U.S. Department of Justice

Civil Rights Division

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Employment Litigation Section - PHB
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July 12, 2018

Via ECF
Honorable Nicholas G. Garaufis
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. City of New York, et al., 07-CV-2067 (NGG)(RLM)

Dear Judge Garaufis:

On behalf of all parties, the United States writes to update the Court on the implementation of retroactive pension benefits and to document the parties' assent to the agreements set forth below regarding resolution of all but one of the outstanding pension issues. *See* n.12, *infra*. The parties are not presently requesting action by or relief from the Court.

In October 2012, the Court awarded retroactive seniority relief to all of the eligible Nonhire Claimants appointed as priority hires to the New York City Fire Department ("FDNY") and to eligible Delayed-Hire Claimants who were appointed to the FDNY after their presumptive hire dates.[1] *See* Dkt. 1012 at 14-15. The Final Relief Order defines retroactive seniority as retroactive competitive seniority and retroactive benefits seniority, which includes "seniority for purposes of calculating an individual's salary or other pay, *pension benefits*, and future accrual of leave, including vacation, personal, and sick leave, as well as any other purposes for which seniority is used in determining the amount of or eligibility for employee benefits." *Id.* (emphasis added).

This letter memorializes the steps the parties have taken, and will continue to take, to implement retroactive pension benefits. The Fire Department Pension Fund (the "Fund") has reviewed this letter and has confirmed that it will implement retroactive pension benefits according to the terms described herein. To the extent that issues not addressed herein arise during implementation, the New York City Law Department, which represents both the Fund

[1] Four-hundred and forty-five claimants are entitled to retroactive seniority relief pursuant to the Court's order, including 180 Nonhire Claimants who were appointed to the FDNY as priority hires and 265 Delayed-Hire Claimants who were appointed to the FDNY after their presumptive hire dates.

and the FDNY, agrees to consult with the Fund and to propose an approach that the Law Department will discuss with the United States and the Plaintiffs-Intervenors. The parties will attempt to resolve any unanticipated issues that arise without burdening the Court. Should any issues arise that the parties are unable to resolve informally, the parties will bring those issues to the Court's attention.

I. Background

A. Pension Benefits of Tier II Members of the Improved Benefits Plan

As the Court previously found, "[w]hen a firefighter is appointed to the FDNY, he or she becomes a member of the Fire Department Pension Fund (the 'Fund'). Based on their dates of hire,[[2]] all eligible claimants will be Tier II members of the Fund, and enrolled in the Improved Benefits Plan." Dkt. 1588 at 5 (internal citations omitted). Vesting of Tier II pension benefits occurs after five years of membership in the Fund.[3] Dkt. 1457-1, Fire Department Pension Fund Subchapter II Summary Plan Description ("SPD") at 24. Tier II vested pension benefits become payable after 20 years of service at which point the member can apply to receive a monthly "retirement allowance." *Id.*

The Improved Benefits Plan includes both a pension portion, which is funded by employer contributions made by the City, and a separate annuity portion, which is funded by employee contributions. Dkt. 1588 at 5. The pension portion and the annuity portion are collectively referred to herein as the "pension." Employee contributions to the annuity portion of the Fund are paid into the Annuity Savings Fund ("ASF"). Dkt. 1460-1 at 3. An employee's required contributions to the ASF are calculated as a percentage of his or her actual earnings. Dkt. 1457-1, SPD at 9. Employee contribution rates generally range from 4.3% to 8.65% of earnings, depending on the employee's age at appointment. Dkt. 1588 at 5. Employee contributions to the ASF earn interest at the rate of 8.25% per year, compounded annually. *Id.* at 5-6.

The City pays employer contributions to the pension portion of the Fund. *Id.* at 6. Pursuant to the Increased-Take-Home-Pay ("ITHP") program, the City also pays a portion of what would otherwise be the employee's contributions, including up to 5% of the employee's

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[2] If a claimant's eligibility for relief is based on Exam 7029, the claimant's presumptive hire date is February 2, 2003; if a claimant's eligibility for relief is based on Exam 2043, the claimant's presumptive hire date is June 11, 2006.

