fiscal year basis; subject to the provisions of Subsection (d) of this Section.

The provisions of this Section *shall not* be applicable to employee(s) of the Office of the Governor, employee(s) of the Office of the Lieutenant Governor, unclassified employee(s) appointed by the Governor of Guam, and heads of autonomous agencies appointed by a governing board. An

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employee of the Governor or Lieutenant Governor's office or unclassified employee appointed by the Governor of Guam and heads of autonomous agencies appointed by a governing board who has previously retired *shall* become a member of the Defined Contribution Retirement System.

(b) A retired member who subsequently becomes an employee eligible for membership under § 8106 of this Title on or after January 1, 1999 shall, upon becoming so employed, have that member's right to receive payment of that member's annuity suspended for the duration of that member's employment, and shall be ineligible for readmission to the Defined Benefit Plan, but all other rights pertaining to that member's annuity provided by this Article, including automatic increases therein, shall be retained by that member; except, that the retired member shall forfeit any enhanced benefits for which that member was eligible pursuant to the early retirement provisions of § 8121.1.

This Subsection shall not be construed to render a member ineligible for participation in the Defined Contribution Retirement System or the Deferred Compensation Program under Articles 2 and 3 of this Chapter, upon a retired member's subsequent employment with the government of Guam.

(c) No employee voluntarily purchasing early retirement credit shall be rehired by the government of Guam in any position, whether contractual or otherwise, for at least three (3) years from the effective date of retirement, except for those exemptions listed under Item (a). The Retirement Fund shall make all individuals who voluntarily apply for early retirement credit aware that their purchase of such credit shall be construed as a voluntary waiver of their right to re-employment or reinstatement for a period of at least three (3) years.

(d) Any persons hired pursuant to the provisions of Item (a) of this Section who are subsequently rehired for consecutive school years shall be exempt from the requirements expected only of new employees, including, but not limited to, physical examinations with the exception of proof of certification, as a condition of such rehire.

SOURCE: GC § 4210.2; originally enacted as § 4210.1 by P.L. 12-224; amended by P.L. 15-107; renumbered to § 4210.2 by P.L. 16-9; further amended by P.L. 17-25:III:6; amended by P.L. 21-48:9. Amended by P.L. 24-327:6. Amended by P.L. 25:002:6. Amended by P.L. 25-003:6. Amended by P.L. 26-019:2. Subsection (a) amended by P.L. 27-31:40; P.L. 28-183:3 (Jan. 29, 2007), P.L. 29-113:VI:43 (Sept. 30, 2008), P.L. 30-233:2 (Dec. 30, 2010), P.L. 31-001:2 (Feb. 22, 2011), effective retroactively to January 3, 2011, pursuant to P.L. 31-001:3..

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2009 NOTE: P.L. 28-045:10 (June 6, 2005) changed the name of the Department of Education to the Guam Public School System. P.L. 30-050:2 (July 14, 2009) reverted the name of the Guam Public School System to the Department of Education.

§ 8122. Annuity: Amount.

(a) Formula. The basic retirement annuity payable to any member shall be the following:

(1) an amount equal to two percent (2.0%) of average annual salary for each of the first ten (10) years of credited service, and two and one-half percent (2.5%) of average annual salary for each year, or part thereof, of credited service over ten (10) years;

(2) in addition, there shall be added to the amount set forth in Subsection (1) an amount equal to Twenty Dollars (\$20.00) multiplied by each year of credited service, the total of which shall then be reduced by an amount equal to one hundredth of one percent (.01%) of said total for each One Dollar (\$1.00) that a member's average annual salary exceeds the amount of Six Thousand Dollars (\$6,000.00);

(3) no basic retirement annuity shall exceed eighty-five percent (85%) of average annual salary; *and*

(4) the basic retirement annuity shall *not*, in any case, be less than One Thousand Two Hundred Dollars (\$1,200.00) per year per member.

(b) Automatic Increases in Annuity. Any member receiving a basic retirement annuity and entitled to benefits under this Chapter shall receive each year on the anniversary date of the member's retirement or entitlement, an automatic 'sliding scale' increase in the member's annual annuity, to be computed as follows:

(1) members receiving an annual annuity of Three Thousand Five Hundred Dollars (\$3,500.00) or less shall receive an automatic annual increase of Six Hundred Dollars (\$600.00);

(2) members receiving an annual annuity of more than Three Thousand Five Hundred Dollars (\$3,500.00), but not more than Six Thousand Three Hundred Dollars (\$6,300.00), shall receive an automatic annual increase of Four Hundred Dollars (\$400.00);

(3) members receiving an annual annuity of more than Six Thousand Three Hundred Dollars (\$6,300.00) but not more than Ten Thousand One Hundred Dollars (\$10,100.00) shall receive an automatic annual increase of Three Hundred Dollars (\$300.00); *and*

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(4) members receiving an annual annuity of more than Ten Thousand One Hundred Dollars (\$10,100.00) shall receive an automatic annual increase of Two Hundred Dollars (\$200.00).

(c) **Recomputation of Annuities Previously Given.** The basic retirement annuity set forth in Subsection (a) shall be recomputed as follows:

(1) any member who commenced receiving a retirement annuity on or after September 1, 1972, but prior to July 1, 1984, and entitled to benefits under this Chapter shall have the member's basic annuity recomputed to reflect a one-time One Hundred Dollar (\$100.00) increase to that member's basic retirement annuity; *and*

(2) any member who commenced receiving a retirement annuity prior to September 1, 1972 shall have the member's basic retirement annuity recomputed based upon the formula set forth in Subsection (a) f this Section; provided, however, that any member receiving a retirement annuity on September 1, 1972 which is greater than the basic retirement annuity recomputed pursuant to Subsection (a) of this Section shall have that member's basic retirement annuity recomputed to reflect an amount equal to the sum of that member's annuity on September 1, 1972, plus five percent (5%) of the member's annuity on said date.

(d) **Additions to Recomputed Annuities.** The recomputed retirement annuity set forth in Subsection (c) shall be subject to any of the following applicable non-cumulative additions:

(1) any member who commenced receiving a retirement annuity prior to October 1, 1995, and who is entitled to benefits under this Chapter, shall receive, during the fiscal years commencing on October 1, 2002, and ending on February 28, 2003, an additional Four Thousand Two Hundred Thirty-Eight Dollars (\$4,238.00), to replace the amount known as the sum of the One Thousand Two Hundred Dollars (\$1,200.00), One Thousand Five Hundred Dollar (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) supplemental annuity benefits formerly contained in various General Appropriation Acts.

(2) any member who commenced receiving a retirement annuity prior to October 1, 1999, and who is entitled to benefits under this Chapter, shall receive, during the fiscal years commencing on October 1, 1999 and ending on September 30, 2001, an additional One

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Thousand One Hundred Dollars (\$1,100.00), to replace the annual cost of living increase formerly contained in various General Appropriation Acts; *and*

(3) any member who commenced receiving a retirement annuity on or after October 1, 1999, but prior to January 1, 2000, and who is entitled to benefits under this Chapter shall receive, during the fiscal year commencing on October 1, 2000 and ending on September 30, 2001, an additional One Thousand One Hundred Dollars (\$1,100.00), to replace the annual cost of living increase formerly contained in various General Appropriation Acts.

(4) Any member who commenced receiving a retirement annuity on or after January 1, 2000, but prior to October 1, 2000, and who is entitled to benefits under this Chapter shall receive, during the fiscal year commencing on October 1, 2000 and ending September 30, 2001, an additional One Thousand One Hundred Dollars (\$1,100.00), to replace the annual cost of living increase formerly contained in various General Appropriation Acts.

(5) Any retirement annuitant who commenced receiving a retirement annuity prior to October 1, 1995, and who is entitled to retirement benefits under this Chapter shall receive, during the period commencing on March 1, 2003, and ending on October 28, 2003, prospective, non-cumulative supplemental annuity benefits as follows:

(i) Two Thousand Four Hundred Seventy-Two (\$2,472.00) in Class 1 Retiree Supplemental Annuity Benefits, known as the sum of One Thousand Two Hundred Dollars (\$1,200.00), One Thousand Five Hundred Dollars (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) in annual benefits formerly contained in various General Appropriation Acts, for those employees who retired as of October 1, 1977.

(ii) One Thousand Seven Hundred Seventy-Two Dollars (\$1,772.00) in Class 2 Retiree Supplemental Annuity Benefits comprised of the sum of One Thousand Five Hundred Dollars (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) in annual annuity benefits formerly contained in various General Appropriation Acts, for

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those employees who retired between October 2, 1977, and October 1, 1980.

(iii) One Thousand Three Hundred Sixty-Four Dollars (\$1,364.00) in Class 3 Retiree Supplemental Annuity Benefits, comprised of the sum of One Thousand Five Hundred Dollars (\$1,500.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) in annual annuity benefits formerly contained in various General Appropriation Acts, for those employees who retired between October 2, 1980, and October 1, 1982.

(iv) Eight Hundred Seventy-Five Dollars (\$875.00) in Class 4 Retiree Supplemental Annuity Benefits, composed of the sum of One Thousand Five Hundred Dollars (\$1,500.00) in annual annuity benefits, formerly contained in various General Appropriation Acts, for those employees who retired between October 2, 1982 and October 1, 1995, or their survivors.

(v) No persons eligible for Class 1, 2, 3 or 4 Retiree Supplemental Annuity Benefits provided for in paragraph (5) of this Section shall receive such benefit if their regular annual retirement annuity prior to the supplemental amounts herein is more than Forty Thousand Dollars (\$40,000.00). Persons eligible for Class 1, 2, 3, or 4 Retiree Supplemental Annuity Benefits shall only receive an amount of such benefits up to the total aggregate sum of Forty Thousand Dollars (\$40,000.00) in combined retirement annuities and supplemental retirement annuities and not more.

(6) Any retirement annuitant who commenced receiving a retirement annuity *prior to* October 1, 1995, and who is entitled to retirement benefits under this Chapter, *shall* receive, during the period commencing on October 1, 2011 and ending on September 30, 2012, prospective, non-cumulative supplemental annuity benefits as follows:

(i) Four Thousand Two Hundred Thirty-Eight Dollars (**\$4,238**) in Retiree Supplemental Annuity Benefits, known as the sum of One Thousand Two Hundred Dollars (**\$1,200**), One Thousand Five Hundred Dollars (**\$1,500**), Seven Hundred Dollars (**\$700**), and Eight Hundred Thirty-Eight Dollars (**\$838**) in annual benefits formerly contained in various General Appropriation Acts.

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(ii) *No* retiree who is eligible for Retiree Supplemental Annuity Benefits provided for in this Section *shall* receive such benefit if her/his regular annual retirement annuity, excluding the supplemental amounts authorized herein and survivor benefits, *exceeds* Forty Thousand Dollars (**\$40,000**). A retiree who is eligible for Retiree Supplemental Annuity Benefits *shall* receive *no more than* Forty Thousand Dollars (**\$40,000**) in combined retirement annuities and supplemental retirement annuities.

(iii) Any retiree or survivor eligible to receive the supplemental annuity may waive their supplemental annuity payment authorized herein by the filing of a notarized affidavit waiving such payment with the Retirement Fund.

SOURCE: GC § 4211; Subsection (b) Repealed and reenacted by P.L. 12-151 and amended by P.L. 17-66:1, introductory sentence further amended by P.L. 17-82:5; (d) repealed and reenacted by P.L. 12-151 and 17-66:2; (e) added by P.L. 15-135, repealed and reenacted by P.L. 16-114:5. Amended by P.L. 25-072:IV:4. Subsection (d)(4) added by P.L. 25-174:2 to correct prior miscalculations and omissions. Subsection (d)(1) amended by P.L. 26-36:27 and P.L. 27-05:IV:23. Subsection (d)(5) added by P.L. 26-36:28 and 27-05:IV:28. Subsection (d)(6) added by P.L. 27-29:IV:18; repealed and reenacted by P.L. 27-106:IV:18; amended by P.L. 28-068:III:12 (Sept. 30, 2005); P.L. 28-150:IV:II:4 (Sept. 30, 2006), P.L. 29-019:V:II:4 (Sept. 29, 2007), P.L. 29-113:V:II:4 (Sept. 30, 2008), P.L. 30-055:XI:5 (Sept. 4, 2009), P.L. 30-196:XI:5 (Sept. 1, 2010), P.L. 31-077:XI:5 (Sep. 20, 2011).

§ 8122.1. Adjustments.

(a) When an error is made in the records maintained by the Fund or by the government, or in the contributions made on behalf of a member, or in computing a benefit, and, as a result, a member or beneficiary is entitled to receive from the Fund more or less than the member or beneficiary would have been entitled to receive had the records or contributions been correct or had the error not been made, then (1) the records, contributions, or error shall be corrected, and (2) as far as practicable, future payments or benefit entitlement shall be adjusted so that the actuarial equivalent of the annuity or benefit to which the member or beneficiary was correctly entitled shall be paid. If no future payment is due, a person who was paid any amount to which the person was not entitled is liable for repayment of that amount, and a person who was not paid the full amount to which the person was entitled shall be paid the balance of that amount.

(b) An adjustment that requires the recovery of benefits may not be

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made under this section if:

(1) the error was not the result of erroneous information supplied by the member or beneficiary;

(2) the member or beneficiary did not have reasonable grounds to believe that the amount of the benefit was in error; and

(3) the incorrect benefit was first paid four years or more before the member or beneficiary was notified of the error.

(c) At every regularly scheduled meeting of the Board of Trustees of the Fund, the Director shall report to the Board on all situation since the Director's last report in which an adjustment has been prohibited under (b) of this section. If the Board finds that there is reason to believe that one or more of the conditions set out in (b) of that section have not been met, the Director shall notify the member or beneficiary that an adjustment will be made to recover the overpayment.

(d) Notice of the adjustment under this Subsection shall include a statement that the affected member or beneficiary may appeal the adjustment to the record by notifying the Director, in writing, within thirty (30) days after receipt of notice that the records will be adjusted. A member or beneficiary who receives notice of adjustment under this subsection may appeal to the Board for a waiver of the adjustment in accordance with Section 8122.2(b). An adjustment shall not be required while the appeal is pending.

(e) The Fund shall pay regular interest on amounts owed to a member or beneficiary.

(f) Interest shall be charged on amounts owed to the Fund by a member or beneficiary if the amount owed is the result of erroneous information supplied by the member or beneficiary, or if the member or beneficiary had reasonable grounds to believe the amount of the benefit was in error. The interest paid under this subsection shall be equal to the rate established in §8137(c) for which the correct payment was due and shall continue until an actuarial adjustment to the benefit is effective or the amount owed is paid.

SOURCE: Added by P.L. 20-150:4. Repealed by P.L. 25-072:IV:5. Reenacted by P.L. 28-068:IV:96 (Sept. 30, 2005).

§ 8122.2. Waiver of Adjustments.

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(a) Upon appeal to the Board by an affected member or beneficiary under (b) of this section, the Board may waive an adjustment or any portion of an adjustment made under §8122.1 if , in the opinion of the Board:

(1) the adjustment or portion of the adjustment will cause undue hardship to the member or beneficiary;

(2) the adjustment was not the result of erroneous information supplied by the member or beneficiary; and

(3) the member or beneficiary had no reasonable grounds to believe the records were incorrect or a mistake had been made before the adjustment was made.

(b) In order to obtain consideration of a waiver under this section, the affected member or beneficiary must appeal to the Board in writing within thirty (30) days after receipt of notice that an adjustment is to be made.

(c) The Board may conduct a hearing on an appeal under this Section.

(d) The Board may impose conditions on the granting of a waiver which it considers equitable. These conditions may include requiring the member or beneficiary to make additional contributions, with interest, to the Fund.

(e) The Board may reconsider a ruling under this section, pursuant to the procedures set fort in the Administrative Adjudication Act.

SOURCE: Added by P.L. 28-068:IV:96 (Sept. 30, 2005).

§ 8123. Disability.

(a) A member less than sixty-five (65) years of age, who shall become totally and permanently disabled for service, either mentally or physically, regardless of how or where the disability shall have occurred after joining the retirement fund, shall be entitled to a disability retirement annuity; *provided*, that he is *not* receiving disability payments from the United States Government for substantially the same ailment; and further provided that, to be eligible for a disability retirement annuity from a non-occupational cause, he shall have had at least six (6) years of actual service as a member of the Government of Guam Retirement Fund *prior* thereto, or five (5) years of actual service as a member of the Government of Guam Retirement Fund *prior* thereto if he has been medically certified to be terminally ill.

A person shall *not* qualify for a disability retirement annuity if his disability arises from an impairment occurring *prior to* his employment by

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the government of Guam. A total and permanent disability for the purposes of this Chapter is one which results from some impairment of body or mind which can be expected to result in death, or can be expected to last for a continuous period of not less than twelve (12) months. The impairment shall be one that substantially precludes a person from performing with reasonable regularity the substantial and material parts of any gainful work or occupation that he would be competent to perform were it not for that impairment, and if founded upon condition which render it reasonably certain that it will continue indefinitely.

