

**CHAPTER 110-10  
ADMINISTRATIVE RULES AND REGULATIONS**

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Chapter Authority: 1 CMC § 8315(g) (renumbered by PL 13-60 (effective Dec. 5, 2003)).

Chapter History: Amdts Adopted 34 Com. Reg. 32298 (Feb. 29, 2012); Amdts Proposed 33 Com. Reg. 32094 (Nov. 29, 2011); Amdts Adopted 33 Com. Reg. 31758 (July 22, 2011); Amdts Proposed 33 Com. Reg. 31547 (Apr. 21, 2011); Amdts Adopted 33 Com. Reg. 32092 (Nov. 29, 2011); Amdts Proposed 33 Com. Reg. 31555 (Apr. 21, 2011); Amdts Adopted 32 Com. Reg. 30554 (July 15, 2010); Amdts Proposed 32 Com. Reg. 30341 (May 21, 2010); Amdts Adopted 31 Com. Reg. 29980 (Dec. 22, 2009); Amdts Proposed 31 Com. Reg. 29940 (Oct. 29, 2009); Amdts Adopted 31 Com. Reg. 29205 (Feb. 25, 2009); Amdts Proposed 30 Com. Reg. 28984 (Dec. 22, 2008); Amdts Adopted 30 Com. Reg. 28890 (Oct. 25, 2008); Emergency and Proposed 30 Com. Reg. 28535 (July 28, 2008); Amdts Adopted 30 Com. Reg. 28527 (June 27, 2008); Amdts Proposed 30 Com. Reg. 28507 (May 27, 2008); Amdts Adopted 30 Com. Reg. 28516 (May 27, 2008); Amdts Proposed 30 Com. Reg. 28378 (Mar. 25, 2008); Amdts Adopted 29 Com. Reg. 27943 (Dec. 18, 2007); Amdts Proposed 29 Com. Reg. 27408 (Nov. 19, 2007); Amdts Adopted 29 Com. Reg. 26693 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26666 (July 18, 2007); Amdts Adopted 29 Com. Reg. 26676 (July 18, 2007); Amdts Proposed 29 Com. Reg. 26561 (June 18, 2007); Amdts

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Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 19 Com. Reg. 15148 (Feb. 15, 1997); Amdts Proposed 18 Com. Reg. 14299 (Aug. 15, 1996); Amdts Adopted 17 Com. Reg. 13524 (June 15, 1995); Amdts Proposed 17 Com. Reg. 13015 (Mar. 15, 1995); Amdts Adopted 16 Com. Reg. 12439 (Sept. 15, 1994); Amdts Proposed 16 Com. Reg. 11874 (May 15, 1994); Amdts Adopted 16 Com. Reg. 12323 (Aug. 15, 1994); Amdts Proposed 16 Com. Reg. 11921 (June 15, 1994); Amdts Adopted 16 Com. Reg. 11694 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11162 (Dec. 15, 1993); Amdts Adopted 15 Com. Reg. 11086 (Nov. 15, 1993); Amdts Proposed 15 Com. Reg. 10479 (Feb. 15, 1993); Correction Adopted 15 Com. Reg. 10820 (Sept. 15, 1993); Amdts Adopted 15 Com. Reg. 10571 (Apr. 15, 1993); Amdts Proposed 14 Com. Reg. 10203 (Dec. 15, 1992); Certified 14 Com. Reg. 8653 (Jan. 15, 1992); Amdts Adopted 13 Com. Reg. 7661 (Mar. 15, 1991); Amdts Proposed 12 Com. Reg. 7446 (Nov. 15, 1990); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: PL 1-43 (effective Jan. 18, 1980), formerly codified at 1 CMC §§ 8301, et seq., originally created the Northern Mariana Islands Retirement Fund. PL 6-17 (effective May 7, 1989), the “Northern Mariana Islands Retirement Fund Act of 1988,” codified as amended at 1 CMC §§ 8301-8394, repealed and reenacted PL 1-43, as amended. See PL 6-17, ch. 1 § 8312; see also the commission comment to 1 CMC § 8301. PL 13-60 (effective Dec. 5, 2003), the “Retirement Integrity Assurance Act,” amended numerous provisions of the 1988 NMI Retirement Fund Act.

1 CMC § 8312 creates the Northern Mariana Islands Retirement Fund (NMIRF) as an autonomous agency and public corporation of the government of the Commonwealth of the Northern Mariana Islands. NMIRF, through a Board of Trustees, is empowered to establish, maintain and operate a retirement fund program for the public employees of the Commonwealth. 1 CMC § 8315(a). 1 CMC § 8315(g) (renumbered by PL 13-60) authorizes NMIRF to adopt rules and regulations as necessary for the exercise of the funds’ powers, performance of its duties and administration of its operations.

NMIRF first promulgated Administrative Rules and Regulations in 1981 pursuant to PL 1-43 § 4(f) (formerly codified at 1 CMC § 8314(f)) and PL 5-48 § 3. The history of the NMIRF Administrative Rules and Regulations from 1981 until July 1989 is as follows: Amdts Proposed 11 Com. Reg. 6140 (Apr. 15, 1989);\* Amdts Adopted 10 Com. Reg. 5718 (Oct. 15, 1988); Amdts Proposed 10 Com. Reg. 5618 (Aug. 15, 1988); Amdts Adopted 10 Com. Reg. 5582 (July 15, 1988); Amdts Proposed 10 Com. Reg. 5544 (May 15, 1988); Amdts Emergency 9 Com. Reg. 4991 (July 20, 1987) (effective for 120 days from June 23, 1987);\* Amdts Adopted 8 Com. Reg. 4556 (Sept. 15, 1986); Amdts Proposed 8 Com. Reg. 4472 (Aug. 15, 1986); Adopted 5 Com. Reg. 2445 (Aug. 31, 1983); Proposed 5 Com. Reg. 2182 (June 30, 1983); Proposed 3 Com. Reg. 1441 (Nov. 30, 1981);\* 3 Com. Reg. 1226 (Mar. 30, 1981) (effective for 120 days from Feb. 4, 1981).\*

\*Notices of permanent adoption for the April 1989, July 1987, November 1981, and March 1981 regulations were never published.

After the repeal of PL 1-43 and enactment of PL 6-17 in May 1989, NMIRF promulgated the 1989 NMIRF Administrative Rules and Regulations codified as amended in this chapter.

In October and December 2005, NMIRF proposed to re-promulgate this chapter in its entirety with numerous amendments. In March 2006, NMIRF re-promulgated this chapter and adopted numerous amendments as proposed in December 2005. The October 2005 amendments were not adopted and are not included herein.

Public Law 15-13, the Defined Contribution Plan Act, codified at 1 CMC § 8451-8478, became effective June 16, 2006. The purposes of PL 15-13 included:

- (a) To create portable individual retirement accounts for all new public employees hired on or after the effective date of [1 CMC] § 8453;
- (b) To provide conditions under which certain Class I members of the Retirement Fund may transfer from the existing defined benefit plan to the new defined contribution plan.

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Comment to 1 CMC § 8451. In July 2007, the NMIRF amended the definition section § 110-10-010 and adopted part 900 of this chapter to implement the provisions of PL 15-13. See 29 Com. Reg. 26676 (July 18, 2007) and 29 Com. Reg. 26561 (June 18, 2007).

Public Law 15-61, effective May 17, 2007, codified at 1 CMC § 8395 provides:

Notwithstanding any law, regulation, or a policy to the contrary, the Retirement Fund shall pay the full pension of retirees and shall not be reduced or recalculated on the basis that the employer contributions, in whole or in part, have not been remitted to the Fund. All unpaid retirement government contributions for all affected employees shall be treated as unfunded liability.

Public Law 15-70, the Defined Benefit Plan Reform Act of 2007, effective June 17, 2007, made changes to certain retirement provisions of the Commonwealth Code. In August 2007, NMIRF adopted amendments to this subchapter to effectuate the provisions of PL 15-70. See 29 Com. Reg. 26693 (Aug. 17, 2007) and 29 Com. Reg. 26666 (July 18, 2007).

Public Law 15-126, effective January 24, 2008, codified at 1 CMC § 8368, amended the employer's retirement contribution rate. To the extent that these regulations conflict with Public Law 15-126, they are superseded.

Public Law 16-36, effective April 15, 2009, amended the priority for payout of employer retirement contributions. To the extent that these regulations conflict with Public Law 16-36, they are superseded.

Public Law 17-32, effective February 16, 2011, codified at 1 CMC § 8358, amended the powers of the Board to provide for annual retirement bonuses in place of cost of living increases. To the extent that these regulations conflict with Public Law 17-32, they are superseded.

Public Law 17-46, effective June 16, 2011, codified at 1 CMC § 8374, amended the list of acceptable investments for the Fund. To the extent that these regulations conflict with Public Law 17-46, they are superseded.

Public Law 17-66, effective December 20, 2011, codified at 1 CMC § 8363(a), amended the Retirement Fund's life insurance provisions. To the extent that these regulations conflict with Public Law 17-66, they are superseded.

Public Law 17-79, effective August 30, 2012, codified at 1 CMC §§ 8481-8489, extended the federal Social Security system to Commonwealth elected officials and employees. To the extent that these regulations conflict with Public Law 17-79, they are superseded.

Public Law 18-21, effective October 7, 2013, codified at 1 CMC § 8466, amended the Retirement Fund's distribution provisions to allow members to withdraw money from their accounts without terminating employment. To the extent that these regulations conflict with Public Law 18-21, they are superseded.

### **Part 001 - General Provisions**

#### **§ 110-10-001 Authority**

Under and by virtue of the authority vested in the Board pursuant to 1 CMC § 8315(f), and section 10 of Public Law 13-60 [comment to 1 CMC § 8253], the Board hereby promulgates the rules and regulations in this chapter.

Modified 1 CMC § 3806(f), (d).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

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### § 110-10-005 Purpose

The Board promulgates the rules and regulations in this chapter to effectively administer and maintain the Fund pursuant to Public Laws 6-17, 6-41, 7-39, 7-40, 8-24, 8-30, 8-31, 8-39, 9-45, 10-88, 11-2, 11-9, 11-95, 11-114, 13-60, 15-13 and 15-70 to update existing regulations, and for other purposes.

Modified 1 CMC § 3806(d).

History: Amdts Adopted 29 Com. Reg. 26693 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26666 (July 18, 2007); Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: In March 2006, former § 110-10-005 (Definitions) was renumbered to § 110-10-010. The August 2007 amendments added Public Laws 15-13 and 15-70 to this section.

### § 110-10-010 Definitions

Applicability. The words and terms as used in this chapter shall have the meanings indicated and shall include the plural unless the context clearly indicates otherwise. The definitions herein provided shall supplement the public laws referenced in § 110-10-005.

(a) “Accredited institution of higher learning” means an institution of higher learning that is either:

(1) Located in the United States of America, its commonwealths, possessions, or territories, that is included on the U.S. Department of Education’s Database of Accredited Postsecondary Institutions and Programs; or

(2) Located outside the United States of America, its commonwealths, possessions, or territories, but for which an expert recommendation regarding United States Educational Equivalency to an associate’s or bachelor’s degree has been obtained from a credential evaluation service organization that is a member of either the Association of International Credential Evaluators (AICE) or the National Association of Credential Evaluation Services (NACES), provided that:

(i) the recommendation is sent directly to the NMI Retirement Fund by the expert and arrives in a sealed envelope; and

(ii) the cost of obtaining such a recommendation is paid by the member applying to receive the Education Service Credit.

(b) “Administrator” means the administrator of the Fund or the acting administrator in the event the administrator is unavailable for duty.

(c) “Annual” means yearly, and refers to the calendar year.

(d) “Annual salary.” The term “annual salary” means:

(1) For members who were employed before December 5, 2003 (the effective date of Public Law 13-60) and who did not receive a refund of contributions, annual salary shall include base salary, lump sum payment of annual leave, 30% bonus, overtime compensation, hazardous pay, differential pay, and hardship post pay, but not housing allowance or any other type of extra pay

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where retirement contributions are not deducted and remitted to the Fund. Furthermore, the exceptions in Public Law 6-41 (former 1 CMC § 8313(o)(1)-(2)), shall apply to the definition of salary for members under this subsection.

(2) For members who became employed on or after December 5, 2003 (the effective date of Public Law 13-60), including persons who were refunded contributions and subsequently became re-employed with the CNMI government on or after the effective date of Public Law 13-60, the definition of “annual salary” in Public Law 13-60 [1 CMC § 8313(o)], shall apply.

(3) Provided however, that “bonus salary,” as referenced in section 5 of PL 13-60 [1 CMC § 8313(o)], shall include severance pay and any settlement of any claim involving employment or termination of employment. Such payments shall be excluded from the calculation of base salary.

(e) “Calendar year” means the year from January 1 to December 31.

(f) “Child” as used in 1 CMC § 8313(g), the term “child” includes a child adopted pursuant to local custom, provided that the customary adoption is recognized in an order by a court of competent jurisdiction.

(g) “Complete separation from service” or “completely separated from service” means separation from government service by any employee of the government, whose employment has terminated, effective as of the last day of employment, and who has been refunded his or her contributions. A person who completely separates from service and refunds his or her contributions shall be deemed a new member of the Fund upon subsequent employment with the CNMI government.

(h) “Credited service” means prior service and membership service, plus accumulated sick leave.

(i) “Date of retirement” means the date on which the application for retirement is approved by the Fund. The member’s entitlement to annuity payments shall commence on this date.

(j) “Early withdrawal penalty.” The penalty applied to employees hired on or after December 5, 2003 (the effective date of Public Law 13-60), who separate from service and receive a refund of contributions. This amounts to 10% of total contributions, excluding interest earned, which shall be withheld and retained upon issuance of the refund by the Fund.

(k) “Education service” means that period of time when a member attended an accredited institution of higher learning as prescribed by rules and regulations to be promulgated by the Board; provided, that the member must have obtained a degree and that a maximum of two years of service will be earned for a completed associate’s degree and a maximum of four years of service will be earned for a completed bachelor’s degree or higher.

(l) “Fiscal Year” means a twelve month period from October 1 to September 30.

(m) “Government.” The term “government” as used in Public Law 6-17 [1 CMC §§ 8301-8394] means the government of the Commonwealth of the Northern Mariana Islands, which

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came into existence on or after January 8, 1978 including branches, departments, agencies, instrumentalities, public corporations, municipalities, political subdivisions and the Office of the Washington Representative.

(n) “Interest.” The term “regular interest” in 1 CMC § 8313(n) and elsewhere in these regulations shall mean the following:

(1) For purposes of refunding contributions, the Fund shall pay three and one half percent (3.5%), compounded annually through September 30, 2011 and from October 1, 2011 the rate shall be set by the Administrator each year based on the average of the rates offered on savings accounts by the banks in the CNMI, and such regular interest shall be credited for each complete year.

