

2010

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REGISTER

RULES
OF GOVERNMENTAL
AGENCIES



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INTRODUCTION

The Illinois Register is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category. Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State Statute; and activities (meeting agendas; Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State Agencies; is also published in the Register. The Register is a weekly update of the Illinois Administrative Code (a compilation of the rules adopted by State agencies). The most recent edition of the Code, along with the Register, comprise the most current accounting of State agencies' rulemakings. The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1, et seq.].

ILLINOIS REGISTER PUBLICATION SCHEDULE FOR 2010

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
1	December 21, 2009	January 4, 2010
2	December 28, 2009	January 8, 2010
3	January 4, 2010	January 15, 2010
4	January 11, 2010	January 22, 2010
5	January 19, 2010	January 29, 2010
6	January 25, 2010	February 5, 2010
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21	May 10, 2010	May 21, 2010
22	May 17, 2010	May 28, 2010
23	May 24, 2010	June 4, 2010
24	June 1, 2010	June 11, 2010

<u>Issue #</u>	<u>Rules Due Date</u>	<u>Date of Issue</u>
25	June 7, 2010	June 18, 2010
26	June 14, 2010	June 25, 2010
27	June 21, 2010	July 2, 2010
28	June 28, 2010	July 9, 2010
29	July 6, 2010	July 16, 2010
30	July 12, 2010	July 23, 2010
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32	July 26, 2010	August 6, 2010
33	August 2, 2010	August 13, 2010
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36	August 23, 2010	September 3, 2010
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51	December 6, 2010	December 17, 2010
52	December 13, 2010	December 27, 2010
53	December 20, 2010	January 3, 2011

ILLINOIS VIOLENCE PREVENTION AUTHORITY

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Violence Prevention Grants
- 2) Code Citation: 89 Ill. Adm. Code 1400
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1400.100	New Section
1400.110	New Section
1400.120	New Section
1400.130	New Section
1400.140	New Section
1400.200	New Section
1400.210	New Section
1400.220	New Section
1400.230	New Section
1400.240	New Section
1400.250	New Section
1400.260	New Section
- 4) Statutory Authority: Implementing and authorized by Section 15 of the Illinois Violence Prevention Act [20 ILCS 4027/15]
- 5) A Complete Description of the Subjects and Issues Involved: Pursuant to Public Act 96-405 that granted rulemaking authority to the Illinois Violence Prevention Authority, these rules address policies and procedures utilized by the Illinois Violence Prevention Authority in awarding grants. The rules include general policies and procedures, and fiscal and monitoring provisions.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No

ILLINOIS VIOLENCE PREVENTION AUTHORITY

NOTICE OF PROPOSED RULES

- 11) Statement of Statewide Policy Objectives: Neither creates nor enlarges a State mandate within the meaning of Section 3b of the State Mandates Act [30 ILCS 805/3b].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: During the first 45 day notice period, interested persons may submit comments in writing to:

Barbara Shaw
Illinois Violence Prevention Authority
100 W. Randolph, Rm. 4-750
Chicago, Illinois 60601

312/814-1514 phone
312/814-8269
barbara.shaw@illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: This rulemaking affects municipalities and non-profit corporations if they want to apply for grants from the Illinois Violence Prevention Authority.
 - B) Reporting, bookkeeping or other procedures required for compliance: This rulemaking includes accounting and reporting requirements for agencies awarded grant funds.
 - C) Types of professional skills necessary for compliance: Program management and monitoring skills.
- 14) This rulemaking was not included on either of the 2 most recent agendas because: The dates had passed before the Illinois Violence Prevention Authority realized that advance notice of intent to promulgate rules is required.