(b) Such annuity shall begin to accrue upon the later of: (1) commencement of disability; *or* (2) date of Board approval; provided, that *if* the member is receiving salary for sick leave, payment shall accrue from the date salary ceases.

(c) As a condition of membership in the Retirement Fund, an employee shall have a physical examination performed at the employee's expense and a report of the exam shall be submitted to the retirement fund within sixty (60) days of employment. An employee's failure to provide the Retirement Fund with a report of the physical examination will render the member ineligible for disability retirement.

SOURCE: GC § 4212; amended by P.L. 15-75; Subsection (a) amended by P.L. 17-66:5 and P.L. 18-5:7. Repealed and reenacted by P.L. 24-315:2.

§ 8124. Same: Written Certification Required.

A member shall be required to undergo two (2) medical examinations to be performed and submitted by at least two (2) licensed and practicing physicians selected by the Board certifying that the member is totally and likely to be permanently disabled for the future performance of the duties of any assigned position in the service of the government. *If* upon consideration of the report of such physicians, the medical consultant and such other evidence as shall have been presented to it by the member, or others interested therein, the Board finds the member to be totally and permanently disabled, it shall grant him a disability retirement annuity upon written certification that the member has been separated from the service of the employer because of total disability of such nature as to reasonably prevent further service for the employer, and as a consequence is *not* entitled to compensation from the government.

SOURCE: GC § 4212.1, as added by P.L. 13-199. Repealed and reenacted by P.L. 24-315:3.

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§ 8125. Same: Amount of Disability Retirement Annuity.

(a) The amount of basic disability retirement annuity shall be sixty-six and two-thirds percent (66 2/3%) based on the average of the three (3) highest annual salaries received by a member during that member's years of credited service.

(b) The annuity in Subsection (a) shall be reduced by any amounts awarded to a member under worker's compensation laws for substantially the same impairment.

(c) The Board may revoke any and all disability retirement annuity benefit(s) *if* a member fails to report a worker's compensation award for substantially the same impairment.

(d) As used in this Section "*annual salary*" means the base pay and non-base pay for which the members contributed to the Fund as provided in § 8136(c) of this Chapter.

(e) Any disability retirement annuitant who shall have the annuitant's annuity recomputed as of December 1, 1972, shall receive an *automatic* increase of the annuitant's then recomputed annuity in the amount of one and one-half percent (1½%) thereof on December 1, 1972.

(f) Any disability retirement annuitant who, between April 1, 1970 and December 1, 1972, became entitled to receive a disability retirement annuity, shall have the annuitant's basic disability retirement annuity increased on December 1, 1972, by an amount equal to one-half percent (½%) thereof for each four (4) month period that the annuitant was in receipt of the annuitant's annuity.

(g) Any disability retirement annuitant who receives less than Six Thousand Dollars (\$6,000.00) salary during that person's employment shall have the annuitant's disability retirement annuity recomputed at a Six Thousand Dollar (\$6,000.00) salary level, *subject* to the additions set forth in § 8129.

SOURCE: GC § 4212.2, as added by P.L. 13-199; amended by P.L. 16-9 and P.L. 17-6:6. Repealed and reenacted by P.L. 24-315:4. Repealed and reenacted by P.L. 25-072:IV:6(a).

§ 8126. Same: Appeal of Medical Certification.

Any member, who is not satisfied with the decision of the physician or physicians engaged by the Board, may appeal said decision to the Board of

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Trustees within sixty (60) days after receiving notification of said decision of the medical examiner. The Board upon appeal by a member, shall order another medical examination by a different physician or physicians and after hearing the appeal based upon said information, its decision shall be final and binding.

SOURCE: GC § 4212.3, as added by P.L. 13-199.

§ 8127. Same: Resumption of Employment.

(a) Following the allowance of a disability annuity to any member, the Board of Trustees *shall* require any disability annuitant to undergo two (2) medical examinations during the first seven (7) years under disability retirement and may require additional medical examination at least once in every five (5) year period thereafter, to be made at a place mutually agreed upon, by a physician *or* physicians engaged by the Board.

The medical examination *shall* not be required after the member, under the member's applicable retirement plan, reaches regular retirement age *or* where years of actual service plus actual years on disability equals the amount of years that would qualify the member to retire as a regular retiree, whichever is earlier. *If* any examination indicates that the annuitant is no longer physically *or* mentally incapacitated for service, *or* that he is engaged *or* is able to engage in a gainful occupation, payment of the disability annuity by the Fund shall be discontinued as soon as the disability annuitant is reinstated to the payroll, but in no case *shall* payments be made for more than sixty (60) days after physicians and a medical consultant engaged by the Board find the annuitant is no longer incapacitated for service.

(b) Should the annuitant become able to resume a gainful occupation and his earnings therefrom be less than his salary at the date of retirement or that salary currently paid for similar positions, whichever is lower, the Board shall continue the disability allowance in an amount which added to his earnings from a gainful occupation, shall not exceed his salary at the date of retirement or the salary currently paid for similar positions, whichever is lower.

(c) Any disability annuitant who is restored to active service shall have deductions taken for the Retirement Fund and upon subsequent retirement shall have the annuitant's retirement allowance based upon all allowable service, including that upon which the disability allowance is based.

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SOURCE: GC § 4212.4, as added by P.L. 13-199; repealed and reenacted by P.L. 17-66:9; Subsection (a) amended by P.L. 20-221:43; repealed and reenacted by P.L. 24-315:5; amended by P.L. 29-111:1 (Aug. 26, 2008). Subsection (c) added by P.L. 25-072:IV:7(b).

§ 8128. Same: Refusal to Submit to Medical Examination.

Should any disability annuitant refuse to submit to a medical examination as herein provided, payments by the fund shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all rights of the member in any disability annuity may be revoked by the Board.

SOURCE: GC § 4212.5, as added by P.L. 13-199.

§ 8129. Same: Automatic Increases in and Additions to Recomputed Annuities.

The recomputed disability retirement annuity set forth in § 8125 of this Chapter shall be subject to any of the following applicable non-cumulative additions:

(a) Any member receiving a disability retirement annuity shall receive each year on the anniversary date of that person's retirement or entitlement, an *automatic sliding scale* increase to be computed as follows:

(1) disability retirement annuitants receiving an annual annuity of Three Thousand Dollars (\$3,000.00) or less shall receive an *automatic* annual increase of Three Hundred Dollars (\$300.00);

(2) disability retirement annuitants receiving an annual annuity of more than Three Thousand Dollars (\$3,000.00), but not more than Six Thousand Dollars (\$6,000.00) shall receive an *automatic* annual increase of Two Hundred Fifty Dollars (\$250.00);

(3) disability retirement annuitants receiving an annual annuity of more than Six Thousand Dollars (\$6,000.00), but not more than Ten Thousand Dollars (\$10,000.00), shall receive an *automatic* annual increase of Two Hundred Dollars (\$200.00);
and

(4) disability retirement annuitants receiving an annual annuity of more than Ten Thousand Dollars (\$10,000.00) shall

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receive an *automatic* annual increase of One Hundred Dollars (\$100.00).

(b) Any disability retirement annuitant who commenced receiving a disability retirement annuity prior to October 1, 1995, and who is entitled to disability retirement benefits under this Chapter shall receive, during the fiscal years commencing on October 1, 2002 and ending on February 28, 2003, an additional Four Thousand Two Hundred Thirty -Eight Dollars (\$4,238.00), to replace the sum known as the One Thousand Two Hundred Dollars (\$1,200.00), One Thousand Five Hundred Dollars (\$1,500.00), Seven Hundred Dollar (\$700.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) supplemental annuity benefits formerly contained in various General Appropriation Acts.

(c) Any disability retirement annuitant who commenced receiving a disability retirement annuity prior to October 1, 1999, and who is entitled to benefits under this Chapter, shall receive, during the fiscal years commencing on October 1, 1999 and ending on September 30, 2001, an additional One Thousand One Hundred Dollars (\$1,100.00), to replace the annual cost of living increase formerly contained in various General Appropriation Acts.

(d) Any disability retirement annuitant who commenced receiving a disability retirement annuity on or after October 1, 1999, but prior to January 1, 2000, and who is entitled to benefits under this Chapter shall receive, during the fiscal year commencing on October 1, 2000 and ending on September 30, 2001, an additional One Thousand One Hundred Dollars (\$1,100.00), to replace the annual cost of living increase formerly contained in various General Appropriation Acts.

(e) Any disability retirement annuitant who commenced receiving a disability retirement annuity on or after January 1, 2000, but prior to October 1, 2000, and who is entitled to benefits under this Chapter shall receive, during the fiscal year commencing on October 1, 2000 and ending September 30, 2001, an additional One Thousand One Hundred Dollars (\$1,100.00), to replace the annual cost of living increase formerly contained in various General Appropriation Acts.

(f) Any disability retirement annuitant who commenced receiving a disability retirement annuity prior to October 1, 1995, and who is entitled to disability retirement benefits under this Chapter shall

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receive, during the period commencing on March 1, 2003, and ending on October 28, 2003, prospective non-cumulative supplemental annuity benefits as follows:

(i) Two Thousand Four Hundred Seventy-Two (\$2,472.00) in Class 1 Retiree Supplemental Annuity Benefits, known as the sum of One Thousand Two Hundred Dollars (\$1,200.00), One Thousand Five Hundred Dollars (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) in annual benefits formerly contained in various General Appropriation Acts, for those employees who retired as of October 1, 1977.

(ii) One Thousand Seven Hundred Seventy-two (\$1,772.00) in Class 2 Retiree Supplemental Annuity Benefits comprised of the sum of One Thousand Five Hundred Dollars (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) in *annual* annuity benefits formerly contained in various General Appropriation Acts, for those employees who retired between October 2, 1977, and October 1, 1980.

(iii) One Thousand Three Hundred Sixty-Four Dollars (\$1,364.00) in Class 3 Retiree Supplemental Annuity Benefits, comprised of the sum of One Thousand Five Hundred Dollars (\$1,500.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) in annual annuity benefits formerly contained in various General Appropriation Acts, for those employees who retired between October 2, 1980, and October 1, 1982.

(iv) Eight Hundred Seventy-Five Dollars (\$875.00) in Class 4 Retiree Supplemental Annuity Benefits, composed of the sum of One Thousand Five Hundred Dollars (\$1,500.00) in annual annuity benefits, formerly contained in various General Appropriation Acts, for those employees who retired between October 2, 1982, and October 1, 1995, or their survivors.

(v) No persons eligible for Class 1, 2, 3 or 4 Retiree Supplemental Annuity Benefits provided for in paragraph (f) of this Section shall receive such benefit if their regular annual retirement annuity prior to the supplemental amounts herein is more than Forty Thousand Dollars (\$40,000.00). Persons eligible

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for Class 1, 2, 3, or 4 Retiree Supplemental Annuity Benefits shall only receive an amount of such benefits up to the total aggregate sum of Forty Thousand Dollars (\$40,000.00) in combined retirement annuities and supplemental retirement annuities and not more.

(g) Any disability retirement annuitant who commenced receiving a disability retirement annuity *prior to* October 1, 1995, and who is entitled to disability retirement benefits under this Chapter *shall* receive, during the period commencing on October 1, 2011 and ending on September 30, 2012, prospective non-cumulative supplemental annuity benefits as follows:

(1) Four Thousand Two Hundred Thirty-Eight Dollars (**\$4,238**) in Retiree Supplemental Annuity Benefits, known as the sum of One Thousand Two Hundred Dollars (**\$1,200**), One Thousand Five Hundred Dollars (**\$1,500**), Seven Hundred Dollars (**\$700**), and Eight Hundred Thirty-Eight Dollars (**\$838**) in annual benefits formerly contained in various General Appropriation Acts.

(2) *No* persons eligible for Retiree Supplemental Annuity Benefits provided for in Paragraph (g) of this Section *shall* receive such benefit if their regular annual retirement annuity, excluding survivor benefits, prior to the supplemental amounts herein *exceeds* Forty Thousand Dollars (**\$40,000**). *No* persons eligible for Retiree Supplemental Annuity Benefits *shall* receive *more than* the sum of Forty Thousand Dollars (**\$40,000**) in combined retirement annuities and supplemental retirement annuities.

(3) Any disability retirement annuitant eligible to receive the supplemental annuity may waive their supplemental annuity payment authorized herein by the filing of a notarized affidavit waiving such payment with the Retirement Fund.

SOURCE: GC § 4212.6, as added by P.L. 13-199. Subsections (b), (d) and (e) repealed by P.L. 25-072:IV:6. Preamble (first paragraph) to § 8129 repealed by P.L. 25-072:IV:7(a). Section 8129 Repealed and reenacted by P.L. 25:072:IV:8. Subsection (e) added by P.L. 25-174:3 to correct misapplications and omissions. Subsection (b) amended by P.L. 26-36:29. Subsection (b) amended by PL. 27-05:IV:25. Subsection (f) added by P.L. 26-36:30. Subsection (f) added by P.L. 27-05:IV:27. Subsection (g) added by P.L. 27-29:IV:17; repealed and reenacted by P.L. 27-106:IV:17; amended by P.L. 28-068:III:11 (Sept. 30, 2005), P.L. 28-150:IV:II:3

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(Sept. 30, 2006), P.L. 29-019:V:II:3 (Sept. 29, 2007), P.L. 29-113:V:II:3 (Sept. 30, 2008), P.L. 30-055:XI:4 (Sept. 4, 2009), P.L. 30-196:XI:4 (Sept. 1, 2010), P.L. 31-077:XI:4 (Sept. 20, 2011).

§ 8130. Refund on Separation.

(a) Upon complete separation from service before a member shall have completed at least twenty-five (25) years of total service, the member shall be entitled to receive a refund of his or her total contributions, including regular interest, but no payment of interest shall be made in any case in which total service is less than one (1) year. Total contributions shall include all contributions made by a member to obtain various types of credit authorized by this Chapter.

Any member who withdraws after having completed at least five (5) years total service shall have the option of leaving his or her contributions in the Fund and receiving a service retirement annuity upon attainment of the age of sixty (60) years without choice of any of the optional survivors' benefits hereinunder described.

If such member has less than twenty-five (25) years of total service, he/she may elect to receive his or her contributions, with regular interest, as herein above provided, in lieu of the service retirement annuity. If his or her total service is twenty-five (25) years or more, the acceptance of such deferred retirement annuity payment beginning at the age of sixty (60) years, shall be mandatory as to such member.

Any member receiving a refund of contributions shall thereby forfeit, waive and relinquish all accrued rights and benefits in the system, including all credited and creditable service. The Board may, in its discretion regardless of cause, withhold payment of a refund for a period not to exceed three (3) months after receipt of an application from a member.

(b) Any member who receives a refund of contributions shall thereafter be ineligible for membership in the Defined Benefit Plan.

SOURCE: GC § 4213, as amended by P.L. 12-180; second paragraph amended by P.L. 16-9; fifth paragraph by P.L. 18-6:20; sixth paragraph added by P.L. 18-41:6. repealed and reenacted by P.L. 19-19:60. Subsections (b) and (c) repealed and reenacted by P.L. 20-4:1; Subsection (d) amended by P.L. 20-4:2. Subsections (b), (c) & (d) repealed by P.L. 24-327:7. Subsection (b) added by P.L. 24-327:8. Amended by P.L. 27-68:3 to reflect the new minimum retirement time to 25 years of service instead of 20 years.

NOTE: Please see NOTE following § 8136 regarding computation of interest at time of repayment to the Fund.

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See Attorney General Opinion RF02-0250, referred to in P.L. 27-68.

§ 8131. Death Prior to Retirement Without Survivor Benefits.

Upon death of a member occurring before his retirement on a service retirement annuity or disability retirement annuity, leaving no persons eligible for survivor annuities as provided in § 8134 of this Chapter the following shall be payable:

(a) A refund of the total amount of contributions made by the member, including regular interest; and

(b) If the member was an employee at the date of death, a single sum death benefit payment in the amount of One Thousand Dollars (\$1,000).

Payment of these refunds and benefits shall be made to a beneficiary or beneficiaries designated by the member in a nomination filed with the Board, or if no such designation has been made, payment shall be made to the estate of the member.

SOURCE: GC § 4214, as Repealed and reenacted by P.L. 11-171.

§ 8132. Death After Retirement Without Survivors Benefits.

Upon death of a member while in receipt of a service retirement annuity or disability retirement annuity, leaving no person entitled to survivor annuities as provided in § 8134 of this Chapter, the following shall be payable:

(a) The total amount of contributions made by the member, including regular interest, less the total amount of annuity payments received by the member; and

(b) A single sum death benefit payment in the amount of One Thousand Dollars (\$1,000).

