

Title 32
EMPLOYEE BENEFITS

Part VII. Public Employee Deferred Compensation

Subpart 1. Deferred Compensation Plan

Chapter 1. Administration

§101. Definitions

Account Balance—

1. the bookkeeping account maintained with respect to each participant which reflects the value of the deferred compensation credited to the participant, including:

- a. the participant's total amount deferred;
- b. the earnings or loss of the fund (net of fund expenses) allocable to the participant;
- c. any transfers for the participant's benefit; and
- d. any distribution made to the participant or the participant's beneficiary:
 - i. if a participant has more than one beneficiary at the time of the participant's death, then each beneficiary's share of the account balance shall be treated as a separate account for each beneficiary;

2. the *account balance* includes:

- a. any account established under §505 for rollover contributions and plan-to-plan transfers made for a participant;
- b. the account established for a beneficiary after a participant's death; and
- c. any account or accounts established for an alternate payee [as defined in Code §414(p)(8)].

Administrator or *Plan Administrator*—the person, persons or entity appointed by the Louisiana Deferred Compensation Commission to administer the plan pursuant to LAC 32:VII.103.A, if any.

Age 50 or Older Catch-Up—the deferred amount described pursuant to LAC 32:VII.303.C.

Alternate Payee—the spouse, former spouse, child or other dependent of a participant who has acquired an interest in the participant's account pursuant to a Qualified Domestic Relations Order (QDRO) pursuant to §1503. Alternate payees shall be treated as beneficiaries for all purposes under the plan except that alternate payees shall be allowed to request a distribution of all or a portion of their account balance at any time, subject to the terms of the QDRO.

Beneficiary—the person, persons or entities designated by a participant pursuant to §301.A.5 who is entitled to receive benefits under the plan after the death of a participant.

Commission—the Louisiana Deferred Compensation Commission, as established in accordance with R.S. 42:1302, which shall be comprised of the state treasurer, the commissioner of administration, the commissioner of insurance, the commissioner of financial institutions (or their designees), and three participant members (elected by the participants).

Compensation—all payments paid by the employer to an employee or independent contractor as remuneration for services rendered, including salaries and fees, and, to the extent permitted by treasury regulations or other similar guidance, accrued vacation and sick leave pay paid within 2 and 1/2 months of participant's severance from employment so long as the employee would have been able to use the leave if employment had continued.

Custodial Account—the account established with a bank or trust company meeting the provisions of Internal Revenue Code (IRC) §401(f), that the commission has elected to satisfy the trust requirement of IRC §457(g) by setting aside plan assets in a custodial account.

Custodian—the bank or trust company or other person, if any selected by the commission to hold

plan assets in a custodial account in accordance with regulations pursuant to IRC §457(g) and 401(f).

Deferred Compensation—the amount of compensation not yet earned, which the participant and the commission mutually agree, shall be deferred.

Employee—any individual who is employed by the employer, either as a common law employee or an independent contractor, including elected or appointed individuals providing personal services to the employer. Any *employee* who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the plan shall be excluded.

Includible Compensation—an employee's actual wages in Box 1 of Form W-2 for a year for services to the employer, but subject to a maximum of \$200,000 [or such higher maximum as may apply under Code §401(a)(17)] and increased (up to the dollar maximum) by any compensation reduction election under Code §§125, 132(f), 401(k), 403(b), or 457(b) [for purposes of the limitation set forth in §303.A, compensation for services performed for the employer as defined in IRC §457(e)(5)].

Independent Contractor—an individual (not a corporation, partnership, or other entity), who is receiving compensation for services rendered to or on behalf of the employer in accordance with a contract between such individual and the employer.

Interest or Interest in Deferred Compensation—under the plan, the aggregate of:

1. a participant's deferred compensation for his or her entire period of participation in the plan; and
2. the earnings or losses allocable to such amount. Such interest represents an accounting entry only and does not constitute an ownership interest, right or title in the assets so invested.

Investment Product—any form of investment designated by the commission for the purpose of receiving funds under the plan.

IRC—the *Internal Revenue Code* of 1986, as amended, or any future United States Internal Revenue law. References herein to specific section numbers shall be deemed to include treasury regulations thereunder and Internal Revenue Service guidance thereunder and to corresponding provisions of any future United States internal revenue law. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

Limited Catch-Up—the deferred amount described in LAC 32:VII.305.A.

Non-Elective Employer Contribution—any contribution made by an employer for the participant with respect to which the participant does not have the choice to receive the contribution in cash or property. Such term may also include an employer matching contribution.

Normal Retirement Age—

1. the age designated by a participant, which age shall be between:
 - a. the earliest date on which such participant is entitled to retire under the public retirement system of which that participant is a member without actuarial reduction in his or her benefit; and
 - b. age 70 1/2, provided, however, that if a participant continues in the employ of the employer beyond 70 1/2, *normal retirement age* means the age at which the participant severs employment;
2. if the participant is not a member of a defined benefit plan in any public retirement system, the participant's normal retirement age may not be earlier than age 65, and may not be later than age 70 1/2. A special rule shall apply to qualified police or firefighters under the plan, if any. Any qualified police or firefighter, as defined under §415(b)(2)(H)(ii)(I), who is participating in the plan may choose a normal retirement age that is not earlier than age 40 nor later than age 70 1/2;
3. if a participant continues to be employed by employer after attaining age 70 1/2, not having previously elected an alternate normal retirement age, the participant's alternate normal retirement age shall not be later than the mandatory

retirement age, if any, established by the employer, or the age at which the participant actually severs employment with the employer if the employer has no mandatory retirement age.

Participant—an individual who is eligible to defer compensation under the plan, and has executed an effective deferral authorization. *Participant* also includes an employee or independent contractor who has severance from employment but has not received a complete distribution of his or her interest in deferred compensation under the plan.

Participation Agreement—the agreement executed and filed by an individual who is eligible to defer compensation under the plan, and has executed an effective deferral authorization.

Pay Period—a regular accounting period designated by the employer for the purpose of measuring and paying compensation earned by an employee or independent contractor.

Plan—the State of Louisiana Public Employees Deferred Compensation Plan established by this document and any applicable amendment.

Plan Year—the calendar year.

Qualified Domestic Relations Order or *QDRO*—as specified in LAC 32:VII.1503.B.

Qualified Military Service—any service in the uniformed service (as defined in Chapter 43 of Title 38 of the United States Code as in effect as of December 12, 1994) by any individual if such individual is entitled to reemployment rights under such Chapter with respect to such service.

Section 3121 Participant—an individual who is using the Plan as a retirement system providing FICA replacement benefits pursuant to IRC §3121(b)(7)(F) and the regulations thereunder.

Separation from Service or *Separates from Service*—

1. with respect to an employee, the permanent severance of the employment relationship with the employer on account of such employee's:

- a. retirement;
- b. discharge by the employer;

c. resignation;

d. layoff; or

e. in the case of an employee who is an appointed or elected officer, the earlier of:

i. the taking of the oath of office of such officer's successor; or

ii. the cessation of the receipt of compensation

2. if an employee incurs a break in service for a period of less than 30 days or transfers among various Louisiana governmental entities, such break or transfer shall not be considered a separation from service;

3. with respect to an independent contractor, *separation from service* means that the expiration of all contracts pursuant to services performed for or on behalf of the employer.

Severance from Employment or *Severs Employment*—

1. the date the employee dies, retires, or otherwise has a severance from employment with the employer, as determined by the administrator (and taking into account guidance issued under the Code). An employee whose employment is interrupted by qualified military service under Code §414(u) shall be deemed severed from employment until such time as he or she is reemployed following the term of duty. A participant shall be deemed to have severed employment with the employer for purposes of this plan when both parties consider the employment relationship to have terminated and neither party anticipates any future employment of the participant by the employer. In the case of a participant who is an independent contractor, severance from employment shall be deemed to have occurred when:

a. the participant's contract for services has completely expired and terminated;

b. there is no foreseeable possibility that the employer shall renew the contract or enter into a new contract for services to be performed by the participant; and

c. it is not anticipated that the participant shall become an employee of the employer;

2. with respect to an employee, the permanent severance of the employment relationship with the employer on account of such employee's:

- a. retirement;
- b. discharge by the employer;
- c. resignation;
- d. layoff; or
- e. in the case of an employee who is an appointed or elected officer, the earlier of:
 - i. the taking of the oath of office of such officer's successor; or
 - ii. the cessation of the receipt of compensation;

3. if an employee incurs a break in service for a period of less than 30 days or transfers among various Louisiana governmental entities, such break or transfer shall not be considered a severance from employment.