(2) For purposes of a member’s repayment of refunded contributions to the Fund, the interest rate the member shall pay is the higher of the average investment rate of return of the past five most current fiscal years from the date of the application, or the actuarial rate in existence at the time of election.

(3) For purposes of a member’s payment of retroactive contributions and class difference equivalents for early retirement pursuant to § 110-10-205 herein, the interest shall be 5%.

(o) “Judge of the Commonwealth government” means a judge appointed by the Governor after January 8, 1978, to serve as a judge of the Commonwealth Trial Court, the Superior Court of the Commonwealth, or as a justice of the Supreme Court of the Commonwealth of the Northern Mariana Islands.

(p) “Medical professional.” For purposes of Public Law 11-2 [1 CMC § 8392], this term means an employee of the Department of Public Health who has received a specialized degree or formal training in, and whose occupational title has the primary duty of, the treatment or care of patients’ medical or psychological conditions and who is so certified by the CNMI Medical Professional Licensing Board.

(q) “Member of the legislature” means a person elected to serve in the Northern Marianas Commonwealth Legislature on or after January 8, 1978.

(r) “Membership service” means service rendered on or after becoming a member of the Fund.

(s) “Military service” means that period of time when a member served in the Armed Forces of the United States, including but not limited to the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(t) “Overtime” or “compensatory time.” For purposes of Public Law 8-24 [1 CMC §§ 8333-34], these terms mean the number of hours worked at the same job in excess of 2,080 regular hours per year during any year of membership service, and for which payment was received or compensatory time used, and which have been timely certified by the Director of Finance or the head of the autonomous agency, as the case may be.

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(u) “Place of residence.” For purposes of determining where a disability examination shall take place pursuant to 1 CMC § 8347, this term means the island on which the member resides, if in the Commonwealth. If the member lives outside the Commonwealth, this term means within 50 miles of where the member resides, provided there exist in that area suitable medical facilities at which disability examinations can be conducted. If no medical facilities exist within 50 miles of where the member resides, then the Administrator shall designate the nearest medical facility at which disability examinations can be conducted. In any case, where the member resides shall be the last address of record on file with the Fund pursuant to § 110-10-601.

(v) “Prior service” means service rendered prior to becoming a Fund member.

(w) “Re-employment.” Re-employment of a retiree as an employee or a consultant by the CNMI government is limited by both Article III, section 20(c) of the NMI Constitution as well as by 1 CMC § 8392. For purposes of the limitations contained in this chapter, the following definitions will apply:

(1) “Consultant” or “consultant contract”:

(i) A consultant is an expert who is called upon for professional or technical advice or opinions. The expertise of a consultant may be based on education, training, experience, or a combination thereof.

(ii) A consulting contract is an agreement for the services of a consultant for compensation. The work product of a consulting contract is primarily intellectual in character and may include consultation, analysis or recommendation; it does not include the provisions of supplies or materials; and will result in the production of a report or completion of a task.

(iii) A contract for professional services, such as provided by engineers, accountants, physicians, lawyers and other similar professionals, is not a consulting contract for purposes of 1 CMC § 8392. Such a contract must, however, meet the test for an independent contract set forth in § 110-10-010(w)(3).

(2) “Employee” or “employment contract”, means any retiree in the service of any entity, office or official of the CNMI government under any appointment or contract of hire without regard to the label of the contract, for wages or its equivalent, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed. Whether a person is an employee requires a factual inquiry that will be determined on a case by case basis. The form or title of the contract or personnel action under which the retiree is hired is not, by itself, determinative of whether the retiree is an employee.

(3) “Independent contractor” or “independent contract,” means any contract, without regard to the label of the contract, between a retiree and any entity, office or official of the CNMI government to provide professional services, products or deliverables or a retiree who enters into such a contract. In determining whether a person is an independent contractor, a consultant or an employee, the following factors shall be considered:

(i) The extent or control which, by the agreement, the employer may exercise over the details of the work;

(ii) Whether or not the one employed is engaged in a distinct occupation or business;

(iii) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(iv) The skill required in the particular occupation;



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- (v) Whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work;
- (vi) The length of time the person is employed;
- (vii) The method of payment whether by the time or by the job;
- (viii) Whether or not the work is part of the regular business of the employer;
- (ix) Whether or not the parties believe they are creating an employer-employee relationship; and
- (x) Whether or not, the same or comparable work has previously been performed by the retiree during any period of employment with the CNMI government. These factors are all examined and no one factor is determinative. (Source: *Castro v. Hotel Nikko Saipan, Inc.*, 4 N.M.I. 268 (1995)).

(x) “Regular hours.” For purposes of the credit granted for overtime and compensatory time pursuant to Public Law 8-24 [1 CMC §§ 8333-34], this term means 2,080 hours per calendar year consisting of the actual hours worked, annual leave taken and paid, sick leave taken and paid or administrative leave taken and paid, and paid legal holidays. This term does not include annual leave paid in lump sum during the years of membership service or on the date of retirement, or any type of leave converted into service credit.

(y) “Teacher.” For purposes of Public Law 8-30 [1 CMC §§ 8401-8405 (repealed by PL 11-114)], this term means an employee who is a certified or non-certified classroom teacher, instructor, or an employee holding such occupational title whose primary duty is to teach students. This term does not include administrative or support personnel, teacher aides, or other professionals whose primary duty is not to teach students.

(z) “Terminated vested member” means either:

(1) A person who became a member after October 1, 1980, but before April 16, 1998 (the effective date of Public Law 11-9) and whose government employment has terminated with at least 3 years but less than 20 years of membership service and who did not obtain a refund of contributions; or

(2) A person who became a member on or after April 16, 1998 (the effective date of Public Law 11-9), and whose government employment has terminated with at least 10 years but less than 20 years of membership service and who did not obtain a refund of contributions.

(aa) “Vesting credit” means the sum of credited service, education service and military service, and overtime or compensatory time performed in excess of 2,080 hours, which service shall be deemed creditable for the purpose of determining a member’s eligibility for the additional five years of credited service pursuant to N.M.I. Constitution, Article III, § 20. Vesting service shall only be used to determine whether a member is eligible for benefits and shall not be used to determine the amount of benefits to be paid to a member.

(bb) “Wages” for purposes of determining whether a retiree is receiving compensation from the CNMI government, means the money rate at which the service rendered is recompensed under the contract of hiring, including the reasonable value of board, rent, housing, lodging or similar advantage received from the employer, and gratuities received in the course of employment from other than the employer. This definition of wages does not supplant the

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definition of “annual salary” for the purposes of calculating benefits under the Retirement Fund Act.

(cc) “Years of Service” means the calendar year(s) or fraction thereof for which service is creditable and used for computation of benefits and eligibility for benefits.

(dd) “Eligible Defined Benefit Plan Member” means a member of the Defined Benefit Plan with less than 10 years of contributing member service who has the option, upon written election, to voluntarily and irrevocably elect to become a member of the Defined Contribution Plan, on a prospective basis, on or after the date selected by the Administrator, which is on or after the effective date of the establishment of the Defined Contribution Plan pursuant to Public Law 15-13, codified at 1 CMC § 8454. This option to elect in writing, to voluntarily and irrevocably become a member of the defined contribution plan, shall expire twelve months after the date selected by the Administrator following the establishment of the Defined Contribution Plan.

(ee) “Date selected by the administrator” means the first date Eligible Defined Benefit Plan Members may elect in writing, to voluntarily and irrevocably become a member of the Defined Contribution Plan and shall be July 25, 2007.

(ff) “July 25, 2007” means the “date selected by the Administrator” and is the first date eligible defined benefit plan members may elect in writing, to voluntarily and irrevocably become a member of the Defined Contribution Plan which same option to elect to become a member of the Defined Contribution Plan shall expire on July 25, 2008.

(gg) “July 25, 2008” means the date wherein eligible defined benefit plan members may elect, voluntarily and irrevocably to become a member of the defined contribution plan which same option to elect to become a member of the defined contribution plan shall expire.

(hh) “Individual’s spouse” means an individual legally married to the eligible defined benefit plan member whose written election to voluntarily and irrevocably become a member of the defined contribution plan is not effective unless this same election is signed by the individual’s spouse.

(ii) “Qualified domestic relations order” means a divorce or dissolution judgment under Commonwealth law, or subject to judicial recognition under Commonwealth law, which includes an order approving a property settlement, and otherwise complies with 1 CMC § 8451(v)(1-8).

(jj) “Employee contribution account balance” means the amount to be transferred from the defined benefit plan into the defined contribution plan on the behalf of the eligible defined benefit plan member and shall include:

- (1) The amount of the employee’s contributions into the Defined Benefit Plan;
- (2) The amount of “regular interest” accrued on these employee contributions as fixed by the Board Resolution pursuant to 1 CMC § 8313(n), to be 7.5% per annum;
- (3) Any amount of matching employer contribution legislatively appropriated for that purpose, subject to the applicability of 26 U.S.C. § 415(c); and

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(4) Less any amounts owed to the Fund for obtaining various types of credit authorized under any applicable law, regulation, or program of the Fund, such as amounts due for Member Home Loan Program, hardship withdrawals, or other obligations to the Fund.

Modified 1 CMC § 3806(c), (d), (e), (f), (g).

History: Amdts Adopted 34 Com. Reg. 32298 (Feb. 29, 2012); Amdts Proposed 33 Com. Reg. 32094 (Nov. 29, 2011); Amdts Adopted 33 Com. Reg. 32092 (Nov. 29, 2011); Amdts Proposed 33 Com. Reg. 31555 (Apr. 21, 2011); Amdts Adopted 29 Com. Reg. 27943 (Dec. 2007); Amdts Proposed 29 Com. Reg. 27408 (November 19, 2007); Amdts Adopted 29 Com. Reg. 26676 (July 18, 2007); Amdts Proposed 29 Com. Reg. 26561 (June 18, 2007); Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 16 Com. Reg. 12439 (Sept. 15, 1994); Amdts Proposed 16 Com. Reg. 11874 (May 15, 1994); Amdts Adopted 16 Com. Reg. 12323 (Aug. 15, 1994); Amdts Proposed 16 Com. Reg. 11921 (June 15, 1994); Amdts Adopted 16 Com. Reg. 11694 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11162 (Dec. 15, 1993); Correction Adopted 15 Com. Reg. 10820 (Sept. 15, 1993); Amdts Adopted 15 Com. Reg. 10571 (Apr. 15, 1993); Amdts Proposed 14 Com. Reg. 10203 (Dec. 15, 1992); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The Commission added an apostrophe to “associates” and “bachelors” in subsection (k) to correct manifest errors. The Commission inserted apostrophes in the words “associate’s” and “bachelor’s” in subsection (a)(2) pursuant to 1 CMC § 3806(g). The Commission inserted the period at the end of the first sentence in subsections (d), (j), (m), (n), (p), (t), (u), (w), (x), and (ii).

In subsection (ii), the Commission corrected the citation of “1 CMC § 8451(22)(A-H).” The correct citation for “qualified domestic relations order” is 1 CMC § 8451(v)(1-8).

In March 2006, this section was renumbered from § 110-10-005 to § 110-10-010 and was repromulgated with numerous amendments. The July 2007 amendments added subsections (dd) through (jj). The December 2007 amendments amended § 110-10-010(jj)(4).

The November 2011 amendments amended subsection (a) and added subsection (a)(2).

The February 2012 amendments amended subsection (n).

### **Part 100 - Membership in Retirement Fund**

#### **§ 110-10-101 Election of Membership Class**

A class II member may elect at any time to change to class I membership. Upon election, the member will receive a refund of 2.5% of salary member contribution made to the Fund for a maximum period of twelve months plus regular interest thereon. The election to change membership class is irrevocable. A class I member cannot elect to join class II membership.

Modified 1 CMC § 3806(e), (f).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The March 2006 amendments changed the second sentence of this section.

#### **§ 110-10-105 Eligibility for Fund Membership**

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(a) A person whose employment is for a specific project, which will cease upon completion of the project or purpose, shall not be eligible to become a member of the Fund based on that employment. Examples of such a specific project include the census, a constitutional convention, disaster related projects and the like. (1 CMC § 8322).

(b) Part time, seasonal, intermittent or temporary employees who are members whose services are not for a specific project or otherwise not compensated on a fee basis will receive one-twelfth of a year of membership service for every 160 hours for which they are paid in a calendar year, but in no case more than 12 months credit for any calendar year. In the event a person is employed concurrently in another government position, § 110-10-285 of this chapter shall govern.

(c) Independent contractors and persons whose services are compensated on a fee basis are not eligible for membership.

Modified 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: In March 2006, subsections (a) and (b) were amended, subsection (c) was added and the title of the section was changed.

### **§ 110-10-110 Services to the Saipan Credit Union**

Services to the Saipan Credit Union prior to January 1, 1990, may be creditable provided the person became an employee of the CNMI government between January 1, 1990, and February 13, 1995 (the effective date of Public Law 9-27). The required contributions shall first be paid by the employee and by the CNMI government at the prevailing employee's and employer's rate at the time and class of membership at enrollment date. The employee must elect to be credited for such prior service within 30 days of the effective date of first employment with the CNMI government between January 1, 1990, and December 4, 2003. Failure to so elect will be deemed an irrevocable rejection of the credit.

Modified 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The March 2006 amendments, among other changes, added the February 13, 1995 limitation.

### **§ 110-10-115 Elected Members of Local Municipal Council**

Prior service credit may be allowed for members who have rendered service to a municipal council prior to January 9, 1978, as follows:

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- (a) The person became an employee of the CNMI government before December 5, 2003 (the effective date of Public Law 13-60) and did not refund contributions.
- (b) If the member was a full-time government employee at the same time of service to a local municipal council, no credit for council service will be granted.
- (c) If the member was not a government employee at the time of service to a local municipal council, the member may receive service credit for every full year served with the council. No credit shall be granted for partial year of service. For example, a member who served three years and 364 days for a local municipal council and was not at the same time a full-time government employee may receive credit for 3 years, but not the 364 days, regardless of how close to one year the partial year is.
- (d) Members who qualify for prior service credit for service to any local municipal council must elect to receive the credit by November 4, 1989 (within 180 days of the effective date of Public Law 6-17) or 30 days from the first date of hire, whichever is later. Failure to timely apply for the prior service credit shall be deemed an irrevocable rejection of the credits.

Modified 1 CMC § 3806(e), (f).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The 2006 amendments changed the title of this section and added subsection (a) among the other amendments to this section.