[3] All 180 priority hires became vested members of the Fund upon appointment to the FDNY because their presumptive hire dates were more than five years before their actual appointment dates. When the parties began implementing retroactive pension benefits, of the 265 Delayed-Hire Claimants who were appointed after their presumptive hire dates, 17 had already left the FDNY and were no longer members of the Fund, 8 had already retired, and the remaining 240 were vested members of the Fund because they had completed over five years of service with the FDNY.

gross salary, which reduces the employee's required contributions. *Id.* For example, if an employee has a contribution rate of 7.5%, the City would pay an amount equal to 5% of the employee's salary to the pension portion of the Fund while the employee would pay the remaining 2.5% to the ASF. *See id.* The employer contributions, including the ITHP program payments, also earn interest at the rate of 8.25% per year, compounded annually. *Id.*

The employee's contributions (2.5% in the example above) and interest earned on those contributions are referred to as "accumulated deductions." Dkt. 1457-1, SPD at 9. The amount of accumulated deductions required to be in the employee's ASF account at a given time is referred to as the employee's "minimum required contribution." *Id.* If a member's ASF account does not contain the member's minimum required contribution, the member's ASF account has a deficit, which continues to grow as interest is earned at 8.25% on the unpaid employee contributions until the member's retirement date.[4] Any deficit remaining on the member's retirement date will be deducted from the member's retirement allowance.

In addition to paying the employee contributions (2.5% in the example above), an employee may choose to make voluntary additional contributions to the ASF by waiving the ITHP and instead paying the full employee contribution rate ("ITHP Waiver") and/or by participating in the Voluntary Employee Contributions 50% Indicator ("50% Indicator") program. *Id.* If an employee participates in the ITHP Waiver program, the City will continue to pay up to an additional 5% to the pension portion of the Fund. Dkt. 1588 at 6 n.4. For example, if an employee with a contribution rate of 7.5% waives the ITHP, the employee will contribute the full 7.5%, rather than only 2.5%, to the ASF while the City continues to contribute 5% to the pension portion of the Fund. Dkt. 1460 at 3. Employees who participate in the 50% Indicator program make additional contributions equal to 50% of their required employee contributions to the ASF. Dkt. 1457-1, SPD at 9. If the employee participates in the 50% Indicator program in addition to waiving the ITHP, the employee will contribute 11.25% to the ASF (the 7.5% contribution rate plus 3.75%, which is 50% of the 7.5% contribution rate). Dkt. 1460 at 4. If the employee participates in the 50% Indicator program without waiving the ITHP, the employee will contribute 6.25% (the 2.5% contribution rate, which is reduced from 7.5% because the ITHP is not waived, plus 3.75%, which is 50% of the 7.5% contribution rate). *Id.* at 3-4.

Voluntary additional contributions made pursuant to the ITHP Waiver and the 50% Indicator programs also earn interest at the rate of 8.25% per year, compounded annually. *Id.* at 4. Contributions made above the minimum required contributions, including payments made pursuant to the ITHP Waiver and the 50% Indicator programs and interest earned on those contributions, are referred to as "excess" contributions. Dkt. 1457-1, SPD at 9. Excess contributions, which are contributed to the ASF, will result in a greater annuity at retirement or may be withdrawn as a lump sum at retirement. *Id.* However, if a claimant has paid voluntary additional contributions but has not paid his or her minimum required contribution (including his or her owed minimum employee contribution, which is discussed below in Section I.B.2, and any interest earned on that contribution for which the claimant is responsible), the claimant's

[4] As discussed below in Section I.B.2, a deficit would result if a claimant's ASF account did not contain the minimum required contribution for the time period between his or her presumptive hire date and actual appointment date.

voluntary additional contributions will be applied to his or her minimum required contribution until it is paid in full.[5]

B. Implementation of Retroactive Pension Benefits to Date

As ordered by the Court, the following contributions and interest payments are included in the implementation of retroactive pension benefits: (1) employer contributions, including ITHP program payments, and interest earned on those contributions, (2) "owed minimum employee contributions" and interest earned on those contributions, and (3) employee contributions using the ITHP Waiver and/or the 50% Indicator programs ("retroactive additional contributions") and interest earned on those contributions.