Total Amount Deferred—with respect to each participant, the sum of all compensation deferred under the plan (plus investment gains and/or losses thereon, including amounts determined with reference to life insurance policies) calculated in accordance with the method designated in the participant's participation agreement(s) under which such compensation was deferred and any subsequent election(s) to change methods, less the amount of any expenses or distributions authorized by this plan.

Trustee—the commission or such other person, persons or entity selected by the commission who agrees to act as *trustee*. This term also refers to the person holding the assets of any custodial account or holding any annuity contract described in LAC 32:VII.317.

Unforeseeable Emergency—

- 1. severe financial hardship of a participant or beneficiary resulting from:
 - a. an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in IRC §152, and without regard to IRC §152(b)(1), (b)(2), and (d)(1)(B));

- b. loss of the participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster); or

- c. other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of participant or beneficiary;

- 2. the definition of *unforeseeable emergency* does not include either the purchase of a home or the payment of college tuition;

- 3. The definition of *unforeseeable emergency* includes, but is not limited to, the following:

- a. payment of mortgage payments or rent due to imminent foreclosure of or eviction from the participant's or beneficiary's primary residence;

- b. the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication; and

- c. the need to pay for funeral expenses of a spouse or dependent (as defined above) of a participant or beneficiary.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1962 (October 1998), amended LR 28:1494 (June 2002), LR 32:118 (January 2006), LR 37:1617 (June 2011).

§103. Commission Authority

A. The commission shall have full power and authority to adopt rules or policies required to implement the plan and to interpret, amend or repeal any such rule or policy. In addition, the commission shall have full power and authority to administer the plan or to arrange for the administration of the plan through appropriate contracts or agents in accordance with applicable state law. The power and authority of such agents shall be limited to the powers enumerated in the contractual agreements between the commission and such agents.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1963 (October 1998).

§105. Duties of Commission

A. The duties shall include:

1. appointing one (or more) attorney, accountant, actuary, custodian, record keeper or any other party needed to administer the plan;

2. directing the trustee or custodian with respect to payments from assets held in the plan;

3. communicating with employees regarding their participation and benefits under the plan, including the administration of all claims procedures;

4. filing any returns and reports with the Internal Revenue Service or any other governmental agency;

5. reviewing and approving any financial reports, investment reviews, or other reports prepared by any party appointed under §105.A.1;

6. establishing a funding policy and investment objectives consistent with the purposes of the plan;

7. construing and resolving any question of plan interpretation. The commission's interpretation of plan provisions (including eligibility and benefits under the plan) is final;

8. appointing an emergency committee comprised of at least three individuals. Applications for a withdrawal of deferred compensation based on an unforeseeable emergency shall be approved or disapproved by such committee:

a. a participant shall furnish medical or other evidence to the emergency committee to establish and substantiate the existence of an unforeseeable emergency;

b. if an application for a withdrawal based on unforeseeable emergency is approved, the amount of the withdrawal shall be limited to the amount required to meet such emergency. Payment shall not be made to the extent such emergency is relieved:

i. through reimbursement or compensation by insurance or otherwise;

ii. by the liquidation of the participant's assets, provided the liquidation does not cause a financial hardship; or

iii. by the revocation of the participant's deferral authorization.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1963 (October 1998), amended LR 28:1495 (June 2002).

§107. Administrative Fees and Expenses

A. The commission may, in its sole discretion, use one or more of the following methods to meet the costs of administering the plan. The commission may:

1. establish a reasonable monthly or annual administrative charge;

2. deduct an allocable portion of administrative costs from deferred compensation;

3. deduct an allocable portion of administrative costs from the income or earnings of investment products;

4. authorize any duly-appointed administrator to accept commissions from providers of investment products, provided, however, that the amount of such commissions may not exceed the amount of similar commissions paid to unrelated third parties;

5. deduct administrative costs from funds on deposit in financial institutions; and/or

6. deduct any other reasonable fee or commission required to defray the costs of administering the plan.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1963 (October 1998).

§109. Actions of Administrator

A. Every action taken by the commission shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The commission shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all affected persons, unless the contrary is proven by affirmative evidence. No member, if a participant of the commission or a committee, shall make any determination (other than a policy decision which affects all participants) similarly situated with respect to his or her specific interest in deferred compensation under the plan. The commission shall not be liable for amounts of compensation

deferred by participants or for other amounts payable under the plan.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1964 (October 1998).

§111. Delegation

A. Subject to any applicable laws and any approvals required by the employer, the commission may delegate any or all of its powers and duties hereunder to another person, persons, or entity, and may pay reasonable compensation for such services as an administrative expense of the plan, to the extent such compensation is not otherwise paid.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1964 (October 1998).

Chapter 3. Plan Participation, Options and Requirements

§301. Enrollment in the Plan

A. The following applies to compensation deferred under the plan.

1. A participant may not defer any compensation unless a deferral authorization providing for such deferral has been completed by the participant and is filed in good order with the administrator. Such election shall become effective no earlier than the first payroll period after the first day of the month after such new election is made, and shall continue in effect until modified, disallowed or revoked in accordance with the terms of this plan, or until the participant ceases employment with the employer. With respect to a new employee, compensation will be deferred in the payroll period during which a participant first becomes an employee if a deferral authorization providing for such deferral is executed on or before the first day on which the participant becomes an employee. Any prior employee who was a participant in the plan and either revoked their participant agreement, or is rehired by employer, may resume participation in the plan by entering into a participation agreement, which shall take effect no earlier than the first payroll period after the first day of the

month after such new participation agreement is entered into by the participant and accepted by the administrator. Any distributions being taken from this plan are to be terminated prior to the resumption of deferrals under the plan. Additionally, if distributions had not begun pursuant to a prior severance from employment, any deferred commencement date elected by such employee with respect to those prior plan assets shall be null and void.

2. In signing the participation agreement, the participant elects to participate in this plan and consents to the deferral by the employer of the amount specified in the participation agreement from the participant's gross compensation for each pay period. Such deferral shall continue in effect until modified, disallowed or revoked in accordance with the terms of this plan. Unless the election specifies a later effective date, a change in the amount of the deferral shall take effect as of the first payroll period after the first day of the next following month, or as soon as administratively practicable, if later.

3. The minimum amount of compensation deferred under a deferral authorization shall be no less than \$20 each month; provided, however, that such minimum deferral shall not apply to a participant whose deferral authorization (or similar form) in effect on October 1, 1984, permitted a smaller deferral, or to a participant who elects to defer not less than 7.5 percent of compensation (voluntary and/or involuntary contributions) in lieu of Social Security coverage (§11332 of the Social Security Act and IRC §3121). The employer retains the right to establish minimum deferral amounts per pay period and to limit the number and/or timing of enrollments into the plan in the participation agreement.

4. Notwithstanding §301.A.1, to the extent permitted by applicable law, the administrator may establish procedures whereby each employee becomes a participant in the plan (automatic enrollment) and, as a term or condition of employment, elects to participate in the plan and consents to the deferral by the employer of a specified amount for any payroll period for which a participation agreement is not in effect. In the event such procedures are in place, a participant may elect to defer a different amount of

compensation per payroll period, including zero, by entering into a participation agreement.

a. Within a reasonable period of time before each plan year, the commission shall give to each employee to whom an automatic enrollment arrangement described in §301.A.4 applies for such year notice of the employee's rights under such arrangement.

b. The notice provided for in §301.A.4.a above shall provide an explanation of the employee's rights and obligations under the arrangement, including the right to elect not to have contributions made on the employee's behalf or to have such contributions made at a different percentage. The notice shall also provide an explanation of how contributions made under the arrangement will be invested in the absence of any investment election by the employee.