Payment of these refunds and benefits shall be made to the beneficiary or beneficiaries designated by the member, in a nomination filed with the Board or if no such designation has been made, payment shall be made to the estate of the member.

SOURCE: GC § 4215, as Repealed and reenacted by P.L. 11-171.

§ 8133. Death of Inactive Member.

Notwithstanding any other provision of this Chapter, upon the death of a member, not in service, who had completed at least twenty (20) years of

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total service prior to his separation, if a surviving spouse or children survive the member, said surviving spouse or guardian of surviving children if there is no surviving spouse, shall have the following options:

(a) The surviving spouse may elect to receive an annuity as provided under § 8134(a)(1) or (a)(2) whichever is applicable and § 8134(c), if applicable; or

(b) If only a child or children survive, the guardian of said child or children may elect for the child or children to receive the annuity provided under §8214(a)(3) and (c) if applicable; or

(c) The surviving spouse or guardian of surviving minor children if there is no surviving spouse, may elect to receive in lieu of the annuity above provided, a refund of the amount of the deceased member's accumulated contribution in the Fund including regular interest to the date of the death.

SOURCE: GC § 4216, as amended by P.L. 11-171.

§ 8134. Survivor Annuities and Death Benefits.

Upon the death of a member who has completed *at least* three (3) years of total service, or upon the death of a member in the line of duty, survivor annuities and death benefits *shall* be payable to eligible survivors described in Subsection (a) for the applicable term set forth in Subsection (b).

(a) Eligible Survivors. The following persons *shall* be eligible to receive the following survivor benefits or death benefits as set forth in this Article. Eligibility *shall* be determined as of the date of death of a member, whether in service, in the line of duty, or in retirement.

(1) Surviving Spouse Annuity. A surviving spouse, as defined in § 8104(v), *shall* be eligible to receive a surviving spouse annuity upon the death of a member.

(2) Surviving Child Annuity. A member's unmarried child, by blood or adoption, who is:

(A) under the age of eighteen (18) years and lived in the same principal residence as the member who provided more than one-half (1/2) of the child's support;

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(B) eighteen (18) years of age or older, but under twenty-four (24) years of age, and a full-time student in high school, or an accredited undergraduate educational institution; or

(C) disabled prior to age eighteen (18) years, *shall* be eligible to receive a surviving child annuity upon the death of a member based on the Rate Formula set forth in § 8135.

To establish eligibility based on disability, the Board must receive, *no later than* one (1) year following the death of a member, examination report(s) by two (2) licensed physicians pronouncing that prior to age eighteen (18) years the child was, and currently remains, permanently physically or mentally disabled, and incapable of self-support.

(b) Term of Survivor Benefits.

(1) A surviving spouse annuity *shall* be payable as of the death of the member, and *shall* terminate upon the earlier of:

(A) the death of the surviving spouse; or

(B) the remarriage of the surviving spouse before the age of forty (40) years.

(2) A surviving child annuity *shall* be payable to each eligible surviving child as of the death of the member, subject to the aggregate basic surviving child annuities for five (5) or more children under § 8135. A surviving child annuity *shall* terminate upon a child's death, marriage, attainment of age eighteen (18) years (*unless* the child is disabled, or attends high school or an undergraduate educational institution full-time), attainment of age twenty-five (25) years (*unless* the child is disabled), or if a previously disabled child is no longer disabled.

(c) Optional Provisions for Unmarried Employees. Upon retirement for services, any unmarried employee, whether male or female, if in good health as determined upon medical examination, may elect to receive in lieu of his or her full service retirement annuity, on an actuarial equivalent basis, a reduced annuity payable during his or her lifetime with an annuity payable to his or her designated beneficiary at the same rate and under the same conditions as are applicable to a surviving spouse of a member. The reduced retirement annuity payable to the member under this option *shall* be ninety percent (90%) of the full service retirement annuity if the designated

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beneficiary is of the same age, or older, or less than five (5) years younger than the retired employee. Such retirement annuity *shall* be reduced to the extent of one percent (1%) for each additional year above five (5) that the age of the member exceeds the age of the beneficiary; provided, that the reduced retirement annuity for the member shall in no event be less than sixty percent (60%) of the full service retirement annuity.

(d) Survivor Death Benefit. Upon the death of a member, while in service or in receipt of a service retirement or disability retirement annuity, if a surviving spouse or child survives the member, a single lump sum death benefit payment in the amount of One Thousand Dollars (\$1,000) *shall* be payable.

SOURCE: GC § 4217, as Repealed and reenacted by P.L. 11-171; Subsections (a)(1) and (a)(2) amended by P.L. 13-199. Subsection (f) added by P.L. 20-99:8. Subsection (c) amended by P.L. 24-189:2. Subsection (a)(4) amended by P.L. 24-281:2. Subsection (a) amended by P.L. 26-010:1. Repealed and Reenacted by P.L. 31-192:5 (Feb. 27, 2012).

2012 NOTE: P.L. 26-010:2 repealed by P.L. 31-192:2.

§ 8135. Same: Rate Formula.

(a) The annual survivor annuity payable under § 8134 shall be determined as follows:

(1) Spouse. The annual survivor annuity *shall* be equal to sixty percent (60%) of the basic retirement annuity or the basic disability retirement annuity earned by the member and accruing to that member's credit, or payable to the member at the date of the member's death for the period of the member's total service, whichever is greater. The spouse's annual survivor annuity *shall not*, in any case, be *less than* One Thousand Two Hundred Dollars (\$1,200) per year.

(2) Children. The basic minor child annuity *shall* be Two Thousand Eight Hundred Eighty Dollars (\$2,880) per year for a minor child *up to* eighteen (18) years of age. The aggregate basic minor child annuity for children of a member *shall not*, in any case, exceed Fourteen Thousand Four Hundred Dollars (\$14,400) per year for five (5) or more minor children.

(b) Automatic Increases in Annuity. Any survivor annuitant, *not* to include a minor child annuitant, who is entitled to benefits under this

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Chapter shall receive each year on the anniversary date of the annuitant's entitlement, an *automatic* 'sliding scale' increase, to be computed as follows:

(1) survivor annuitants receiving an annual annuity of Three Thousand Five Hundred Dollars (\$3,500.00) or less shall receive an *automatic* annual increase of Six Hundred Dollars (\$600.00);

(2) survivor annuitant receiving an annual annuity of more than Three Thousand Five Hundred Dollars (\$3,500.00), but not more than Six Thousand Three Hundred Dollars (\$6,300.00), shall receive an *automatic* annual increase of Four Hundred Dollars (\$400.00);

(3) survivor annuitants receiving an annual annuity of more than Six Thousand Three Hundred Dollars (\$6,300.00), but *not* more than Ten Thousand One Hundred Dollars (10,100.00), shall receive an *automatic* annual increase of Three Hundred Dollars (\$300.00); *and*

(4) survivor annuitants receiving an annual annuity of more than Ten Thousand One Hundred Dollars (\$10,100.00) shall receive an *automatic* annual increase of Two Hundred Dollars (\$200.00).

(c) **Recomputation of Annuities.** The basic survivor annuity set forth in Subsection (a)(1) of this Section shall be recomputed as follows:

(1) any person receiving a survivor annuity prior to August 31, 1974 shall have that person's basic annuity recomputed based upon the formula set forth in §§ 8104(j), 8122(a)(1), 8122(a)(2), 8123(d), 8135(a)(1) and 8135 (b); *and*

(2) any person who commenced receiving a survivor annuity on or after September 1, 1972, but prior to July 1, 1984, and entitled to benefits under this Chapter shall have that person's basic annuity recomputed to reflect a one-time One Hundred Dollar (\$100.00) increase to that person's basic survivor annuity.

(d) **Additions to Recomputed Survivor Annuities.** The recomputed survivor annuity set forth in Subsection (c) shall be subject to any of the following applicable non-cumulative additions:

(1) Any survivor annuitant who commenced receiving a survivor annuity prior to October 1, 1995, shall receive, during the fiscal years commencing on October 1, 2002, and ending on February 28, 2003, an additional Four Thousand Two Hundred Thirty-Eight Dollars (\$4,238.00) to replace the amount known as the sum of the One

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Thousand Two Hundred Dollar (\$1,200.00), One Thousand Five Hundred Dollars (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) supplemental annuity benefits formerly contained in various General Appropriation Acts.

(2) Any survivor annuitant who commenced receiving a survivor annuity prior to October 1, 1999, and is entitled to benefits under this Chapter, shall receive, during the fiscal years commencing on October 1, 1999 and ending on September 30, 2001, an additional One Thousand One Hundred Dollars (\$1,100.00), to replace the annual cost of living increase formerly contained in various General Appropriation Acts.

(3) Any survivor annuitant who commenced receiving a survivor annuity on or after October 1, 1999, but prior to January 1, 2000 and entitled to benefits under this Chapter, shall receive, during the fiscal year commencing on October 1, 2000 and ending on September 30, 2001, an additional One Thousand One Hundred Dollars (\$1,100.00), to replace the annual cost of living increase formerly contained in various General Appropriation Acts.

(4) Any survivor annuitant who commenced receiving a survivor annuity on or after January 1, 2000, but prior to October 1, 2000, and who is entitled to benefits under this Chapter shall receive, during the fiscal year commencing on October 1, 2000 and ending September 30, 2001, an additional One Thousand One Hundred Dollars (\$1,100.00), to replace the annual cost of living increase formerly contained in various General Appropriation Acts.

(5) the prospective payment of supplemental benefits for the period March 1, 2003, through September 30, 2003, for survivors of those employees who retired prior to October 1, 1995, to be paid in the following manner:

(i) Two Thousand Four Hundred Seventy-Two (\$2,472.00) in Class 1 Retiree Supplemental Annuity Benefits, known as the sum of One Thousand Two Hundred Dollars (\$1,200.00), One Thousand Five Hundred Dollars (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) in annual benefits formerly contained in various General Appropriation Acts, for survivors of those employees who retired as of October 1, 1977.

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(ii) One Thousand Seven Hundred Seventy-Two (\$1,772.00) in prospective Class 2 Retiree Supplemental Annuity Benefits comprised of the sum of One Thousand Five Hundred Dollars (\$1,500.00), Seven Hundred Dollars (\$700.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) in annual annuity benefits formerly contained in various General Appropriation Acts, for survivors of those employees who retired between October 2, 1977, and October 1, 1980.

(iii) One Thousand Three Hundred Sixty-Four Dollars (\$1,364.00) in Class 3 Retiree Supplemental Annuity Benefits, comprised of the sum of One Thousand Five Hundred Dollars (\$1,500.00), and Eight Hundred Thirty-Eight Dollars (\$838.00) in annual annuity benefits formerly contained in various General Appropriation Acts, for survivors of those employees who retired between October 2, 1980 and October 1, 1982.

(iv) Eight Hundred Seventy-Five Dollars (\$875.00) in Class 4 Retiree Supplemental Annuity Benefits, composed of the sum of One Thousand Five Hundred Dollars (\$1,500.00) in annual annuity benefits, formerly contained in various General Appropriation Acts, for survivors of those employees who retired between October 2, 1982, and October 1, 1995.

(v) No persons eligible for Class 1, 2, 3 or 4 Retiree Supplemental Annuity Benefits provided for in paragraph (5) of this Section shall receive such benefit if their regular annual retirement annuity prior to the supplemental amounts herein is more than Forty Thousand Dollars (\$40,000.00). Persons eligible for Class 1, 2, 3, or 4 Retiree Supplemental Annuity Benefits shall only receive an amount of such benefits up to the total aggregate sum of Forty Thousand Dollars (\$40,000.00) in combined retirement annuities and supplemental retirement annuities and not more.

(6) the prospective payment of supplemental benefits for the period of October 1, 2011 through September 30, 2012 for survivors of those employees who retired prior to October 1, 1995, to be paid in the following manner:

(i) Four Thousand Two Hundred Thirty-Eight Dollars (**\$4,238**) in Retiree Supplemental Annuity Benefits, known as the

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sum of One Thousand Two Hundred Dollars (**\$1,200**), One Thousand Five Hundred Dollars (**\$1,500**), Seven Hundred Dollars (**\$700**), and Eight Hundred Thirty-Eight Dollars (**\$838**) in annual benefits formerly contained in various General Appropriation Acts.

(ii) *No* person eligible for Retiree Supplemental Annuity Benefits provided for in this Section *shall* receive such benefits if his regular annual retirement annuity exclusive of the supplemental amounts authorized hereby *exceeds* Forty Thousand Dollars (**\$40,000**). *No* persons eligible for Retiree Supplemental Annuity Benefits *shall* receive *more than* the sum of Forty Thousand Dollars (**\$40,000**) in combined retirement annuities and supplemental retirement annuities.

(iii) Any retiree or survivor eligible to receive the supplemental annuity may waive their supplemental annuity payment authorized herein by the filing of a notarized affidavit waiving such payment with the Retirement Fund.

(e) Additions to Minor Child Annuities.

(1) Minor surviving children of a member, retirement annuitant or disability retirement annuitant, who commenced receiving minor child annuities provided under § 8135(a)(2) prior to October 1, 1999, and have no surviving parent, shall receive, during the fiscal years commencing on October 1, 1999 and ending on September 30, 2001, an additional One Thousand One Hundred Dollars (\$1,100.00), which shall be payable to their guardian for the collective benefit of all surviving minor children entitled to receive benefits under this Chapter, in order to replace the annual cost of living increase formerly contained in various General Appropriation Acts.

(2) Minor surviving children of a member, retirement annuitant, or disability retirement annuitant, who commenced receiving minor child annuities provided under § 8135(a)(2) on or after October 1, 1999, but prior to January 1, 2000, and have no surviving parent, shall receive, during the fiscal year commencing on October 1, 2000 and ending on September 30, 2001, an additional One Thousand One Hundred Dollars (\$1,100.00), which shall be payable to their guardian for the collective benefit of all surviving minor children entitled to receive benefits under

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this Chapter, in order to replace the annual cost of living increase formerly contained in various General Appropriation Acts.

(3) Any minor surviving children of a member, retirement annuitant or disability retirement annuitant, who commenced receiving minor child annuities provided under § 8135 (a)(2) on or after January 1, 2000, but prior to October 1, 2000, and have no surviving parent, shall receive, during the fiscal year commencing on October 1, 2000 and ending September 30, 2001, an additional One Thousand One Hundred Dollars (\$1,100.00), which shall be payable to their guardian for the collective benefit of all surviving minor children entitled to receive benefits under this Chapter, in order to replace the annual cost of living increase formerly contained in various General Appropriation Acts.

SOURCE: GC § 4217.1, as added by P.L. 11-171; amended by P.L. 12-180; Subsection (b) amended by P.L. 17-66:3; further amended by P.L. 17-82:6. Subsection (a)(1) amended by P.L. 19-19:62; Subsection (a)(2) amended by P.L. 18-5:25. Amended by P.L. 24-44:2 and P.L. 25-072:IV:9. Subsections (d)(4) and (e)(3) added by P.L. 25-174:4 & 5 to correct for miscalculations and omissions. Subsection (d)(1) amended by P.L. 26-36:31 and 27-05:IV:24. Subsection (d)(5) added by P.L. 26-36:32. Subsection (d)(5) added by P.L. 27-05:IV:26. Subsection (d)(6) added by P.L. 27-29:IV:16; repealed and reenacted by P.L. 27-106:IV:16; amended by P.L. 28-068:III:10 (Sept. 30, 2005), P.L. 28-150:IV:II:2 (Sept. 30, 2006), P.L. 29-019:V:II:2 (Sept. 29, 2007), P.L. 29-113:V:II:2 (Sept. 30, 2008), P.L. 30-055:XI:3 (Sept. 4, 2009), P.L. 30-196:XI:3 (Sept. 1, 2010), P.L. 31-077:XI:5 (Sep. 20, 2011). Subsection (a) amended by P.L. 31-077:XII:35.

§ 8136. Contributions to Fund.

(a) Base Pay. Each member of the Fund shall contribute the following:

(1) Six percent (6%) of salary earned and accruing to such member from the operative date to July 1, 1973;

(2) Six and one-half percent (6.5%) of salary earned and accruing to such member subsequent to July 1, 1973;

(3) Seven and one-half percent (7.5%) of the base pay earned and accruing to such member subsequent to October 1, 1981;

(4) Eight and one-half percent (8.5%) of the base pay earned and accruing to such member to be effective on the first full pay period after the date of enactment of this Section, which enactment date is subsequent to October 1, 1992;

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(5) Nine and one-half percent (9.5%) of the base pay earned and accruing to such member subsequent to October 1, 1993.

(b) These contributions shall be made as a deduction from salary, notwithstanding that the salary paid in cash to such member may be reduced thereby below the established statutory rate. Every employee who is a member of the Fund shall be deemed to consent and agree to the deduction from salary as herein provided, and shall receipt for his full salary, and payment to such employee of salary less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such employee during the period covered by such payment, except as to the benefits herein provided.