To fund the claimants' pensions (including the pension portion and the ASF) retroactively for the time period between claimants' presumptive hire dates and actual appointment dates, both the City and the claimants must make retroactive pension contributions.

1. **Employer Contributions**

The City must pay the employer contributions, including the ITHP program payments, as well as interest that would have been earned on those contributions, into the pension portion for the time period between the claimants' presumptive hire dates and actual appointment dates.[6] These employer contributions and interest payments by the City are taxable to the claimants only upon distribution to the claimants (*e.g.*, at retirement) and are not taxable to the claimants upon the City's contribution to the pension.

2. **Owed Minimum Employee Contributions**

As discussed above in Section I.A, if a member's ASF account does not contain his or her minimum required contribution, the member's ASF account will have a deficit (which will result in a reduction in the member's retirement allowance if it remains unpaid on the member's retirement date). To avoid a deficit, both the employee contributions that would have been paid during the time period between a claimant's presumptive hire date and actual appointment date and the interest that would have been earned on those contributions must be paid into the ASF so that the claimant's account contains his or her minimum required contribution. As discussed in

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[5] If a claimant whose voluntary additional contributions were applied to his or her minimum required contribution pays the minimum required contribution before retirement, the voluntary additional contributions will be shifted back to excess contributions and will include all interest earned on those voluntary additional contributions as if they had not been applied to the minimum required contribution.

[6] As a result, all claimants who are vested members of the Fund are entitled to a retirement allowance that is payable after 20 years of service regardless of when they separated from the FDNY and whether they paid their minimum required contributions unless their deficits are so large that they eliminate their retirement allowances.

greater detail below, these payments have been made by most, but not all, of the claimants who are entitled to retroactive pension benefits.

In April 2015, the Court addressed the City's obligations regarding retroactive pension benefits, holding that, in addition to paying the employer contributions and the interest due on the employer contributions, the City must "pay the interest due on claimants' minimum employee contributions as a necessary element of the retroactive seniority granted in the Final Relief Order." Dkt. 1588 at 21. Thus, to avoid a deficit in the ASF, subject to the deadlines discussed below, a claimant must retroactively pay only the employee contribution (2.5% of earnings in the example discussed above on page 3) for the time period between his or her presumptive hire date and actual appointment date while the City must pay the interest earned on those contributions. The parties refer to the employee contributions the claimant must pay to avoid a deficit as the claimant's "owed minimum employee contribution."

The majority of claimants were given a deadline of August 10, 2016, to pay their owed minimum employee contributions while the City remained liable for any interest earned through August 10, 2015.[7] On May 13 and July 31, 2015, the Court-appointed claims administrator, The Garden City Group, Inc. ("GCG"), sent the 154 priority hires appointed to the FDNY through December 2014[8] and the 265 Delayed-Hire Claimants who were appointed to the FDNY after their presumptive hire dates letters notifying them of their retroactive pension benefits and any owed minimum employee contributions[9] based on calculations performed by the Fund. GCG informed these claimants that their owed minimum employee contributions would be withheld from their back pay awards unless they opted out of having their contributions withheld. *See* n.7, *supra*. Per the parties' agreement, GCG also notified the claimants that they would have the option to make retroactive additional contributions pursuant to the ITHP Waiver and the 50% Indicator programs for the time period between their presumptive hire dates and actual appointment dates but that such additional contributions would not be withheld from their back pay awards. In August 2015, the City issued back pay award payments to claimants and

[7] Under the Amended Monetary Relief Consent Decree, entered by the Court on March 11, 2015, to settle the United States' and the Plaintiffs-Intervenors' claims for back pay and fringe benefits, the City was required to issue back pay award payments by August 10, 2015, and withhold from those awards the owed minimum employee contributions for any claimants who did not opt out of having their contributions withheld. *See* Dkt. 1571. *See also* Dkt. 1468 ¶¶ 38-39.