5. Investment Selection and Beneficiary Designation

a. The participation election, or such other form as approved by the administrator, shall include the employee's designation of investment funds. Any such election shall remain in effect until a new election is filed. A change in the investment direction shall take effect as of the date provided by the administrator on a uniform basis for all employees.

b. Each participant shall initially designate in the participation agreement a beneficiary or beneficiaries to receive any amounts, which may be distributed in the event of the death of the participant prior to the complete distribution of benefits. A participant may change the designation of beneficiaries at any time by filing with the commission a written notice on a form approved by the commission. If no such designation is in effect at the time of participant's death, or if the designated beneficiary does not survive the participant by 30 days, his beneficiary shall be his surviving spouse, if any, and then his estate.

6. Information Provided by the Participant. Each employee enrolling in the plan should provide to the administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable, in the sole discretion of the administrator, for the

administrator to administer the plan, including, without limitation, whether the employee is a participant in any other eligible plan under Code §457(b).

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1964 (October 1998), amended LR 28:1495 (June 2002), LR 32:119 (January 2006), LR 37:1620 (June 2011).

§303. Deferral Limitations

A. Except as provided in §305.A.1-2.a-b, the maximum that may be deferred under the plan for any taxable year of a participant shall not exceed the lesser of:

1. the applicable dollar amount in effect for the year, as adjusted for the calendar year in accordance with IRC §457(e)(15). [After 2006, the dollar amount is adjusted for cost-of-living under Code §415(d)]; or

2. 100 percent of the participant's includible compensation, each reduced by any amount specified in Subsection B of this §303 that taxable year. However, in no event can the deferred amount be more than the participant's compensation for such years unless the employer is making nonelective employer contributions;

a. the annual deferral amount does not include any rollover amounts received by the plan under treasury regulation §1.457-10(e).

B. The deferral limitation shall be reduced by any amount excludable from the participant's gross income attributable to elective deferrals to another eligible deferred compensation plan described in IRC §457(b).

C. A participant who attains age 50 or older by the end of a plan year and who does not utilize the limited catch-up for such plan year may make a deferral in excess of the limitation specified in Paragraphs A.1-2 of this §303, up to the amount specified in and subject to any other requirements under IRC §414(v).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1964 (October 1998), amended LR 28:1496 (June 2002), LR 32:120 (January 2006).

§305. Limited Catch-Up

A. For one or more of the participant's last three taxable years ending before the taxable year in which normal retirement age under the plan is attained, the maximum deferral shall be the lesser of:

1. twice the otherwise applicable dollar limit under IRC §457(e)(15) for that taxable year; reduced by any applicable amount specified in LAC 32:VII.303.B; or

2. the sum of:

a. an amount equal to the aggregate limit determined by §303A. of this Plan for the current year and any prior calendar years beginning after December 31, 2001, during which the participant was eligible to participate in this Plan, minus the aggregate amount of compensation that the participant deferred under this Plan during such years, plus

b. an amount equal to the aggregate limit referred to in IRC §457(b)(2) for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the participant was an employee, minus the aggregate contributions made by the participant to pre-2002 coordination plans for such years.

B. If a participant is not a member of a defined benefit plan in any public retirement system, normal retirement age may not be earlier than age 65, and may not be later than age 70 1/2.

C. Pre-2002 Coordination Years

1. For purposes of this §305, *Contributions to Pre-2002 Coordination Plans* means any employer contribution, salary reduction or elective contribution under:

a. any other eligible Code §457(b) plan; or

b. a salary reduction or elective contribution under any Code §401(k) qualified cash or deferred arrangement;

c. Code §402(h)(1)(B) simplified employee pension (SARSEP);

d. Code §403(b) annuity contract; and

e. Code §408(p) simple retirement account;

or

f. any plan for which a deduction is allowed because of a contribution to an organization described in Code §501(c)(18), including plans, arrangements or accounts maintained by the employer or any employer for whom the participant performed services.

2. Contributions for any calendar year are only taken into account for purposes of this §305 to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code §457(b)(2) for that year.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:1496 (June 2002), LR 32:120 (January 2006), LR 37:1620 (June 2011).

§307. Participant Modification of Deferral

A. The participant shall be entitled to modify the amount (or percentage) of deferred compensation with respect to compensation payable no earlier than the payroll period after the first day of the next following month, or as soon as administratively practicable, if later, provided such modification is entered into by the participant and accepted by the commission. Notwithstanding the above, if a negative election procedure has been implemented pursuant to §301.A.4, a participant may enter into or modify a participation agreement at any time to provide for no deferral.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:1496 (June 2002), LR 32:120 (January 2006).

§309. Employer Modification of Deferral

A. The commission shall have the right to modify or disallow the periodic deferral of compensation elected by the participant:

1. in excess of the limitations stated in LAC 32:VII.303.A and 305.A;

2. in excess of the participant's net compensation for any pay period;

3. upon any change in the length of pay period utilized by employer. In such case the periodic deferral shall be adjusted so that approximately the same percentage of pay shall be deferred on an annual basis;

4. in order to round down periodic deferrals to the nearest whole cent amount;

5. to reduce the future deferrals in the event that the amount actually deferred for any pay period exceeds, for any reason whatsoever, the amount elected by the participant. In the alternative, such amount of excess deferral may be refunded to the participant. No adjustment in future deferrals shall be made if a periodic deferral is missed or is less than the amount elected, for any reason whatsoever; or

6. if the deferral elected for any pay period is less than the minimum amount specified in LAC 32:VII.301.A.3.

B. To the extent permitted by, and in accordance with, the *Internal Revenue Code*, the employer or administrator may distribute the amount of a participant's deferral in excess of the distribution limitations stated in §§301, 303, 305, 307 and 309 notwithstanding the limitations of §701.A; provided, however, that the employer and the commission shall have no liability to any participant or beneficiary with respect to the exercise of, or the failure to exercise, the authority provided in this §309.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:1496 (June 2002), LR 32:121 (January 2006).

§311. Revocation

A. A participant may, at any time, revoke his or her deferral authorization by notifying the commission, in writing, on forms acceptable to the commission. Upon the acceptance of such notification, deferrals under the plan shall cease no later than the commencement of the first pay period beginning at least 30 days after acceptance; provided, however, that the commission shall not be responsible for any delay which occurs despite its good faith efforts. In no event shall the revocation of a participant's deferral authorization permit a distribution of deferred compensation,

except as provided in §701.A of these rules, and shall be subject to the terms and provisions of the affected investment.

B. A participant's request for a distribution in the event of an unforeseeable emergency shall in addition be treated as a request for revocation of deferrals as of a date determined by the commission.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:1496 (June 2002).

§313. Re-Enrollment

A. A participant who revokes the participation agreement as set forth in §311.A may execute a new participation agreement to defer compensation payable no earlier than the payroll period after the first day of the next following month, or as soon as administratively practicable, if later, provided such new participation agreement is executed by the participant and accepted by the commission.

B. A former participant who is rehired after retirement may rejoin the plan as an active participant unless ineligible to participate under other plan provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1965 (October 1998), amended LR 28:1496 (June 2002), LR 32:121 (January 2006).

§315. Multiple Plans

A. Should a participant participate in more than one deferred compensation plan governed by IRC §457, the limitations set forth in LAC 32:VII.303 and 305 shall apply to all such plans considered together. For purposes of LAC 32:VII.303 and 305, compensation deferred shall be taken into account at its value in the later of the plan year in which deferred or the plan year in which such compensation is no longer subject to a substantial risk of forfeiture (within the meaning of IRC §457).

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1966 (October 1998).

§323. Section 3121 Participants

A. Notwithstanding any other provisions in this plan to the contrary, the following shall apply to all section 3121 participants:

1. annual allocations to each section 3121 participant's account must be equal to at least 7.5 percent of the participant's annual compensation;

2. all amounts deferred by a section 3121 participant shall be held in a non-forfeitable account. Such account shall be credited with earnings at a rate that is reasonable under all the facts and circumstances or employees' accounts are held in a separate trust that is subject to general fiduciary standards and are credited with actual net earnings on the trust fund, in accordance with IRS Treas. reg. §31.3121(b)(7)-2(e)(2)(iii);

3. no distributions from the Plan shall be made to a section 3121 participant before such Participant severs employment.