(c) The annual salary of a member shall include: (i) the base pay of the member for which he/she contributed to the Fund as required in § 8136(a) of this Chapter; *and* (ii) the non-base pay of the member for which he/she contributed to the Fund pursuant to his/her election made *prior to* March 29, 1993, in accordance with P.L. No. 19-10:XI:10, P.L. No. 20-4:3, *and* P.L. No. 22-06:7.

SOURCE: GC § 4218; Subsections (a)(1) and (a)(2) repealed and reenacted by 11-171; Subsections (a)(3) and (a)(4) added by P.L. 16-9; Subsection (b) repealed and reenacted by P.L. 11-171; Subsection (c) added by P.L. 16-9. Subsection (a)(4) was amended by P.L. 19-1:7, which effectively repealed Subsections (b) and (c). Subsections (b) and (c) were reenacted by amendment in P.L. 19-3:10. Subsection (a)(4) was repealed and reenacted by P.L. 19-10:XI:13(a), P.L. 19-19:23, and again by P.L. 20-4:3. Subsection (a) amended by P.L. 22-6:6. Subsection (c) repealed and reenacted by P.L. 24-315:6.

NOTE: P.L. 19-3:10 contained the following uncodified language:

"The amendment made to Item (4) of Subsection (a) of 4 GCA § 8136 in Public Law 19-1 shall be effective October 1, 1986 provided that the government of Guam or the employer involved shall pay its regular proportionate contribution on such amount at the same rate as may be in effect for regular wages.

The amendment made in this Section adding Subsections (b) and (c) to 4 GCA § 8136, which were inadvertently repealed in Section 7 of Public Law 19-1, is effective January 28, 1987."

P.L. 19-10:XI:13(b) contained the following uncodified language:

"(b) All current employees of the government of Guam shall have one hundred eighty (180) days to decide whether to exercise such option, and shall thereafter be deemed to waive the option. In order to exercise such option, all current members shall pay into the fund payment for all such sums received during the course of their employment with the government of Guam."

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Regular interest on repayment to the Fund.

P.L. 20-4:4 contained the following uncodified language:

"Notwithstanding any other law or regulation, members and prior members who paid or executed promissory notes for repayment of withdrawn contributions or for educational or military credit or for non-base pay contributions shall have the interest on their repayment recalculated anew at regular interest and shall have payments reduced or the repayment period shortened accordingly."

Section 7 of P.L. 22-6 contained the following language:

Section 6 of this Act denies the right of any new member of the Retirement Fund to make contributions on account of their non-base pay. All members of the Fund who have previously elected to make such contributions may continue to do so except that the contribution rate shall be eight and one-half percent (8 1/2%) for the period following enactment of this Act to the first full pay period, nine and one half percent (9 1/2%) for the period from the beginning of such first full pay period through September 30, 1993, and ten and one half percent (10 1/2%) thereafter.

§ 8137. Contribution by the Government.

The Government shall make contributions to the Fund each year on an actuarial funded basis, toward the annuities and benefits herein provided. These contributions shall be equal to the sum of the following:

(a) Government Normal Cost. An annual amount resulting from the application of a rate percent of total salaries of all members representing the present value of the actuarial reserve requirement for membership service, for such year, for service retirement annuity, disability retirement annuity, and annuities to widows and children, and the one-year term premium for the Government's liability for death benefits, after taking credit for the contributions. From July 1, 1955 to August 30, 1972, the rate of contributions shall be seven and two hundred eighty-seven thousandths percent (7.287%) of the total salaries of the members participating in the Fund. From September 1, 1972, the rate of contribution shall be seven and six hundred ninety-seven thousandths percent (7.697%) of the total salaries of the members participating in the Fund. From July 1, 1976, the rate of contribution shall be eight and six hundred ninety-seven thousandths percent (8.697%) of the total salaries of the members participating in the Fund. From October 1, 1981, the rate of contribution shall be ten and six hundred ninety-nine thousandths percent (10.699%) of the total base pay of the members participating in the Fund and ten and six hundred

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ninety-nine thousandths percent (10.699%) of the pay for which members opted to contribute eight and one-half percent (8.5%) as provided in Section 7 of this Act. From the beginning of the first full pay period following the beginning of the 1992 fiscal year, the rate of contribution shall be six and ten-thousandths percent (6.010%) with respect to both pay and non-base pay for which members opted to contribute as provided in Section 7 of this Act. From October 1, 1993, the rate of contribution with respect to both base pay and the pay for which members opted to contribute as provided in Section 7 of this Act shall be equal to the Government Normal Cost rate percent determined in the latest completed actuarial valuation prepared for the Board of Trustees by the actuary appointed by the Board.

(b) Government Unfunded, Liability Amortization Cost. An amount resulting from the application of a rate percent of total salaries of all members which will amortize the remaining liability for prior service over a period of eighty (80) years following May 1, 1951. From July 1, 1955, to August 30, 1972, the rate of contribution shall be not less than one and three hundred seventeen thousandths percent (1.317%) of the total salaries of the members participating in the Fund. From September 1, 1972, the rate of contributions shall be not less than one and four hundred and seven thousandths percent (1.407%) of the total salaries of the members participating in the Fund. From the beginning of the first full pay period following the beginning of the 1992 fiscal year, the rate of contribution shall be equal to thirteen and six hundred sixty-five thousandths percent (13.665%) of the total salaries of the members participating in the Fund. From October 1, 1993, the rate of contribution shall be equal to the Government Unfunded Liability Amortization Cost rate percent determined in the latest completed actuarial valuation prepared for the Board of Trustees by the actuary appointed by the Board, subject to the approval by *I Liheslaturan Guåhan* by legislation. From March 1, 2003, until the next completed actuarial valuation prepared for the Board of Trustees by the actuary appointed by the Board, the rate of contribution shall be eighteen percent (18%) of the total salaries of the members participating in the Fund. Thereafter, the contribution shall be equal to the Government Unfunded Liability Amortization Cost rate percent prepared for the Board of Trustees by the actuary appointed by the Board, subject to approval by *I Liheslaturan Guåhan* by legislation,

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which will amortize the remaining liability for prior service for the full period authorized herein.

The amount of contributions by the Government shall be determined by applying the applicable percentage rate of contributions as hereinabove prescribed to the total salaries paid to the members during each payroll period, and all such amounts shall be paid into the Fund following the close of each payroll period, concurrently with the contributions made to the Fund by the members. For purposes of this Section, the term total salaries of members shall be interpreted to include Base Pay, as defined in 4 GCA § 8301(I), of members participating in the Government Defined Contribution System.

(c) An amount resulting from the application of a rate equal to average rate of return on the investment of retirement funds in the preceding fiscal year of total delinquent payments during the period when such payments are delinquent. In addition an amount equal to one percent (1%) per year of delinquent payments shall be paid over the Fund as penalty for late payment. As used in this Section, delinquent payments means payments due the Fund pursuant to 4 GCA Section 8136 and Subsections (a) and (b) of this Section which are not paid over to the Fund within ten (10) working days after issuance of payroll checks.

(d) In addition to all other contributions made by the government to the Retirement Fund pursuant to this chapter, the government shall pay as an additional contribution to the Fund one percent (1%) of the total salaries of all members, effective October 1, 1988 through the last full pay period prior to enactment of this Section. These payments shall be first applied towards any unfunded liability of the Fund, if there be any.

(e) From October 1, 2000, the Government rate of contribution for agencies receiving appropriations from *I Liheslaturan Guåhan* [the Legislature] and for Federally funded programs shall equal 18.6%. From October 1, 2001, the government rate of contribution for agencies receiving appropriations from *I Liheslaturan Guåhan* [the Legislature] and for Federally funded programs shall equal 85% of the sum of the contribution rates required under §§ 8137(a) and 8137(b) up to a maximum of 19.8016%. From October 1, 2002, the Government rate of contribution for agencies receiving appropriations from *I Liheslaturan*

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Guåhan and for Federally funded programs shall equal twenty-six percent (26.0%). From March 1, 2003, the Government rate of contribution for agencies receiving appropriations from *I Liheslaturan Guåhan* [the Legislature] and for Federally funded programs shall equal eighteen percent (18%) and thereafter shall be one hundred percent (100%) of the sum of the contribution rates required under § 8137(a) and adopted by the Board pursuant to § 8137(b).

From October 1, 2000, the government rate of contribution for autonomous agencies not receiving appropriations from *I Liheslaturan Guåhan* shall equal one hundred percent (100%) of the sum of the contribution rates required under §§ 8137(a) and 8137(b) up to a maximum of twenty-one percent (21%). From October 1, 2002, the government rate of contribution for autonomous agencies not receiving appropriations from *I Liheslaturan Guåhan* shall equal one hundred percent (100%) of the sum of the contribution rates required under §§ 8137(a) and 8137(b) up to a maximum of twenty-six percent (26%). From March 1, 2003, the government rate of contribution for autonomous agencies not receiving appropriations from *I Liheslaturan Guåhan* shall be eighteen percent (18%), and thereafter shall equal to one hundred percent (100%) of the sum of the contribution rates required under § 8137(a) and adopted by the Board pursuant to § 8137(b).

(f) The debt service relative to the Thirty Million Dollars (\$30,000,000) for Fiscal Year 2002 for the supplemental annuity benefits; cost of living allowance; *I Maga 'lahen Guåhan* and *I Segundu na Maga 'lahen Guåhan*'s pensions; retiree group health, dental and life insurance premiums; retiree life insurance subsidy; and Medicare premiums shall be paid from the 1.2016% increase in Employer Contributions for Fiscal Year 2002 over the FY2001 contribution rate of 18.6% for positions funded by Public Law Number 26-35, as amended by Public Law Numbers 26-36 and 26-47.

(g) For Fiscal Year 2002, separately, the Guam Power Authority, the Guam Telephone Authority, the Guam Waterworks Authority, the A. B. Won Pat International Airport Authority, the Guam Economic Development Authority, the Guam Housing Corporation, the Government of Guam Retirement Fund, the Port Authority of Guam, and the Guam Visitors Bureau *shall* remit to the Government of Guam Retirement Fund an amount equal to the number of employees which

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are retired from each entity multiplied by the amounts of: (1) Four Thousand Two Hundred Thirty-eight Dollars (\$4,238.00), known as the sum of the One Thousand Two Hundred Dollars (\$1,200.00), One Thousand Five Hundred Dollars (\$1,500.00), Seven Hundred Dollars (\$700.00) and Eight Hundred Thirty-eight Dollars (\$838.00) supplemental annuity benefits formerly contained in various General Appropriation Acts; and (2) One Thousand One Hundred Dollars (\$1,100.00), known as the latest cost of living adjustment. Each of the above listed entities *shall* also remit to the Government of Guam Retirement Fund the amounts necessary to defray the cost of Medicare premiums for Retirees of those agencies and their survivors who are eligible to receive social security income benefits and are required under the government of Guam group health insurance program to pay such premiums to continue to participate in such health insurance program, failing which they are excluded therefrom (to continue existing programs contained in the monthly payments).

The remittances required herein *shall* be made in two (2) equal installments and shall be due on or before December 31st and March 31st, respectively. The Government of Guam Retirement Fund shall promulgate, continue and amend, if necessary, previous administrative procedures to ensure the proper submission, receipt and accounting of all sums remitted in conformance with this section.

(h) (1) Board's Power to Enforce. The Board of the Government of Guam Employees' Retirement Fund may file in Superior Court a Petition for Writ of Mandate to compel any government official who is so obligated to pay or transfer money to the Retirement Fund for employee or employer contributions to the Fund.

(2) Remedies. At the court's discretion, failure to comply with a Writ of Mandate issued pursuant to this Section after notice and a hearing shall be subject to contempt of court proceedings.

(3) Costs and Attorney's Fee. If the Board's petition is granted, the court shall award costs and a reasonable attorney's fee, which shall be paid from funds of the official's agency.

(4) Dismissal after Payment. If payment of the delinquent amount is made within fifteen (15) days after filing the petition for Writ, the petition shall be dismissed.

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SOURCE: GC § 4219 , as amended by P.L. 11-171; Subsection (a) amended by P.L. 16-9; Subsection (c) added by P.L. 17-53:24; (b) amended by P.L. 17-66:10; (d) added by P.L. 19-19:58. Entire section amended by P.L. 22-6:8. Subsection (b) amended by P.L. 23-42:2 (9/29/95). Subsection (f) added by P.L. 26-36, amended by P.L. 26-49;1. Subsection (g) added by P.L. 26-49:2. Subsection (e) repealed/ reenacted by P.L. 26-35:IV:8 and by P.L. 26-36:22. Subsection (e) repealed and reenacted by P.L. 26-152:IV:2 (9/30/2002). Subsection (b) amended by P.L. 27-05:IV:20. Subsection (e) amended by P.L. 27-05:IV:21. Subsection (h) added by P.L. 28-38:2. Subsection (g) amended by P.L. 30-101:23 (Mar. 12, 2010).

NOTE: P.L. 28-150:V:3 (Sep. 30, 2006), provides the following:

“Section 3. Government of Guam Retirement Fund Rate of Contribution. In accordance with § 8137(e) of Article 1, Chapter 8 of Title 4 of the Guam Code Annotated, in each fiscal year beginning with Fiscal Year 2007 and continuing through Fiscal Year 2011, the government’s rate of contribution to the Government of Guam Retirement Fund shall annually increase by *no less than* 0.84% in order to reach the contribution rate of 26% or the actuarial recommended contribution rate.”

2010 NOTE: P.L. 30-196:XIII:3, provides the following:

“Section 3. Government of Guam Retirement Fund Rate of Contribution. In accordance with §8137(e) of Article 1, Chapter 8 of Title 4 of the Guam Code Annotated, the government rate of contribution to the Government of Guam Retirement Fund throughout Fiscal Year 2011 *shall* be twenty seven and forty six hundredths percent (27.46%).”

2011 NOTE: P.L. 31-074:I:4, provides the following:

“Section 4. Section 3 of Chapter XIII of Public Law 30-196, is hereby *amended* to read:

“Section 3. Government of Guam Retirement Fund Rate of Contribution.
In accordance with § 8137(e) of Article 1, Chapter 8 of Title 4 of the Guam Code Annotated, the government rate of contribution to the Government of Guam Retirement Fund throughout Fiscal Year 2011 *shall* be twenty seven and forty six hundredths percent (27.46%).

No later than June 15, 2011 the GGRF Board of Trustees and *I Maga'låhen Guåhan* shall execute an Agreement titled the **Health Insurance Bailout Agreement of FY 2011** that reduces the sums paid of government of Guam statutory employer contributions accordingly:

(a) Between June 4, 2011 and September 30, 2011, the Government rate of contribution for agencies receiving appropriations from I Liheslaturan Guåhan and for Federally-funded programs shall equal seventy eight and seven hundredths percent (78.07%) of the sum of the contribution rates required under § 8137(e) of Article 1, Chapter 8 of Title 4 of the Guam Code Annotated as amended.

(b) Between June 4, 2011 and September 30, 2011, the government rate

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of contribution for autonomous agencies not receiving appropriations from I Liheslaturan Guåhan shall equal one hundred percent (100%) of the sum of the contribution rates required under § 8137(e) of Article 1, Chapter 8 of Title 4 of the Guam Code Annotated as amended.

(c) For the period between June 4, 2011 and September 30, 2011, the “savings” to the government of Guam from the Health Insurance Bailout Agreement of FY 2011 shall equal twenty one and ninety three hundredths percent (21.93%) of the sum of the contribution rates required under § 8137(e) of Article 1, Chapter 8 of Title 4 of the Guam Code Annotated, as amended.

(d) Five Million One Hundred Forty Five Thousand Six Hundred Ninety Eight Dollars (\$5,145,698) of the “savings” resulting from the Health Insurance Bailout Agreement of FY 2011 is de-appropriated and is hereby re-appropriated to the Health Benefit Cost Account as calculated in Appendix I to pay for health insurance premiums for government of Guam employees and retirees. The funds re-appropriated in this Section shall disburse any cash payment of premiums on behalf of the following agencies/departments using the following ratio:

Table 1	Additional Appropriation Authorization	Ratio
Retirees (GGRF)	\$8,142,267	63.88%
Health Benefit Cost Account (DOA)	\$3,303,431	25.92%
DOE	\$1,300,000	10.20%
Total	\$12,745,698	100.00%

(e) The Guam Memorial Hospital Authority (GMHA) is hereby required to remit to the GGRF all the calculated One Million Twenty Six Thousand One Hundred Sixty Dollars (\$1,026,160) savings from the reduction of the employer contribution pursuant to Subsection (a) of this Section for the payment of current year delinquent contributions for the members of the Defined Contribution Plan (5% member and 5% employer contributions). These Funds shall be deposited into the members' account upon receipt. The total delinquent contributions due as of May 23, 2011 is One Million Three Hundred Seventy Two Thousand Five Hundred Thirteen Dollars (\$1,372,513). GMH shall supplement an additional up to Three Hundred Forty Six Thousand Three Hundred Fifty Three Dollars (\$346,353) from other GMH funds as needed to ensure the entire amount is remitted to the GGRF by September 30 2011.