The full text of the Proposed Rules begins on the next page:

ILLINOIS VIOLENCE PREVENTION AUTHORITY

NOTICE OF PROPOSED RULES

TITLE 89: SOCIAL SERVICES

CHAPTER XII: ILLINOIS VIOLENCE PREVENTION AUTHORITY

PART 1400

VIOLENCE PREVENTION GRANTS

SUBPART A: GENERAL ADMINISTRATIVE PROVISIONS

Section

1400.100	Administration of Violence Prevention Grants
1400.110	Conflict of Interest
1400.120	Grant Application Process
1400.130	Grant Application Requirements
1400.140	Funding Criteria

SUBPART B: FISCAL AND MONITORING PROVISIONS

Section

1400.200	Accounting Requirements
1400.210	Allowable Expenditures
1400.220	Non-Allowable Expenditures
1400.230	Grant Agreements
1400.240	Modification of Program and Budget
1400.250	Program and Fiscal Reporting
1400.260	Inspection of Records and On-Site Visits

AUTHORITY: Implementing and authorized by Section 15 of the Illinois Violence Prevention Act [20 ILCS 4027/15].

SOURCE: Adopted at 34 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL ADMINISTRATIVE PROVISIONS

Section 1400.100 Administration of Violence Prevention Grants

- a) The Illinois Violence Prevention Authority (Authority) is authorized to award grants to agencies to conduct violence prevention activities as outlined in Section 15 of the Illinois Violence Prevention Act [20 ILCS 4027/15].

ILLINOIS VIOLENCE PREVENTION AUTHORITY

NOTICE OF PROPOSED RULES

- b) Grants are subject to the Illinois Grant Funds Recovery Act [30 ILCS 705].

Section 1400.110 Conflict of Interest

No private organization or agency shall be eligible to receive grants from the Authority if a staff member or contractual employee of that organization or agency is a member of the Authority.

Section 1400.120 Grant Application Process

- a) In order to receive a grant from the Authority, agencies must submit an application in response to a Request for Proposals (RFP) issued by the Authority.
- b) The Authority shall issue an RFP for each grant program administered by the Authority. The RFP shall specify the deadline for the submission of applications, which shall provide applicants with 30 days to respond, and shall specify the purpose of the grant program, eligible applicants, the maximum amount for which an applicant may apply, and program requirements particular to the grant program for which the applicant is requesting funds. All RFPs for general distribution, other than RFPs issued to renewal applicants, will be posted on the Authority's website.
- c) All applications submitted by eligible applicants will be reviewed by a review committee for completeness and accuracy. Applications recommended for funding will be presented by staff for Authority approval based on the criteria specified in Section 1400.140.
- d) Applicants to be awarded grants will be notified within 7 days after the date of approval by the Authority. Applicants who are not awarded funds will be notified within 30 days after the date of Authority determination. A list of all grant awards will be posted on the Authority's website.
- e) Initial grant awards are for a 12 month period. Renewal grants for certain grant programs are available as specified in the RFP for the particular grant program, based on availability of funds. In order to receive renewal grants from the Authority, funding must be available and applicants must have submitted a complete and accurate renewal application and must have complied with previous grant agreements.

Section 1400.130 Grant Application Requirements

ILLINOIS VIOLENCE PREVENTION AUTHORITY

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A grant application must be submitted in a format prescribed by the Authority and must include the following information:

- a) Identifying information, including:
 - 1) Organization name and type, Federal Employer Identification Number, complete address, telephone number, and e-mail address;
 - 2) The name and telephone number of the organization's chief executive officer or executive director;
 - 3) The name, telephone number and e-mail address of the organization's contact person for purposes of the grant;
 - 4) A current certificate of good standing with the Secretary of State;
 - 5) For non-governmental entities, the applicant's Illinois Charitable Trust registration number or a statement that the agency is exempt.
- b) A Proposal Narrative that includes:
 - 1) A description of the applicant's capacity to perform the proposed activities and, when applicable, a history of past performance of the proposed activities or similar activities;
 - 2) A description of the community area and the population to be served or reached by the proposed activities;
 - 3) A description of how the applicant will meet grant program requirements as specified in the RFP for the specific grant program for which the applicant is requesting funds;
 - 4) A description of the staffing and management plan associated with conducting the proposed activities/services, when applicable; and
 - 5) Resumes of staff to be funded with grant funds or, if the position has not been filled, a job description.