[8] On July 13, 2015, the Court held that the City must implement retroactive pension benefits for all priority hires upon appointment to the FDNY, including 27 priority hires who separated from the FDNY before graduating from the Academy, unless the City establishes that a priority hire was dismissed from employment under circumstances that voided these benefits. *See* Dkt. 1613.

[9] Four-hundred and forty-five claimants were entitled to retroactive pension benefits pursuant to the Court's order, but not all of those claimants owed a minimum employee contribution because they (1) were no longer employed by the FDNY and were no longer members of the Fund, (2) had transferred contributions to the Fund from another pension plan or had otherwise paid their minimum required contributions, or (3) were already receiving retirement allowances.

withheld from those awards the owed minimum employee contributions for most of the claimants entitled to retroactive pension benefits.[10]

Five priority hires were appointed to the FDNY in June and December 2015 and were notified of the details of their retroactive pension benefits, including their owed minimum employee contributions, on October 23, 2015, and February 12, 2016. These 5 priority hires who were notified of their owed minimum employee contributions after issuance of their back pay awards were given a deadline of August 10, 2017, to pay their owed minimum employee contributions while the City remained liable for any interest earned through that date.[11]

All of the claimants who were notified of the details of their retroactive pension benefits through February 12, 2016, were informed that while employed by the FDNY, they could (1) have the contributions withheld from their paychecks in an amount arranged between them and the Fund, in which case the contributions would be federally tax deferred, or (2) make contribution payments directly to the Fund, in which case the contributions would not be federally tax deferred. After employment with the FDNY, claimants may make payments of their owed minimum employee contributions, and interest earned on those contributions, only directly to the Fund. Claimants may make these payments only until the twentieth anniversary of their membership with the Fund. However, the City is not liable for any interest earned on any portion of the owed minimum employee contributions that was unpaid after the deadlines given to the claimants.

When claimants made payments of their owed minimum employee contributions through withholding from their back pay awards or otherwise by the deadlines given to them, the City, on the same date as the claimants' payments, paid the interest earned on the paid portion of the owed minimum employee contributions. The City's payments of interest earned on owed minimum employee contributions are taxable to the claimants only upon distribution to the claimants (*e.g.*, at retirement) and are not taxable to the claimants upon the City's contribution to the plan. Claimants may pay any unpaid interest earned on their owed minimum employee contributions as discussed below in Section II.A.1 and B.3. Failure to pay any unpaid interest by retirement will result in a deficit and a reduced retirement allowance.

Twenty-one additional priority hires were appointed to the FDNY in December 2016 and June 2017. Each of these claimants owes a minimum employee contribution. The process to be used in implementing their retroactive pension benefits is discussed below in Section II.B.

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[10] Three hundred and sixty-eight claimants owed minimum employee contributions at that time, and owed minimum employee contributions were withheld from the back pay awards of 298 of those claimants.

[11] The deadline for 52 of the claimants whose owed minimum employee contributions were not withheld from their back pay awards was extended until August 10, 2017.

3. Retroactive Additional Contributions

In addition to paying their owed minimum employee contributions, claimants also may participate retroactively in the ITHP Waiver and/or the 50% Indicator programs for the time period between their presumptive hire dates and actual appointment dates. On July 13, 2015, the Court held that the City must pay the interest that will be due on any additional contributions made by claimants awarded retroactive seniority for the time period between their presumptive hire dates and actual appointment dates pursuant to the ITHP Waiver and the 50% Indicator programs. Dkt. 1613. The City's payments of interest earned on retroactive additional contributions using the ITHP Waiver and/or the 50% Indicator programs are taxable to the claimants only upon distribution to the claimants (*e.g.*, at retirement) and are not taxable to the claimants upon the City's contribution to the plan.

On April 21, 2016, GCG sent the claimants who had been appointed as of that date who are entitled to make retroactive additional contributions a notice providing information about their option to make retroactive additional contributions. However, implementation of retroactive additional contributions was put on hold pending agreement by the parties on a process to implement the contributions.