(f) The reduction in the contribution rate in Subsection (a) of this Section is hereby effective upon the execution of the Agreement titled the Health Insurance Bailout Agreement of FY 2011 that reduces the government of Guam statutory employer contribution accordingly. The Agreement shall be

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executed no later than June 15, 2011.””

§ 8137.1. Annual Cost of Living Allowance. [Repealed]

SOURCE: Added by P.L. 19-019:57 (Aug. 22, 1988). Repealed by P.L. 23-045:IV:7 (Oct. 18, 1995).

§ 8137.2. Employees on Active Duty.

The government shall pay the employer's and employee's shares for Retirement Fund contributions, group health insurance premiums, and group life insurance premiums for all officers and other employees of the government of Guam who are on leave without pay and on active duty with the Guam National Guard or the reserve components of any of the Armed Services of the United States. All agencies and departments of the government of Guam shall fund, from their respective annual budgets, the contributions for retirement, health insurance, and life insurance authorized by this section. The provisions of this section shall be retroactive to August 2, 1990.

SOURCE: Added by P.L. 21-1:10.

§ 8137.3. Prohibition on Double Computation of Cost of Living Adjustments for Retirees.

Notwithstanding any other provision of law enacted prior to or subsequent to this Section, cost of living adjustments for members who retire after September 30, 1995 shall be computed by the Government of Guam Retirement Fund and retirement benefit supplements which may be given above the basic annuity shall not include sums which have already been included in the salaries upon which the basic annuity is calculated. The COLA payments contained in various General Appropriation Acts and previously applied to employees salaries and again, in a double computation, applied as retirees' cost of living adjustments, known as the One Thousand Two Hundred Dollar (\$1,200), One Thousand Five Hundred Dollar (\$1,500), Seven Hundred Dollar (\$700), and Eight Hundred Thirty-Eight Dollar (\$838) annuity benefits, shall not be applied to cost of living adjustments for retirees.

SOURCE: Added by P.L. 23-45:IV:6 (10/18/95).

§ 8137.4. Increment(s) to be Included in Calculating Retirement Annuity.

Any government of Guam Employee who elects to apply for retirement shall be authorized to add in the increment(s) which such employee would

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have received if the freeze mandated by Public Law 23-14 had not been in effect. For purposes of this section, the government of Guam Salary and Increment Schedule shall be the basis for determining the amount of the increment(s) to be used for computation. The employee shall pay to the Retirement Fund the employer's and employee's contribution on the salary increment.

SOURCE: Added by P.L. 23-128:IV:3.

§ 8138. Board of Trustees.

(a) The general administration and the responsibility for the proper operation of the Fund, and for making effective the provisions of this Article, shall be vested in a Board of Trustees.

(b) Upon the election and appointment of additional trustees, the Board of Trustees shall consist of seven (7) members as follows:

(1) Elected Retirees: Two (2) retirees who are domiciled in Guam and are currently in receipt of a retirement annuity from either the Defined Benefit Plan or the Defined Contribution Retirement System, to be elected only by retirees of the Defined Benefit Plan or the Defined Contribution Retirement System. Retirees who are employed by, or under contract with, the government of Guam shall, regardless of their employment status, remain eligible to vote for Elected Retirees and/or to serve as Elected Retirees on the Board of Trustees.

(2) Elected Active Members: Two (2) members of either the Defined Benefit Plan or the Defined Contribution Retirement System (A) who are employed and have been employed for at least five (5) years by the government of Guam; and (B) who are contributing to either the Defined Benefit Plan in accordance with § 8136 of this Article or to the Defined Contribution Retirement System in accordance with §8208 of this Chapter, to be elected by members of the Defined Benefit Plan and participants in the Defined Contribution Retirement System.

(3) Appointed Residents: Three (3) persons who are domiciled in Guam, two (2) of whom are not employed by the government of Guam, and one (1) of whom shall be a government employee in the classified service, all with demonstrated financial ability and broad business management or investment experience, ideally in investment

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or management of pension funds, to be appointed by *I Maga'lahren Guåhan* with the advice and consent of *I Liheslaturan Guåhan*.

(4) Elected Officials and Retirement Fund Employees Disqualified. Any person holding an elected office and any employee of the Retirement Fund shall be disqualified from serving on the Board of Trustees.

SOURCE: GC § 4220, as amended by P.L. 14-154. Repealed/reenacted by P.L. 26-131:2. Subsection (b) amended by P.L. 27-05:IV:22. Entire section amended by P.L. 27-43:2 to provide for elected members. Subsection (b)(4) amended by P.L. 27-104:4.

§ 8138.1. Classification of Offices; Transition; Initial and Subsequent Elections and Appointments.

(a) Classification of Offices. The Board of Trustees shall transition into a seven (7) member board as described in § 8138, consisting of two (2) Elected Retirees, two (2) Elected Active Members, two (2) Appointed Residents who are not employed by nor retired from the government, and one (1) Appointed Resident who is in the classified service. To realize that intent, those seven (7) offices shall be classified by identifying each office with a number, with Office 1 and Office 2 held by those who are Elected Retirees, and Office 3 and Office 4 held by those who are Elected Active Members. Offices 5, 6, and 7 shall be held by those appointed by *I Maga'lahren Guåhan* with the advice and consent of *I Liheslaturan Guåhan* with Offices 5 and 6 held by Appointed Residents who are not employed by nor retired from the government of Guam. Office 7 shall be held by an Appointed Resident who shall be a government of Guam employee in the classified service.

(b) Transition. Incumbent Trustees shall continue to serve on the Board of Trustees, except that they will be deemed to have resigned upon the oath of office taken by two (2) Elected Retirees and two (2) Elected Active Members who are elected in the initial election to fill Offices 1 through 4.

(c) Elections and Appointments. An initial election and all subsequent elections to fill Offices 1 through 4 shall be conducted on a Saturday that is not a legal holiday, except that the election shall not be held within sixty (60) days prior to a Primary or General Election, or between a Primary and General Election, in which case the Board of Trustees' election shall be held at least thirty (30) but no more than sixty (60) days following a General Election. The initial election shall be held between February 1, 2004, and March 1, 2004. Board of Trustees elections shall be conducted by the Guam

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Election Commission and shall be funded by the Retirement Fund to fill Offices 1 through 4 in the following manner: Offices 1 and 2 shall be filled only by Elected Retirees. Offices 3 and 4 shall be filled only by Elected Active Members. All appointments for Offices 5 through 7 shall be made by *I Maga'lahaen Guåhan* with the advice and consent of *I Liheslaturan Guåhan*. Offices 5 and 6 shall be filled only by Appointed Residents who are not employed by the government of Guam. Office 7 shall be filled only by an Appointed Resident who shall be a government of Guam employee in the classified service.

SOURCE: Added by P.L. 27-43:3.

§ 8138.2. Oath; Term of Office; Compensation.

(a) Each Trustee, within ten (10) days after being duly appointed or elected and having received a certificate of election, shall take an oath of office that the Trustee will diligently and honestly administer the affairs of the Board of Trustees, and that the Trustee will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Fund. The oath shall be subscribed to by the member making it and shall be administered and certified by the Chief Justice of the Supreme Court of Guam.

(b) The term of office of a Trustee elected or duly appointed shall be five (5) years from the date the Trustee first takes the oath of office following such election or appointment.

(c) Notwithstanding the expiration of the terms of office, each Trustee shall continue to serve until that Trustee's successor is elected or duly appointed, as the case may be, and the successor has taken the oath of office. Upon the successor's oath of office, the predecessor to that office shall be deemed to have resigned.

(d) The Trustee shall be compensated in accordance with 5 GCA § 43104, as amended.

SOURCE: Added by P.L. 26-43:4.

§ 8138.3. Quorum; Voting.

(a) Four (4) or more board members physically in attendance shall constitute a quorum for all meetings of the Board of Trustees. Each Trustee shall be entitled to one (1) vote as a member of the Board of Trustees. Four (4) affirmative votes taken at a meeting of the Board of Trustees at which a quorum is present shall be considered valid acts of the Board of Trustees.

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(b) Provided that a quorum is present at a Board meeting, members of the Board or any committee designated by the Board who are not physically present at a meeting of the Board may participate in a meeting of the Board, or of the committee, as the case may be, by means of conference by telephone or similar communications equipment which provides all persons participating in the meeting with the ability to hear one another and speak and discuss. However, a vote by a Board member shall not be valid unless the Board member is physically present at the meeting.

SOURCE: Added by P.L. 27-43:5.

§ 8138.4. Resignation; Vacancies; Disqualification.

(a) No Courtesy Resignations. After a gubernatorial election in which there is a change of administration of the government of Guam, courtesy resignations by Trustees elected to the Board of Trustees shall not be requested nor expected by the new administration.

(b) Vacancies. If there ever shall be a vacancy before the end of the term in any of the Offices 1 through 4, then the balance of the unexpired term of those offices shall be filled by the candidate(s) who received the next highest number of votes in the election in which the vacating Trustee was elected.

Should there be no eligible and willing candidate(s) to fill any vacancies in Offices 1 through 4, then the Board of Trustees, through a majority vote, shall select an 'Interim Member' to serve. The Interim Member must meet all required qualifications for the specific Office to which they are appointed. Interim Members have the same rights and voting privileges as elected and appointed members with the exception of their term of service. If the length of the term remaining for the specific vacated Office is one (1) calendar year or less from the date of the vacancy, then the Interim Member shall serve until the end of the term. If the length of the term remaining for the specific vacated Office is greater than one (1) calendar year, then the Guam Election Commission shall conduct an election to fill the vacancy or vacancies in accordance with the provisions of this Article. In such case, the Interim Member shall serve until a Trustee is selected and certified through the election process, at which point the Interim Member is considered to have resigned.

(c) Disqualification Upon Change in Status. If the status of a Trustee changes after election, or after appointment and confirmation by *I Liheslaturan Guåhan* (e.g., an Elected Retiree or Elected Active Member or

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Appointed Resident no longer qualifies as such), then that change in status shall disqualify the Trustee from remaining in his or her respective office for the remainder of that term of office, and the Trustee shall be deemed to have resigned thirty (30) days following the event triggering the disqualification. Said disqualification shall not be the sole cause for invalidating actions taken prior to the deemed resignation date. The vacancy created by such deemed resignation shall be filled as described in (b), above.

(d) **Convicted Persons Disqualified.** A person convicted of a felony or a crime of moral turpitude shall be ineligible for appointment or election to, and shall be disqualified from service on, the Board of Trustees. Conviction of a felony or a crime of moral turpitude while in office shall be deemed automatically to constitute immediate resignation as a Trustee, without the need for any action by the Board of Trustees to effect that resignation.

SOURCE: Added by P.L. 27-43:6.

§ 8138.5. Rules and Regulations.

The Board of Trustees is authorized to establish rules and regulations to implement the provisions of 4 GCA §§ 8138 through 8138.4.

SOURCE: Added by P.L. 27-43:7.

§ 8139. Same: Duties.

The Board of Trustees shall have, in addition to other duties arising out of this Chapter, the following duties:

(1) establish and maintain an office in the facilities provided by the Government for the meetings of the Board and the keeping of the books, accounts and records of the Fund; hold regular meetings bi-monthly and such special meetings as may be deemed necessary; and keep a full record of all of its proceedings, which shall be open to inspection by the public.

(2) Provide for the installation of a system of accounts and records which will give full effect to the requirements of this Chapter; adopt all necessary actuarial tables to be used in the operation of the fund; and provide for the compilation of such statistical and financial data as may be required for actuarial valuations, period surveys and calculations.

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(3) Obtain such information from the participating members and the Government as shall be necessary for the proper operation of the Fund.

(4) Consider and pass upon all applications for annuities, benefits refunds and other payments and authorize the expenditures for such purposes, in accordance with the provisions hereof.

(5) Accept any gift, grant or bequest of any money or property of any kind, for the purposes designated by the granter if such purposes are specified as providing cash benefits to some or all of the members or annuitants of the Fund; if no such purposes are designated, the same shall be credited to the account representing income from investments.

(6) Have the accounts of the Fund audited as of the end of each fiscal year by a competent accountant and submit an annual report to the Government as soon as possible following the close of the year embodying, among other things, a balance sheet showing the financial and actuarial condition of the Fund, a statement of income and expenditures for the year, a statement showing changes in the asset, liability and reserve accounts during the year, a statement of investments owned by the Fund, detailed statements of investments acquired and disposed of during the year, including the description of each security, purchase or sale price and names of vendors and vendees, and such other financial or statistical data as are necessary for a proper interpretation of the condition of the Fund and the results of its operation. The Board shall also cause to be published for distribution among the members a synopsis of such report.

SOURCE: GC § 4221.

§ 8139.1. Fiduciary Duties.

(a) The members of the Board of Trustees stand in a fiduciary relationship to the beneficiaries of the Retirement Fund in regard to the management of the Fund.

(b) The members of the Board of Trustees shall discharge their duties with respect to the management of the Retirement Fund solely in the interest of the members and beneficiaries of the Fund and for the exclusive purpose of providing benefits to members and beneficiaries and defraying reasonable expenses of administering the Fund. The members of the Board of Trustees shall discharge their duties with the care, skill, prudence and diligence under

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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. The members of the Board of Trustees shall discharge their duties by diversifying the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. The members of the Board of Trustees shall discharge their duties in accordance with the documents and instruments governing the fund.

SOURCE: Added by P.L. 18-5:1.

§ 8139.2. Penalty for Violation of Fiduciary Duty.

Any member of the Board of Trustees who violates the provision of § 8139.1 and § 8143(j) of this Chapter shall be removed from the position of trustee of the retirement fund by the Governor and shall be personally liable to the retirement fund to the extent of the losses incurred by the fund. The Attorney General of Guam shall enforce the provisions of this Section to hold such members personally liable.

SOURCE: Added by P.L. 18-05:4.

§ 8139.3. Indemnification.

The government of Guam shall indemnify and hold harmless any Trustee, Director, officer, staff person, or former Trustee, Director, officer or staff person who may have served as a Trustee, Director or officer of the Fund, in whole or in part, for any liability, loss, damage, costs and expenses arising out of payment of funds pursuant to this Act for FY2002 supplemental annuity benefits; cost of living allowance; *I Maga'lahen Guåhan* and *I Segundu na Maga'lahen Guåhan's* pensions; retiree group health, dental and life insurance premiums; retiree life insurance subsidy; and Medicare premiums, except in relation to matters as to which the person is adjudged to be liable for criminal misconduct in the performance of duty to the Fund.

SOURCE: Added as a permanent law (uncodified) by P.L. 26-49:6 which was amending P.L. 26-36:34.

§ 8140. Director of Fund.

(a) The Board shall appoint the Director of the Fund, who shall be its Chief Executive Officer. The Director of the Fund shall serve at the pleasure of the Board, which shall fix his annual base salary at a minimum of Eighty Thousand Five Hundred Eighty Dollars (\$80,580) and a maximum not to

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exceed the base salary assigned for *I Maga'lahen Guåhan*. The Director of the Fund shall be responsible for the planning, organizing, and administering the operations of a multi-billion dollar pension system under the laws, policies and programs as established by acts of *I Liheslaturhan Guåhan* and under the policy guidance and direction of the Board of Trustees, and shall perform such other and additional duties as the Board may require.

The Director of the Fund shall have the necessary knowledge, skills, and abilities to include:

(1) thorough knowledge of the general principles of management and supervision, particularly as they apply to public administration;

(2) considerable knowledge of the general principles of fiscal management, including knowledge of auditing and accounting requirements;

(3) considerable knowledge of actuarial, insurance, and investment principles and practices;

(4) considerable knowledge of pension system, both Federal and Local Systems;

(5) ability to plan, organize and direct the works of others;

(6) demonstrated oral and written communication skills;

(7) ability to analyze, interpret and clearly convey to others, complex financial, statistical, actuarial and other technical information, and to take action or to make recommendations on such data;

(8) ability to establish and maintain positive communication and effective working relationships with administrative officials, legislators, consultants, Board Trustees, system employees, both active, inactive and retired members of the Fund, public employee organizations and the general public;

(9) a Bachelor's degree in Business Administration, Finance, Accounting, Economics, Public Administration, or closely-related area; and at least seven (7) years of diverse management experience in the administration of a public or private pension system; or a Master's Degree in Business Administration, Finance, Accounting, Economics, Public Administration, or closely-related field, and at least five (5) years of diverse management experience in the administration of a

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public or private pension system.

SOURCE: GC §4222; amended by P.L. 14-154 and P.L. 18-5:2; amended by P.L. 28-068:IV:72 (Sept. 30, 2005).

§ 8140.1 Deputy Director of Fund.