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- c) A Proposed Budget that includes:
 - 1) Line item costs for personnel services, including a breakdown of fringe benefit costs, contractual services, supplies, travel and equipment costs for the proposed activities;
 - 2) The total cost of the proposed activities and amount requested from the Authority, including, when applicable, specific costs associated with meeting program requirements specified in the RFP for the specific grant program for which the applicant is applying for funds;
 - 3) Sources and amount of applicant and other funds to be utilized for the proposed activities;
 - 4) Three vendor quotations for equipment costs in excess of \$1,000; and
 - 5) Budget justification that details the line item costs and specifies how the costs were calculated.
- d) A Signed General Assurances Form that certifies and assures compliance with applicable federal and State laws and general grant requirements.

Section 1400.140 Funding Criteria

The Authority shall consider the following criteria in determining which applications to fund and the amount to be awarded to funded applicants:

- a) The amount of funds allocated by the Authority for the specific grant program for which the applicant has submitted an application;
- b) The degree to which the applicant submitted a complete and accurate application;
- c) The extent to which the proposed activities/services meet the specific grant program requirements for which the applicant has submitted an application, as specified in the RFP for the specific grant program for which the applicant is requesting funds;
- d) The extent to which different areas of the State are served or reached; and

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- e) The applicant's history of compliance with programming, reporting and accounting requirements pertaining to grants awarded under this Part or under any other government program.

SUBPART B: FISCAL AND MONITORING PROVISIONS

Section 1400.200 Accounting Requirements

The following requirements pertain to all grantees receiving Authority grant awards:

- a) All grantee accounting entries must be supported by appropriate source documents, recorded in books of original entry, and posted to a general ledger on a monthly basis.
- b) Each grantee shall maintain all fiscal records related to the grant for 3 years after the end of each budget period. In instances involving unresolved issues arising from an audit, pending litigation or unresolved fiscal reporting issues, records relating to the unresolved issues must be retained until the issues are resolved if beyond the 3 year requirement.
- c) Grantees shall expend funds in accordance with the contracted budget or in accordance with Authority re-allocation procedures pursuant to Section 1400.240.

Section 1400.210 Allowable Expenditures

Expenditures of Authority grant funds are allowable if they meet the following criteria and are not specified in Section 1400.220 as a non-allowable expenditure:

- a) Are necessary and reasonable for proper and efficient administration of the program and are not a general expense required to carry out the overall responsibilities of the agency;
- b) Are not allocable to or included as a cost of any other State or federally financed program in either the current or a prior period;
- c) Are net of all applicable credits;
- d) Are specifically identified with the provisions of a direct service or program activity;

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- e) Are actual expenditures of funds in support of program activities, documented by check number and/or internal ledger transfer of funds.

Section 1400.220 Non-Allowable Expenditures

Non-allowable costs include, but are not limited to:

- a) Alcoholic beverages;
- b) Bad debts or debt retirement;
- c) Contingencies or provision for unforeseen events;
- d) Contributions or donations;
- e) Entertainment, exclusive of incentives to encourage target group participation;
- f) Fines and penalties;
- g) Gratuities;
- h) Indirect cost plan allocations when the fiscal agent is also the applicant;
- i) Interest and financial costs;
- j) Legislative and lobbying expenses; and
- k) Real property payments or purchases.

Section 1400.230 Grant Agreements

- a) The Grant Agreement serves as the formal statement of mutual expectations between the Authority and the grantee. The Grant Agreement includes an attached budget and specifies the term of the agreement, the grant award amount and payment schedule, and the program and fiscal reporting schedule.
- b) The portion of the grantee's application that describes the services to be provided is incorporated in the Grant Agreement by reference.