B. In the event a section 3121 participant no longer intends to use the plan as a retirement system providing FICA replacement benefits pursuant to IRC §3121(b)(7)(F) and the regulations thereunder, the participant may transfer any amounts being held pursuant to this Subsection to an account described in §505 of the plan.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 37:1620 (June 2011).

§319. Qualified Military Service

A. Notwithstanding any provision of this plan to the contrary, contributions and benefits with respect to qualified military service shall be provided in accordance with IRC §414(u).

B. Protection of Persons Who Serve in a Uniformed Service. An employee whose employment is interrupted by qualified military service under Code §414(u) may elect to make additional annual deferrals upon resumption of employment with the employer equal to the maximum annual deferrals that the employee could have elected during that period if the employee's employment with the employer had

continued (at the same level of compensation) without the interruption or leave, reduced by the annual deferrals, if any, actually made for the employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1966 (October 1998), amended LR 32:121 (January 2006).

§321. Correction of Excess Deferrals

A. If the total amount deferred on behalf of a participant for any calendar year exceeds the limitations described above, or the total amount deferred on behalf of a participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the participant under another eligible deferred compensation plan under Code §457(b) for which the participant provides information that is accepted by the administrator, then the total amount deferred, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 32:121 (January 2006).

§323. Section 3121 Participants

A. Notwithstanding any other provisions in this plan to the contrary, the following shall apply to all section 3121 participants:

1. annual allocations to each section 3121 participant's account must be equal to at least 7.5 percent of the participant's annual compensation;

2. all amounts deferred by a section 3121 participant shall be held in a non-forfeitable account. Such account shall be credited with earnings at a rate that is reasonable under all the facts and circumstances or employees' accounts are held in a separate trust that is subject to general fiduciary standards and are credited with actual net earnings on the trust fund, in accordance with IRS Treas. reg. §31.3121(b)(7)-2(e)(2)(iii);

3. no distributions from the Plan shall be made to a section 3121 participant before such Participant severs employment.

B. In the event a section 3121 participant no longer intends to use the plan as a retirement system providing FICA replacement benefits pursuant to IRC §3121(b)(7)(F) and the regulations thereunder, the participant may transfer any amounts being held pursuant to this Subsection to an account described in §505 of the plan.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 37:1620 (June 2011).

Chapter 5. Investments

§501. Investment Options

A. The commission shall in its sole discretion select certain investment options to be used to determine income to be accrued on deferrals. These investment options may include specified life insurance policies, annuity contracts, or investment media issued by an insurance company. In any event, it shall be the sole responsibility of the commission to ensure that all investment options offered under the plan are appropriate and in compliance with any and all state laws pertaining to such investments.

B. The commission shall have the right to direct the trustee with respect to investments of the plan assets, may appoint an investment manager to direct investments, or may give the trustee sole investment management responsibility. Any investment directive shall be made in writing by the commission or investment manager. In the absence of such written directive, the trustee shall automatically invest the available cash in its discretion in an appropriate interim investment until specific investment directions are received. Such instructions regarding the delegation of investment responsibility shall remain in force until revoked or amended in writing. The trustee shall not be responsible for the propriety of any directed investment made and shall not be required to consult with or advise the commission

regarding the investment quality of any directed investment held hereunder.

C. The commission may, from time to time, change the investment options under the plan. If the commission eliminates a certain investment option, all participants who had chosen that investment shall select another option. If no new option is selected by the participant, money remaining in the eliminated investment option shall be moved at the direction of the commission. The participants shall have no right to require the commission to select or retain any investment option. To the extent permitted by and subject to any rules or procedures adopted by the administrator, a participant may, from time to time, change his choice of investment option. Any change with respect to investment options made by the commission or a participant, however, shall be subject to the terms and conditions (including any rules or procedural requirements) of the affected investment options and may affect only income to be accrued after that change.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1966 (October 1998).

§503. Participant Investment Direction

A. Participants shall have the option to direct the investment of their personal contributions and their share of any employer contributions among alternative investment options established as part of the overall trust, unless otherwise specified by the employer. Such investment options shall be under the full control of the trustee. A participant's right to direct the investment of any contribution shall apply only to making selections among the options made available under the plan.

B. Each participant shall designate on his or her participation agreement the investment that shall be used to determine the income to be accrued on amounts deferred. If the investment chosen by the participant experiences a gain, the participant's benefits under the plan likewise shall reflect income for that period. If the investment chosen by a participant experiences a loss, or if charges are made under such investment, the participant's benefits under the plan likewise shall reflect such loss or charge for that period.

C. Neither the commission, the administrator, the trustee nor any other person shall be liable for any losses incurred by virtue of following the participant's directions or with any reasonable administrative delay in implementing such directions.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1966 (October 1998).

§505. Participant Accounts

A. The commission shall maintain or cause to be maintained one or more individual deferred compensation ledger account or similar individual account(s) for each participant. Such accounts shall include separate accounts, as necessary, for IRC §457 Deferred Compensation, IRC §457 rollovers, IRA rollovers, other qualified plan and IRC §403(b) plan rollovers, and such other accounts as may be appropriate from time to time for plan administration. At regular intervals established by the commission, each participant's account shall be:

1. credited with the amount of any deferred compensation paid into the plan;
2. debited with any applicable administrative or investment expense, allocated on a reasonable and consistent basis;
3. credited or debited with investment gain or loss, as appropriate; and
4. debited with the amount of any distribution.

B. At least once per calendar quarter, each participant shall be notified in writing of his/her total amount deferred.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:1497 (June 2002).

§507. Distributions from the Plan

A. The payment of benefits in accordance with the terms of the plan may be made by the trustee, or by any custodian or other person so authorized by the commission to make such distribution. Neither the commission, the trustee nor any other person shall be liable with respect to any distribution from the plan made at the direction of

the employer or a person authorized by the employer to give disbursement direction.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998).

Chapter 7. Distributions

§701. Conditions for Distributions

A. Payments from the participants §457 Deferred Compensation Plan account to the participant or beneficiary shall not be made, or made available, earlier than:

1. the participant's severance from employment pursuant to LAC 32:VII.703.A or death; or
2. the participant's account meets all of the requirements for an in-service de minimus distribution pursuant to LAC 32:VII.705.A and B; or
3. the participant incurs an approved unforeseeable emergency pursuant to LAC 32:VII.709.A; or
4. the participant transfers an amount to a defined benefit governmental plan pursuant to LAC 32:VII.705.C; or
5. the calendar year in which an in-service participant attains age 70 1/2, but only if such participant revokes all deferrals of compensation into the plan prior to beginning distributions.

B. Payments from a Participant's Rollover Account(s). If a participant has a separate account attributable to rollover contributions to the plan, the participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:1497 (June 2002), LR 32:121 (January 2006).

§703. Severance from Employment

A. Distributions to a participant shall commence following the date in which the participant severs employment, in a form and manner determined pursuant to LAC 32:VII.713.A, 715.A and 717.A.

B. Upon notice to participants, and subject to §§701.A, 703.B, and 721.A, the administrator may establish procedures under which a participant whose total §457 Deferred Compensation account balance is less than an amount specified by the administrator (not in excess of \$1,000 or other applicable limit under the Internal Revenue Code) may receive a lump sum distribution on the first regular distribution commencement date (as the employer or administrator may establish from time to time) following the participant's severance from employment, notwithstanding any election made by the participant pursuant to §721.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:1497 (June 2002), LR 32:121 (January 2006).

§705. In-Service Distributions

A. Voluntary In-Service Distribution of De Minimis Accounts. A participant who is an active employee shall receive a distribution of the total amount payable to the participant under the plan if the following requirements are met:

1. the portion of the total amount payable to the participant under the plan does not exceed an amount specified from time to time by the commission (not in excess of \$5,000 or other applicable limit under the Internal Revenue Code);

2. the participant has not previously received an in-service distribution of the total amount payable to the participant under the plan;

3. no amount has been deferred under the plan with respect to the participant during the two-year period ending on the date of the in-service distribution; and

4. the participant elects to receive the distribution.