II. Remaining Payments of Owed Minimum Employee Contributions and Interest Earned on Those Contributions

Payment of a claimant's owed minimum employee contributions is optional. However, if a claimant's owed minimum employee contribution and interest earned on that owed minimum employee contribution are not paid to the Fund, the claimant's ASF account will have a deficit, which will result in a reduced retirement allowance when the clamant becomes eligible to receive it. The deficit will continue to grow until the claimant's retirement date because the unpaid portion of the owed minimum employee contribution will continue to earn interest at the rate of 8.25% per year, compounded annually.

As discussed in Section I.B.2, with the exception of the 21 priority hires whose first appointment to the FDNY was in December 2016 or June 2017, all of the claimants who are entitled to retroactive pension benefits were notified of the amounts of their owed minimum employee contributions and that they had a deadline of either August 10, 2016, or August 10, 2017, after which the City would not pay any of the interest earned on their owed minimum employee contributions. The remaining 21 priority hires have not been given any deadlines with regard to making payments or the City's liability for paying interest. As discussed below in Section II.B, they will be provided with this information on or around July 13, 2018.

A. Payment of Owed Minimum Employee Contributions and Interest Earned on Those Contributions by Claimants Previously Notified of the Details of Their Retroactive Pension Benefits

1. These claimants may make payments on their deficits, including their owed minimum employee contributions and interest earned on those payments, to the Fund until their retirement dates.

a. *While employed by the FDNY*, these claimants may have their owed minimum employee contributions and interest earned on those contributions withheld from their paychecks in an amount arranged between them and the Fund. Contributions and interest withheld from paychecks will be federally tax deferred.
b. *Both during and after employment with the FDNY*, these claimants may make payments of their owed minimum employee contributions and interest earned on those contributions directly to the Fund. However, any such payments will not receive federal tax deferral benefits. After employment with the FDNY, a claimant may make such payments only until the twentieth anniversary of his or her membership with the Fund.

2. As discussed in Section I.B.2, the City will not pay interest earned on any portion of a claimant's owed minimum employee contribution that was unpaid after August 10, 2016, for most of the claimants who were notified of their owed minimum employee contributions before their back pay awards were issued, and after August 10, 2017, for claimants who were notified of their owed minimum employee contributions after their back pay awards were issued and for the 52 claimants discussed in footnote 11. This includes interest earned both before and after these dates.
3. If a claimant's ASF account does not contain his or her minimum required contribution (including the claimant's owed minimum employee contribution and any interest earned on that contribution) before the claimant's retirement date, any voluntary additional contributions made by the claimant will be applied to his or her minimum required contribution until it is paid in full before becoming excess.

B. *Payment of Owed Minimum Employee Contributions and Interest Earned on Those Contributions by the Twenty-one Priority Hires Who Have Not Been Notified of the Details of Their Retroactive Pension Benefits*

1. <u>Notice of Retroactive Pension Benefits:</u> On or around July 13, 2018, these claimants will be sent a notice by both mail and email providing details about their retroactive pension benefits, including the amount of their owed minimum employee contributions and the amount of interest earned on those contributions through June 2017.
2. <u>Interest Payments by the City:</u>
   a. Except as provided in Section II.B.5.d, the City will pay interest earned through June 1, 2020, on any portion of an owed minimum employee contribution paid by one of these claimants by June 1, 2020.
   b. Interest will be paid at the rate of 8.25%, compounded annually.
   c. The City's payments of interest earned on owed minimum employee contributions are taxable to the claimants only upon distribution to the claimants (*e.g.*, at retirement) and are not taxable to the claimants upon the City's contribution to the plan.

d. When one of these claimants makes a payment of his or her owed minimum employee contribution on or before June 1, 2020, the City will make a corresponding interest payment on the same date.
   i. If the payment is withheld from the claimant's paycheck on a biweekly basis, the interest payment on the arrear deduction will be made on the same biweekly basis.
   ii. If the claimant makes a payment directly to the Fund, the City will make a corresponding interest payment on the same date.