### **§ 110-10-120 Education Service Credit**

Vesting service credit shall be granted upon election by the member on a form prescribed by the Board of Trustees under the following terms and conditions:

- (a) The person became a government employee and Fund member before December 5, 2003 (the effective date of Public Law 13-60). The education service credit is not available for any person who becomes a member on or after December 5, 2003, including those persons who have been refunded contributions and subsequently become a new government employee on or after December 5, 2003. For example, a person who became a member on August 1, 1997, terminated employment on December 31, 1999, was refunded contributions, and re-employed with the CNMI government on August 1, 2005, is not eligible for the education service credit.
- (b) The member must submit an original diploma or degree from an accredited institution of higher learning. The original will be returned to the member after the Fund has made a copy. A member is not entitled to more vesting service credit by virtue of having two or more associate or higher degrees. The total maximum vesting service credits available under this section is four years. The member is entitled to a maximum of two years of education vesting service credit for having one or more associate degrees, or a maximum of four years of education vesting service credit for having one or more bachelor's or higher degrees.

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(1) For an associate degree, vesting service credit shall be granted for a maximum of two years. A member with credited service of five years or more and who has contributed not less than three years as a member may receive one year of education vesting service credit. A member who has credited and contributing service of at least five years may receive two years of education vesting service. For example, a member with credited service of five years, but only two years of contributing service, is not entitled to any education vesting service credit. If that same member remains employed and contributes to the Fund for at least three more years, the member may be eligible for two years of education vesting service for an associate degree.

(2) For a bachelor's, master's or higher degree, the member shall be granted a maximum of four years of education vesting service credit. A member with credited service of five years or more and who has contributed not less than three years may receive two years of education service credit. A member with at least five years of credited and contributing service may receive three years of education vesting service credit. A member with more than ten years of credited service, regardless of the member's number of years of contributing service, may receive four years of education vesting credit.

(c) The member must arrange for the accredited educational institution to send directly to the Fund an official, sealed transcript indicating completion of studies for a degree or degrees.

(d) To be eligible for education vesting service credits, the member must elect in writing on a prescribed form at any time prior to retirement.

Modified 1 CMC § 3806(e), (f).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: This section was formerly § 110-10-130 before 2006. The March 2006 amendments made numerous changes to this section and repealed sections § 110-10-120, Prior Service for Class II Members, and § 110-10-125, Certification of Service. The remaining sections in this part have been re-designated accordingly.

### **§ 110-10-125 Military Service Credit**

Vesting service credit for active military service shall be granted upon election by the member under the following terms and conditions:

(a) The person became a government employee and Fund member before December 5, 2003, the effective date of Public Law 13-60. The military service credit is not available for any person who became a member on or after the effective date of Public Law 13-60, including those persons who completely separated from government service and have been refunded contributions.

(1) Example 1: A person became an employee on January 1, 1996, and completely separated from government service on January 1, 1997, without having applied for the military service credit. The person was refunded contributions and subsequently returned to government service on August 1, 2005. Although that person first became a member on January 1, 1996, before the effective date of Public Law 13-60, the person ceased becoming a member upon completely separating from government service on January 1, 1997, and refunding contributions. The person

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became a new member on August 1, 2005, after the effective date of Public Law 13-60 (December 5, 2003), and is not eligible for the military service credit.

(2) Example 2: Same facts as example 1 [§ 110-10-125(a)(1)], except that the person did not refund contributions upon leaving government service. The person remained a member from January 1, 1997, through the re-employment date of August 1, 2005. Accordingly, the person is eligible for the military service credit.

(3) Example 3: The person first became a member on August 1, 2005. This person is not eligible for the military service credit.

(b) A maximum of two years vesting service credit shall be granted for active service in the Armed Forces of the United States.

(1) If the member has at least three years but less than five years of credited service, one year of military vesting service shall be granted.

(i) Example 1: A member with three years of credited service and six months of military service with an honorable discharge may receive six months of military service credit.

(ii) Example 2: A member with three years of credited service and two and one-half years of military service with an honorable discharge may receive one year of military service credit.

(iii) Example 3: Same facts as example 1 (three years of credited service and six months of military service with honorable discharge) [§ 110-10-125(b)(1)(i)], but after ten years on reserve status, the member is called to active service for another two years. The member has a total of two and one-half years of active service, one year of which may be creditable. The ten years on reserve status is not creditable.

(iv) Example 4: Same facts as example 1 [§ 110-10-125(b)(1)(i)], but the person became a new member on August 1, 2005, after the effective date of Public Law 13-60 (December 5, 2003). The member is not eligible for the military service credit.

(2) If a member has more than five years of credited service, two years of military vesting service may be granted.

(i) Example 1: A member with seven years of credited service and six months of military service with an honorable discharge may receive six months of military service credit.

(ii) Example 2: A member with seven years of credited service and two and one-half years of military service with an honorable discharge may receive two years of military service credit.

(iii) Example 3: Same facts as example 1 [§ 110-10-125(b)(2)(i)], but after ten years on reserve status, the member is called to active service for another two years. The member has a total of two and one-half years of active service, two years of which may be creditable. The ten years on reserve status are not creditable.

(iv) Example 4: Same facts as example 1 [§ 110-10-125(b)(2)(i)], but the person became a new member on August 1, 2005, after the effective date of Public Law 13-60 (December 5, 2003). The member is not eligible for the military service credit.

(c) To be eligible for military vesting service credit, the member must elect in writing on a form prescribed by the Board of Trustees and submit such election to the Fund together with authenticated documentation, such as Form DD 14, from the Armed Forces showing the beginning date of service and the date of an honorable discharge.

(d) To be eligible for military vesting service credit, the member must make the election before retiring.

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(e) A member who was honorably discharged for medical reasons from the Armed Forces of the United States may be eligible to receive vesting service credit for up to two years provided the other requirements in this section are satisfied.

Modified 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The Commission designated the subparts of (a), (b)(1), and (b)(2), which were not designated in the original. This section was formerly § 110-10-135 before 2006. The March 2006 amendments made numerous changes to this section and repealed sections § 110-10-120, Prior Service for Class II Members, and § 110-10-125, Certification of Service. The remaining sections in this part have been re-designated accordingly.

### **§ 110-10-130 Applicability of the 5 Year Credit Pursuant to Constitutional Amendment No. 19 and Limitation Re-employment and Double Dipping**

(a) In accordance with Constitutional Amendment 19, a member is eligible to retire and to receive an additional five years membership credit under the following circumstances:

- (1) The member has been on active government service on or after January 7, 1986; and
- (2) The member has acquired not less than 20 years of membership service credits under the NMI Retirement Fund system; and
- (3) The member has made an election to retire under this provision in writing, on a form prescribed by the Board of Trustees, at the time of application for retirement. Such an election is irrevocable once made.
- (4) A member who elects to retire under this section may not be reemployed by the Commonwealth government or any of its instrumentalities or agencies, for more than 60 days in any fiscal year without losing his or her retirement benefits for the remainder of that fiscal year. (Constitutional Amendment No. 19).
- (5) Provided, however, that retirees are allowed to return to government employment as classroom teachers, doctors, nurses and other medical professionals for a period not to exceed two years without losing their retirement benefits. (1 CMC § 8392(d)).

(b) An employee who has retired under age retirement or an employee who has retired upon acquiring 20 years or more of membership service under the NMI Retirement Fund system before January 7, 1986, is not eligible to receive an additional five years of credit if the employee is subsequently employed by the CNMI government on or after January 7, 1986.

Modified 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: This section was formerly entitled "Education Service Credit" (§ 110-10-130). This section was § 110-10-140 before the 2006 amendments. In March 2006, numerous amendments were made to this section and the title of the section was changed.



**§ 110-10-135 Membership Status Upon Subsequent Employment**

A person who has completely separated from service and received a refund of contributions shall, upon subsequent employment with the CNMI government, be deemed a new member of the Fund.

Modified 1 CMC § 3806(f).

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The March 2006 amendments added this section. This section was formerly entitled “Military Service Credit” (§ 110-10-125).

**§ 110-10-140 Re-employment and Double Dipping**

(a) Retirees may not return to government service and continue to receive retirement annuities during their return to service except under the following conditions:

(1) Employment Contract. A retiree under an employment contract must fall within one of the exemptions for re-employment enumerated under 1 CMC § 8392(a)(1)-(3), or (5). Doctors, nurses, other medical professionals, and classroom teachers may receive retirement annuities for a maximum of two years, after which the annuities must be ceased. Retirees employed with the CNMI government under the Older Americans Act may receive retirement annuities indefinitely during such employment. All other retirees may not be re-employed with the CNMI government unless they fall within an exemption enumerated under 1 CMC § 8392(a)(1)-(3), or (5), but during the time of employment retirement annuities will be limited to sixty days per fiscal year, provided that the retiree elected to take advantage of the five extra years service credit granted by Amendment 19. After the sixty days, such retiree may continue to receive compensation under the employment contract, but must relinquish and shall not be eligible to receive his retirement annuity for the balance of the fiscal year.

(2) Consulting Contract. A retiree under a consulting contract must fall within one of the exemptions for re-employment enumerated under 1 CMC § 8392(a)(1)-(3), or (5). Such a retiree is limited to receive both compensation under the contract and retirement annuities for sixty days per fiscal year, provided that the retiree elected to take advantage of the five extra years service credit granted by Amendment 19. After the sixty days, such retiree may continue to receive compensation under the consulting contract, but must relinquish and shall not be eligible to receive his retirement annuity for the balance of the fiscal year.

(3) Independent Contract. If the contract calls for professional services, products or deliverables and comports with § 110-10-010(w)(3), the retiree may continue to receive retirement annuities as well as compensation under the contract during the term of the contract.

(b) Duty to Disclose Re-employment. Within 30 days of either the execution of any form of employment contract with the CNMI government by the retiree, or the effective date of a request for personnel action by the CNMI government, the retiree has the duty to disclose the re-employment to the Fund. Such disclosure shall be in writing on a form prescribed by the Board of Trustees and shall include a copy of the document that is the basis for the re-hiring. Failure to comply with this subsection shall constitute grounds for terminating retirement benefits.

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(c) Retirees who do not meet any of the conditions in § 110-10-140(a) may not return to government service.

Modified 1 CMC § 3806(e), (f).

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The 2006 amendments added this section. This section was formerly entitled “Applicability of the 5 Year Credit Pursuant to Constitutional Amendment No. 19” (§ 110-10-130).

### **Part 200 - Benefits**

#### **§ 110-10-201 Normal Retirement Benefits for Class I Members**

(a) Employees of the CNMI government who were hired prior to April 16, 1998 (the effective date of Public Law 11-9) may retire on a service retirement annuity, provided they are at least 62 years of age, have three years of contributing membership service from May 7, 1989 and have not withdrawn their contributions. (PL 6-17).

(b) Employees of the CNMI government who were hired after October 1, 1980, but prior to May 7, 1989 and who were 60 years of age or older on date of hire may retire, provided they have three years of credited prior service and have not withdrawn their contributions. (PL 6-17).

(c) Employees of the CNMI government who were hired on or after April 16, 1998 (the effective date of Public Law 11-9) may retire on a service retirement annuity, provided they are at least 62 years of age with 10 years of contributing membership service from May 7, 1989, and have not withdrawn their contributions. (PL 11-9).

Modified 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Certified 14 Com. Reg. 8653 (Jan. 15, 1992); Amdts Adopted 13 Com. Reg. 7661 (Mar. 15, 1991); Amdts Proposed 12 Com. Reg. 7446 (Nov. 15, 1990); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The Commission inserted the final periods at the end of subsections (a)-(c). The original subsection (a)(3) contained a reference to “Section 2.01(P)(3),” which does not exist. The Commission inserted the correct NMIAC section (§ 110-10-010(w)(3)) regarding independent contracts. In March 2006, this section was repromulgated with numerous amendments.

#### **§ 110-10-205 Early Retirement Benefits for Class I Members, Post PL 15-70 (effective date June 14, 2007)**

A class I member may elect to take early retirement under the following terms and conditions:

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(a) A person who became a class I member before April 16, 1998 (the effective date of Public Law 11-9) must be at least 52 years of age with 10 years of vesting service or be under 62 years of age with at least 25 years of vesting service, provided that the member has at least three years of credited service earned after May 7, 1989, and further provided that that person elected to take early retirement prior to June 14, 2007. Those who elect to take early retirement after June 14, 2007 will have until June 14, 2012 to retire under the transition provisions of PL 15-70 (lump-sum contribution, etc.). Those members who take early retirement after June 14, 2012, will receive an annuity reduced by the actuarially determined amount of 3% for each year or pro rata for a partial year that the member is under 62 years of age.

(b) A person who became a class I member on or after April 16, 1998, must be at least 52 years of age with 10 years of membership service or be under 62 years of age with at least 25 years of membership service, provided that the member has at least 10 years of membership service earned after May 7, 1989, and further provided that that person elected to take early retirement prior to June 14, 2007. Those who elect to take early retirement after June 14, 2007 will have until June, 14, 2012 to retire under the transition provisions of PL 15-70. Those members who take early retirement after June 14, 2012, will receive an annuity reduced by the actuarially determined amount of 3% for each year or pro rata for a partial year that the member is under 62 years of age.

(c) A person eligible to take early retirement under §§ 110-10-205(a) or (b), prior to June 14, 2012 and who so elects, may pay to the Fund, prior to retirement, a lump sum amount equivalent to the difference between class I and class II contributions, including regular interest, for all periods in which the member was required to make contributions until the date of retirement. Such payment does not constitute conversion from class I to class II; rather, it entitles the member to receive an annuity equivalent to the full amount the member would have been entitled to receive at age 62. No payment of such lump sum amount shall be allowed by installment or by deduction from the member's annuity. Provided, however, a person who became a member prior to 12/5/2003, may elect to have his/her benefits reduced by 3% for every year or fraction thereof that the member is under age 62.

(d) At any time prior to early retirement, a person who is actively employed with the CNMI government, may elect to pay to the Fund the difference between class I and class II contributions, including regular interest, for all periods in which the member was required to make contributions until the date of election. Such payment shall be made in full, prior to retirement, in a lump sum. Such payment does not constitute conversion from class I to class II; rather, it entitles the member, upon early retirement, to receive an annuity equivalent to the full amount the member would have been entitled to receive at age 62. After such election, the member shall be deducted the applicable contribution rate of a class II member until the date of retirement.+++\* An election under this paragraph is irrevocable.

(e) A terminated vested member is not eligible to receive early retirement benefits under 1 CMC § 8342. Accordingly, a person seeking to receive early retirement benefits must file the required documents and application with the Fund before officially separating from government service. No applications for early retirement will be considered if the person already has

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terminated employment with the CNMI government without first having filed the required application and documents.