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NOTICE OF PROPOSED RULES

Section 1400.240 Modification of Program and Budget

- a) The grantee shall not change, modify, revise, alter, amend or delete any part of the services or activities it has agreed to provide in the Grant Agreement without written approval of the Authority.
- b) The grantee has the responsibility to identify instances in which funds cannot be used in accordance with the Grant Agreement budget and must seek reallocation of these funds utilizing Authority forms and the following procedures:
 - 1) The grantee may reallocate up to \$1,000 of grant funds or up to 2% of the total annual budget, whichever is greater, to existing line items in the approved Grant Agreement budget. The grantee must note the reallocation in the fiscal reporting forms.
 - 2) If the grantee wishes to reallocate amounts less than \$1,000 of the grant funds or up to 2% of the total annual budget, whichever is greater, to an expense that creates a new line item in the approved budget, the grantee must submit to the Authority a written request and explanation for reallocation.
 - 3) If the grantee wishes to reallocate amounts of \$1,000 or more of grant funds or up to 2% of the total annual budget, whichever is greater, the grantee must submit to the Authority a written request and explanation for the reallocation.
 - 4) The Authority shall grant a reallocation of funds when it determines that funds will be used for allowable expenses consistent with the funded services.
 - 5) The Authority shall inform the grantee within 30 days after receipt of a request, if the request is not approved.

Section 1400.250 Program and Fiscal Reporting

- a) The grantee shall submit to the Authority financial and activity reports on a timetable specified in the RFP and the Grant Agreement. The reports shall be on forms specified by the Authority. All report forms must be received by the

ILLINOIS VIOLENCE PREVENTION AUTHORITY

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Authority no later than 15 days following the end of the report period and 30 days following the end of the grant. The reports shall detail activities conducted, participants involved, expenditures and revisions, if any, of timetables and activities to reflect the current program status and future activity. Failure to comply within the 15-day period may result in the delay of subsequent award installments or termination of the Grant Agreement.

- b) In addition to the reports required by subsection (a), grantee agrees to render to the Authority, upon the demand of the Authority, a complete and satisfactory accounting of any and all monies granted to grantee pursuant to the Grant Agreement.

Section 1400.260 Inspection of Records and On-Site Visits

- a) The grantee shall permit agents of the Authority to inspect the financial records of the grantee as they relate to the Grant Agreement.
- b) The grantee shall permit agents of the Authority to enter the premises of the grantee to observe the operation of the grantee's program and to conduct a site visit for general monitoring purposes. The Authority shall give the grantee reasonable notice of intent to enter the premises for purposes of observing and/or conducting a site visit.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Supplemental Nutrition Assistance Program
- 2) Code Citation: 89 Ill. Adm. Code 121
- 3) Section Number: 121.26 Adopted Action:
Amendment
- 4) Statutory Authority: Implementing Sections 12-4.4 through 12-4.6 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13]
- 5) Effective Date of Amendment: April 19, 2010
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in the Illinois Register: April 24, 2009; 33 Ill. Reg. 6009
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: This rulemaking was proposed under the Food Stamp Program name. Since that time, the name of the program was changed to the Supplemental Nutrition Assistance Program. No other substantive changes were made in the text of the proposed rulemaking.
- 12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
121.57	Amendment	33 Ill. Reg. 5248; April 10, 2009
121.58	Amendment	33 Ill. Reg. 5248; April 10, 2009

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

121.30	Amendment	33 Ill. Reg. 11772; August 14, 2009
121.52	Amendment	33 Ill. Reg. 11772; August 14, 2009
121.55	Amendment	33 Ill. Reg. 11772; August 14, 2009
121.140	Amendment	33 Ill. Reg. 11772; August 14, 2009
121.60	Amendment	33 Ill. Reg. 14463; October 23, 2009
121.61	Amendment	33 Ill. Reg. 14463; October 23, 2009
121.63	Amendment	33 Ill. Reg. 14463; October 23, 2009
121.63	Amendment	34 Ill. Reg. 1512; January 29, 2010