B. Involuntary In-Service Distribution of De Minimis Accounts. Upon notice to participants, and subject to LAC 32:VII.721.A, the commission may establish procedures under which the plan shall distribute the total amount payable under the plan to a participant who is an active employee if the following requirements are met:

1. the portion of the total amount payable to the participant under the plan does not exceed an amount specified from time to time by the commission (not in excess of \$1,000 or other applicable limit under the Internal Revenue Code);

2. the participant has not previously received an in-service distribution of the total amount payable to the participant under the plan; and

3. no amount has been deferred under the plan with respect to the participant during the two-year period ending on the date of the in-service distribution.

C. Participants in the plan providing FICA replacement retirement benefits pursuant to regulations under Code §3121(b)(7)(F) are not eligible for In-Service De Minimis distributions.

D. Purchase of Defined Benefit Plan Service Credit

1. If a participant is also a participant in a defined benefit governmental plan [as defined in IRC §414(d)], such participant may request the commission to transfer amounts from his or her account for:

a. the purchase of permissive service credit [as defined in IRC §415(n)(3)(A)] under such plan; or

b. a repayment to which IRC §415 does not apply by reason of IRC §415(k)(3).

2. Such transfer requests shall be granted in the sole discretion of the commission, and if granted, shall be made directly to the defined benefit governmental plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:1497 (June 2002), LR 32:121 (January 2006).

§707. Deferred Commencement Date at Separation from Service

A. Following the date in which the participant severs employment, the participant may select a deferred commencement date for all or a portion of the participant's account balance. If the participant elects to defer the entire account balance, the future commencement date may not be later than April 1 of the calendar year following

the calendar year in which the participant attains age 70 1/2.

B. If the participant is an independent contractor:

1. in no event shall distributions commence prior to the termination date on which all such participant's contracts to provide services to or on behalf of the employer expire; and

2. in no event shall a distribution payable to such participant pursuant to §703.A commence if, prior to the conclusion of the one-month period following cessation of services under contract, the participant performs services for the employer as an employee or independent contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:1498 (June 2002), LR 32:122 (January 2006).

§709. Unforeseeable Emergency

A. If a participant has incurred a genuine unforeseeable emergency and no other resources of financial relief are available, the commission may grant, in its sole discretion, a participant's request for a payment from the participant's account. Any payment made under this provision shall be in a lump sum.

1. The commission shall have the right to request and review all pertinent information necessary to assure that hardship withdrawal requests are consistent with the provisions of IRC §457.

2. In no event, however, shall an unforeseeable emergency distribution be made if such hardship may be relieved:

a. through reimbursement or compensation by insurance or otherwise;

b. by liquidation of the participant's assets, to the extent the liquidation of the participant's assets would not itself cause a severe financial hardship; or

c. by cessation of deferrals under this plan.

3. The amount of any financial hardship benefit shall not exceed the lesser of:

a. the amount reasonably necessary, as determined by the commission, to satisfy the hardship; or

b. the amount of the participant's account.

4. Payment of a financial hardship distribution shall result in mandatory suspension of deferrals for a minimum of 6 months from the date of payment (or such other period as mandated in treasury regulations).

B. The following events are not considered unforeseeable emergencies under the Plan:

1. enrollment of a child in college;

2. purchase of a house;

3. purchase or repair of an automobile, except due to a casualty loss or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary;

4. repayment of loans (unless the loan was the direct result of an unforeseeable emergency, as defined in section 101 of the plan);

5. payment of income taxes, back income taxes, or fines associated with back income taxes (except for income taxes which result from a distribution made in connection with an unforeseeable emergency, as defined in section 101 of the plan);

6. marital separation or divorce; or

7. bankruptcy (except when bankruptcy resulted directly from an unforeseeable emergency, as defined in section 101 of the plan).

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1968 (October 1998), amended LR 28:1498 (June 2002), LR 32:122 (January 2006), LR 37:1621 (June 2011).

§711. Death Benefits

A. Upon the participant's death, the participant's remaining account balance(s) will be distributed to the beneficiary commencing after the administrator receives satisfactory proof of the participant's death (or on the first regular distribution commencement date thereafter as the

employer or administrator may establish from time to time), unless prior to such date the beneficiary elects a deferred commencement date, in a form and manner determined pursuant to LAC 32:VII.713.A and 717.A.

B. If there are two or more beneficiaries, the provisions of this §711 and of §717.A shall be applied to each beneficiary separately with respect to each beneficiary's share in the participant's account.

C. Death of Participant before Participant's Required Beginning Date. If the participant dies before the required beginning date, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows.

1. If the participant's surviving spouse is the participant's sole designated beneficiary, then, except as provided in this §711, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70 1/2, if later.

2. If the participant's surviving spouse is not the participant's sole designated beneficiary, then, unless the beneficiary elects the five-year rule, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

3. If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

4. If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this Subsection C will apply as if the surviving spouse were the participant.

D. Death On or After Participant's Required Beginning Date

1. Participant Survived by Designated Beneficiary. If the participant dies on or after the participant's required beginning date and there is a

designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the longer of the remaining life expectancy of the participant or the remaining life expectancy of the participant's designated beneficiary, determined as follows.

a. The participant's remaining life expectancy is calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

b. If the participant's surviving spouse is the participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

c. If the participant's surviving spouse is not the participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the participant's death, reduced by one for each subsequent year.

2. No Designated Beneficiary. If the participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the participant's remaining life expectancy calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

E. Under no circumstances shall the commission be liable to the beneficiary for the amount of any payment made in the name of the

participant before the commission receives satisfactory proof of the participant's death.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1968 (October 1998), amended LR 28:1498 (June 2002), LR 32:122 (January 2006).

§713. Payment Options

A. A participant's or beneficiary's election of a payment option must be made at least 30 days prior to the date that the payment of benefits is to commence. If a timely election of a payment option is not made, benefits shall be paid in accordance with §715.A. Subject to applicable law and the other provisions of this plan, distributions may be made in accordance with one of the following payment options:

1. a single lump-sum payment;
2. installment payments for a period of years (payable on a monthly, quarterly, semiannual, or annual basis), which extends no longer than the life expectancy of the participant or beneficiary as permitted under the requirements of IRC §401(a)(9) using the Uniform Lifetime Table at regulation. §1.041(a)(9)-9, A-2 for the participant's age on the participant's birthday for that year. If the participant's age is less than age 70, the distribution period is 27.4 plus the number of years that the participant's age is less than age 70. The account balance for this calculation (other than the final installment payment) is the account balance as of the end of the year prior to the year for which the distribution is being calculated;
3. installment payments for a period of years (payable on a monthly, quarterly, semiannual, or annual basis) automatically adjusted for cost-of-living increases based on the rise in the *Consumer Price Index for All Urban Consumers* (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase shall be made in periodic payment checks beginning the following January;
4. partial lump-sum payment of a designated amount, with the balance payable in installment payments for a period of years, as described in Subsection A of this §713;

5. annuity payments (payable on a monthly, quarterly, or annual basis) for the lifetime of the participant or for the lifetime of the participant and beneficiary in compliance with IRC §401(a)(9);

6. such other forms of installment payments as may be approved by the commission consistent with the requirements of IRC §401(a)(9).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1968 (October 1998), amended LR 28:1498 (June 2002), LR 32:123 (January 2006).

§715. Default Distribution Option

A. In the absence of an effective election by the participant, beneficiary or other payee, as applicable, as to the commencement and/or form of benefits, distributions shall be made in accordance with the applicable requirements of IRC §§401(a)(9) and 457(d), and proposed or final treasury regulations thereunder. In the absence of an effective election by the beneficiary or alternate payee as to the commencement and/or form of benefits, distribution shall be made in a lump sum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:1499 (June 2002), LR 32:123 (January 2006).

§717. Limitations on Distribution Options

A. No distribution option may be selected by a participant or beneficiary under this §717 unless it satisfies the requirements of IRC §§401(a)(9) and 457(d) and proposed or final treasury regulations thereunder.