The Director of the Fund may employ, with the consent of the Board, a Deputy Director with an annual base salary of a minimum of Sixty-six Thousand Three Hundred Sixty-four (\$66,364) and a maximum not to exceed the base salary assigned for the Lieutenant Governor of Guam. The Deputy Director shall serve at the pleasure of the Director and the Board, and his duties shall be determined by the Director.

SOURCE: Added by P.L. 28-068:IV:73 (Sept. 30, 2005).

§ 8140.2. Duties of the Director Regarding COLA Awards.

The Director of the Fund is authorized to assist the Director of Administration and the Treasurer of Guam in the administration of COLA AWARD payments in connection with Superior Court Case No. SP0206-93.

SOURCE: Added by P.L. 28-151:5 (Oct. 31, 2006). Amended by P.L. 29-004:11 (Sept. 6, 2007).

NOTE: This section was added by P.L. 28-151 in relation to the authorization of the Governor to make COLA payments pursuant to *Rios v. Camacho*, Superior Court Case No. SP0206-93. Pursuant to P.L. 28-151, this section “shall be repealed and cease to be of any further force and effect upon the Superior Court’s determination in SP0206-93 that all COLA awards have been paid over.”

§ 8140.3. Assistance for COLA Awardees. [Repealed]

SOURCE: Added by P.L. 28-151:5 (Oct. 31, 2006). Repealed by P.L. 29-004:12 (Sept. 6, 2007).

NOTE: This section was added by P.L. 28-151 in relation to the authorization of the Governor to make COLA payments pursuant to *Rios v. Camacho*, Superior Court Case No. SP0206-93. Pursuant to P.L. 28-151, this section “shall be repealed and cease to be of any further force and effect upon the Superior Court’s determination in SP0206-93 that all COLA awards have been paid over.”

§ 8141. Employees of Fund.

(a) The Director may employ such clerical, medical or other assistance as shall be necessary for the proper administration of the fund. The Director may also engage actuarial or other professional service to assist in the preparation of the annual reports, to advise in matters of policy and to make the periodic actuarial surveys. The costs and expenses of the administration

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of the fund including any audit fees incurred in connection with the financial operation of the fund shall be paid out of said fund, provided that any payments related to the management of the investment account such as investment counseling service and custodial fees shall be a direct charge to Investment Income. At least once every five (5) years an actuarial survey and investigation shall be made of the operating experience of the fund, including a study of rates of mortality, disability, retirement, separation and other essential factors relating to the operations of the fund. Such survey shall also provide for a verification or redetermination of the rates of contributions by the Government. The cost of such survey shall be paid from the fund.

(b) The Board of Trustees may employ an attorney to assist and represent it in all civil matters, including civil litigation matters, which concerns the Board. The Board of Trustees may set the terms and conditions of employment for the attorney and his compensation.

(c) The position of *Controller* is established within the Government of Guam Retirement Fund. The Controller shall be a Certified Public Accountant. The Controller shall report directly to the Government of Guam Retirement Fund Director. The Retirement Fund Director shall hire the Controller by direct employment as an unclassified employee of the government of Guam, or by personal services contract, as is deemed necessary by the Retirement Fund Director and approved by the Government of Guam Retirement Fund Board of Trustees to attract and retain a qualified Controller, notwithstanding the provisions of 4 GCA. § 6206.1.

SOURCE: GC § 4223, as amended by P.L. 13-199 and 17-28:9. Subsection (c) added by P.L. 26-84:11. Subsection (b) amended by P.L. 28-189:2 (Jan. 29, 2007).

§ 8142. Rules and Regulations.

The Board shall establish rules and regulations to implement the provisions of this Chapter which shall not be inconsistent herewith.

SOURCE: GC § 4224.

§ 8142.1. Cost of Living Allowance in connection with Superior Court Case No. SP0206-93; Priority of Payments.

The Director of the Fund *shall* notify the Treasurer of Guam to pay COLA Awards to the following persons in the priority stated herein. The notification *shall* be based on information available to the Fund as of the date on which notice is delivered to the Treasurer of Guam:

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(a) The COLA Awardee.

(b) *If* the COLA Awardee is deceased, then the notification *shall* name the COLA Awardee's surviving spouse, but only *if* the surviving spouse is living on the date notice is delivered to the Treasurer of Guam.

(c) *If* the COLA Awardee's surviving spouse is deceased, the notification *shall* name the living beneficiary designated by the COLA Awardee in the Fund's Designation of Beneficiary Form on record at the Fund. *If* there are multiple beneficiaries, the notification *shall* include each living beneficiary and the proportion of the COLA Award paid to each beneficiary *shall* be based on the percentage stated in the Designation of Beneficiary Form.

(d) *If* the sole beneficiary designated by the COLA Awardee in the Fund's Designation of Beneficiary Form is deceased *or* if the Designation of Beneficiary Form cannot be located within thirty (30) days of the Fund being notified of the COLA Awardee's death, the notification *shall* name the COLA Awardee's Estate *or* heirs in accordance with Title 4 GCA § 8142.2.

(e) *If* there are multiple beneficiaries designated by the COLA Awardee in the Fund's Designation of Beneficiary Form, and *if* any of them are deceased, the notification *shall* name each of the living beneficiaries and the deceased beneficiary's Estate *or* heirs in accordance with Title 4 GCA § 8142.2 regarding the deceased beneficiary's percentage interest as designated in the Designation of Beneficiary Form.

SOURCE: Added by P.L. 29-004:13 (Sept. 6, 2007).

§ 8142.2. Priority of Payments Continued.

When a COLA Award is authorized to be paid in accordance with this Section, such payment *shall* be made as follows:

(a) *If* an estate proceeding has been opened for a COLA Awardee and a Personal Representative has been appointed, then the COLA Award (*or* the applicable percentage thereof designated to the deceased beneficiary) *shall* be paid to the duly appointed Personal Representative of the COLA Awardee's Estate to be distributed as part thereof;

(b) *If* an estate proceeding has been opened for a COLA Awardee

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but has since been closed and a Decree of Final Distribution has been issued and filed, then the Fund *shall* pay the COLA Award to the Personal Representative of the COLA Awardee's Estate upon submission of a reappointment, new Letters Testamentary *or* Letters of Administration, as the case may be, in accordance with a reopening of the estate pursuant to Title 15 GCA § 3039;

(c) *If* an estate proceeding was never opened, then any person claiming to be an heir of the COLA Awardee *or* otherwise claiming to be entitled to distribution of the COLA Award *or* any part thereof may file a Petition in the Superior Court setting forth his *or* her claim and requesting the Superior Court to determine who is entitled to the COLA Award distribution. Upon submission of the Superior Court's Final Decree determining which persons are entitled to distribution of the COLA Award and setting forth the interests of each, the Fund *shall* notify the Treasurer of Guam to make payment in accordance with said Decree; *or*

(d) *If* an estate proceeding was never opened, any person claiming to be an heir of the COLA Awardee *or* otherwise claiming to be entitled to distribution of the COLA Award *or* any part thereof may file a petition pursuant to Title 15 GCA § 3101.1.

SOURCE: Added by P.L. 29-004:14 (Sept. 6, 2007).

§ 8142.3. Determination of Priority for COLA Awards.

The Director of the Fund may reasonably rely on any of the documents enumerated herein to analyze information concerning marriage, death, survivorship, and priority of payments under §§ 8142.1 and 8142.2 *if* a COLA Awardee or a person next in priority is deceased. The Director's reasonable reliance on said documentation in making payment of the COLA Award *shall* constitute acquittance for said payment and *shall* fully discharge the Director and the Fund from further liability with respect thereto without further investigation or inquiry:

- (a) a certified death certificate (original or copy);
- (b) a certified marriage certificate, or equivalent (original or copy);
- (c) the Designation of Beneficiary Form on record at the Fund;
- (d) Letters Testamentary or Letters of Administration; and

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(e) applicable court orders determining persons entitled to and directing payment of the COLA Awardee's COLA Award.

SOURCE: Added by P.L. 29-004:15 (Sept. 6, 2007).

§ 8143. Investment of Funds.

(a) The reserves of the Fund in excess of requirements for current operations shall be invested and reinvested by or under authority of the Board of Trustees. At its discretion, the Board may designate its Chairman or an investment committee consisting of two (2) or more members of the Board to supervise this function; in either case, references to the Board in §§ 8143 through 8159, inclusive, shall be deemed to refer to the individual or committee exercising said function.

(b) The Board shall have full power to manage the investments as in its considered judgment seem most appropriate to the requirements and objectives of the Fund, including but not limited to the power to hold, purchase, sell, convey, assign, transfer, dispose of, lease, subdivide or partition any assets held or proceeds thereof; to execute or cause to be executed relevant documents; to enter into protective agreements, execute proxies, grant consents; and to do all other things necessary or appropriate to its position as an owner or creditor; provided, however, that neither the Board nor its agents may invest in any form, directly or indirectly in a hotel or motel operation in the territory of Guam.

(c) All proceeds and income from investments, of whatever nature, shall be credited to the accounts of the Fund. Transactions in marketable securities shall be carried out at prevailing market prices.

(d) The Board may commingle securities and moneys subject to the crediting of receipts and earnings and charging of payments to the appropriate accounts established by this Chapter.

(e) No member of the Board and no employee of the Board shall have any direct or indirect interest in the income, gains or profits on any investment made by the Board, nor shall any such person receive any pay or emolument for services in connection with any investment made by the Board. Participation in the Fund under the terms of this Chapter shall not be construed to include interest, pay or emolument within the meaning of this Subsection.

(f) No member of the Board, employee or agent shall become an endorser or surety or in any manner an obligor of investments made by the

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Fund, nor shall any member, employee or agent be held liable for actions taken in good faith and in performance of his duties.

(g) Investments may be held in bearer form or may be registered either in the name of the Fund or the nominee of the custodian engaged under § 8144.

(h) Due bills may be accepted from brokers against payment for securities purchased, pending delivery within a reasonable period of time of certificates representing such investments.

(i) The Board may, for the purpose of protecting the fund, and at its discretion, purchase insurance on the lives of the members of the fund; provided, that costs incurred in providing said insurance shall be displayed separately apart from administrative expenses if the fund is required to budget for such item along with other operating expenditures.

(j) Before the Board may approve by resolution the acquisition of real property consisting of physical assets under § 4225.16 of the Government Code, as amended, codified as § 8159, of Title 4 GCA, the following steps must be taken:

(1) the proposed acquisition must be reviewed and recommendations must be submitted to the Board by an investment agent as defined under § 8145 of this Chapter;

(2) completion of an in-house evaluation of the proposed acquisition must be completed;

(3) a review of the proposed acquisition as to legal sufficiency must be made by the Attorney General; and

(4) a review and recommendation must be submitted by three (3) members of the Board of Trustees.

At no time shall an acquisition considered under this Section be made that would provide an immediate investment return which is less than the average rate of investment return that the Fund is receiving overall on its alternative investment portfolio.

SOURCE: GC § 4225, as amended by P.L. 13-199. Subsection (j) added by P.L. 18-5:3.

§ 8144. Custodian.

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The Board shall engage one or more bank trust departments to assume responsibility for the physical possession of fund assets or evidences of assets. The custodian shall submit such reports, accountings and other information in such form and at such times as requested by the Board. All costs incurred for custodial services shall be a direct charge to Investment Income. The custodian shall hold all assets for the account of the Government of Guam Retirement Fund and shall act only upon the instructions of the Board, its ex-officio director or a member, committee or agent so authorized by the Board. No custodian shall be engaged unless it:

- (a) Has been continuously engaged in rendering trust custody services for a period of ten (10) or more years; and
- (b) Is organized under the laws of the United States or a state or territory thereof; and
- (c) Has capital and surplus in excess of Ten Million Dollars (\$10,000,000); and
- (d) Is a member of the Federal Reserve System whose deposits are insured by the Federal Deposit Insurance Corporation or any successor thereto; or
- (e) Notwithstanding any of the above, any locally chartered bank may be a custodian of the Retirement Fund.

SOURCE: GC § 4225.1, as amended by P.L. 13-199.

§ 8145. Investment Agent.

(a) In order to secure expert advice and counsel, the Board may engage an investment agent which shall be either an investment counsel or a bank trust department as hereinafter qualified. All costs incurred in this connection shall be a direct charge to Investment Income.

(b) No person, firm or corporation shall be eligible for employment as investment counsel which acts as principal for its own account or as broker for a client other than the Fund in connection with the sale of any security to or the purchase of any security from the Fund.

(c) No investment counsel shall be engaged unless:

(1) The principal business of the person, firm or corporation selected by the Board consists of rendering investment supervisory services, that is, the giving of continuous advice as to the investment of Funds on the basis of the individual needs of each client; and

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(2) The principal ownership and control of such person, firm or corporation rests with individuals who are actively engaged in such business; and

(3) Such person, firm or corporation and its predecessors have been continuously engaged in such business for a period of ten (10) or more years; and

(4) Such person, firm or corporation is registered as an investment adviser under the laws of the United States of America as from time to time in effect; and

(5) The contract between the Board and the investment counsel is of no specific duration and is voidable at any time by either party; and

(6) Such person, firm or corporation certifies in writing, to the Board, that the assets under its direct investment supervision are in excess of Two Hundred Million Dollars (\$200,000,000).

(d) The Board shall not engage a bank trust department unless it:

(1) Certifies in writing, to the Board, that the assets under its direct investment supervision are in excess of Two Hundred Million Dollars (\$200,000,000); and

(2) Has been, together with its predecessors, continuously engaged in supervising investments for a period of ten (10) or more years; and

(3) Is organized under the laws of the United States or a state or territory thereof; and

(4) Has capital and surplus in excess of Ten Million Dollars (\$10,000,000); and

(5) Is a member of the Federal Reserve System whose deposits are insured by the Federal Deposit Insurance Corporation or any successor thereto.

(e) The Board or its designee under § 8143(a), shall establish and may from time to time change operating arrangements with the Investment Agent in order to facilitate efficient management and timely investment action.

(f) No investment shall be made unless in the opinion of the Investment Agent it is an appropriate investment for the Fund and is an authorized investment under §§ 8143 through § 8159, inclusive, or in the

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absence of such opinion, unless preceded by a resolution of the Board direction the investment.

SOURCE: GC § 4225.2, as amended by P.L. 13-199.

§ 8146. General Investment Limitations.

No investment shall be made if, after such investment, the Fund would own:

(a) Any combination of obligations of any one political subdivision, corporation or other single issuing entity in excess of five percent (5%) of Fund assets at cost. This limitation shall not apply to general obligations of the United States or the territory of Guam.

(b) Any combination of investment instruments as covered by § 8151, Subsection (b) of § 8154, Subsection (b) of § 8156, and Subsection (b) of § 8157 in excess of Fifteen Percent (15%) of Fund assets at cost.

(c) Obligations or other investments issued or guaranteed by the territory of Guam in excess of Ten Percent (10%) of Fund assets at cost, provided however, that this limitation shall not apply to such obligations or other investments that are unconditionally guaranteed as to principal and interest by, or supported by lease assignment from, another entity whose principal business is outside of said Territory and whose obligations are authorized investments under §§ 8143 through 8159, inclusive

SOURCE: GC § 4225.3; Repealed and reenacted by P.L. 22-6:1.

§ 8147. Guarantees and Assignments.

Bonds or other evidence of indebtedness of any issuing entity, if not authorized for investment by other sections, are authorized under this Section if they are:

(a) Unconditionally guaranteed as to principal and interest by another entity; or

(b) Secured by a first mortgage and by an unconditional assignment of lease payments by another entity; or

(c) Secured by a chattel mortgage or conditional sales contract and by an unconditional assignment of lease payments by another entity, and the face amount of the bonds or other evidence of

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indebtedness does not exceed eighty percent (80%) of the purchase price of the property securing the mortgage or contract; provided, however, that under Subsections (a), (b) and (c), the bonds or other evidences of indebtedness of the guarantor or lessor are authorized investments under §§ 8142 through 8159 inclusive.

SOURCE: GC § 4225.4, as amended by P.L. 13-56.

§ 8148. Authorized Investments.

Sections 8142 through 8159, inclusive, identify specific types of investments which are authorized for purchase by the fund subject to the procedures, limitations and authorizations contained in §§ 8142 through 8145, inclusive. Nothing contained in any Section shall be construed to require sale or disposition of an investment, authorized at the time of acquisition, if such investment should subsequently cease to be authorized for purchase.

SOURCE: GC § 4225.5, as amended by P.L. 13-56.

§ 8149. Same: Bank Deposits.

Interest-bearing time deposits in banks organized under the laws of the United States or any state or territory thereof, provided that said bank:

- (a) Has capital and surplus in excess of \$10,000,000; and
- (b) Is a member of the Federal Reserve System; and
- (c) Together with any predecessors, have been conducting a banking business for a continuous period of ten (10) or more years; or
- (d) Any bank or savings and loan association chartered in Guam and a member of the Federal Deposit Insurance Corporation or the Federal Home Loan Bank System.

