

DISTRICT OF COLUMBIA RETIREMENT BOARD

NOTICE OF FINAL RULEMAKING

The District of Columbia Retirement Board ("DCRB"), pursuant to the authority set forth in Section 121(e) of the District of Columbia Retirement Reform Act ("Reform Act"), approved November 17, 1979 (Pub. L. 96-122, 93 Stat. 866, D.C. Official Code § 1-711(e)(2011 Repl.)) and § 12(j)(c)(5) of the Policemen and Firemen's Retirement and Disability Act, approved September 1, 1916 (39 Stat. 718, D.C. Official Code § 5-714(c)(5)(2008 Repl.)), hereby gives notice of the adoption of final rulemaking to add Chapter 17 of Title 7 of the District of Columbia Municipal Regulations ("DCMR"). The purpose of the final rule is to explain the annual income review conducted by DCRB for disability annuitants under the District of Columbia Police Officers and Firefighters' Retirement Plan and the District of Columbia Teachers' Retirement Plan.

DCRB stated its intent to adopt the proposed rule as final in the Notice of Proposed Rulemaking published in the *D.C. Register* on December 14, 2012 at 59 DCR 014827. No comments were received and no substantive changes were made to the proposed rulemaking. These rules will become final upon publication in the *D.C. Register*.

CHAPTER 17

DISTRICT OF COLUMBIA RETIREMENT BOARD BENEFITS ADMINISTRATION RULES

*Chapter 17 of Title 7 of the DCMR is added as follows:*

**1700 PURPOSE AND GOVERNANCE**

1700.1 In accordance with Section 121(a) of the District of Columbia Retirement Reform Act, as amended, Public Law 96-122 (codified at D.C. Official Code § 1-711(a) (2011 Repl.)), the District of Columbia Retirement Board (DCRB) has exclusive authority and discretion to manage and control the District of Columbia Police Officers and Fire Fighters' Retirement Fund (Police and Fire Retirement Fund) and the District of Columbia Teachers' Retirement Fund (Teachers' Retirement Fund) and to implement and administer the retirement program for the District of Columbia police officers, firefighters and teachers. DCRB is also authorized to issue rules for the management and administration of the retirement program.

**1701 ANNUAL INCOME REVIEW**

1701.1 Annual Income Review for Teacher Disability Annuitants. Any teacher disability annuitant who retired under D.C. Code Official Code § 38-2021.04(a) (2001 Ed.) and who has not reached voluntary retirement age

as defined in D.C. Official Code § 38-2021.03 (2001 Ed.) must file annually by May 15th with DCRB a notarized statement of employment and earnings and any additional information as requested by DCRB to verify employment income beginning for the first calendar year after retirement up to and including the calendar year in which the annuitant reaches voluntary retirement age.

- 1701.2 Annual Income Review for Police Officer and Firefighter Disability Annuitants Under Age 50. Any police officer or firefighter annuitant who was hired on or after February 15, 1980, retired under D.C. Official Code § 5-709 or § 5-710 (2008 Repl.), and who is under age fifty (50), must file annually by May 15th with DCRB a notarized statement of employment and earnings and any additional information as requested by DCRB to verify employment income beginning for the first calendar year after retirement up to and including the calendar year in which the annuitant reaches age 50.
- 1701.3 Notarized Annual Earnings Statement. DCRB will notify annuitants at the beginning of each of calendar year if they are required to file an annual income report, what they must file, when they must file, and the penalty for failure to file. Information required to be filed may include, but is not limited to, tax returns, Forms W-2 and 1099, proof of non-filing of a tax return or extension of time to file a tax return. After review of the initial filing, annuitants may be required to file additional notarized statements and information.
- (a) Any refusal or willful failure to timely submit the required annual income report will result in the disability annuity being stopped until DCRB receives all the information requested. The annuitant will not be eligible to receive an annuity or any portion of an annuity for the period beginning on the date after the final day for timely filing the annual income report (May 16th) and ending on the date on which DCRB receives all the required information. The annuitant must return any overpayments to DCRB. DCRB may recoup overpayments by offsetting any reinstated annuity or other annuity entitlement.
  - (b) Any willful submission of materially false income information will result in forfeiture of the disability annuity.
- 1701.4 Due Process Rights. DCRB will determine continued entitlement to the disability annuity on the basis of the annual income review. Prior to any annuity termination, reduction or offset, DCRB will inform the annuitant of its decision in writing and the annuitant's due process rights in accordance with D.C. Official Code § 1-751 (2011 Repl.).

- 1701.5 Restoration to Earning Capacity for Teacher Disability Annuitants and Annuity Termination.
- (a) If a teacher disability annuitant who is subject to the annual income review in § 1701.1 has earned income from wages or self-employment or both during that calendar year equal to at least 80 percent of the current pay rate for the position occupied immediately before retirement, the annuitant's earning capacity is restored. DCRB will terminate the disability annuity on January 1 of the following calendar year in which earning capacity was restored. The annuitant must return any overpayments to the Teachers' Retirement Fund. DCRB may recoup overpayments by offsetting any reinstated annuity or other annuity entitlement.
  - (b) A terminated disability annuity will be reinstated at the same rate in effect when it was terminated on January 1 of any year following a calendar year during which an annuitant's earning capacity falls below the 80 percent earnings limit, or sooner as DCRB determines administratively practicable, if the annuitant has not reached voluntary retirement age and has not recovered from his/her disability and has not been reappointed to a position that is equal or similar to the one occupied at retirement.
  - (c) An annuitant who has not reached voluntary retirement age may file a request for reinstatement of a terminated disability annuity, as instructed by DCRB, any time after one full year elapses during which his or her earning capacity falls below the 80 percent earnings limit.
  - (d) An annuitant whose disability annuity has been terminated and not restored prior to reaching voluntary retirement age may request a deferred retirement annuity or a refund of any remaining employee contributions. A deferred retirement annuity election or refund of employee contributions bars any restoration of a terminated disability annuity.
- 1701.6 Restoration to Earning Capacity for Police Officer and Firefighter Disability Annuitants Under Age 50 and Annuity Termination.
- (a) If, in any calendar year after the annuitant's year of retirement, a police officer or firefighter disability annuitant who is subject to the annual income review in § 1701.2, has earned income from wages or self-employment or both equal to at least 80 percent of the current compensation rate for the position occupied immediately before retirement, the annuitant's earning capacity is restored. DCRB will stop the disability annuity payment forty-five