- 15) Summary and Purpose of Rulemaking: This rulemaking is the result of a Food and Nutrition Service clarification that requires DHS to impose a progressive Supplemental Nutrition Assistance Program (SNAP) sanction on individuals who fail to comply with a SNAP work requirement, a SNAP Employment and Training (FSE&T) requirement, or a TANF work and training requirement. As a result of this rulemaking, if an individual fails to comply with work registration requirements, SNAP E&T program requirements, or TANF work and training requirements, or if the individual voluntarily quits a job or reduces his or her work hours, a sanction shall be imposed on that individual for 3 months for the first or second violation and six months for the third and subsequent violations.

- 16) Information and questions regarding this adopted amendment shall be directed to:

Tracie Drew, Chief
Bureau of Administrative Rules and Procedures
Department of Human Services
100 South Grand Avenue East
Harris Building, 3rd Floor
Springfield, Illinois 62762

217/785-9772

- 17) Does this amendment require the preview of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code? No

The full text of the Adopted Amendment begins on the next page:

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES
SUBCHAPTER b: ASSISTANCE PROGRAMSPART 121
SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

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- 121.1 Application for Assistance
- 121.2 Time Limitations on the Disposition of an Application
- 121.3 Approval of an Application and Initial Authorization of Assistance
- 121.4 Denial of an Application
- 121.5 Client Cooperation
- 121.6 Emergency Assistance
- 121.7 Expedited Service
- 121.8 Express Stamps Application Project
- 121.10 Interviews

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

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- 121.18 Work Requirement
- 121.19 Ending a Voluntary Quit Disqualification (Repealed)
- 121.20 Citizenship
- 121.21 Residence
- 121.22 Social Security Numbers
- 121.23 Work Registration/Participation Requirements
- 121.24 Individuals Exempt from Work Registration Requirements
- 121.25 Failure to Comply with Work Provisions
- 121.26 ~~Periods~~Period of Sanction
- 121.27 Voluntary Job Quit/Reduction in Work Hours
- 121.28 Good Cause for Voluntary Job Quit/Reduction in Work Hours
- 121.29 Exemptions from Voluntary Quit/Reduction in Work Hours Rules

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DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

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121.33	Unearned Income In-Kind
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121.40	Earned Income
121.41	Budgeting Earned Income
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DEPARTMENT OF HUMAN SERVICES

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- 121.81 Initiation of Administrative Fraud Hearing (Repealed)
- 121.82 Definition of Fraud (Renumbered)
- 121.83 Notification To Applicant Households (Renumbered)
- 121.84 Disqualification Upon Finding of Fraud (Renumbered)
- 121.85 Court Imposed Disqualification (Renumbered)
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DEPARTMENT OF HUMAN SERVICES

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121.222	Volunteer Community Work Component (Repealed)

DEPARTMENT OF HUMAN SERVICES

NOTICE OF ADOPTED AMENDMENT

- 121.223 Work Experience Component (Repealed)
- 121.224 Supportive Service Payments to Meet the Work Requirement (Repealed)
- 121.225 Meeting the Work Requirement with the Illinois Works Component (Repealed)
- 121.226 Meeting the Work Requirement with the JTPA Employability Services Component (Repealed)

AUTHORITY: Implementing Sections 12-4.4 through 12-4.6 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13].