\* So in original. See Commission Comment.

Modified 1 CMC § 3806(e), (f).

History: Amdts Adopted 34 Com. Reg. 32298 (Feb. 29, 2012); Amdts Proposed 33 Com. Reg. 32094 (Nov. 29, 2011); Amdts Adopted 31 Com. Reg. 29980 (Dec. 22, 2009); Amdts Proposed 31 Com. Reg. 29940 (Oct. 29, 2009); Amdts Adopted 29 Com. Reg. 26693 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26666 (July 18, 2007); Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 16 Com. Reg. 12439 (Sept. 15, 1994); Amdts Proposed 16 Com. Reg. 11874 (May 15, 1994); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The February 1994 amendments repealed former § 4.3, entitled “Re-employment and Double Dipping.” See 16 Com. Reg. at 11702 (Feb. 15, 1994). The September 1994 amendments added a new subsection (d).

The March 2006 amendments re-promulgated this section with numerous changes. The August 2007 amendments changed subsections (a), (b), and (d) and the title of this section.

The February 2012 amendments amended subsections (a), (b), and (c).

The site marked with three crosses is the former site of a note. The crosses appeared in the 2012 version of the regulation, but the note did not. The note cross-referenced 1 CMC § 8361(b).

### **§ 110-10-210 Normal Retirement Benefits for Class II Members**

Normal retirement benefits for class II members shall be in accordance with standards and procedures set forth in 1 CMC §§ 8343 and 8344.

Modified 1 CMC § 3806(f).

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The March 2006 amendments added this section. This section was formerly entitled “Disability Benefit” (§ 110-10-220).

### **§ 110-10-215 Early Retirement Benefits for Class II Members**

Early retirement benefits for class II members shall be in accordance with standards and procedures set forth in 1 CMC §§ 8321, 8342 and 8354.

Modified 1 CMC § 3806(f).

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The March 2006 amendments added this section. This section was formerly entitled “Option for Unmarried Employees; Class II Members” (§ 110-10-230).

**§ 110-10-220 Disability Benefits**

(a) Any member who becomes disabled from an occupational cause and qualifies for disability benefits will have his or her benefits computed at 50 percent of the salary earned at the time the disability was incurred, except that a person who is found by the Board to be disabled shall receive the amount of salary applicable according to the law in place at the time the Board finds the disability. Provided however, that any disabled class I member, who is otherwise eligible to retire on a normal or service retirement, shall not receive a retirement annuity but rather shall receive disability benefits in an amount no greater than the retirement annuity to which they would have been otherwise entitled.

(b) If the disability continues until the member reaches 62 years of age or if the disability commences after the member reaches age 62 years of age, the benefits shall be based on the normal retirement for class I members or the greater of the normal retirement or disability benefits for class II members. (1 CMC § 8345(b)).

(c) A member applying for non-occupational disability benefits (active members totally and permanently disabled while off-duty) must meet the following additional requirements:

(1) A person who became a member before December 5, 2003 (the effective date of Public Law 13-60), and did not refund contributions must have at least eighteen months of membership service.

(2) A person who became a member on or after December 5, 2003 (the effective date of Public Law 13-60), including those persons who were refunded contributions and who subsequently became re-employed with the CNMI government on or after the effective date of Public Law 13-60 must have at least five years of membership service.

(d) Investigation, Records, and Other Information

(1) In accordance with 1 CMC § 8347, the Administrator shall have the right to investigate the member's disability and submit any information gathered from an investigation to a licensed physician or a specialist to determine a member's initial or continuing entitlement to a disability annuity.

(2) The member shall be required to undergo reasonable examination by two licensed and practicing physicians selected by the Board, at least one of whom is a specialist in the area of the disability being examined.

(3) The member shall be required to provide medical records, other medical information, employment information, financial information and any other information reasonably requested by the Administrator.

(4) The member, any current employer, and any former employer is required to provide the job description, job duties, essential functions, job site conditions, possible accommodation, payroll records, attendance records, return-to-work information, and any other employment related information reasonably requested by the Administrator.

(e) If any examination indicates that the disability annuitant is no longer physically or mentally incapacitated for service, or that the disability annuitant is engaged in or is able to engage in a gainful occupation, payment of the disability annuity by the Fund shall be discontinued.

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(f) If the Administrator determines that the disability annuitant received any amount from the United States Social Security system, any worker's compensation insurance program, or any insurance or other program covering the annuitant's disability, the Administrator shall reduce the amount of the disability annuity by an amount equal to any sum the annuitant is entitled to from any other disability program.

(1) In order to substantiate that the disability annuitant did not receive any amount from other disability programs, the member must submit, within thirty days of the annual Commonwealth or federal deadline (or applicable extended deadline) for filing tax returns, a certified copy of his or her latest income tax returns, including W-2 forms, schedules and other supporting documents.

(g) Failure to undergo a reasonable examination or re-examination, failure to cooperate with the examiner or the Administrator, or failure to provide any requested information under this section § 110-10-220 may cause the application to be cancelled and any payment, if started, to cease.

Modified 1 CMC § 3806(c), (e), (f).

History: Amdts Adopted 31 Com. Reg. 29980 (Dec. 22, 2009); Amdts Proposed 31 Com. Reg. 29940 (Oct. 29, 2009); Amdts Adopted 31 Com. Reg. 29205 (Feb. 25, 2009); Amdts Proposed 30 Com. Reg. 28984 (Dec. 22, 2008); Amdts Adopted 30 Com. Reg. 28527 (Jun. 27, 2008); Amdts Proposed 30 Com. Reg. 28507 (May 27, 2008); Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The Commission inserted the close parenthesis and period at the end of subsection (b). This section, "Disability Benefit," was amended and re-designated from § 110-10-210 by the March 2006 amendments. This section was formerly entitled "Survivors Benefits for Children" (§ 110-10-250).

The 2008 amendments amended subsection (a). The February 2009 amendments amended subsection (d). The December 2009 amendments amended subsection (c).

### **§ 110-10-222 Disability Benefits Policy and Procedure**

(a) Policy

(1) All full-time defined benefit plan members ("regular employees") disabled from an occupational cause are eligible for consideration for disability benefits. All regular employees allegedly disabled from a non-occupational cause who had been a member prior to December 5, 2003 with more than 18 months of membership service and who did not refund their contributions are eligible for consideration of non-occupational disability benefits. All regular employees allegedly disabled from a non-occupational cause who became a member after December 5, 2003 with more than five years of membership service and who did not refund their contributions are eligible for consideration for non-occupational disability benefits. Disability benefits shall be based on applicable law at the time of a Board finding of disability, pursuant to 1 CMC § 8347.

(2) Benefits are available only to a regular employee who is under a duly licensed physician's care, and as certified by the Board of Trustees. The Board of Trustees shall certify a list of physicians and specialists. The physicians to certify the starting, continuing, and ending dates of the employee's disability on the disability certificate form may not be the applicant's primary care physician\*. The physicians, one of whom is a specialist in the area of the disability

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being evaluated must also, certify, with limited exception, that the member is totally and permanently disabled for the further performance of the duties of any assigned position in the service of the government. The Administrator retains authority to prescribe applicable forms for disability applicants and to further request information/medical reports.

(3) Reconfirmation of disability by the certifying physicians and specialists will be required by the Fund annually for a five year period, and once for every following three year period, unless a certified physician or specialist in the hemodialysis field certifies the applicant is diagnosed with end stage renal disease with permanent hemodialysis as the only treatment plan.

(4) Following five years of continuous disability, an assessment will be made to see if the employee qualifies for disability benefits as a long-term disability applicant. In the event the qualification for long term disability is met, a reconfirmation of the disability by the certifying physicians and (one of who is a specialist)\* will be required by the Fund once for every following three year period, with limited exceptions as noted, *supra*, which may be elaborated based on Board resolution.

(5) Under no circumstances will the combined benefits from a disability plan or the disability program exceed the highest salary received by the member prior to the Board finding of disability.

### (b) Responsibilities

(1) The member is responsible for completing his/her section of the disability certification form and for obtaining the necessary information from the certifying physicians one of whom is a specialist. These certifying physicians and specialists must certify the nature, extent of the illness or injury and projected duration of the disability on the disability certification form.

(2) The member is responsible for completing the annual certification of disability during the first five years of the disability period. In the event the member is certified as a long-term disability annuitant, the member is responsible for complying with the certification process once every following three year period. The certifying physicians and/or specialists must also certify the nature, extent of illness or injury during each following three year period of the member's disability on disability certification forms.

### (c) Procedures

(1) The member obtains applicable physicians' statements (disability certification forms), certifying the nature, extent and duration of illness/disability and forwards it to the Administrator or the Administrator's designee, for initial review and compliance, and accompanies these forms with certification from a specialist in the area of the disability, unless the Board makes a finding of *in extremis* or grave and exceptional circumstances.

(i) The physician must fill out the form by printing the information if it cannot be typed, to include height, weight and blood pressure of the patient. Submissions that are illegible or incomplete will be returned to the patient who has the obligation to see that the information is supplied in satisfactory format. The employee then obtains the certification of a specialist in the area of the disability pursuant to applicable law.

(ii) The physician must sign a disclaimer that if the information provided is knowingly false or misleading, in an attempt to defraud the CNMI government, they may be guilty of a misdemeanor under applicable Commonwealth or federal law.

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- (iii) The member applying for disability on the basis of end stage renal disease that will be starting on hemodialysis must submit a treatment plan from an attending physician with a certification as a specialist or work assignment in the hemodialysis unit.
  - (iv) If the disability is related to a disease that required surgery, or was caused as a complication of surgery, the operative report must be submitted along with the application form.
  - (v) If the diagnosis related to the primary disability required hospitalization, a copy of the discharge summary must accompany the application form.
  - (vi) The primary diagnosis must be assigned an ICD-9 code. The ICD-9 code of any secondary diagnosis that impacts upon the extent or duration of the patient's disability must be included. The Board reserves the policy decision to update ICD codes in the future.
  - (vii) If the condition(s) causing the disability require standard radiologic examination (X-ray) or imaging examinations (CT scan, Magnetic Resonance Imaging, ultrasound, echocardiography, angiography, bone density scans, etc.) or any other examination modality, a copy of those reports must accompany the initial application for disability.
  - (viii) Disability upon a psychiatric diagnosis must include an evaluation by a licensed and board certified psychiatrist or licensed clinical psychologist with specialized training/certification in the disability asserted.
  - (ix) Disability related to physical limitations must be documented by an evaluation by the vocational rehabilitation counselor or an occupational therapist and/or licensed physical therapist.
  - (x) Disability related to malignant disease must be accompanied by a pathology report if any surgery or biopsies were used to establish the diagnosis.
  - (xi) Presumptive disability such as sudden blindness, bilateral amputations, major organ transplant (e.g., heart/lung), severe burns over 70% of the body, etc. must be accompanied by medical records justifying such presumptive disability, and/or grave and exceptional circumstances.
- (2) The Administrator, the Benefits Branch Director, or the Administrator's designee, reviews the documentation and may request additional information or request additional medical reports from the applicable physician to confirm illness/disability before forwarding this information to the Board for its review and/or approval or disapproval.
  - (3) The Administrator, the Benefits Branch Director, or the Administrator's designee, in the event the Board makes a finding of disability, initiates a status change form authorizing short-term disability benefits, and obtains the applicant's signature on it.
  - (4) The Administrator, the Benefits Branch Director, or the Administrator's designee, estimates the benefit amount the employee is expected to receive from the short-term disability annually during the five-year period of the short-term disability.
  - (5) The Administrator, the Benefits Branch Director, or the Administrator's designee, may terminate the short-term disability benefits when the member's illness/disability prognosis improves, or at the end of the initial five-year period unless a duly licensed physician or specialist in nephrology certifies the applicant is diagnosed with end stage renal disease requires chronic hemodialysis as the only treatment plan for their disease.\* Other diagnoses by a duly licensed physician or specialist of terminal conditions such as terminal cancer or diseases like cystic fibrosis, myasthenia gravis, etc. may be considered a permanently disabling condition/disease.
  - (6) The member obtains applicable physician's statements (disability certification form), certifying nature, extent and duration of a long term illness/disability and forwards it to the



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Administrator or the Benefits Branch Director, or the Administrator's designee, for initial review and compliance with long-term disability benefits.

(7) The Administrator, the Benefits Branch Director, or the Administrator's designee, reviews the documentation and may request additional information or request additional medical reports from the applicable physician to confirm illness/disability before forwarding this information to the Board for its review and approval or disapproval.

(8) The Administrator, the Benefits Branch Director, or the Administrator's designee, in the event the Board makes a finding of long-term disability, initiates a status change form authorizing long-term disability benefits, and obtains the applicant's signature.

(9) The Administrator, the Benefits Branch Director, or the Administrator's designee, estimate the annual benefit amount expected to be received from long-term disability.

(10) The Administrator forwards this estimated annual long-term disability annuity form to the Board for its review and approval and certification of expenditure of funds.

\*So in original.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 31 Com. Reg. 29205 (February 25, 2009); Proposed 30 Com. Reg. 28984 (December 22, 2008); Adopted 30 Com. Reg. 28890 (Oct. 25, 2008); Emergency Proposed 30 Com. Reg. 28535 (Jul. 28, 2008) (effective for 120 days from July 23, 2008).

### **§ 110-10-225 Service Credit and Other Benefits for Certain Government Officials**

(a) A person who served the CNMI government as governor, lieutenant governor, judge of the Commonwealth government, mayor, member of the legislature, or resident representative to the United States, shall receive an additional three percent times average annual salary times years of service in such capacity. The 3% bonus is available under the following terms and conditions:

(1) The person became a member before December 5, 2003 (the effective date of Public Law 13-60), and

(2) The person did not refund his or her contributions.

(3) The recomputation will be performed at the time of retirement and will increase the benefit by 3% per year for every year served in such capacity. The additional benefit shall be effective on May 7, 1989 (the effective date of Public Law 6-17), but shall not be retroactive to the date of retirement, if earlier than May 7, 1989.

(4) Such additional credit may not increase the annuity payable to more than 100 percent of the highest annual salary received.

(b) The same benefits shall accrue to former members of the Marianas District Legislature whose service was rendered prior to January 8, 1978; provided, however that these benefits shall not be retroactive but be computed forward from January 19, 1990; and

(1) A person who served as a member of the Marianas District Legislature before April 1, 1975 may be credited 60 calendar day per year of service.

(2) A person who served as a member of the Marianas District Legislature on or after April 1, 1975 may receive credit for full-time employment.