3. <u>Payments by Claimants:</u>
   a. Contributions: These claimants may make payments on their owed minimum employee contributions to the Fund until their retirement dates.
      i. *While employed by the FDNY*, these claimants may have their owed minimum employee contributions withheld from future paychecks in an amount arranged between them and the Fund. Contributions withheld from paychecks will be federally tax deferred.
      ii. *Both during and after employment with the FDNY*, these claimants may make payments of their owed minimum employee contributions directly to the Fund. However, any such payments will not receive federal tax deferral benefits. After employment with the FDNY, a claimant may make such payments only until the twentieth anniversary of his or her membership with the Fund.
   b. Interest: After June 1, 2020, these claimants may make interest payments for any interest earned on any portion of their owed minimum employee contributions that they paid after June 1, 2020.
      i. *While employed by the FDNY*, these claimants may have the interest withheld from future paychecks in an amount arranged between them and the Fund. Interest withheld from paychecks will be federally tax deferred.
      ii. *Both during and after employment with the FDNY*, these claimants may make the interest payments directly to the Fund. However, any such payments will not receive federal tax deferral benefits. After employment with the FDNY, a claimant may make such payments only until the twentieth anniversary of his or her membership with the Fund.

4. <u>Employer Contributions by the City:</u> The City will pay the employer contributions and interest earned on the employer contributions for the time period between the claimants' presumptive hire dates and actual appointment dates.
   a. Interest will be paid at the rate of 8.25%, compounded annually.
   b. These employer contributions and interest payments by the City are taxable to the claimants only upon distribution to the claimants (*e.g.*, at retirement) and are not taxable to the claimants upon the City's contribution to the pension.

5. Fund Obligations:
   a. In July, August, and September 2018, the Fund will hold a total of three pension informational sessions to provide additional information about retroactive pension benefits.
   b. Upon the request of a claimant for information about his or her retroactive pension benefits, the Fund shall provide the requested information as soon as practicable.
   c. Upon the request of a claimant for assistance with setting up a payment plan for repayment of owed minimum employee contributions, making a retroactive pension contribution payment to the Fund, or taking out a pension loan to use in payment of retroactive pension contributions, the Fund shall process any one such request within 30 days of receipt of the request absent extraordinary circumstances.
   d. If the Fund does not fulfill its obligations under Section II.B.5.a-c, the United States and the Plaintiffs-Intervenors reserve their right to seek an extension of the period of the City's liability for payment of interest for any claimants affected by the delay in fulfilling said obligations.

III. Payment of Retroactive Additional Contributions and Interest Earned on Those Contributions

Until June 1, 2020, claimants who are entitled to retroactive pension benefits and are members of the Fund may make retroactive additional contributions as part of the ITHP Waiver and/or the 50% Indicator programs for the time period between their presumptive hire dates and actual appointment dates.[12] These payments are purely voluntary. These additional contributions will increase the claimants' excess contributions, which will result in a greater annuity at retirement or may be withdrawn as a lump sum at retirement. The City will pay interest earned through June 1, 2020, on any paid portion of retroactive additional contributions. After June 1, 2020, claimants can no longer make payments of retroactive additional contributions regardless of whether they are employed by the FDNY.

[12] Thirty-three claimants who are entitled to retroactive pension benefits have retired. The parties are discussing whether options exist to permit them to make retroactive additional contributions should they desire to do so.

