

LOSAP Reporting & Disclosures

(summarized from an article that appeared in The Counsellor on March 1, 2011)

The Board of Fire Commissioners of a fire district acts as the sponsor of the Length of Service Awards Program (LOSAP) and administers it for volunteer firefighter participants. An agreement should be in place between the Board of Fire Commissioners and any third party administrator retained to manage the plan for a district.

The board is responsible for maintaining specific documents and reports as well as ensuring that they are made available to participants. These include written plan documents that summarize the rules and procedures that govern the LOSAP and the entitlement of participants to benefits.

Article 11-A of the General Municipal Law provides the statutory framework that governs the creation, amendment and management of LOSAPs. It states that the board should adopt a point system, contained in a written document and in accordance with the rules set out in Section 217 of the law that describes the activities required to be attained by personnel to earn a year of service credit under the LOSAP.

The rules, regulations and guidelines that govern the LOSAP should be in writing, based upon procedures and guidelines in accordance with applicable law, approved by the Board of Fire Commissioners and provided to each volunteer firefighter on the commencement of participation in the plan.

If Article 11-A of the General Municipal Law requires voter approval for adoption of a provision or amendment relative to LOSAP, voter approval should be secured at the annual or a special election of the fire district.

Section 219-a of the law states that the sponsor or designated program administrator shall provide each active volunteer firefighter participating in a service award program, within six months from the date participation commences, with a summary of the program's provisions, including those relating to the participation requirements, the rate at which a non-

forfeitable interest in the program benefits increase and the program's service awards formula. Additionally, material modifications to such program provisions shall be communicated in writing to each participant within six months after the later of the date modification is adopted or the date it is effective. The following shall be made available for inspection or copying by a program participant or beneficiary at the sponsor's main office: a copy of the program; the summary of the program; documents related to the funding or investment of the assets of the program; and any contracts or agreements with service providers to the program. (McKinney's General Municipal Law § 219-a)

The statute establishes record-keeping requirements for volunteer fire departments and fire companies, including the need to maintain all required records on forms prescribed by the governing board of such political subdivision of the state. The records are to be made available for review to determine if member participants have achieved a year of service credit under the program. In the case of a state-administered program, each participating fire company shall compile and maintain the required records in a manner consistent with the rules and regulations governing the state-administered program. (McKinney's General Municipal Law § 219-a)

The reporting structure further provides that, by March 31 of each year, the fire department or company shall provide the governing board of the fire district with a written list of the participant volunteer firefighters, certified under oath, who achieved a year of firefighting credit under the program's plan rules for the prior year and, by implication, a written list of those who did not. In the case of state-administered plans, the list shall be submitted annually by March 31 or otherwise as provided in the rules and regulations governing the state-administered program. A volunteer firefighter may request in writing that his or her name be deleted from the list as a "participant" in the "defined benefit plan" or "defined contribution plan," which will remain effective until the request is withdrawn by the individual in writing. (McKinney's General Municipal Law § 219-a)

Upon receipt, review and approval of the list of persons entitled to service credit, the Board of Fire Commissioners must certify the final list and see that it is posted for at least 30 days at all fire stations in which participants are assigned to perform for review by members to provide participants with fair notice of any failure or refusals to grant a year of service credit. (McKinney's General Municipal Law § 219-a) The board should ensure that the posting of the list is included in the minutes of the next meeting to establish that the task was completed and cause the time to appeal to start to run.

In the event a firefighter participant is aggrieved by the failure or refusal to certify his or her service card for the year, he or she must appeal such failure or refusal in writing to the Board of Fire Commissioners within 30 days.

A participant whose name does not appear on the approved certified list or who is denied credit for service prior to the establishment of the service award program has the right to appeal within 30 days of posting of the list or within 30 days of denial of past service credit. A written appeal shall be mailed to the clerk or secretary of the governing board of such political subdivision, which shall investigate the appeal. The decision of the authorities in control of each volunteer fire company shall be subject to appropriate judicial review. (McKinney's General Municipal Law § 219-a)

The board is required to investigate the appeal and issue a determination. Since the statute calls for an appeal, rather than a hearing, the board can restrict the process to a review of the written material submitted rather than hold a formal hearing with witnesses. After the board renders its ruling, the participant, if still aggrieved, may challenge the ruling in State Supreme Court.