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(c) Only those persons who served as a member of a board or commission for at least ten years before December 5, 2003 (the effective date of Public Law 13-60) and did not refund contributions are eligible to receive an annuity pursuant to former 1 CMC § 8341(f).

Modified 1 CMC § 3806(f), (g).

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The Commission inserted “who” between “person” and “served” to correct a manifest error. This section was added by the 2006 amendments. The former section, “Death After Separation; Contributions on Account,” was repealed by the 2006 amendments.

### **§ 110-10-230 Option for Unmarried Employees — Class II Members**

(a) Should any member be unmarried on the date of retirement, and designate an individual as a beneficiary pursuant to 1 CMC § 8352(d), and subsequently marry, the prior designation will be deemed null and void.

(b) Any individual designated by a member pursuant to 1 CMC § 8352(d) shall be entitled to an annuity equal to that of a surviving spouse for class II members, except as provided in subsection (a).

Modified 1 CMC § 3806(d), (f).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: In 2006, this section was amended and re-designated from § 110-10-215 to § 110-10-230. This section was formerly entitled “Designation of Payee on Behalf of Recipient of Retirement Benefits” (§ 110-10-265).

### **§ 110-10-235 Refund of Contribution**

(a) Upon complete separation from government service, a member eligible for refund of contributions shall receive both contributions and interest thereon after submission of an application for refund. A member who became employed on or after December 5, 2003 (the effective date of Public Law 13-60), shall be subject to a 10% early withdrawal penalty on total contributions, excluding interest. Computation of interest and any deduction, if applicable, shall be calculated according to the fiscal year, as of the close of each fiscal year (October 1 to September 30), using 365 days per year. Examples in computing interest and deductions, where applicable, are provided below.

(1) Example 1: Member started working for the CNMI government on June 1, 1995, and started contributing to the Fund beginning pay-period June 29, 1995. As of the closing of the fiscal year, September 30, 1995, Member had contributed \$1,000. Member stopped working on January 31, 1996. From October 1, 1995, to January 31, 1996, Member contributed \$500.

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Member submitted a refund application on February 2, 1996. The total amount to be refunded is computed in the following way:

1995 Contribution	\$1,000.00
For Fiscal Year 1995 Interest (\$1000 x 3.5%)	35.00
Total Accumulated Contribution/Interest as of 9/30/95	<u>\$1,035.00</u>
1996 Contribution	500.00
Total Amount to Be Refunded	<u>\$1,535.00</u>

No interest is given for 1996 because member applied for a refund before the close of the fiscal year.

(2) Example 2: The same facts as example 1 [§ 110-10-235(a)(1)], except that member did not request a refund until December 31, 1996. Member's total refund amount is computed as follows:

1995 Contribution	\$1,000.00
For Fiscal Year 1995 Interest (\$1000 x 3.5%)	35.00
Total Accumulated Contribution/Interest as of 9/30/95	<u>\$1,035.00</u>
1996 Contribution	500.00
For Fiscal Year 1996 Interest (\$1535 x 3.5%)	53.73
Total Accumulated Contribution/Interest as of 9/30/96	<u>\$1,588.73</u>
Total Amount to Be Refunded	\$1,588.73

(3) Example 3: The same facts as example 2 [§ 110-10-235(a)(2)], except that the person returns to government employment after refunding contributions and after the effective date of Public Law 13-60. Member started working for the CNMI government on June 1, 2005, and started contributing to the Fund beginning pay-period June 29, 2005. As of the close of the fiscal year, September 30, 2005, member had contributed \$1,000. Member stopped working on January 31, 2006. From October 1, 2005, to January 31, 2006, member contributed \$500. Member submitted a refund application on February 2, 2006. Note that the results will be the same if the member did not have the prior government employment and became a member on or after the effective date of Public Law 13-60. The total amount to be refunded is computed in the following way:

2005 Contribution	\$1,000.00
For Fiscal Year 2005 Interest (\$1,000 x 3.5%)	35.00
Deduction of 10% (\$1,000 x 10%)	<u>(100.00)</u>
Total Accumulated Contribution/Interest as of 9/30/05	\$935.00
2006 Contribution	500.00
For Fiscal Year 2006 Interest (\$1,435 x 3.5%)	50.23
Deduction of 10% (\$500 x 10%)	<u>(50.00)</u>
Total Accumulated Contribution/Interest as of 9/30/06	\$1,435.23
Total Amount to Be Refunded	\$1,435.23

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(4) Example 4: Member started working for the CNMI government on June 1, 2003, and started contributing to the Fund beginning pay-period June 29, 2003. As of the close of the fiscal year, September 30, 2003, member had contributed \$1,000. Member stopped working on January 31, 2004. From October 1, 2003, to January 31, 2004, member contributed \$500. The result is similar to example 1 [§ 110-10-235(a)(1)] because the member became an employee before the effective date of Public Law 13-60 and did not previously refund contributions.

2003 Contribution	\$1,000.00
For Fiscal Year 2003 Interest (\$1,000 x 3.5%)	35.00
Total Accumulated Contribution/Interest as of 9/30/03	<u>\$1,035.00</u>
2004 Contribution	500.00
Total Amount to Be Refunded	<u>\$1,535.00</u>

(b) A member who receives a refund of contributions gives up all rights and benefits accorded to that member under the Retirement Fund Act. Accordingly, upon re-employment with the CNMI government on or after the effective date of Public Law 13-60, the member shall be deemed a class I member and subject to Public Law 13-60, regardless of the member's status before refunding contributions. A member who receives a refund of contributions and returns to government employment before the effective date of Public Law 13-60 is subject to the applicable laws and rules and regulations in force at the time of the member's re-employment.

(c) Regardless of class membership, a member shall be restricted from government re-employment for a period of six months after receiving a refund of his or her contributions, unless the member repays to the Fund the full amount of the refund plus regular interest, prior to returning to government service.

(d) Upon timely and full repayment of the refund and regular interest, the Fund shall recognize the membership service represented by the refunded amount.

(e) In accordance with 1 CMC § 8356(b)(3), the Board may, in its discretion, regardless of cause, withhold payment of a refund for a period not to exceed three months after receipt of an application from a member. Refund of contributions may be made in installments within the three-month limit.

Modified 1 CMC § 3806(f), (g).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 17 Com. Reg. 13524 (June 15, 1995); Amdts Proposed 17 Com. Reg. 13015 (Mar. 15, 1995); Amdts Adopted 16 Com. Reg. 12439 (Sept. 15, 1994); Amdts Proposed 16 Com. Reg. 11874 (May 15, 1994).

Commission Comment: The Commission changed "become" to "became" in subsection (a) to correct a manifest error. The Commission designated the subparts of subsection (a), which were not designated in the original.

The 1995 amendments readopted and republished this section in its entirety with numerous amendments. In 2006, this section was amended and re-designated from § 110-10-270 to § 110-10-235. This section was formerly entitled "Reporting Required for Payment on Behalf of Recipients Who Are Incapable of Self-management" (§ 110-10-270). The 2006 amendments, among other changes, added subsections (a)(3) through (a)(4) and (b) through (e).

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In October 2007, PL 15-98 amended 1 CMC Section 8356(a) to authorize Class I Retirement Fund members with 15 years of contributing member service to withdraw their contributions.

### **§ 110-10-240 Interest Computation for Active Members**

At the end of each fiscal year, regular interest shall be computed and added to the contributions of the member.

History: Amdts Adopted 34 Com. Reg. 32294 (Feb. 29, 2012); Amdts Proposed 33 Com. Reg. 32094 (Nov. 29, 2011); Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 17 Com. Reg. 13524 (June 15, 1995); Amdts Proposed 17 Com. Reg. 13015 (Mar. 15, 1995); Amdts Adopted 16 Com. Reg. 12439 (Sept. 15, 1994); Amdts Proposed 16 Com. Reg. 11874 (May 15, 1994).

Commission Comment: In 2006, this section was amended and re-designated from § 110-10-275 to § 110-10-240. This section was formerly entitled “Penalty for Failure to File a Report” (§ 110-10-275). The 2012 amendments removed the fixed interest rate.

### **§ 110-10-245 Prior Service Credit per Public Law 8-39 [former 1 CMC §§ 8323-8326]**

Only those persons who became members before December 5, 2003 (the effective date of Public Law 13-60) and did not refund contributions are eligible to apply for the prior service credit for service described in former 1 CMC § 8323, provided all other requirements are met.

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 16 Com. Reg. 12439 (Sept. 15, 1994); Amdts Proposed 16 Com. Reg. 11874 (May 15, 1994).

Commission Comment: In 2006, this section was amended and re-designated from § 110-10-280 to § 110-10-245. This section was formerly entitled “Vesting Service Credit for Overtime or Compensatory Time” (§ 110-10-280).

### **§ 110-10-250 Survivors’ Benefits for Children**

(a) Benefits for children of a deceased member shall be paid to the surviving spouse for the benefit of the children, or if there is no surviving spouse, to a guardian appointed by a court of competent jurisdiction for the benefit of the children.

(b) Death of a member with children by different spouses:

(1) If a deceased member has children eligible for survivor’s benefits, such children shall be entitled to a pro rata share of children’s benefits payable, regardless of whether they continue to reside with the member’s surviving spouse.

(2) The fact that such children may not be children of the surviving spouse is irrelevant in determining the children’s benefits.

(3) All benefits payable to children who are not residing with the surviving spouse shall be payable to the legal guardian appointed for such children. If a child is over 18 years of age, is not under legal guardianship and is eligible for a benefit, the benefit shall be payable to the child.

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History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: In 2006, this section was amended and re-designated from § 110-10-220 to § 110-10-250. This section was formerly entitled “Early Retirement Bonus” (§ 110-10-290). The 2006 amendments, among other changes, removed former subsection (b) and re-designated subsection (c) to (b).

### **§ 110-10-255 Death After Separation — Non-vested Members: Refund to Survivors: No Annuities**

(a) Pre-PL 11-9: Non-Vested Members — Less Than Three Years Membership Service:  
Upon the death of a person who became a member after October 1, 1980, but before April 16, 1998 (effective date of PL 11-9), and whose government service terminated with less than three years of membership service, and who did not obtain a refund of contributions, the estate or beneficiary of the deceased is entitled to receive a full refund in the case of a class II member and a 1/3 refund in the case of a class I member of the total amount of contributions made by the member, including regular interest. Payment of such a refund shall be made in accordance with 1 CMC § 8348.

(b) Post PL 11-9: Non-Vested Members — Less Than Ten Years Membership Service  
Upon the death of a person who became a member after April 16, 1998 (effective date of PL 11-9), and whose government service terminated with less than ten years of membership service, and who did not obtain a refund of contributions, the estate or beneficiary of the deceased is entitled to receive a full refund in the case of a class II member and a 1/3 refund in the case of a class I member of the total amount of contributions made by the member, including regular interest. Payment of such refunds shall be made in accordance with 1 CMC § 8348.

Modified 1 CMC § 3806(e), (f).

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The March 2006 amendments added this section. This section was formerly entitled “Procedure for Certification of Lack of Funds” which was repealed by the 2006 amendments.

### **§ 110-10-260 Death After Separation — Vested Members: Survivors’ Annuities**

(a) Pre-PL 11-9: Vested Members — Three Years or More Membership Service:  
Upon the death of a person who became a member after October 1, 1980 but before April 16, 1998 (effective date of PL 11-9), and whose government service terminated with three years or more of membership service, and who did not obtain a refund of contributions, the survivors shall be entitled to annuities in accordance with 1 CMC § 8351 for survivors of class I members and in accordance with 1 CMC § 8353 for survivors of class II members.

(b) Post-PL 11-9: Vested Members — Ten Years or More Membership Service:  
Upon the death of a person who became a member after April 16, 1998 (effective date of PL 11-9), and whose government service terminated with ten years or more of membership service, and who did not obtain a refund of contributions, the survivors shall be entitled to annuities in

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accordance with 1 CMC § 8351 for survivors of class I members and in accordance with 1 CMC § 8353 for survivors of class II members.

(c) **Death After Separation Vested Members, No Persons Eligible For Survivors' Annuities:** Upon the death of a vested member occurring before his or her retirement on a retirement annuity, leaving no persons eligible for survivors' benefits, and who did not obtain a refund of contributions, a full refund in the case of a class II member and a 1/3 refund in the case of a class I member of the total amount of contributions made by the member, including regular interest, shall be paid to the beneficiaries or estate of the member, in accordance with 1 CMC § 8348(b).

Modified 1 CMC § 3806(e), (f), (g).

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The Commission changed "an refund" to "a refund" in subsection (b) to correct a manifest error. The March 2006 amendments added this section. This section was formerly entitled "Basis for the Payment of Bonus; Withholdings" (§ 110-10-295).

### **§ 110-10-265 Designation of Payee on Behalf of Recipient of Benefits**

(a) Payment of retirement benefits or other benefits issued under the Fund plan is personal to the recipient as provided under 1 CMC § 8383. For this reason, the benefit shall not be assigned or paid to any person other than the recipient, unless the person lacks the legal capacity to directly receive the benefit as follows:

- (1) The recipient is under the age of 18 years;
- (2) The recipient has been declared by a court of competent jurisdiction to be mentally incapable of managing his/her own affairs, financial or otherwise.

(b) Payment of benefits to recipients who are under the age of 18 years shall be made to the recipient's legal guardian(s).

(c) If a court of competent jurisdiction appoints a legal guardian for the recipient, the legal guardian shall serve as the payee.

(d) For purposes of payments on behalf of a recipient, a power of attorney in any manner, shape or form, executed after the date of declaration of incompetence of the recipient, shall not be honored or recognized by the Board nor can it be used to determine a payee.

(e) Application for a change of payee shall be filed by the person eligible under this section to receive the benefits, on a form prescribed by the Board. The Board shall have the final determination on all applications submitted.

Modified 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

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Commission Comment: The Commission changed the semi-colon to a period at the end of subsection (a)(2) to correct a manifest error. In 2006, this section was amended and re-designated from § 110-10-230 to § 110-10-265.

### **§ 110-10-270 Reporting Required for Payment on Behalf of Recipients Who Are Incapable of Self-management**

(a) Persons authorized to receive payment of benefits on behalf of the recipient pursuant to § 110-10-265 shall file with the Fund a monthly report on the use of the funds received during the previous month. The report must be signed and contain the following language or its legal equivalent: “I declare under penalty of perjury under the laws of the Commonwealth of the Northern Mariana Islands that the contents of this declaration are true to the best of my knowledge and belief. Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at (village or city where signed).”

(b) The report required under this section § 110-10-270 shall be in writing, contain a statement of how and on what the funds were used to benefit the recipient, filed no later than the last day of the month following the month on which a payment was received.