B. If installment payments are designated as the method of distribution, the minimum distribution shall be no less than \$100 per check and the payments made annually must be no less than \$600.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:1499 (June 2002).

§719. Taxation of Distributions

A. To the extent required by law, income and other taxes shall be withheld from each benefit

payment, and payments shall be reported to the appropriate governmental agency or agencies.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:1499 (June 2002).

§721. Transfers and Rollovers

A. Transfers to the Plan. If the participant was formerly a participant in an eligible deferred compensation plan maintained by another employer, and if such plan permits the direct transfer of the participant's interest therein to the plan, then the plan shall accept assets representing the value of such interest; provided, however, that the participant has separated from service with that former employer and become an employee of employer. Such amounts shall be held, accounted for, administered and otherwise treated in the same manner as compensation deferred by the participant except that such amounts shall not be considered compensation deferred under the plan in the taxable year of such transfer in determining the maximum deferral under LAC 32:VII.303.A.1-2. The commission may require such documentation from the predecessor plan, as it deems necessary to confirm that such plan is an eligible deferred compensation plan within the meaning of IRC §457, and to assure that transfers are provided under such plan. The commission may refuse to accept a transfer in the form of assets other than cash, unless the commission agrees to hold such other assets under the plan.

B. In-Service Transfers from the Plan. If a participant separates from service prior to his or her required beginning date, and becomes a participant in an eligible deferred compensation plan of another governmental employer, and provided that payments under this plan have not begun, such participant may request a transfer of his or her account to the eligible deferred compensation plan of the other employer. Requests for such transfers must be made in writing to the commission and shall be granted in the sole discretion of the commission. If an amount is to be transferred pursuant to this provision, the commission shall transfer such amount directly to the eligible deferred compensation plan of the other employer. Amounts transferred to another eligible deferred

compensation plan shall be treated as distributed from this plan and this plan shall have no further responsibility to the participant or any beneficiary with respect to the amount transferred.

C. Section 3121 Participant Transfers. If a participant was formerly a section 3121 participant, then the plan shall accept assets representing amounts deferred under §323 of this plan, provided the participant remains an employee.

D. Rollovers to the Plan

1. The plan shall accept a rollover contribution on behalf of a participant or employee who may become a participant. A rollover contribution, for purposes of this Subsection, is an eligible rollover contribution (as defined in IRC §402(f)(2)) from any:

- a. plan qualified under IRC §401(a) or 403(a);
- b. tax-sheltered annuity or custodial account described in IRC §403(b);
- c. individual retirement account or annuity described in IRC §408;
- d. eligible deferred compensation plan described in IRC §457(b).

2. Prior to accepting any rollover contribution, the commission must reasonably conclude, after a good faith effort, that the amount to be rolled over to the plan is a valid rollover within the meaning of the Internal Revenue Code. A participant's rollover contribution shall be held in a separate rollover account or accounts, as the commission shall determine from time to time. If, at any time, a rollover contribution is determined to be invalid, the commission shall distribute to the participant any such amount determined to be invalid within a reasonable period of time after such a determination is made.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:1499 (June 2002), LR 37:1621 (June 2011).

§723. Eligible Rollover Distributions

A. General. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this §723, a distributee may elect, at the time and in the manner prescribed by the employer, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. Notice. The commission shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the distributee explaining the following, as amended from time to time by applicable changes to the law:

1. the provisions under which the distributee may have the distribution directly transferred to an eligible retirement plan and that the automatic distribution by direct transfer applies to certain distributions in accordance with §401(a)(31)(B) of the Internal Revenue Code;

2. the provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan;

3. the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution;

4. the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

C. Definitions. For purposes of this §723, the following definitions shall apply.

Direct Rollover—a payment by the plan to the eligible retirement plan specified by the distributee.

Distributee—includes an employee or former employee, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a *qualified domestic relations order*, as defined in IRC §414(p), are

distributees with regard to the interest of the spouse or former spouse.

Eligible Retirement Plan—an eligible retirement plan is an individual retirement account described in IRC §408(a), an individual retirement annuity described in IRC §408(b), an annuity plan described in IRC §403(a) that accepts the distributee's eligible rollover distribution, a qualified trust described in IRC §401(a) (including §401(k)) that accepts the distributee's eligible rollover distribution, a tax-sheltered annuity described in IRC §403(b) that accepts the distributee's eligible rollover distribution, or another eligible deferred compensation plan described in IRC §457(b) that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

Eligible Rollover Distribution—any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies and the distributee's designated beneficiary, or for:

- a. a specified period of 10 years or more;
- b. any distribution to the extent such distribution is required under IRC §401(a)(9);
- c. any distribution that is a deemed distribution under the provisions of IRC §72(p);
- d. the portion of any distribution that is not includable in gross income; and
- e. any hardship distribution or distribution on account of unforeseeable emergency.

Reasonable Period of Time—shall have the meaning assigned to it under §401(a)(31) of the Internal Revenue Code and the regulations thereunder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969

(October 1998), amended LR 28:1499 (June 2002), LR 32:123 (January 2006), LR 37:1621 (June 2011).

§725. Elections

A. Elections under this Chapter 7 shall be made in such form and manner as the commission may specify from time to time. To the extent permitted by and in accordance with the Internal Revenue Code, any irrevocable elections as to the form or timing of distributions executed prior to January 1, 2002, are hereby revoked.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:1500 (June 2002).

§727. Practices and Procedures

A. The commission may adopt practices and procedures applicable to existing and new distribution elections.

AUTHORITY NOTE: Promulgated in accordance with R.S. §42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:1500 (June 2002).

Chapter 9. Leave of Absence

§901. Paid and Unpaid Leave of Absence

A. Paid Leave of Absence. If a participant is on an approved leave of absence from the employer with compensation, or on approved leave of absence without compensation that does not constitute a severance from employment within the meaning of IRC §402(d)(4)(A)(iii) which under the employer's current practices is generally a leave of absence without compensation for a period of one year or less, said participant's participation in the plan may continue.

B. Unpaid Leave of Absence. If a participant is on an approved leave of absence without compensation and such leave of absence continues to such an extent that it becomes a severance from employment within the meaning of IRC §402(e)(4)(A)(iii), said participant shall have severed employment with the employer for purposes of this plan. Upon termination of leave without pay and return to active status, the participant may execute a new participation agreement to be effective when permitted by LAC 32:VII.313.B of the plan.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:1500 (June 2002).

Chapter 11. Participant Loans

§1101. Authorization of Loans

A. The commission may direct the administrator to make loans to participants on or after the effective date of treasury regulations or other guidance under IRC §457 and to the extent allowable under and in accordance with IRC §457. Such loans shall be made on the application of the participant in a form approved by the administrator and on such terms and conditions as are set forth in this Chapter 11, provided, however, that the administrator may adopt rules or procedures specifying different loan terms and conditions, if necessary or desirable, to comply with or conform to such treasury regulations or other guidance and other applicable law.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:1500 (June 2002).

§1103. Maximum Loan Amount

A. In no event shall any loan made to a participant be in an amount which shall cause the outstanding aggregate balance of all loans made to such participant under this plan exceed the lesser of:

1. \$50,000, reduced by the excess (if any) of:

a. the highest outstanding balance of loans from the plan to the participant during the one-year period ending on the day before the date on which the loan is made;

b. over the outstanding balance of loans from the plan to the participant or the beneficiary on the date on which the loan is made; or

2. one-half of the participant's account balance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:1500 (June 2002), amended LR 32:123 (January 2006).

§1105. Repayment of Loan

A. Each loan shall mature and be payable, in full and with interest, within five years from the date such loan is made, unless:

1. the loan is used to acquire any dwelling unit that within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the participant; or

2. loan repayments are, at the employer's election, suspended as permitted by IRC §414(u)(4) (with respect to qualified military service).

AUTHORITY NOTE: Promulgated in accordance with R.S. §42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:1500 (June 2002).

§1107. Loan Terms and Conditions

A. In addition to such rules as the administrator may adopt, which rules are hereby incorporated into this plan by reference, all loans to participants shall comply with the following terms and conditions.