A. *All Eligible Claimants May Make Retroactive Additional Contributions*

1. On or around July 13, 2018, all claimants who are vested members of the Fund who have not yet retired will be sent a notice by both mail and email providing details about their retroactive additional contributions.
   a. Priority hires will be sent a notice containing the information detailed in Section III.B.2.
   b. Delayed-Hire Claimants will be sent a notice providing sample calculations for both the ITHP Waiver and the 50% Indicator programs.
2. Claimants may make retroactive additional contributions only after the following:
   a. They have paid in full their owed minimum employee contributions and any interest earned on their owed minimum employee contributions, OR
   b. For claimants who are currently employed by the FDNY, they have set up a payment plan with the Fund to have their owed minimum employee contributions and any interest earned on those contributions withheld in full from their future paychecks.
3. Payments of retroactive additional contributions, whether made as part of the ITHP Waiver or the 50% Indicator programs, will not receive tax deferral benefits.
4. Claimants must make payments of retroactive additional contributions in the predetermined amounts discussed in Sections III.B.2 and C.2 directly to the Fund – they cannot be withheld from claimants' paychecks.
5. Deadlines: The following deadlines apply unless extended as set forth in Section III.A.6.d.
   a. Claimants may make payments of retroactive additional contributions only until June 1, 2020, regardless of whether they are employed by the FDNY.
   b. The City will pay interest owed on retroactive additional contributions made through June 1, 2020. The City's obligation to pay interest is for the interest owed up through the date the retroactive contribution is made. Following payment of the retroactive additional contribution, the contribution will accrue interest as it would have in the ordinary course.
      i. The City will make a corresponding interest payment on the same date that a claimant makes a payment.
      ii. Interest will be paid at the rate of 8.25%, compounded annually.
      iii. The City's payments of interest earned on retroactive additional contributions are taxable to the claimants only upon distribution to the claimants (*e.g.*, at retirement) and are not taxable to the claimants upon the City's contribution to the plan.
   c. After June 1, 2020, claimants can no longer make payments of retroactive additional contributions regardless of whether they are employed by the FDNY.
6. Fund Obligations:
   a. In July, August, and September 2018, the Fund will hold a total of three pension informational sessions to provide additional information about retroactive pension benefits.
   b. Upon the request of a claimant for information about his or her retroactive additional contributions, the Fund shall provide the requested information as soon as practicable.

c. Upon the request of a claimant for assistance with setting up payment(s) of retroactive additional contributions or taking out a pension loan to use in payment of retroactive additional contributions, the Fund shall process any one such request within 30 days of receipt of the request absent extraordinary circumstances.
d. If the Fund does not fulfill its obligations under Section III.A.6.a-c, the United States and the Plaintiffs-Intervenors reserve their right to seek an extension of the period of the City's liability for payment of interest for any claimants affected by the delay in fulfilling said obligations.

B. Eligible Priority Hires May Make up to Four Payments of Retroactive Additional Contributions

1. Priority hires who are vested members of the Fund who have not retired may make either one or two payments of retroactive additional contributions as part of the ITHP Waiver program in the amounts provided pursuant to Section III.B.2.a and one or two payments of retroactive additional contributions as part of the 50% Indicator program in the amounts provided pursuant to Section III.B.2.b.
2. Each priority hire will be sent a notice on or around July 13, 2018, containing the following information:
   a. ITHP Waiver program:
      i. The amount of retroactive ITHP Waiver program contributions the claimant would have been eligible to make from his or her presumptive hire date through December 31, 2010, had the priority hire been appointed on his or her presumptive hire date.
      ii. The amount of retroactive ITHP Waiver program contributions the claimant would have been eligible to make from January 1, 2011, through his or her actual appointment date, had the priority hire been appointed on his or her presumptive hire date.
      iii. The amount of retroactive ITHP Waiver program contributions the claimant would have been eligible to make from his or her presumptive hire date through his or her actual appointment date had the priority hire been appointed on his or her presumptive hire date.
   b. 50% Indicator program:
      i. The amount of retroactive 50% Indicator program contributions the claimant would have been eligible to make from his or her presumptive hire date through December 31, 2010, had the priority hire been appointed on his or her presumptive hire date.
      ii. The amount of retroactive 50% Indicator program contributions the claimant would have been eligible to make from January 1, 2011, through his or her actual appointment date, had the priority hire been appointed on his or her presumptive hire date.
      iii. The amount of retroactive 50% Indicator program contributions the claimant would have been eligible to make from his or her presumptive hire date through his or her actual appointment date had the priority hire been appointed on his or her presumptive hire date.

c. Interest: Estimated amounts of interest earned through approximately October 2016 on each amount provided in Section III.B.2.a and b.