SOURCE: GC § 4225.6, as amended by P.L. 13-124.

§ 8150. Same: Bonds of United States and Federal Instrumentalities.

(a) Bonds or other evidence of indebtedness of the United States of America, or any of its agencies or instrumentalities, when such obligations are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality thereof;

(b) Debt securities issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation that are backed by pools of mortgage loans and guaranteed as to timely repayment of

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principal and interest by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or

(c) Non-mortgage-related bonds or other evidence of indebtedness of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

SOURCE: GC § 4225.7. Amended by P.L. 30-233:2 (Dec. 30, 2010).

§ 8151. Same: Bonds Issued by National Governments Other Than The United States.

Bonds and other evidences of indebtedness which are direct obligations of, or secured by, the full faith and credit of national governments other than the United States, where there exists the power to levy taxes for the prompt payment of the principal and interest of such bonds or evidences of indebtedness, provided that:

(a) The issuer shall not be in default in the payment of principal or interest on any bonds or other evidences of indebtedness; and

(b) The Investment Agent determines that such an investment would be employed by a prudent man acting in a like capacity and familiar with such matters would use in the investment of a fund with like character and with like aims; and

(c) No investment shall be made in any one (1) issue described in this Section in an amount in excess of ten percent (10%) of such issues.

SOURCE: GC § 4225.8; Repealed and reenacted by P.L. 22-6:2.

§ 8152. Same: Bonds of States and Territories.

Bonds or other evidences of indebtedness which are direct obligations of or secured by the full faith and credit of, any state or territory of the United States or the District of Columbia where there exists the power to levy taxes for the prompt payment of the principal and interest of such bonds or evidences of indebtedness; but the issuer shall not be in default in the payment of principal or interest on any bonds or other evidences of indebtedness.

SOURCE: GC § 4225.9

§ 8153. Same: Public Revenue Bonds.

Bonds or other obligations which are payable from revenues or earnings specifically pledged there for of a public utility, state, municipally or

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territorially owned, either directly or through civil division, authority or public instrumentality of a state or territory or municipality; provided that:

(a) The laws of the state or territory or municipality authorizing the issuance of such bonds or other obligations require that rates for service shall be fixed, maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating and maintenance charges and both principal and interest of such bonds or obligations; and

(b) No such bonds or other obligations shall be in default in the payment of principal or interest.

SOURCE: GC § 4225.10.

§ 8154. Same: Bonds of Domestic and Foreign Corporations; Index-Eligible Securities.

(a) Bonds of Domestic Corporations. Bonds, debentures, notes and other evidences of indebtedness of any corporation *or* corporations created *or* existing under the laws of the United States, *or* of any of the states *or* territories of the United States *or* the District of Columbia which are *not* in default either as to principal *or* interest, provided that:

(1) Such bonds *or* other evidence of indebtedness are rated within the four (4) highest categories of two (2) nationally recognized and published rating services which have been approved by the Board and the Investment Agent; *or*

(2) In case such bonds *or* other evidence of indebtedness are not so rated by two (2) such services, the net earnings available for fixed charges over a prior period of five (5) fiscal years next preceding the date of investment have averaged per year and during either of the last two (2) years have been, after depreciation and after taxes, *not less than*:

(A) two (2) times its average annual fixed charges over the same period, in the case of any public utility company;

(B) one and one-half (1-1/2) times its average annual fixed charges over the same period, in the case of any finance company;
or

(C) three (3) times its average annual fixed charges over the same period, in the case of any other company.

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(3) *No more than* two percent (2%) of the Fund at cost *shall* be invested in the obligations of any one (1) domestic corporation *or* other single domestic issuing entity described in this Subsection.

(b) Bonds of Foreign Corporations. Bonds, debentures, notes and other evidences of indebtedness of any corporation or corporations created *or* existing under the laws of nations other than the United States which are *not* in default either as to principal *or* interest, provided that the Investment Agent in its informed opinion, determines that such an investment would be employed by a prudent man acting in a like capacity and familiar with such matters would use in the investment of a fund of like character and with like aims. *No more than* one and one-half percent (1-1/2%) of the Fund at cost *shall* be invested in the obligations of any one (1) foreign corporation *or* other single issuing foreign entity described in this Subsection.

(c) *No* investment *shall* be made in any one (1) issue described in Subsections (a) and (b) of this Section in an amount in excess of ten percent (10%) of such issues.

(d) Other Securities in the U.S. Aggregate Bond Index. Bonds, debentures, notes and other evidences of indebtedness which are denominated in U.S. Dollars, investment-grade, fixed-rate and of the quality of fixed income securities covered by the U.S. Aggregate Bond Index.

SOURCE: GC § 4225.11; repealed and reenacted by P.L. 22-6:3. Amended by P.L. 30-120:2 (Apr. 1, 2010).

§ 8155. Same: Equipment Trust Obligations.

(a) Equipment trust obligations or certificates evidencing an interest in or lien upon transportation equipment used or to be used by a common carrier or carriers and a right to receive determined portions of fixed obligatory payments for the use or purchase of such equipment, when such obligations or certificates are issued and are unconditionally guaranteed as to principal and interest, and, as to the payment of such obligatory payments, by a corporation created or existing under the laws of the United States or any state, district or territory thereof, or the Dominion of Canada or any of its provinces, and when the face amount of such obligations or certificates does not exceed eighty percent (80%) of the purchase price of the transportation equipment.

(b) No investment shall be made in any one issue described in this Section in an amount in excess of ten percent (10%) of such issue.

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SOURCE: GC § 4225.12.

§ 8156. Same: Domestic and Foreign Preferred Stock.

(a) Domestic Preferred Stock. Domestic preferred or guaranteed stock or shares of any institution created or existing under the laws of the United States or of any state, district or territory thereof or the District of Columbia, provided that:

(1) All publicly held prior obligations and prior preferred stock, if any, of such institution at the date of acquisition are eligible as investments under §§ 8143 through 8160; and

(2) The net earnings of the institution available for fixed charges over a period of five (5) fiscal years next preceding the date of investment have averaged per year, and during either of the last two (2) years have been, after depreciation and after income taxes. no less than:

(i) Two times its average annual fixed charges, maximum contingent interest and preferred dividend requirements over the same period, in the case of any public utility company; or

(ii) Three (3) times its average annual fixed charges, maximum contingent interest and preferred dividend requirements over the same period, in the case of any other company.

For purposes of this Subsection, the term 'preferred dividend requirements' shall mean cumulative and noncumulative dividends on all preferred stock of the issuer, whether paid or not.

(b) Foreign Preferred Stock. Foreign preferred or guaranteed stock or shares of any institution created or existing under the laws of nations other than the United States which are not in default either as to principal or interest, provided that the Investment Agent in its informed opinion, determines that such an investment would be employed by a prudent man acting in a like capacity and familiar with such matters would use in the investment of a fund of like character and with like aims.

(c) Limitations:

(1) No investment shall be made in any one issue described in Item (1) of Subsection (a) of this Section in an amount in excess of ten percent (10%) of such issues.

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(2) No more than two percent (2%) of the Fund at cost shall be invested in the preferred stock of any one issuing domestic company.

(3) No more than two percent (2%) of the Fund at cost shall be invested in the preferred stock of any one issuing foreign company.

(4) The aggregate of all investments authorized under this Section shall not exceed fifteen percent (15%) of Fund Assets at cost.

SOURCE: GC § 4225.13, as amended by P.L. 13-56; Repealed and reenacted by P.L. 22-6:4.

§ 8157. Same; Common Stock.

(a) Common or capital stock of any institution or entity created or existing under the laws of the United States or any state, district, or territory thereof, or of the District of Columbia or of any foreign country; provided that, with respect to at least fifty percent (50%) of the investments at cost under this Section:

(i) The issuing institution, entity or a predecessor thereto, has reported a profit in at least four (4) of the five (5) fiscal years next preceding the date of investment or alternatively in at least seven (7) of the ten (10) fiscal years next preceding the date of investment; and

(ii) The institution, entity or such predecessor has paid cash dividends on its common or capital stock in at least four (4) of the five (5) years next preceding the date of investment, or alternatively in at least seven (7) of the ten (10) fiscal years next preceding the date of investment; and

(iii) Total cash dividends have not exceeded total earning in the five (5) years next preceding the date of investment; and

(iv) On the date of investment, the issuer shall not be in default in payment of principal or interest on any of its publicly held bonds or other evidences of indebtedness and any contingent interest, cumulative and noncumulative preferred dividends and dividends on prior common or capital stock shall have been paid in full.

No more than five percent (5%) of the Fund shall be invested in the common or capital stock of anyone issuing domestic company described in

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this Section.

(b) Common or capital stock of any institution or entity created or existing under the laws of nations other than the United States provided that the Investment Agent determines that such an investment would be employed by a prudent man acting in a like capacity and familiar with such matters would use in the investment of a fund with like character and with like aims. No more than one and one-half percent (1-1/2%) of the Fund at cost shall be invested in the common or capital stock of anyone issuing foreign company described in this Section.

(c) No investment shall be made in anyone (l) issue described in this Section in an amount in excess of ten percent (10%) of such issues.

(d) The aggregate amount of all investments under this Section at cost shall not exceed fifty percent (50%) of the Fund.

SOURCE: GC § 4225.14; Repealed and reenacted by P.L. 22-6:5. Subsection (a) further amended by P.L. 22-09:3. Section 8157 amended by P.L. 28-136:2 (July 11, 2006).

§ 8158. Investment Funds.

(a) Common or capital shares of any investment trust or mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as from time to time amended, provided that the cost of the shares acquired is no greater than their net asset value on the date of acquisition.

(b) Units in any common trust fund or commingled fund maintained by a custodian meeting the requirements of Title 4 GCA § 8144 and advised or sub-advised by an investment management organization meeting the requirements of Title 4 GCA § 8145.

(c) Preferred shares of any investment trust or mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as from time to time amended, provided that:

(1) The number of issued and outstanding common or capital shares multiplied by their asset value per share, plus;

(2) The number of issued and outstanding preferred shares multiplied by their par or stated value, is at least fifty percent (50%) greater than the number of issued and out-standing preferred shares

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multiplied by their par or stated value. For purposes of this Section, the number of issued and outstanding shares shall be taken as of the latest available public report of such investment trust or mutual fund. Preferred shares as described in this Subsection shall *not* be subject to the provisions of § 8156.

(d) The term ‘net asset value’ as used in this Section shall mean the total quoted or estimated market value of all securities or other assets owned, less that total of all determinable liabilities, as reported by such common trust fund, commingled fund, investment trust or mutual fund.

(e) Limitation:

(1) The investment in units, preferred, common and capital stock of anyone common trust fund, commingled fund, investment trust or mutual fund shall *not* exceed five percent (5%) of the Fund at cost; and

(2) The aggregate of all investments under this Section shall *not* exceed thirty percent (30%) of the Fund at cost.

SOURCE: GC § 4225.15. Amended by P.L. 28-135:2 (July 11, 2006).

§ 8158.1. Exchange Traded Funds.

(a) Units *or* shares of any exchange traded fund (ETF) established as an open-end investment management company *or* a unit investment trust registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as from time to time amended. Although ETFs may trade at prices established throughout the trading day, like any other listed equity security trading in the secondary market on an exchange, the units *or* shares described in this subsection *shall not* be subject to the provisions of §8157. Although ETFs are unit investment trusts, the units *or* shares described in this subsection *shall not* be subject to the provisions of §8158. The investment in units *or* shares of any one exchange traded fund *shall not exceed* twenty percent (20%) of the Fund at cost.

SOURCE: Added by P.L. 29-089:2 (July 18, 2006).

§ 8159. First Mortgages or Interests Therein. Secured Interests in Real Property.

(a) Entire first mortgages on improved unencumbered real property located in the United States, any state or territory thereof, or the District of Columbia, provided that the amount loaned does not exceed seventy-five

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percent (75%) of the fair market value of such property, the worth to be substantiated by a qualified real estate appraiser acceptable to the Board.

(b) Bonds, notes or other evidences of indebtedness secured by first mortgages on real property that are:

(1) Guaranteed by the Veterans' Administration under the Servicemen's Re-adjustment Act of 1944 (as from time to time amended), or otherwise guaranteed by the United States of America, or by any agency or instrumentality of the United States of America which affords essentially the same protection as that provided by the Serviceman's Re-adjustment Act of 1944; or

(2) Insured under the National Housing Act or under the Farmer's Home Administration Act of 1946 (as from time to time amended), provided that the amount loaned does not exceed one hundred percent (100%) of the fair market value of the property, the worth to be substantiated by a qualified real estate appraiser acceptable to the Board.

(c) Real property, first mortgages on real property, or any participation or interest therein, which may also include equipment essential to the use of said real property, provided that:

(1) The repayment of principal and interest on such mortgages or the rental income from such real property or interest therein is guaranteed by, or secured by direct or assigned obligations of, any institution or entity whose bonds or other evidences of indebtedness are authorized investments under §§ 8143 through 8160, inclusive; and

(2) Such property is located in the United States, any state or territory thereof, or the District of Columbia; and

(3) The amount loaned or paid does not exceed one hundred percent (100%) of the fair market value of property or participation or interest therein, the worth to be substantiated by a qualified real estate appraiser acceptable to the Board.

(d) Any shares or participating interests in a corporation or trust formed to acquire investments of the types authorized in Subsections (a), (b) and (c) of this Section.

(e) Improved real property, as used in this Section, shall mean real property on which is situated permanent buildings suitable for residence,

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industry or commerce. The term "mortgage" shall be construed to include a deed of trust for security. The term "interest in real property" shall be construed to include a leasehold in real property.

(f) Real property for the purposes of this Section shall not be deemed to be encumbered within the meaning of this Section by reason of the existence of instruments reserving rights-of-way, sewer rights and rights in walls nor by reason of building restrictions or other restrictive covenants, nor by reason of the fact that it is subject to lease under which rents or profits are reserved to the owner, if the security for such investment is a full and unrestricted first lien upon such real property and there is no condition nor right of re-entry or forfeiture under which such investments can be cut off, subordinated or otherwise disturbed.

(g) No investment shall be made, either directly or indirectly, in mortgages junior to first mortgages.

(h) No mortgage loan upon a leasehold shall be made or acquired pursuant to this Section unless the terms thereof provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient to completely amortize the loan within a period of four-fifths (4/5ths) of the term of the leasehold, inclusive of the term which may be provided by enforceable option of renewal, which is unexpired at the time the loan is made, but in no event exceeding thirty (30) years.

(i) Servicing agreements may be arranged with qualified mortgage servicing institutions for the handling of mortgage service details. The servicer may be reimbursed the customary fee charged by the trade. The servicer shall furnish the Board each month, with respect to each mortgage serviced, postings of all cash transactions affecting each mortgage and, at the end of each calendar year, a completely posted ledger sheet for each separate mortgage serviced, giving all cash transactions affecting such mortgage.

(j) The aggregate of all investments made under this Section shall not exceed forty percent (40%) of the Fund at cost.

(k) In making mortgage investments under this section priority shall be given to mortgages on residential property located in Guam. The aggregate of such mortgage investments shall not exceed ten percent (10%) of the Fund assets.

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SOURCE: GC § 4225.16; Subsection (c)(1) amended by P.L. 13-56; subsection (k) added by P.L. 22-6:10.

§ 8160. Supplemental Residential Financing for Members.

In cases of demonstrated need, loans or loan guarantees not secured by real property interests may be made to members of the Retirement Fund who are then currently employed by the government of Guam for the purpose of facilitating purchase and ownership of single-family residential units located in the territory of Guam, to be occupied by such members, or for repairs, remodeling or extension of single-family units, provided that:

(a) Such loans or loan guarantees shall be referred to herein as supplemental loans;

(b) The long-term financing for such residential units is arranged by a qualified institutional lender subject to the approval of the Board of Trustees of the Retirement Fund;

(c) The term of a supplemental loan or loan guarantee may not extend beyond the normal or elected early retirement date of a borrower, or fifteen (15) years, whichever is earlier;

(d) Supplemental loans or loan guarantees shall be an amount of fifteen percent (15%) or less of the fair market value, as established by a qualified real estate appraiser acceptable to the Board, of the residential unit to be purchased, repaired, remodeled or extended by the member;

(e) No loan or loan guarantee shall exceed an amount equal to one hundred twenty-five percent (125%) of the lump sum cash amount which would be payable under the provisions of the Retirement Plan to such a member if he were to terminate his employment on the date of his supplemental loan or loan guarantee application. Supplemental loans or loan guarantees shall be made to members of the Fund who have served the government of Guam and contributed to the Fund at least five (5) years and have at least Two Thousand Five Hundred Dollars (\$2,500) in membership contribution;

(f) All payments for principal, interest and other charges owing with respect to a supplemental loan or loan guarantee shall be withheld from the salary of the borrower by the government of Guam for the Retirement Fund and remitted directly to said Fund;

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(g) Each loan or loan guarantee shall be secured by an absolute assignment of the entire present and future interest of the borrowing member in the Retirement Fund, and by an absolute assignment of any other amounts payable or to be payable to such member by the government of Guam or any department or agency thereof upon termination of employment of the member;

(h) Credit life insurance and disability insurance or an approved equivalent, payable to the Retirement Fund in the event of death or permanent disability of borrowing members, shall be procured and maintained by the Board of Trustees of the Retirement Fund in behalf of, and at the expense of the borrower, in amounts determined by the Board;

(i) Financing under this Subsection shall be administered in accordance with policies and procedures established by the Board.