(45) days from the date of the written determination that earning capacity has been restored. The annuitant must return any overpayments to the Police and Fire Retirement Fund. DCRB may recoup overpayments by offsetting any reinstated annuity or other annuity entitlement.

- (b) A terminated disability annuity will be reinstated on January 1 of any year following a calendar year during which an annuitant's earning capacity falls below the 80 percent earnings limit if the annuitant is under age 50 and has not recovered from his/her disability and has not been reemployed in the department from which he/she retired at the same or equivalent grade or rank held at retirement.
- (c) An annuitant who is under age 50 may also file a request for reinstatement of a terminated disability annuity, as instructed by DCRB, any time after one full year elapses during which his or her earning capacity falls below the 80 percent earnings limit.
- (d) An annuitant whose disability annuity has been terminated and not reinstated prior to age 50 may request a deferred retirement annuity or a refund of any employee contributions. The election of a deferred retirement annuity or refund of employee contributions bars any restoration of a terminated disability annuity.

## 1701.7

Annuity Reduction for Police Officer and Firefighter Disability Annuitants Under Age 50.

- (a) If DCRB determines that a police officer or firefighter disability annuitant who is subject to the annual income review in § 1701.2 has income in any calendar year after the annuitant's year of retirement from wages or self-employment or both during that calendar year in excess of the difference between 70 percent of the earnings limit and the disability annuity, the annuitant's disability annuity will be reduced by \$.50 for each \$1 of income received in excess of the difference during that calendar year.
- (b) If income from wages or self-employment or both during that calendar year is in excess of the difference between 100 percent of the earnings limit and the disability annuity, the disability annuity will be further reduced by \$.20 for each \$1 of income received in excess of the difference during that calendar year.
- (c) Reductions will begin after the end of the calendar year under review as soon as administratively practicable as determined by DCRB and will be prorated equally over twelve (12) consecutive

months. The annuitant must return any overpayments to the Police and Fire Retirement Fund. DCRB may recoup overpayments by offsetting the reduced or reinstated annuity or other annuity entitlement.

- (d) For purposes of this § 1701.7, the earnings limit is the greater of:
  - (A) the current salary of the position occupied immediately before retirement, or
  - (B) the current entry salary for active members divided by .70.
- (e) A reduced annuity will be reinstated in whole or in part, as determined by DCRB, as soon as administratively practicable if the annuitant's income from wages or self-employment or both is less than the earnings limit for any full calendar year and the annuitant is under age 50. A reduced annuity that is not reinstated in whole or in part prior to the annuitant reaching age 50 will continue to be paid at its reduced rate.
- (f) An annuitant who is under age 50 may file a request for reinstatement of a reduced annuity, as instructed by DCRB, any time after one full year elapses during which his or her earned income falls below the earnings limit in § 1701.7(d).
- (g) Any annuity reduction under this § 1701.7 may be waived by DCRB, if it determines, in its discretion, a waiver is reasonably practicable and the annuitant is without fault. Principles of equity and good conscience will be considered. An annuitant may request a waiver as instructed by DCRB.

1701.8 Current Rate of Pay for the Position Occupied Immediately Before Retirement.

- (a) A disability annuitant's earned income for a calendar year is compared to the gross annual rate of basic pay in effect on December 31 of that year for the position occupied immediately before retirement. The earned income for disability annuitants is based on the rate for the grade and step which reflects the total amount of basic pay (both the grade and step and any additional basic pay) in effect on the date of retirement.
- (b) Income. The total amount of income from all sources is used to determine earning capacity (see definition of earned income in § 32(c)(2) of the Internal Revenue Code). This includes income received as gross wages from employers, net earnings from self-

employment, and deferred income that is earned in a calendar year. In determining an annuitant's income for a calendar year, the following apply:

- (1) Income is from two sources: wages and self-employment. All income that is subject to Federal employment taxes (i.e., Social Security or Medicare taxes) or self-employment taxes is earned income.
  - (2) Only income earned from personal work efforts or services is considered in determining earning capacity. All forms of non-work-related unearned income are excluded (e.g., pensions, inheritances, investment interest/dividends not related to self-employment).
  - (3) For determining annual income from wages or self-employment or both, income is earned in the calendar year the annuitant actually renders the personal work effort or service and either actually or constructively receives the remuneration.
  - (4) Income includes any District of Columbia salary offset amount.
  - (5) Income earned by a spouse is not included.
- (c) Wages. This term means the gross amount of all remuneration for services performed by an employee for his or her employer before any deductions or withholdings.
- (d) Self-Employment Income.
- (1) This term means remuneration that is received as an independent contractor, either as
    - (A) a sole proprietor;
    - (B) a professional in one's own practice; or
    - (C) a member of a partnership or corporation and regardless of whether the business entity is operated for profit.
  - (2) "Net earnings" from self-employment means gross revenue of the business from all sources before any other deductions or withholdings, minus

- (A) allowable business expenses;
- (B) any job-connected disability expenses; and
- (C) any return from investment allowance.