1. Loans shall be available to all participants on a reasonably equivalent basis.

2. Loans shall bear interest at a reasonable rate to be fixed by the administrator based on interest rates currently being charged by commercial lenders for similar loans. The administrator shall not discriminate among participants in the matter of interest rates, but loans granted at different times may bear different interest rates based on prevailing rates at the time.

3. Each loan shall be made against collateral, including the assignment of no more than one-half of the present value of the participant's total amount deferred as security for the aggregate amount of all loans made to such participant, supported by the participant's collateral promissory note for the amount of the loan, including interest.

4. The participant shall be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the employer to make payroll deductions from his or her compensation as long as the participant is an employee and to transfer such payroll deduction amounts to the trustee in payment of such loan

plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction to be made as soon as practicable after the loan funds are disbursed; provided, however, a participant may prepay the entire outstanding balance of his loan at any time; and provided, further, that if any payroll deductions cannot be made in full because a participant is on an unpaid leave of absence or is no longer employed by a participating employer (that has consented to make payroll deductions for this purpose) or the participant's paycheck is insufficient for any other reason, the participant shall pay directly to the plan the full amount that would have been deducted from the participant's paycheck, with such payment to be made by the last business day of the calendar month in which the amount would have been deducted.

5. A loan to a participant or beneficiary shall be considered a directed investment option for such participant's account balance.

6. No distribution shall be made to any participant, or to a beneficiary of any such participant, unless and until all unpaid loans, including accrued interest thereon, have been satisfied. If a participant terminates employment with the employer for any reason, the outstanding balance of all loans made to him shall become fully payable and, if not paid within 30 days, any unpaid balance shall be deducted from any benefit payable to the participant or his beneficiary. In the event of default in repayment of a loan or the bankruptcy of a participant who has received a loan, the note will become immediately due and payable, foreclosure on the note and attachment of security will occur, the amount of the outstanding balance of the loan will be treated as a distribution to the participant, and the defaulting participant's accumulated deferrals shall be reduced by the amount of the outstanding balance of the loan (or so much thereof as may be treated as a distribution without violating the requirements of the Internal Revenue Code).

7. The loan program under the plan shall be administered by the administrator in a uniform and nondiscriminatory manner. The administrator shall establish procedures for loans, including procedures for applying for loans, guidelines

governing the basis on which loans shall be approved, procedures for determining the appropriate interest rate, the types of collateral which shall be accepted as security, any limitations on the types and amount of loans offered, loan fees and the events which shall constitute default and actions to be taken to collect loans in default.

8. Security for Loan. Any loan to a participant under the plan shall be secured by the pledge of the portion of the participant's interest in the plan invested in such loan.

9. Default

a. In the event that a participant fails to make a loan payment under this Article IV by the end of the calendar quarter following the calendar quarter in which such payment was due, a default on the loan shall occur. In the event of such default:

- i. all remaining payments on the loan shall be immediately due and payable;
- ii. interest will continue to accrue on the unpaid balance until the loan is repaid in full; and
- iii. the participant shall be permanently ineligible for any future loans from the plan unless, in the administrator's sole discretion, the participant is deemed to be credit worthy and agrees to repay the loan through payroll deduction.

b. In the case of any default on a loan to a participant, the administrator shall apply the portion of the participant's interest in the plan held as security for the loan in satisfaction of the loan on the date of severance from employment. In addition, the administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, with the costs of any legal proceeding or collection to be charged to the account balance of the participant.

c. Notwithstanding anything elsewhere in the plan to the contrary, in the event a loan is outstanding hereunder on the date of a participant's death, his or her estate shall be his or her beneficiary as to the portion of his or her interest in the plan invested in such loan (with the beneficiary or beneficiaries as to the remainder of his or her interest in the plan to be determined in accordance with otherwise applicable provisions of the plan).

10. Loans shall not be available for a period of 30 days following the repayment of a previous loan from the plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1969 (October 1998), amended LR 28:1499 (June 2002), LR 32:123 (January 2006), LR 37:1622 (June 2011).

Chapter 13. Plan Amendment or Termination

§1301. Termination

A. The commission may at any time terminate this plan; provided, however, that no termination shall affect the amount of benefits, which at the time of such termination shall have accrued for participants or beneficiaries. Such accrued benefits shall include any compensation deferred before the time of the termination and income thereon accrued to the date of the termination.

B. Upon such termination, each participant in the plan shall be deemed to have revoked his agreement to defer future compensation as provided in LAC 32:VII.311.A as of the date of such termination. Each participant's full compensation on a non-deferred basis shall be restored.

AUTHORITY NOTE: Promulgated in accordance with R.S. §42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:1501 (June 2002).

§1303. Amendments to the Plan

A. The commission may also amend the provisions of this plan at any time; provided, however, that no amendment shall affect the amount of benefits which at the time of such amendment shall have accrued for participants or beneficiaries, to the extent of compensation deferred before the time of the amendment and income thereon accrued to the date of the amendment, calculated in accordance with LAC 32:VII.505.A and the terms and conditions of the investment options hereunder; and provided further, that no amendment shall affect the duties and responsibilities of the trustee unless executed by the trustee.

B. Copies of Amendments. The administrator shall provide a copy of any plan amendment to any trustee or custodian and to the issuers of any investment options.

AUTHORITY NOTE: Promulgated in accordance with R.S. §42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:1501 (June 2002).

Chapter 15. Taxes, Nonassignability and Disclaimer

§1501. Tax Treatment of Amounts Deferred

A. It is intended that pursuant to IRC §457, the amount of deferred compensation shall not be considered current compensation for purposes of federal and state income taxation. This rule shall also apply to state income taxation unless applicable state laws provide otherwise. Such amounts shall, however, be included as compensation to the extent required under the Federal Insurance Contributions Act (FICA). Payments under this plan shall supplement retirement and death benefits payable under the employer's group insurance and retirement plans, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. §42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:1501 (June 2002).

§1503. Nonassignability

A. It is agreed that neither the participant, nor any beneficiary, nor any other designee shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be nonassignable and nontransferable; and in the event of attempt to assign or transfer, the commission shall have no further liability hereunder, nor shall any unpaid amounts be subject to attachment, garnishment or execution, or be transferable by operation of law in event of bankruptcy, or insolvency, except to the extent otherwise required by law.

B. Qualified domestic relations orders approved by the commission shall be administered as follows.

1.a. To the extent required under a final judgment, decree, or order made pursuant to a

state domestic relations law, herein referred to as a Qualified Domestic Relations Order (QDRO) which is duly filed upon the commission, any portion of a participant's account may be paid or set aside for payment to an alternate payee.

NOTE: For purposes of this §1503, an alternate payee is a person or persons designated by a domestic relations order who may be a spouse, former spouse, or a child of the participant.

b. Where necessary to carry out the terms of such a QDRO, a separate account shall be established with respect to the alternate payee, and such person(s) shall be entitled to make investment selections with respect thereto in the same manner as the participant. All costs and charges incurred in carrying out the investment selection shall be deducted from the account created for the alternate payee making the investment selection.

2. Any amounts so set aside for an alternate payee shall be paid out immediately in a lump sum, unless the QDRO directs a different form of payment or later payment date. Nothing in this §1503.B shall be construed to authorize any amounts to be distributed under the employer's plan at a time or in a form that is not permitted under IRC §457. Any payment made to a person other than the participant pursuant to this §1503.B shall be reduced by required income tax withholding. Such withholding and income tax reporting shall be done under the terms of the Internal Revenue Code as amended from time to time.

3. The commission's liability to pay benefits to a participant shall be reduced to the extent that amounts have been paid or set aside for payment to an alternate payee pursuant to this §1503.B. No amount shall be paid or set aside unless the commission, or its agents or assigns, has been provided with satisfactory evidence releasing them from any further claim by the participant with respect to these amounts. The participant shall be deemed to have released the commission from any claim with respect to such amounts in any case in which the commission has been notified of or otherwise joined in a proceeding relating to a QDRO, which sets aside a portion of the participant's account for an alternate payee, and the participant fails to obtain an order of the court

in the proceeding relieving the employer from the obligation to comply with the QDRO.