C. *Eligible Delayed-Hire Claimants May Make up to Two Payments of Retroactive Additional Contributions*

1. Delayed-Hire Claimants who are members of the Fund who have not retired may make one payment of retroactive additional contributions as part of the ITHP Waiver program and one payment of retroactive additional contributions as part of the 50% Indicator program in the amounts provided pursuant to Section III.C.2.[13]
2. Upon request to the Fund, each Delayed-Hire Claimant will be provided with the following information as soon as practicable:
   a. The amount of retroactive ITHP Waiver program contributions the claimant would have been eligible to make from his or her presumptive hire date through his or her actual appointment date had the claimant been appointed on his or her presumptive hire date.
   b. The amount of retroactive 50% Indicator program contributions the claimant would have been eligible to make from his or her presumptive hire date through his or her actual appointment date had the claimant been appointed on his or her presumptive hire date.
   c. Interest earned on the amounts provided in Section III.C.2.a-b, above.

IV. Errors in Pension Calculations

If the Fund provides claimants with inaccurate information regarding their retroactive pension benefits (either directly to the claimants or indirectly through communications to the claimants containing information provided by the City to the parties), the City will notify the United States and the Plaintiffs-Intervenors of the error. The City agrees to work in good faith to find a solution to the error.

V. Pension Loans

A. *Eligibility, Amount, and Frequency*

1. Members of the Fund are eligible to take out a pension loan and borrow up to 75% of their employee contributions and any interest earned on those contributions, including their accumulated deductions and excess contributions.
2. Pension loans may be taken out by members of the Fund only while they are employed by the FDNY.
3. A member may take out two loans in a 12-month period, which begins running from the date the claimant receives the pension loan.

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[13] The amounts of retroactive additional contributions that Delayed-Hire Claimants are eligible to make are much lower than the amounts of retroactive additional contributions priority hires are eligible to make. As a result, Delayed-Hire Claimants are permitted to make only one retroactive payment into each program.

4. It takes the Fund approximately three weeks to process a pension loan.

B. Repayment and Tax Implications

1. A pension loan is usually repaid through payroll deductions (which are not tax deferred) at a minimum rate of 5% of gross salary.
2. A pension loan must be repaid by the earlier of the following two dates: within five years of the date the member receives the loan or by the day the member turns 65 years old.
3. If a member retires with an outstanding loan, a tax penalty will be imposed on the member.
4. Pension loans may be taxable, and the interest rate charged on the unpaid balance of a pension loan is currently 4%, compounded annually. Thus, a pension loan is charged less interest than a claimant would earn on funds contributed through the ITHP Waiver and/or 50% Indicator programs.

C. Examples

1. Assume that the claimant's employee contributions and interest equal $25,000 as of January 1, 2019.
   a. The claimant takes out a pension loan for $18,750 (75% of $25,000) on January 1, 2019.
   b. Assuming that the claimant has not repaid the first loan in full and has $10,000 in employee contributions and interest as of July 1, 2019, the claimant may take out a second pension loan for up to $7,500 (75% of $10,000).
   c. The claimant may not take out a third pension loan until January 1, 2020, regardless of whether the claimant has repaid the first and second loans.
2. Assume that the claimant's employee contributions and interest equal $20,000 as of July 1, 2018.
   a. The claimant takes out a pension loan for $15,000 (75% of $20,000) on July 1, 2018.
   b. On July 2, 2018, the claimant makes a retroactive additional contribution payment of $15,000, and the City pays $10,000 in interest earned on the retroactive additional contributions. The claimant now has $30,000 in employee contributions and interest (as well as an outstanding pension loan for $15,000).
   c. The claimant may now take out one more loan before July 1, 2019. While the claimant's account balance is $30,000, the claimant may take out a loan of up to $22,500 (75% of $30,000).

The parties would be happy to discuss these matters further at the next status conference.

Respectfully,

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