Modified 1 CMC § 3806(c).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: In 2006, this section was amended and re-designated from § 110-10-235 to § 110-10-270.

### **§ 110-10-275 Penalty for Failure to File a Report**

(a) If the payee fails to submit a report as required under § 110-10-270, the payee shall, after notice and an opportunity to respond, return the exact amount of benefits received for the month in which a report was due but not filed.

(b) If the payee fails to return the funds pursuant to § 110-10-275(a), and the Board so directs, the legal counsel for the Board shall initiate a civil action to collect the amount due as determined by the Board, after exhaustion of administrative remedies.

(c) Failure by the person designated as payee to file a required report shall be ground for termination of such designation and the Board may require that another qualified person be appointed or designated to become the payee as described in § 110-10-265.

Modified 1 CMC § 3806(c).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: In 2006, this section was amended and re-designated from § 110-10-240 to § 110-10-275.

### **§ 110-10-280 Vesting Service Credit for Overtime, Compensatory Time and Accumulated Sick Leave**



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(a) Active employees who were paid or granted overtime, compensatory time, or earned accumulated sick leave after January 1, 1985 may be eligible for vesting service credit for overtime, compensatory time, and accumulated sick leave provided the other requirements of this section are met:

- (1) The person must have been a member prior to December 4, 2003 (the effective date of Public Law 13-60) and has not been refunded his or her contributions;
- (2) Overtime or compensatory time hours must exceed 2,080 hours of regular hours worked within the calendar year. For example, if an employee works 2,000 regular hours and 200 hours of overtime or compensatory time for the year, the employee is entitled to 120 hours of additional membership service credit (2,200 hours minus 2,080 hours equals 120 hours);
- (3) Overtime and compensatory time must have been paid to, or used by, the employee; unpaid and unused compensatory time shall not be converted to service credit.
- (4) Overtime and compensatory time must be certified by the Director of Finance or the head of the autonomous agency where overtime or compensatory time was accrued.
- (5) A person who becomes a member after December 5, 2003 is not eligible for vesting service credits for overtime, compensatory and accumulated sick leave.

(b) Overtime and compensatory time and accumulated sick leave hours will be converted to vesting service credit by using the following conversion table:

**Membership Service Conversion Table  
For Sick Leave, Overtime or Compensatory Time**

No. Day	1 Dy & Up	1 Mo & Up	2 Mo & Up	3 Mo & Up	4 Mo & Up	5 Mo & Up	6 Mo & Up	7 Mo & Up	8 Mo & Up	9 Mo & Up	10 Mo & Up	11 Mo & Up
0	--	173	347	520	693	867	1040	1213	1387	1560	1733	1907
1	6	179	352	527	699	872	1046	1219	1392	1566	1739	1912
2	12	185	358	532	705	878	1052	1225	1398	1572	1745	1918
3	17	191	364	537	711	884	1057	1231	1404	1577	1751	1924
4	23	196	370	543	716	890	1063	1236	1410	1583	1756	1930
5	29	202	376	549	722	896	1069	1242	1416	1589	1762	1936
6	35	208	381	555	728	901	1075	1248	1421	1595	1768	1941
7	40	214	387	560	734	907	1080	1254	1427	1600	1774	1947
8	46	220	393	566	740	913	1086	1260	1433	1606	1780	1953
9	52	225	399	572	745	919	1092	1265	1439	1612	1785	1959
10	58	231	404	578	751	924	1098	1271	1444	1618	1791	1964
11	64	237	410	584	757	930	1104	1277	1450	1624	1797	1970
12	69	243	416	589	763	936	1109	1283	1456	1629	1803	1976
13	75	248	422	595	768	942	1115	1288	1462	1635	1808	1982
14	81	254	428	601	774	948	1121	1294	1468	1641	1814	1988
15	87	260	433	607	780	953	1127	1300	1473	1647	1820	1993
16	92	266	439	612	786	959	1132	1306	1479	1652	1826	1999
17	98	272	445	618	792	965	1138	1312	1485	1658	1832	2005
18	104	277	451	624	797	971	1144	1317	1491	1664	1837	2011
19	110	283	456	630	803	976	1150	1323	1496	1670	1843	2016
20	116	289	462	636	809	982	1156	1329	1502	1676	1849	2022
21	121	295	468	641	815	988	1161	1335	1508	1681	1855	2028
22	127	300	474	647	820	994	1167	1340	1514	1687	1860	2034
23	133	306	480	653	826	1000	1173	1346	1520	1693	1866	2040

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No.	1 Dy & Up	1 Mo & Up	2 Mo & Up	3 Mo & Up	4 Mo & Up	5 Mo & Up	6 Mo & Up	7 Mo & Up	8 Mo & Up	9 Mo & Up	10 Mo & Up	11 Mo & Up
24	139	312	485	659	832	1005	1179	1352	1525	1699	1872	2045
25	144	318	491	664	838	1011	1184	1358	1531	1704	1878	2051
26	150	324	497	670	844	1017	1190	1364	1537	1710	1884	2057
27	156	329	503	676	849	1023	1196	1369	1543	1716	1889	2063
28	162	335	508	682	855	1028	1202	1375	1548	1722	1895	2068
29	168	341	514	688	861	1034	1208	1381	1554	1728	1901	2074

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 16 Com. Reg. 11694 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11162 (Dec. 15, 1993).

Commission Comment: In 2006, this section was amended and re-designated from § 110-10-245 to § 110-10-280. The 2006 amendments, among other changes, removed former subsection (b), re-designated subsection (c) to (b) and changed “Day 25 4 Mo & Up” from “836” to “838” in the Membership Service Conversion Table.

### § 110-10-285 Members With Two or More Concurrent Government Jobs

(a) A person who became a member before December 5, 2003 (the effective date of Public Law 13-60) and held two or more concurrent CNMI government jobs qualifying for membership may be eligible for membership service credit for any hours worked in excess of 2,080 hours in a calendar year. Any such membership credit will be calculated consistent with § 110-10-280.

(b) A person who became a member on or after December 5, 2003 (the effective date of Public Law 13-60) and held two or more concurrent CNMI government jobs qualifying for membership is not eligible for membership service credit for any hours worked in excess of 2,080 hours in a calendar year.

(c) However, the salary from each of the concurrent CNMI government jobs shall be used in the computation of any retirement benefits.

Modified 1 CMC § 3806(c), (f).

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The March 2006 amendments added this section.

### § 110-10-290 Early Retirement Bonus

(a) A person who was a member of the Fund before December 15, 1999 (the effective date of Public Law 11-114), may be eligible for a bonus equal to 30% of the annual salary of the member pursuant to Public Law 8-30 [1 CMC §§ 8401-8405 (repealed by PL 11-114)]. A person who became a member of the Fund on or after December 15, 1999 (the effective date of Public Law 11-114) is not eligible for the bonus. Election to receive the bonus shall be in writing and on a form prescribed by the Board of Trustees. The requirements for eligibility to elect and receive the bonus are as follows:

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- (1) Employees, except those specifically exempted by law, who had twenty or more years of vesting service credit with the Fund on October 1, 1993, may elect to receive the bonus and retire within 90 days of October 1, 1993, but not later than December 31, 2005.
  - (2) Employees, except those specifically exempted by law, who had less than twenty years of vesting service credit with the Fund on October 1, 1993, may elect to receive the bonus and retire within 90 days of attaining 20 years of vesting service with the Fund, but not later than December 31, 2005.
  - (3) Any member of the Fund who is occupying an exempted position may be eligible for the bonus only upon attaining at least 20 years of vesting service with the Fund and who elects to retire, but not later than December 31, 2005.
  - (4) Any employee who does not make an election during the 90-day election period, and who converts to a position or status exempted from the civil service, shall not be eligible for the bonus.
  - (5) Any employee, unless exempted by law from the 90-day election requirement, who fails to elect and retire within the 90 days of becoming eligible for the early retirement bonus, shall not be eligible for the bonus.
  - (6) Any employee whose position is classified by the Civil Service Commission and has attained or upon attainment of 20 years of vesting service, may elect to receive the bonus and retire within 90 days of attaining 20 years of vesting service, but not later than December 31, 2005.
  - (7) Excepted service employees or employees who are under an employment contract and who have attained 20 years of vesting service, may elect to receive the bonus and retire within 90 days of the expiration of the employment contract, or if renewed within 90 days of the expiration of any renewed contract, but not later than December 31, 2005.
  - (8) Any elected official, or any department head appointed by the governor, or any special assistant to the governor, who has attained at least 20 years of vesting service, may elect to receive the bonus and retire within 90 days of the expiration of his or her term of office, but not later than December 31, 2005.
  - (9) Employees appointed by elected officials who have attained 20 years of vesting service, may elect to receive the bonus and retire within 90 days of the expiration of the term of the appointing elected official, but not later than December 31, 2005.
  - (10) Teachers, nurses, doctors or attorneys for the CNMI government who have attained 20 years of vesting service; may elect to receive the bonus and retire at any time, but not later than December 31, 2005.
- (b) For purposes of eligibility for the 30% bonus, 20 years of vesting service shall consist of the following:
    - (1) Actual membership service.
    - (2) Credited prior service. Prior service that has not been credited or has not been fully paid will not be counted until it is fully paid and credited, except when the member elects to retire prior to full settlement of the amounts due with appropriate deductions from the annuity amount.
  - (c) Vesting service of education and military service shall not be included in the determination of bonus eligibility until the employee elects to retire. Credited overtime or compensatory time and sick leave balance also will be considered only at the time the employee elects to retire.

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(d) Pursuant to section 11 of Public Law 13-60 [comment to 1 CMC § 8253], no early retirement bonus shall be paid to a government employee electing to retire after December 31, 2005.

Modified 1 CMC § 3806(e), (f).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 16 Com. Reg. 11694 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11162 (Dec. 15, 1993).

Commission Comment: In 2006, this section was amended and re-designated from § 110-10-250 to § 110-10-290.

### **§ 110-10-295 Basis for the Payment of Bonus; Withholdings**

(a) The 30% early retirement bonus shall be based on the lower of the annual salary received during the last 12 months consisting of 26 pay periods immediately preceding the date of retirement; or, the annual salary stated in the most recent personnel action preceding the date of early retirement.

(b) The early retirement bonus is subject to withholding for retirement fund contribution and all applicable taxes.

(c) The cost of the early retirement bonus shall be borne by the employee's hiring authority or as provided by law (PL 11-114).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 16 Com. Reg. 11694 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11162 (Dec. 15, 1993).

Commission Comment: In 2006, this section was amended, including the title, and re-designated from § 110-10-260 to § 110-10-295.

## **Part 300 - Rights and Obligations**

### **§ 110-10-301 Time for Payments and Method of Payment**

(a) All payments for benefits (retirement, disability, surviving spouse and surviving child) shall be made on the fifteenth and last day of every month. Payments will not be disbursed, remitted or released prior to the scheduled disbursement date for any reason.

(b) Periodic benefits payable to annuitants shall only be made by electronic direct deposit into a single account designated in writing by the annuitant, which account must be in the name of the annuitant. Remittance of annuity payments by check or bank draft shall cease and is no longer authorized following April 1, 2012. Each annuitant shall designate its direct deposit account on or before March 1, 2012 on a form designated by the Fund, and may update such designation once annually each December in connection with the Fund's Annuity Recipient Information Update (Form RF-200). Benefits payable to those failing to provide appropriate information to the Fund shall be held in abeyance until such time as appropriate direct deposit

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instructions are received by the Fund. One time “lump sum” benefits such as a Single Sum Death Benefit payment shall be paid by check on the thirtieth (30<sup>th</sup>) of the month following the Fund’s acknowledgement of the beneficiary’s complete application therefore\*.

(c) Except for changes made during the Fund’s annual account update process described in subpart (b) above, there shall be a service charge of twenty-five dollars (\$25.00) to change a designated direct deposit account.

(d) Upon death of an annuitant before a scheduled annuity disbursement date, the pro rata share of the deceased annuitant shall be payable to the surviving spouse or beneficiary, as the case may be. If the deceased annuitant has no surviving spouse or beneficiary, the pro rata share shall be held in abeyance pending the court appointment of an administrator of the estate.

\* So in original.

Modified 1 CMC § 3806(f), (g).

History: Amdts Adopted 34 Com. Reg. 32291 (Feb. 29, 2012); Amdts Proposed 33 Com. Reg. 32107 (Nov. 29, 2011); Amdts Adopted 30 Com. Reg. 28516 (May 27, 2008); Amdts Proposed 30 Com. Reg. 28378 (March 25, 2008); Amdts Adopted 29 Com. Reg. 26693 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26666 (July 18, 2007); Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The Commission changed “are no longer” to “is no longer” in the second sentence of subsection (b). The March 2006 amendments made changes to subsections (a)-(c). The August 2007 amendments changed the title of this section and repealed and replaced subsection (b). The May 2008 amendments made changes to § 110-10-301(a). The February 2012 amendments amended all subsections.

### § 110-10-305 Anti-Fraud Provision

The Fund may, from time to time, request for updated pertinent information, including but not limited to tax information, current identification, driver’s license and the like. It is the duty of the recipient to timely respond to requests for updated information. Substantial or repeated failure to provide complete information or providing false or misleading information shall constitute grounds for terminating benefits.

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

### Part 400 - Other Benefits

#### § 110-10-401 Cost of Living Allowance (COLA)

(a) Eligible class I and class II retirees and surviving spouses in receipt of a retirement or disability annuity from the Fund may have their annuity adjusted for COLA as determined by the Board.

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(b) The determination of the Board of Trustees whether or not to approve a COLA for a particular year shall occur on or about its first regular board meeting following the passage into law of each fiscal year's budget; and shall be based on factors consistent with the fiduciary obligations of the Board and shall include, but not be limited to, the availability of funds specifically appropriated for the purpose.

(c) In the event that a COLA adjustment is determined by the Board, an eligible retiree or surviving spouse is entitled to such adjustment commencing on January 1 subsequent to the anniversary of the member's retirement date upon attaining the following ages:

- (1) Class I retirees: 55 years
- (2) Class I surviving spouses with eligible surviving children: 62 years
- (3) Class I surviving spouses without children: 55 years
- (4) Class II retirees: 55 years
- (5) Class II surviving spouses: 55 years
- (6) Disability annuitants: upon conversion to retirement annuity at 62 years

(d) The COLA rate shall be set by the Board of Trustees each year, using as a guideline the rate used by the United States of America Social Security System for its beneficiaries, and shall only be applied to the first thirty-thousand dollars of each beneficiary's annuity amount. Once the Board of Trustees adopts the COLA rate, it will be the same rate applied throughout the calendar year.