SOURCE: GC § 4225.17, as added by P.L. 13-56.

§ 8161. Administration of the Loan or Loan Guarantee.

The Director of the Retirement Fund shall institute such arrangements as are necessary with the respective lending institutions to facilitate processing and servicing of the loan or loan guarantee.

SOURCE: GC § 4225.18, as added by P.L. 13-56.

§ 8162. Supplemental Loans: Restrictions.

For the purposes of obtaining a supplemental loan or loan guarantee to facilitate the purchase, repair, remodeling or extension of an owner-occupied, single-family dwelling by a member of the Retirement Fund, and only for these purposes, the restriction in § 8166 of this Chapter against assignment or transfer, the restriction against the annuity, benefit or refund answering for debts contracted by a member of the Retirement Fund, and the restriction against attachment or affectation by judicial proceeding, shall not apply.

SOURCE: GC § 4225.19, as added by P.L. 13-56.

§ 8163. Accounts and Records.

An adequate system of accounts and records shall be established and maintained for the Fund that will reflect fully the requirements of the provisions of this Chapter. This system shall be integrated, to the extent possible, with the accounts, records and procedures of the Government and

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to the end that the same shall operate most effectively and at minimum expense, and that duplication of records and accounts may be avoided.

SOURCE: GC § 4226.

§ 8164. Contribution Reserves and Accounts.

All assets of the Fund shall be credited according to the purposes for which they are held in the following designated reserve accounts:

(a) Members' Contribution Reserve. The amounts contributed by the members shall be credited to this reserve, together with regular interest thereon as herein provided. An individual account shall be maintained for each member, to which shall be credited the amounts of his contributions and interest thereon. Regular interest on such contributions shall be credited annually, as of the close of each year and shall be allowed only on the amount of the accumulated contributions standing to the credit of each member at the close of each year. A statement of account shall be issued to each member, annually, as of the end of each fiscal year, showing the amount of his accumulated contributions plus interest.

Upon the granting of a service retirement annuity, disability annuity or survivors annuity or benefit, the accumulated contributions, including interest, to the credit of the member concerned shall be transferred from this reserve to the retirement reserve. Refunds and death benefit payments representing members' contributions shall be charged to this reserve.

Upon effective election by a member to participate in the Defined Contribution Retirement System in accordance with the provisions of §8207 of this Chapter, the accumulated contributions, including interest, to the credit of the member concerned shall be transferred from this reserve to the member's account in the Defined Contribution Retirement System and treated as the member's contribution, *subject* to distribution limitations applicable to funds in the member's account.

(b) Employer's Contribution Reserve. The amounts contributed by the government under the provisions hereof, or service retirement annuity, disability retirement annuity and benefits to survivors covering membership service and prior service, shall be credited to this reserve. Regular interest shall be credited annually upon the mean amount in the reserve.

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Upon the granting of a service retirement annuity, disability retirement annuity or survivor's benefit, an amount representing the excess of the actuarial value of the annuity or benefit over the accumulated contributions of the member, including interest, shall be transferred from this reserve to the retirement reserve.

Upon effective election by a member to participate in the Defined Contribution Retirement System in accordance with the provisions of §8207 of this Chapter, an amount equal to five percent (5%) of the member's annual base pay for each year of creditable service immediately prior to the member's transfer, up to a maximum of five (5) years, not including interest, shall be transferred from this reserve to the Transfer Incentive Reserve in accordance with §8209.1(b) of this Chapter, and shall be subject to the timing of distribution limitations set forth in the Defined Contribution Retirement System Plan and Trust Agreement. Transfers made pursuant to this Subsection shall be fully vested and shall constitute a window benefit to the transferring member, and shall not be available after December 31, 2000."

(c) Retirement Reserve. Upon the granting of a service retirement annuity, disability retirement annuity or survivors benefits the accumulated contributions of the member, including interest and an amount representing the excess of the actuarial value of the annuity or benefit over such accumulated contributions, shall be transferred to this reserve from the member's contribution reserve and employer's contribution reserve, respectively.

All payments on account of any such annuity or benefit shall be charged to this reserve. Regular interest shall be credited annually upon the mean amount of this reserve.

Any excess balance in this reserve, as determined by actuarial valuation as of the close of any fiscal year, shall be applied to reduce the employer's contributions for membership service for the fiscal next following the date of such valuation. Any deficiency in this reserve shall be removed by an increase in the amount of the employer's contributions for membership service.

(d) Death Benefit Account. The amount representing the contributions by the Government for death benefits shall be credited to this account. All death benefit payments on account of death of the member while in service shall be charged to this account.

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(e) Interest and Investment Income Reserve. All income from investments, including gains on investment transactions, shall be credited to this reserve. All losses on investment shall be charged to this reserve. All amounts required for interest on the other reserve accounts of the Fund shall be transferred from this reserve.

(f) Supplementary Annuity Payment Reserve. To defray the cost of increases in the annuity, investment income accruing to the Fund from investments held by the Fund, inclusive of gains or losses on sales or exchanges of investments during the year, over and above four percent (4%) per annum, shall be used to the extent necessary and the amount thereof shall be transferred as of the end of each year, beginning with the year 1971, to an account to be designated as the "Supplementary Annuity Payment Reserve." The increases in annuities effective January 1, 1970, shall be charged to this reserve.

SOURCE: GC § 4227. Subsection (a) as amended by P.L. 17-18:7(a). Subsection (a) amended by P.L. 25-019:3. Subsection (b) amended by P.L. 25-019:4; P.L. 25-157:3.

§ 8165. Interest of Members in Fund.

Each member shall, by virtue of the payment of contributions to the system, receive a vested interest in such contributions and in consideration of such vested interest, shall be conclusively deemed to undertake and agree to pay the same and to have the amounts deducted from his compensation as herein provided.

SOURCE: GC § 4228.

§ 8166. Right to Annuity.

(a) It is the intention of this Chapter that rights to retirement funds, disability or survivor's annuities or benefits, death benefits, or refund of whatever kind, not be attached by judicial proceeding, or assigned, or transferred for payment of any debt, except for:

(1) Court ordered child support and child support arrears; or

(2) Retirement benefits awarded by court order. Not more than fifty percent (50%) of a member's retirement benefits may be paid to a prior spouse, and only if it is court ordered. In addition, in order for a prior spouse to receive a portion of a member's retirement, the parties must have been married for a least ten (10) years during the period the member accrued retirement benefits.

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(b) A prior spouse may receive a court ordered retirement portion only at the time funds are released to a member.

SOURCE: GC § 4229; Amended by P.L. 22-99:11. Amended by P.L. 24-193:2. Repealed and reenacted by P.L. 26-148:11 to conform to federal Child Support Requirements and to clarify the original language but not to change its meaning except as federal law requires.

§ 8167. Payments: Time For.

(a) Any service retirement annuity, disability retirement annuity or any other annuity provided herein shall be payable in equal semi-monthly installments as life annuities, or as temporary annuities, as the case may be and shall not be increased, decreased, revoked or repealed, except for error or except where specifically otherwise provided. The cost of providing death benefits for members in receipt of retirement annuities shall not be construed as a reduction in the life annuity payable to the member.

(b) Semi-monthly annuity payments to eligible members shall commence on the first regular payment date immediately following the effective date of retirement or disability and in the case of eligible survivors on the first regular payment date immediately following the death of the member or retiree. Said payments shall commence notwithstanding the fact that the Board of Trustees shall not have passed the application or authorized the expenditure therefor, in which event the payments shall be made for an amount estimated to be payable by the Director of Administration. The Board shall adopt rules and regulations to provide for the reimbursement of the Fund or the annuitant for estimate payments made in excess of or less than the annuity as finally determined by the Board.

(c) The first semi-monthly payment of annuities shall be prorated to provide benefits only for the portion of the preceding period during which the annuitant was eligible for such annuity.

(d) The last semi-monthly payment of annuities, whether occurring by reason of death, ineligibility or otherwise, shall be prorated to provide benefits only for the portion of the preceding period during which the annuitant was eligible for such annuity.

SOURCE: GC § 4230, as Repealed and reenacted by P.L. 11-165.

§ 8168. Intent of Law.

It is the intention of this Chapter that the payment of the required contributions by the Government shall be an obligation of the Government

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and all allowances, annuities, benefits and administration, custodial and audit fees shall be paid from the Fund.

SOURCE: GC § 4231.

§ 8169. Penalties.

Any person who knowingly makes any false statement or falsifies or permits to be falsified, any record or records of this system, in any attempt to defraud the system, is guilty of a misdemeanor and shall be punishable therefor under the laws of the government of Guam, and the system shall have the right to recover any payments made under false representations.

SOURCE: GC § 4232.

§ 8170. Members of the Legislature.

The provisions of this Chapter shall apply to any person who has served as a member of the Legislature or who shall hereafter serve as such a member and any such person shall be considered a member of the Fund entitled to all the benefits of a member based upon the following additional provisions:

(a) **Definitions and Rules of Construction.** For purposes of this Chapter, the following definitions and rules of construction shall apply to members of the Legislature:

(1) *Legislature* means the Guam Legislature created by the Organic Act of Guam. The terms *Member*, *Senator*, and *Legislator* are synonyms in referring to a person gaining a seat in the Legislature as a result of a general or special election;

(2) *Service as a member of the Legislature during a regular session for any one (1) calendar year* shall be deemed a full year of service, regardless of the length of the session;

(3) *Average annual salary* for any member of the Legislature shall mean the average of the three (3) highest annual salaries received by a Legislator during his years of credited service, whether or not with the Legislature;

(4) The Retirement Fund shall allow any former or incumbent Legislator who desires not to receive the benefits as vested under 4 GCA § 8170(a) prior to the effective date of this Act, to permanently and irrevocably divest himself or herself thereof. Any election to divest must be in writing and may be

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effective retroactive to dates appropriate to the Legislator. Nothing herein shall have the effect of divesting a former or incumbent Senator of any rights without his or her consent.

(b) Creditable Service: Membership Credit: Subsequent Credit. Any person claiming creditable service as a member of the Legislature under the provisions of this Section shall be entitled to receive credit for years of service in the Legislature as follows:

(1) Service credit for all services rendered as a member of the Legislature, provided that such person shall have made a contribution to the Fund in accordance with Subparagraphs (c)(1), (c)(2) or (c)(3) of this Section.

(c) Contributions for Service. Any person claiming credit for service as a member of the Legislature shall make contributions to the Fund in accordance with the following:

(1) To receive credit for services rendered as a member of the Legislature during the period from 1951 to 1966, such persons or their surviving spouses shall pay before January 1, 1980 as contribution to the Fund an amount equal to One Hundred Fifty Dollars (\$150) for each year of service as a member of the Legislature during that period;

(2) To receive credit for services rendered as a member of the Legislature during the period from 1966 to 1973, such persons or their surviving spouses shall pay before January 1, 1980 as contribution to the Fund an amount equal to six percent (6%) of the member's annual salary for each year of service as a member of the Legislature during that period;

(3) To receive credit for service rendered as a member of the Legislature after January 8, 1973, such person shall pay as his contribution to the Fund an amount equal to six and one-half percent (6½%) of his annual salary to be deducted from the bi-weekly salary payments to him for each year of service as a member of the Legislature after January 8, 1973; and

(d) Contributions for Subsequent Credit. Any person claiming service credit for any year or years following his service as a member of the Legislature, or the survivor of a deceased member shall make contributions to the Fund in accordance with the following:

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(1) For each year of such subsequent service credit claimed during the period from 1951 to 1966 such person shall pay before January 1, 1979, as his contribution to the Fund an amount equal to One Hundred Fifty Dollars (\$150).

(2) For each year of such subsequent service credit claimed during the period from 1966 to 1973, such person shall pay before January 1, 1979, as his contribution to the Fund an amount equal to Three Hundred Sixty Dollars (\$360).

(3) For each year of such subsequent service credit claimed after January 8, 1973, such person shall pay quarterly as his contribution to the Fund an amount equal to six and one-half percent (6.5%) of the annual salary received by him during his last year of service as a member of the Legislature.

(e) Application and Notice.

(1) The provisions of this Section shall be mandatory for any person who shall be a member of the Legislature on January 8, 1973 or who thereafter becomes such a member and the Board shall give notice of the application of this Section any such person within one (1) month of the date on which he takes an oath of office as a member of the Legislature.

(2) The Board shall give notice of the provisions of this Section to any person who has served as a member of the Legislature during the period of 1951 to 1973.

SOURCE: GC § 4233, as Repealed and reenacted by P.L. 11-195; Subsection (f) of this Section was repealed by P.L. 12-224. Subsection (a)(3) amended by P.L. 14-114. Subsection (d) repealed and reenacted by P.L. 14-127. Subsection (b)(2) was repealed by P.L. 14-133. Subsections (c)(1) and (c)(2) amended by P.L. 15-48. Subsection (a) amended by P.L. 23-33:1.

§ 8171. Same: Contribution.

Notwithstanding provisions of law, rules, regulations or administrative practices to the contrary, the survivor of a deceased member of the Legislature may contribute for subsequent credit for the deceased member in accordance with the schedule set forth in § 8170 of this Chapter provided such contribution is made on or before January 1, 1979 and the surviving spouse or child of any deceased member of the Legislature may apply for benefits pursuant to the provisions of § 8133 of this Chapter provided such application is submitted to the Board on or before January 1, 1979.

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SOURCE: GC § 4233.1, as added by P.L. 14-127.

§ 8172. Retirement and Other Benefits Coverage of Elective Guam Governor, Lieutenant Governor and Their Survivors.

Notwithstanding any provisions of this Chapter to the contrary:

(a) Any person who is elected Governor or Lieutenant Governor may retire following the completion of his term of office as the Governor or Lieutenant Governor of the territory of Guam. He shall be paid from the Retirement Fund by appropriation made by the Legislature notwithstanding the amount of his contributions thereto an annual pension during the remainder of his life in an amount equal to and not to exceed fifty percent (50%) of the annual salary of the Governor or Lieutenant Governor at the time he retires.

(b) If a Governor or Lieutenant Governor shall become physically or otherwise incapacitated he may make application for the pension provided for in the preceding paragraph and be eligible to receive such annual pension for the same amount without regard to age.

(c) Whenever any person who is or has been an elected Governor or Lieutenant Governor shall die and leave a widow surviving him, an annuity shall be paid to such surviving widow, in an amount equal to and not to exceed twenty percent (20%) of the annual salary received by the deceased husband while in office.

(d) In implementing this Chapter with regard to determining annuities, survivors' benefits and death benefits, the provisions of law set forth in Chapter 8 of the Government Code Annotated, as amended, shall control.

(e) Any elected Governor or Lieutenant Governor may elect to receive other retirement benefits pursuant to Chapter 8 of the Government Code Annotated and upon so electing shall waive the benefits provided by this Chapter.

(f) Annually, on or before the start of a fiscal year, the Director of the Government of Guam Retirement Fund shall certify to the Director of the Bureau of Budget and Management Research the amount required to implement the provisions of this Section (but not to include the cost of benefits to be made pursuant to Chapter III, Title V of the Government Code of Guam). Upon the acceptance of the amount so certified by the Director of Bureau of Budget and Management

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Research, said amount shall become an appropriation of the Unappropriated Surplus of the General Fund of the government of Guam and, accordingly, shall be so recorded in the books of accounts of the General Fund. Upon the release of the appropriation by the Director of the Bureau of Budget and Management Research, the Treasurer of Guam shall pay said amount to the Government of Guam Retirement Fund in increments provided by the release of the Director of the Bureau of Budget and Management Research.

Within thirty (30) days after the appropriation is made hereunder, a copy of the instrument thereof shall be furnished to the Guam Legislature.

SOURCE: GC § 4234, added by P.L. 12-196; Subsection (a) amended by P.L. 14-121 further amended by P.L. 17-25:III:10 and Repealed and reenacted to prior state by P.L. 17-26:25. Subsection (f) added by P.L. 14-153.

§ 8173. Restriction from Transfers.

Except as authorized by the Board of Trustees, no transfers of funds are authorized from any Retirement Fund account to the General Fund or any other fund of the government of Guam. *I Maga 'lahi* [The Governor] shall have no transfer authority over any Retirement Fund accounts.

SOURCE: Added by P.L. 27-43:11.