4. The commission shall not be obligated to comply with any judgment, decree or order which attempts to require the plan to violate any plan provision or any provision of §457 of the Internal Revenue Code. Neither the commission nor its agents or assigns shall be obligated to defend against or set aside any judgment, decree, or order described herein or any legal order relating to the division of a participant's benefits under the plan unless the full expense of such legal action is borne by the participant. In the event that the participant's action (or inaction) nonetheless causes the commission, its agents or assigns to incur such expense, the amount of the expense may be charged against the participant's account and thereby reduce the commission's obligation to pay benefits to the participant. In the course of any proceeding relating to divorce, separation, or child support, the commission, its agents and assigns shall be authorized to disclose information relating to the participant's individual account to the participant's spouse, former spouse or child (including the legal representatives of the alternate payee), or to a court.

5. Any Conforming Equitable Distribution Order (CEDO), filed prior to January 2002, may be amended to comply with this §1503.B, pursuant to a Qualified Domestic Relations Orders (QDRO), which is duly filed upon the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. §42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1970 (October 1998), amended LR 28:1502 (June 2002).

§1505. Disclaimer

A. The commission makes no endorsement, guarantee or any other representation and shall not be liable to the plan or to any participant, beneficiary, or any other person with respect to:

1. the financial soundness, investment performance, fitness, or suitability (for meeting a participant's objectives, future obligations under the plan, or any other purpose) of any investment option in which amounts deferred under the plan are actually invested; or

2. the tax consequences of the plan to any participant, beneficiary or any other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. §42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1971 (October 1998), amended LR 28:1502 (June 2002).

Chapter 17. Employer Participation

§1701. Additional Compensation Deferred

A. Notwithstanding any other provisions of this plan, the employer may add to the amounts payable to any participant under the plan additional deferred compensation for services to be rendered by the participant to the employer during a payroll period, provided:

1. the participant has elected to have such additional compensation deferred, invested, and distributed pursuant to this plan, prior to the payroll period in which the compensation is earned; and

2. such additional compensation deferred, when added to all other compensation deferred under the plan, does not exceed the maximum deferral permitted by LAC 32:VII.303.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. §42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1971 (October 1998), amended LR 28:1502 (June 2002).

Chapter 19. Applicable Terms

§1901. Interpretation

A. Governing Law. This plan shall be construed under the laws of the state of Louisiana.

B. Section 457. This plan is intended to be an eligible deferred compensation plan within the meaning of §457 of the Internal Revenue Code, and shall be interpreted so as to be consistent with such Section and all regulations promulgated thereunder.

C. Employment Rights. Nothing contained in this plan shall be deemed to constitute an employment agreement between any participant and the employer and nothing contained herein shall be deemed to give a participant any right to be retained in the employ of the employer.

D. Days and Dates. Whenever time is expressed in terms of a number of days, the days shall be consecutive calendar days, including weekends and holidays, provided, however, that if the last day of a period occurs on a Saturday, Sunday or other holiday recognized by the employer, the last day of the period shall be deemed to be the following business day.

E. Word Usage. Words used herein in the singular shall include the plural and the plural the singular where applicable, and one gender shall include the other genders where appropriate.

F. Headings. The headings of articles, sections or other subdivisions hereof are included solely for convenience of reference, and if there is any

conflict between such headings and the text of the plan, the text shall control.

G. Entire Agreement. This plan document shall constitute the total agreement or contract between the commission and the participant regarding the plan. No oral statement regarding the plan may be relied upon by the participant. This plan and any properly adopted amendment, shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assigns and on all designated beneficiaries of the participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. §42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1972 (October 1998), amended LR 28:1503 (June 2002).

Title 32
EMPLOYEE BENEFITS
Part VII. Public Employee Deferred Compensation
Subpart 2. Nominations and Elections

Chapter 101. Nomination and Election of Participant Members

§10101. Election Procedures

A. The Louisiana Deferred Compensation Commission (the "commission") developed the following procedures for the election of participant members to the commission, revised August 16, 2005. These procedures shall remain in effect until amended.

1. On or before the first day of January of each year, the commission shall appoint a nominating committee consisting of three to five participants, no two of whom are employed by the same department of state government and none of whom are members of the commission. Public notice of the appointment of the nominating committee shall be given in the same manner as that required for giving public notice of meetings of the commission. All participants shall be notified by means of a notice mailed to them by either the fourth quarter statements or via direct mail that an election will be held, and the method by which the election will be held.

2. The nominating committee shall submit to the commission the name of at least one participant for each vacancy that has occurred and the name of at least one participant for each term that is about to expire. Only participants who have been participants for more than two years prior to the date on which the term begins may be nominated.

3. Upon the receipt of the report of the nominating committee, the commission shall notify personnel officers of the receipt of the said report and shall request personnel officers to notify participants (by posting a notice in appropriate places or by other means) that the said report has been received and that additional nominations may be made by petition.

4. A participant may be nominated by petition if the petition contains the signatures of 12 participants and is received by the commission chairman or his/her designee prior to the deadline set forth in the notice supplied to personnel officers pursuant to Paragraph 3 above. Only participants who have been participants for more than two years prior to the date on which the term begins may be nominated by petition. Petitioning participants' signatures must be accompanied by a statement signed by the nominee in which the nominee expresses his or her willingness to serve if elected.

5. In the event two or more participants are nominated for a position on the commission, the commission chairman shall conduct a drawing to determine the order in which candidates' names will appear on the ballot. All nominees for a position shall be invited by the chairman to attend the drawing. Each ballot shall contain, in addition to the name of the nominee(s), a statement containing no more than 35 words, which statement shall be prepared by the nominee and shall contain biographical information and/or a statement concerning the nominee's position on one or more issues pertinent to the deferred compensation program. If and when the commission determines that the use of photographs of the nominees on the ballots will be feasible, the chairman shall provide all nominees with the opportunity to submit suitable photographs of themselves for use in preparation of the ballots. The submission of such a photograph shall be optional for each nominee.

6. A participant shall be eligible to participate in an election if that participant receives a first quarter statement of his account with the Louisiana Deferred Compensation plan during the year in which the election is held. The commission may elect to distribute the ballots to the eligible participants via the first quarter statement, or via

direct mail. The commission may also contract through a third party vendor to provide vote collection services, including electronic votes utilizing an Interactive Voice Response ("IVR") telephone voting system, electronic votes utilizing the Internet and also paper ballot votes. Election services include the production of election materials, mailing services, barcode system services, election ballot processing and counting using automated scanning, and other related services. If the voting process is sent via the statement or mail, each ballot shall be accompanied by a ballot envelope (clearly marked with instructions that the completed ballot shall be placed therein and the envelope sealed), a mailing envelope on which is printed the name and address of the commission's designated return address, and a signature slip.

7. The commission may require that the participant's signature appear on the signature slip together with the last four digits of the participant's Social Security number. The signature slip and the ballot envelope shall be placed in the mailing envelope. The signature slip must not be placed in the ballot envelope. The mailing envelope shall be mailed or delivered to the commission at the address printed on the mailing envelope.

8. The commission or the commission chairman, if authorized by the commission, shall appoint a ballot counting committee and the commission chairman shall invite all nominees to be present for the ballot counting.

9. The deadline for return of ballots and the date on which ballots will be counted shall both be fixed by the commission or by the commission chairman, if authorized by the commission.

10. Prior to counting the ballots, the ballot counting committee shall make such verification as is deemed appropriate. The committee shall verify that each ballot has been submitted correctly. Any ballot not submitted correctly will be deemed invalid. If a third party vendor is contracted for vote collection services, the ballot counting committee shall examine and verify the database representing the final vote tally.

11. No nominee shall be required to receive a majority of the votes in order to be elected. The

nominee receiving a plurality of the votes cast shall be declared elected. In the event two or more nominees receive the same number of votes, the winner shall be chosen by the toss of a coin.

12. Upon completion of its work, the ballot counting committee shall submit a written report to the chairman concerning the result of the election. The chairman shall make public the result of the election at the next commission meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 32:124 (January 2006).