(e) Notwithstanding any law or regulation to the contrary, each year the Board of Trustees may authorize by a vote of 2/3 of its membership to grant an annual retirement bonus ("ARB") instead of a COLA (as permitted by P.L. 17-32). The decision to grant an ARB instead of a COLA pursuant to subsection (b) above shall be based in large part upon the present level of funding of the Retirement Fund. The Board shall not approve a COLA for any year until such time as an actuary determines that the Retirement Fund is at full funding level, and projected to be able to pay all accrued liabilities as they become due. An ARB will not be compounded or otherwise operate to increase the annuity amount of a retiree, disability annuitant or survivor spouse from year to year.

(f) No COLA or ARB actually paid shall exceed the amount appropriated by the Legislature and will only be paid to members once the funding has been transmitted to the Retirement Fund by the Treasurer of the Commonwealth.

Modified 1 CMC § 3806(f).

History: Amdts Adopted 33 Com. Reg. 31758 (July 22, 2011); Amdts Proposed 33 Com. Reg. 31547 (Apr. 21, 2011); Amdts Adopted 29 Com. Reg. 26693 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26666 (July 18, 2007); Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 16 Com. Reg. 11694 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11162 (Dec. 15, 1993).

Commission Comment: The 1994 amendments repealed former part 6, entitled "Cost of Living Adjustment," and promulgated a new part 6, codified in this part. See 12 Com. Reg. 7444 (Nov. 15, 1990); 11 Com. Reg. 6624 (Nov. 15, 1989); 11 Com. Reg. 6298 (July 15, 1989).

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The March 2006 amendments made numerous changes throughout this section. The August 2007 amendments changed the title of this section and repealed and replaced subsection (b).

Public Law 17-32, effective February 16, 2011, codified at 1 CMC § 8358, amended the powers of the Board to provide for annual retirement bonuses in place of cost of living increases. The July 2011 amendments amended all sections to implement PL 17-32 and inserted new subsections (e) and (f).

The Commission corrected the capitalization of the phrase “board meeting” in subsection (b) and struck the figure “\$30,000” in subsection (d) pursuant to 1 CMC § 3806(e) and (f).

### **§ 110-10-405 Government Life Insurance Contributions and Level of Coverage**

(a) Members in receipt of a service or age retirement annuity shall have the option to elect, on a form prescribed by the Board of Trustees, to receive the same level of life insurance coverage in force at the time of their retirement. Premiums for the excess coverage (an amount in excess of what is presently being made available by the government insurance carrier for retirees) are subject to the prevailing rate for active government employees or as established by the Board based on the prevailing rate for retirees.

(b) The retiree and the Fund shall share the premium cost for coverage beginning October 1, 1993. However, if coverage is made retroactive to the date of retirement (prior to October 1, 1993) the one-time cost of premium will be paid solely by the Fund.

(c) The retroactive effective date does not apply to deceased annuitant’s estate or cause added benefits to be paid to survivors of deceased annuitants.

(d) In the event the existing government life insurance carrier does not consent to provide the additional life insurance coverage, the Board will establish a Life Insurance Trust Fund to meet the requirements of the law.

(e) A retiree who did not carry life insurance coverage immediately prior to retirement shall not be eligible for the option described in subsection (a) of this section.

Modified 1 CMC § 3806(f).

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 16 Com. Reg. 11694 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11162 (Dec. 15, 1993).

Commission Comment: The March 2006 amendments added “Government” to the title of this section and made changes to subsections (a)-(b).

### **§ 110-10-410 Health Insurance Contributions, Term Health Insurance Contributions/Coverage for Defined Contribution Plan Members, and Term Life Insurance Contributions/Coverage for Defined Contribution Plan Members**

(a) Annuitants shall be provided with an option, to be exercised within six months of the date of retirement, to continue their Commonwealth government health insurance coverage under the same group terms and conditions as that government coverage, if any, offered each fiscal year to

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Commonwealth government employees. The Fund assumes no liability to the annuitant for group health insurance coverage beyond the payment of the government's share of the premiums for that fiscal year on behalf of an electing annuitant as provided in this section. Any person who declines to exercise the health insurance option within six months of the date of retirement, or who exercises the option and subsequently cancels health insurance coverage more than six months after the date of retirement, shall not be entitled to reapply for coverage.

(b) Annuitants who exercise the option within six months of the date of retirement to continue their Commonwealth government health insurance coverage under the same group terms and conditions as that government coverage, if any, was offered that same, or preceding (depending on the annuitant's retirement date), fiscal year to Commonwealth government employees shall remit any and all applicable premium payment in a lump-sum for the premium applicable to the period of time within that same six month period.

(c) Members of the defined contribution plan are eligible for the same term health insurance coverage and term life insurance coverage available to defined benefit plan members with the exception of the annuitant's option to continue their Commonwealth government health insurance or life insurance coverage pursuant to 1 CMC § 8363, and 1 CMC § 8364, as amended by PL 15-70, and originally modified by PL 15-13, codified at 1 CMC §§ 8472-73.\*

\* 1 CMC §§ 8472-73 address occupational disability and death benefits, not health or life insurance.

Modified 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 29 Com. Reg. 26693 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26666 (July 18, 2007); Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 16 Com. Reg. 11694 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11162 (Dec. 15, 1993).

Commission Comment: The Commission removed "is" from "if any, is offered" in subsection (a) to correct a manifest error.

The March 2006 amendments made changes to subsection (a) and deleted former subsection (b)(2). The August 2007 amendments changed the title and repealed and replaced this section in its entirety.

Public Law 17-66, effective December 20, 2011, codified at 1 CMC § 8363(a), amended the Retirement Fund's life insurance provisions. To the extent that this regulation conflicts with Public Law 17-66, it is superseded.

### **§ 110-10-415 Survivor's Benefits upon Death of a Terminated Vested Member**

[Repealed.]

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006) (repealed); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Amdts Adopted 16 Com. Reg. 11694 (Feb. 15, 1994); Amdts Proposed 15 Com. Reg. 11162 (Dec. 15, 1993).

Commission Comment: This section was repealed by the March 2006 amendments. See § 110-10-250 Survivors' Benefits for Children, § 110-10-255 Death After Separation — Non-vested Members: Refund to Survivors; No Annuities and § 110-10-260 Death After Separation — Vested Members: Survivors' Annuities for information regarding survivor benefits.



**Part 500 - Appeals**

**§ 110-10-501 Appeal from Decision of Administrator**

Any person aggrieved by a decision of the Administrator of the Retirement Fund shall appeal the decision to the Board by filing a written notice of appeal with the Board within 30 days of the date of the Administrator's decision. A failure to file a timely appeal will result in its dismissal.

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The March 2006 amendments changed "may" to "shall" in the first sentence of this section.

**§ 110-10-505 Contents of the Notice of Appeal**

The notice of appeal shall contain:

- (a) The name of the party appealing;
- (b) A brief statement of any disputed factual matters in the decision of the Administrator; and
- (c) A brief statement of any disputed legal issues in the decision of the Administrator.

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: In March 2006, this section was re-promulgated without change.

**§ 110-10-510 Hearing on Appeal**

(a) After reviewing the notice of appeal, the Board may then, at its discretion, in accordance with 1 CMC § 9109, either:

- (1) Preside at the taking of evidence; or
- (2) Appoint a hearing officer to preside at the taking of the evidence.

No hearing officer will be appointed where the aggrieved party in its notice of appeal does not dispute any factual findings of the Administrator, or raise any new factual issues.

(b) In accordance with 1 CMC § 9110, if a hearing officer is appointed, the hearing officer shall only issue a recommended decision in the case in accordance with the procedures outlined in 1 CMC § 9109. The recommended decision of the hearing officer shall be promptly served on the Board of Trustees. The hearing officer shall then certify the entire record in the matter, along with the recommended decision to the Board of Trustees so that the Board of Trustees can issue its decision and order in the matter in accordance with the procedures outlined in 1 CMC § 9110. The hearing officer shall provide the recommended decision to the Board of Trustees within ninety days from the date the matter was referred to the hearing officer, or the hearing officer

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shall inform the Board, in writing, of the reason for any delay with an estimated date for delivery of the recommended decision.

(c) At the next meeting of the Board of Trustees following receipt of the hearing officer's recommended decision, the Board of Trustees shall issue its decision on the matter. Any appeal of the Board's decision shall be made to the Commonwealth Superior Court in accordance with 1 CMC § 9112(b).

(d) In accordance with 1 CMC § 9110, if the Board presides at the initial hearing, the Board shall decide the case in accordance with the procedures outlined in 1 CMC § 9109. Any appeal of the Board's decision shall be made to the Commonwealth Superior Court in accordance with 1 CMC § 9112(b).

(e) For purposes of all administrative proceedings and appeals under this part, service shall be accomplished by any reasonable means including personal service, registered mail and publication.

Modified 1 CMC § 3806(f).

History: Amdts Adopted 32 Com. Reg. 30554 (July 15, 2010); Amdts Proposed 32 Com. Reg. 30341 (May 21, 2010); Amdts Adopted 31 Com. Reg. 29980 (Dec. 22, 2009); Amdts Proposed 31 Com. Reg. 29940 (Oct. 29, 2009); Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The March 2006 amendments added subsection (d) and the second sentence to subsection (b). The 2009 amendments amended subsection (b). The 2010 amendments amended subsection (b), inserted a new subsection (c), re-designated former subsections (c) and (d), and amended new subsection (d).

The Commission struck the figure "90" in subsection (b) pursuant to 1 CMC § 3806(e).

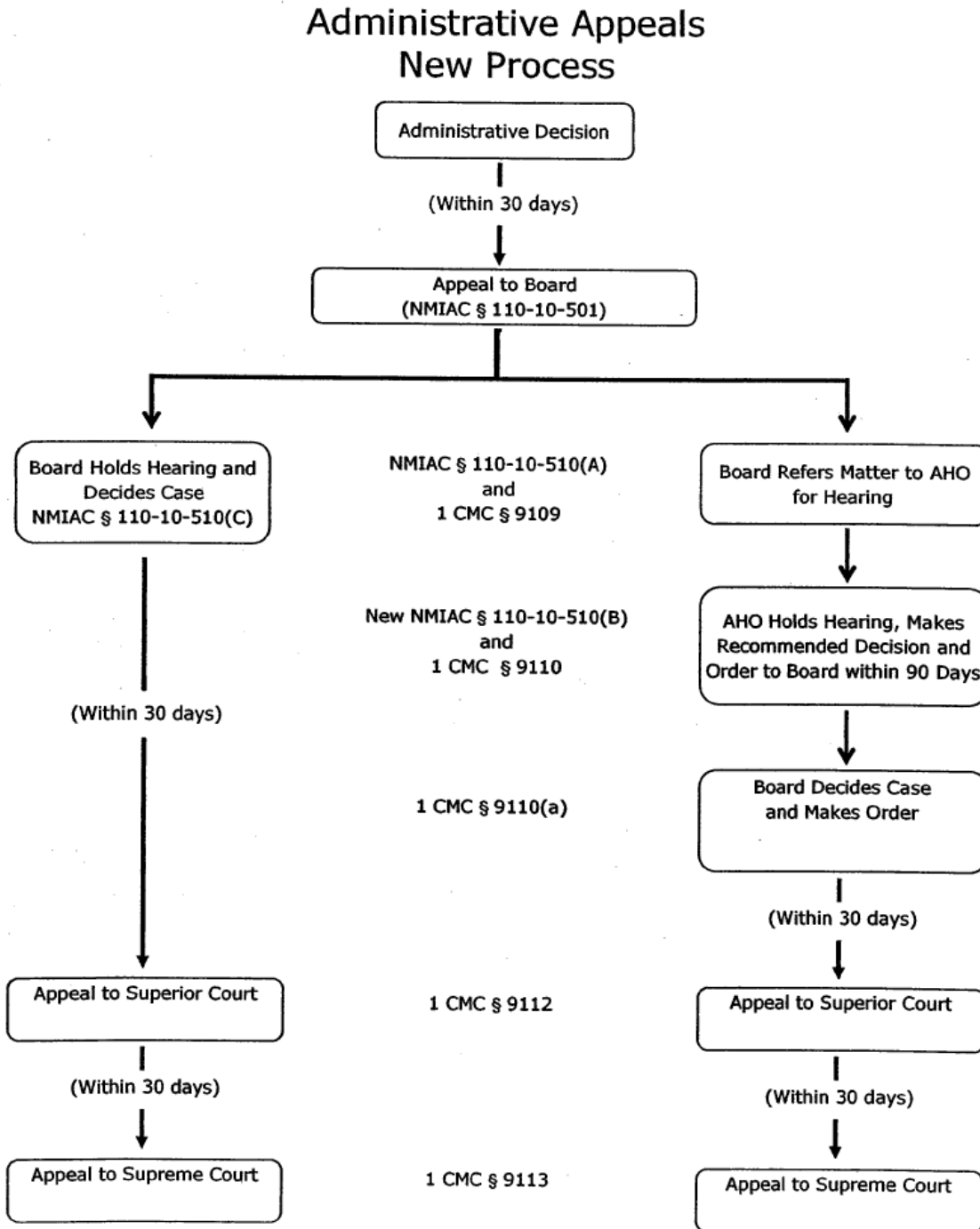
### **§ 110-10-515 Appeal to the Board From a Decision of the Hearing Officer**

[Repealed.]

History: Repeal Adopted 32 Com. Reg. 30554 (July 15, 2010); Repeal Proposed 32 Com. Reg. 30341 (May 21, 2010); Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The March 2006 amendments deleted former subsection (b) and re-designated the remaining sections accordingly.

**Table 500-1 Administrative Appeals New Process**



History: Adopted 32 Com. Reg. 30554 (July 15, 2010); Proposed 32 Com. Reg. 30341 (May 21, 2010).

Commission Comment: The original regulation did not designate this page. The Commission designated it as Table 500-1 pursuant to 1 CMC § 3806(a).

**§ 110-10-520 Legal Representation in Fund Proceedings**

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A person may represent himself or herself in connection with any administrative hearing or other proceeding of the Fund. A person may also be represented in such matters by any attorney licensed to practice in the Commonwealth. A person shall not be represented in such matters by any other person; provided, however, that a person may bring such witnesses, translator(s), and observers to a proceeding as he or she deems necessary.

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The March 2006 amendments removed the parenthetical reference to the Commonwealth Register found at the end of this section.

### **Part 600 - Notice**

#### **§ 110-10-601 Address of Record**

(a) A member shall provide the Fund with an address of record at which to receive notices, benefits or correspondence from the Fund. Should the member move or choose to designate another address of record, the member shall notify the Fund, in writing, of any change in address within 30 days of the change. In the event the member does not comply with this requirement, the member's last address on file shall be deemed the member's address of record until such time the member provides the Fund with a notice of change in address.

(b) Should the member leave the Commonwealth for longer than a 30 day period, whether temporarily, indefinitely or permanently, the member shall likewise provide the Fund with an address at which to receive notices, benefits and correspondence. In the absence of such notice, the member's last address on file shall be deemed the member's address of record until such time the member provides the Fund with a notice of change in address. Any notice, benefits or correspondence may be mailed by the Fund to the address of record. The Administrator shall maintain a log of any returned or undeliverable mail.

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The Commission designated subsections (a)-(b), which were not designated in the original.

#### **§ 110-10-605 Notice to the Fund**

(a) Except where otherwise provided by law, a notice of appeal or other official notice, such as but not limited to an address change or application for benefits, must be filed at either the Fund's main office on Saipan, or at either of the Fund's satellite offices on Tinian or Rota.

(b) A filing also may be made by confirmed facsimile transmission to the Fund's main office facsimile number, (670) 664-8080, or whatever main office facsimile number is currently designated and posted in any of the Fund offices on Saipan, Tinian or Rota, provided that the

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signed original must be received at the main office within fourteen calendar days of the facsimile transmission.

(c) Any notices, applications or other documents provided to the Fund's satellite offices on Tinian or Rota will be deemed filed when received at the Fund's satellite office.

Modified 1 CMC § 3806(e).

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The Commission designated subsections (a)-(c), which were not designated in the original. The Commission changed the colon at the end of subsection (a) to a period.

### **Part 700 - Spousal and Child Support Obligations Arising Out of Judicial Proceedings**

#### **§ 110-10-701 Spousal and Child Support Obligations Arising Out of Judicial Proceedings Defined**

For purposes of this part and section 6(h) of Public Law 13-60 [1 CMC § 8383(b)], the following definitions and requirements shall apply, regardless of when the employee became a member of the Fund. (Source: 8 CMC §§ 1311, 1828; *Rice v. Rice*, 757 P.2d 60, 61 (Alas. 1988).)

(a) In General. The term “spousal and child support obligations arising out of judicial proceedings” means any judgment, decree, or order (hereinafter collectively referred to as a “domestic relations order,” including approval of a property settlement agreement) which —

- (1) Relates to the provisions of child support or alimony payments, including arrearages, or marital property rights to a spouse, former spouse, child or other dependent of a member;
- (2) Is made pursuant to a state's, commonwealth's, territory's, or country's domestic relations law (including a community property law);
- (3) Creates or recognizes the existence of an alternative payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant of a plan; and
- (4) With respect to which the requirements of § 110-10-701(b) and (c) are met.

(b) Order Must Clearly Specify Certain Facts. A domestic relations order meets the requirements of this part only if such order clearly specifies —

- (1) The name and last known mailing address (if any) of the member and the name and mailing address of each alternate payee covered by the order;
- (2) The amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined;
- (3) The number of payments or period to which such order applies; and
- (4) Each plan to which such order applies.

(c) Order May Not Alter Amount, Form, etc., of Benefits. A domestic relations order meets the requirements of this part only if such order —

- (1) Does not require the plan to provide any type or form of benefit, or any option, not otherwise provided under the plan;

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(2) Does not require the plan to provide increased benefits (determined on the basis of actuarial value); and

(3) Does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order determined to be a domestic relations order.

Modified 1 CMC § 3806(c), (f), (g).

History: Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The Commission made “requirement” plural in subsection (a)(4) to correct a manifest error.

### **Part 800 - Procurement**

#### **§ 110-10-801 Adoption of Commonwealth Procurement Regulations**

The Commonwealth Procurement Regulations and any subsequent amendments are adopted, as modified herein, to be the procurement regulations of the Fund. All references in the Commonwealth Procurement Regulations to the Director of Procurement and Supply, Secretary of Finance, and other executive branch officials shall be deemed to refer to the Administrator of the Fund. All references to the Governor shall be deemed to refer to the Board of Trustees of the Fund. All contracts shall be subject to legal review by the Attorney General as provided in the Commonwealth Procurement Regulations. Procurement appeals may be made to the Office of the Public Auditor, as provided in the Commonwealth Procurement Regulations.

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: The Commission created the title of this section. In March 2006, this part was re-designated from part 600 and this section was amended and combined with former § 110-10-805.

#### **§ 110-10-805 Modifications**

[Repealed.]

History: Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005); Adopted 12 Com. Reg. 7444 (Nov. 15, 1990); Adopted 11 Com. Reg. 6624 (Nov. 15, 1989); Proposed 11 Com. Reg. 6298 (July 15, 1989).

Commission Comment: In March 2006, this section (former § 110-10-605) was repealed and its contents amended and combined into § 110-10-801.

### **Part 900 - Conditions for Transfer/Conversion of Non-vested Defined Benefit Plan Members into Defined Contribution Plan**

#### **§ 110-10-901 Class I Members with Less than 10 Years Contributing Member Service**

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After being identified by the Administrator as eligible defined benefit plan members, class I members with less than 10 years of contributing member service shall have an option, upon written election, to voluntarily and irrevocably elect to become members of the defined contribution plan, on a prospective basis, on or after July 25, 2007 (“date selected by the Administrator”). This option to voluntarily and irrevocably elect to become members of the defined contribution plan shall expire 12 months, or up until and including July 25, 2008, after first taking effect with respect to such members.

Modified 1 CMC § 3806(f).

History: Adopted 29 Com. Reg. 26676 (July 18, 2007); Proposed 29 Com. Reg. 26561 (June 18, 2007).

Commission Comment: In July 2007, former § 110-10-901, Effective Date, and part 900 were renumbered to § 110-10-1001 and part 1000 respectively.

### **§ 110-10-905 Election to Participate in the Defined Contribution Plan**

The election to participate in the defined contribution plan must be made in writing on forms and in the manner prescribed by the Administrator. An election made by an eligible defined benefit plan member who is married is not effective unless the election is signed by the individual’s spouse.

Modified 1 CMC § 3806(f).

History: Adopted 29 Com. Reg. 26676 (July 18, 2007); Proposed 29 Com. Reg. 26561 (June 18, 2007).

### **§ 110-10-910 Before Accepting the Election to Participate in the Defined Contribution Plan**

Before accepting an election to participate in the defined contribution plan, the Administrator must provide the eligible defined benefit plan member planning on making an election to participate in the defined contribution plan with written information, including calculations to illustrate the effect of moving the eligible defined benefit plan member’s retirement plan from the defined benefit plan to the defined contribution plan as well as other information to clearly inform the eligible defined benefit plan member of the potential consequences of the eligible defined benefit plan member’s election. An election made under this section to participate in the defined contribution plan is irrevocable.

Modified 1 CMC § 3806(f).

History: Adopted 29 Com. Reg. 26676 (July 18, 2007); Proposed 29 Com. Reg. 26561 (June 18, 2007).

### **§ 110-10-915 Upon Making the Election to Participate in the Defined Contribution Plan**

Upon making the election, the participant shall:

- (a) Be enrolled as a member of the defined contribution plan; \*

\* So in original.

Modified 1 CMC § 3806(f).

History: Adopted 29 Com. Reg. 26676 (July 18, 2007); Proposed 29 Com. Reg. 26561 (June 18, 2007).

**§ 110-10-920 Effective Date of Transfer to the Defined Contribution Plan**

Eligible defined benefit plan members transferring to the defined contribution plan will have their transfers effective at the end of the first pay period following the month of transfer or at such other time as determined by the Administrator for administrative necessity.

Modified 1 CMC § 3806(f).

History: Adopted 29 Com. Reg. 26676 (July 18, 2007); Proposed 29 Com. Reg. 26561 (June 18, 2007).

**§ 110-10-925 Transfer of Membership Service from the Defined Benefit Plan to the Defined Contribution Plan**

Upon a transfer, all membership service previously earned under the defined benefit plan shall be nullified for purposes of entitlement to a future benefit under the defined benefit plan but shall be credited for purposes of determining vesting in employer contributions under the defined contribution plan. For these purposes, “membership service” earned under the defined benefit plan means service under which employee contributions to the defined benefit plan have been paid and does not include any service for which reinstatement indebtedness to the defined benefit plan has not been fully paid.

Modified 1 CMC § 3806(f).

History: Adopted 29 Com. Reg. 26676 (July 18, 2007); Proposed 29 Com. Reg. 26561 (June 18, 2007).

**§ 110-10-930 All Other Class I Members and Class II Members**

(a) All class I members with 10 or more years of contributing member service and all class II members of the defined benefit plan of the Retirement Fund are not eligible to transfer under this subsection to the defined contribution plan.

(b) An eligible class I or class II member whose account is subject to a qualified domestic relations order may not elect to become a member of the defined contribution plan under any elective provisions set forth in § 110-10-901 through § 110-10-920, unless the qualified domestic relations order is amended or vacated and court certified copies of the order are received by the Administrator.

Modified 1 CMC § 3806(c), (f).

History: Adopted 29 Com. Reg. 26676 (July 18, 2007); Proposed 29 Com. Reg. 26561 (June 18, 2007).

**§ 110-10-935 Limitations of Federal Law for Participation in the Defined Contribution Plan**



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To the extent permitted by federal law, each eligible defined benefit plan member who elects to participate in the defined contribution plan shall have transferred to a new account the employee contribution account balance held in trust for the eligible defined benefit plan member under the defined benefit plan of the Northern Mariana Islands Retirement Fund. A matching employer contribution may be made on behalf of that included employee to the new account if the employer makes the matching contribution from funds appropriated by the legislature for that purpose. The amount of the matching employer contribution shall be subject to, and may not exceed, the limitation of 26 U.S.C. § 415(c) during the applicable limitation year in which the contribution is made.

Modified 1 CMC § 3806(f).

History: Adopted 29 Com. Reg. 26676 (July 18, 2007); Proposed 29 Com. Reg. 26561 (June 18, 2007).

### **§ 110-10-940 U.S. Internal Revenue Service Notification**

If the Administrator receives notice from the United States Department of the Treasury, Internal Revenue Service, that this section or a portion of this section will cause the retirement plan under this part, to be disqualified for tax purposes under the Internal Revenue Code, the portion that will cause the disqualification does not apply, and the Administrator shall notify the governor and presiding officers of the legislature.

Modified 1 CMC § 3806(f).

History: Amdts Adopted 29 Com. Reg. 26676 (July 18, 2007); Amdts Proposed 29 Com. Reg. 26561 (June 18, 2007).

## **Part 1000 - Employer/Employee Contribution**

### **§ 110-10-1001 Deficient Employer/Employee Contribution**

In accordance with 1 CMC § 8362 et al., a penalty shall be assessed for any employer and/or employee contribution not paid to the Fund within five days following the end of each payroll date.

(a)(1) All unpaid employer and/or employee contribution from the Government shall be assessed, from the entire amount due, as follows:

- (i) 10% penalty for one to thirty days;
- (ii) 20% penalty for thirty one to sixty days; and
- (iii) 25% penalty for sixty one days and beyond.

(2) Example: The Government fails to remit to the Fund \$100,000 of employer contribution, but timely makes all other employee contributions.

- (i) At the end of thirty days, the Fund shall assess 10% of \$100,000, or \$10,000, making the total amount the Government owes the Fund \$110,000.
- (ii) At the end of sixty days, the Fund shall assess 20% of \$100,000, or \$20,000, making the total amount the Government owes the Fund \$120,000.
- (iii) At the end of seventy five days, the Fund shall assess 25% of \$100,000, or \$25,000, making the total amount the Government owes the Fund \$125,000.

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(3) The Fund may only assess a maximum penalty of 25%, or a total of \$125,000 of unpaid employer contribution and fines for the example above.

(b) The Fund shall assess the appropriate penalty and provide the Government written notice of the amount owed the Fund within ten days of assessment.

(c)(1) If the Fund receives payment for deficient employee and/or employer contribution that has been penalized, all payments must first be applied towards the penalty. Any remaining funds shall therefore be applied towards the principal balance owed.

(2) Example: As described in the above-mentioned example, the Government owes the Fund \$100,000 for unpaid employer contribution and \$25,000 in penalties, totaling \$125,000. Subsequently, the Government remits to the Fund \$75,000.

(i) The Fund shall first satisfy the \$25,000 penalty assessed, leaving a remaining balance of \$50,000.

(ii) The Fund shall therefore apply the remaining balance to the Government's deficient employer contribution, leaving an outstanding balance, owed to the Fund, of \$50,000.

History: Adopted 30 Com. Reg. 28516 (May 27, 2008); Proposed 30 Com. Reg. 28378 (March 25, 2008).

Commission Comment: In May, 2008, the Northern Mariana Islands Retirement Fund renumbered § 110-10-1001 in Part 1000 to § 110-10-1101 in Part 1100 in its entirety without modification, and promulgated "Deficient Employer/Employee Contribution" as § 110-10-1001 as set forth in this section.

The original paragraphs of subsection (a) and (c) were undesignated. The Commission designated them as subsections (a)(1) through (a)(3) and (c)(1) and (c)(2) pursuant to 1 CMC § 3806(a). The Commission struck the figures "5" from the opening paragraph, "1" and "30" from subsection (a)(1)(i), "31" and "60" from subsection (a)(1)(ii), "61" from subsection (a)(1)(iii), "30" from subsection (a)(2)(i), "60" from subsection (a)(2)(ii), "75" from subsection (a)(2)(iii), and "10" from subsection (b) pursuant to 1 CMC § 3806(e).

### **Part 1100 - Miscellaneous Provisions**

#### **§ 110-10-1101 Effective Date**

The regulations in this chapter shall become effective pursuant to the Administrative Procedure Act, 1 CMC §§ 9101-9115.

Modified 1 CMC § 3806(d).

History: Amdts Adopted 30 Com. Reg. 28516 (May 27, 2008); Amdts Proposed 30 Com. Reg. 28378 (March 25, 2008); Amdts Adopted 29 Com. Reg. 26676 (July 18, 2007); Amdts Proposed 29 Com. Reg. 26561 (June 18, 2007); Amdts Adopted 28 Com. Reg. 25536 (Mar. 30, 2006); Amdts Proposed 27 Com. Reg. 25353 (Dec. 30, 2005); Amdts Proposed 27 Com. Reg. 25043 (Oct. 24, 2005).

Commission Comment: The March 2006 amendments added this section. In July 2007, this part and this section were renumbered from part 900 and § 110-10-901. In May 2008, the Northern Mariana Islands Retirement Fund renumbered § 110-10-1001 in Part 1000 to § 110-10-1101 in Part 1100 in its entirety without modification, and promulgated "Deficient Employer/Employee Contribution" as § 110-10-1001 as set forth in this section.