SOURCE: Adopted December 30, 1977; amended at 3 Ill. Reg. 5, p. 875, effective February 2, 1979; amended at 3 Ill. Reg. 31, p. 109, effective August 3, 1979; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 41, p. 165, effective October 11, 1979; amended at 3 Ill. Reg. 42, p. 230, effective October 9, 1979; amended at 3 Ill. Reg. 44, p. 173, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 3, p. 49, effective January 9, 1980; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 23, 1980; amended at 4 Ill. Reg. 10, p. 253, effective February 27, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 17, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1131, effective January 16, 1981; amended at 5 Ill. Reg. 4586, effective April 15, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 12736, effective October 29, 1981; amended at 6 Ill. Reg. 1653, effective January 17, 1982; amended at 6 Ill. Reg. 2707, effective March 2, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10208, effective August 9, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 5195; amended at 7 Ill. Reg. 5715, effective May 1, 1983; amended at 7 Ill. Reg. 8118, effective June 24, 1983; peremptory amendment at 7 Ill. Reg. 12899, effective October 1, 1983; amended at 7 Ill. Reg. 13655, effective October 4, 1983; peremptory amendment at 7 Ill. Reg. 16067, effective November 18, 1983; amended at 7 Ill. Reg. 16169, effective November 22, 1983; amended at 8 Ill. Reg. 5673, effective April 18, 1984; amended at 8 Ill. Reg. 7249, effective May 16, 1984; peremptory amendment at 8 Ill. Reg. 10086, effective July 1, 1984; amended at 8 Ill. Reg. 13284, effective July 16, 1984; amended at 8 Ill. Reg. 17900, effective September 14, 1984; amended (by adding Section being codified with no substantive change) at 8 Ill. Reg. 17898; peremptory amendment at 8 Ill. Reg. 19690,

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effective October 1, 1984; preemptory amendment at 8 Ill. Reg. 22145, effective November 1, 1984; amended at 9 Ill. Reg. 302, effective January 1, 1985; amended at 9 Ill. Reg. 6804, effective May 1, 1985; amended at 9 Ill. Reg. 8665, effective May 29, 1985; preemptory amendment at 9 Ill. Reg. 8898, effective July 1, 1985; amended at 9 Ill. Reg. 11334, effective July 8, 1985; amended at 9 Ill. Reg. 14334, effective September 6, 1985; preemptory amendment at 9 Ill. Reg. 15582, effective October 1, 1985; amended at 9 Ill. Reg. 16889, effective October 16, 1985; amended at 9 Ill. Reg. 19726, effective December 9, 1985; amended at 10 Ill. Reg. 229, effective December 20, 1985; preemptory amendment at 10 Ill. Reg. 7387, effective April 21, 1986; preemptory amendment at 10 Ill. Reg. 7941, effective May 1, 1986; amended at 10 Ill. Reg. 14692, effective August 29, 1986; preemptory amendment at 10 Ill. Reg. 15714, effective October 1, 1986; Sections 121.200 thru 121.208 recodified to 89 Ill. Adm. Code 165 at 10 Ill. Reg. 21094; preemptory amendment at 11 Ill. Reg. 3761, effective February 11, 1987; emergency amendment at 11 Ill. Reg. 3754, effective February 13, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 9968, effective May 15, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 10269, effective May 22, 1987; amended at 11 Ill. Reg. 10621, effective May 25, 1987; preemptory amendment at 11 Ill. Reg. 11391, effective July 1, 1987; preemptory amendment at 11 Ill. Reg. 11855, effective June 30, 1987; emergency amendment at 11 Ill. Reg. 12043, effective July 6, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 13635, effective August 1, 1987; amended at 11 Ill. Reg. 14022, effective August 10, 1987; emergency amendment at 11 Ill. Reg. 15261, effective September 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 15480, effective September 4, 1987; amended at 11 Ill. Reg. 15634, effective September 11, 1987; amended at 11 Ill. Reg. 18218, effective October 30, 1987; preemptory amendment at 11 Ill. Reg. 18374, effective October 30, 1987; amended at 12 Ill. Reg. 877, effective December 30, 1987; emergency amendment at 12 Ill. Reg. 1941, effective December 31, 1987, for a maximum of 150 days; amended at 12 Ill. Reg. 4204, effective February 5, 1988; amended at 12 Ill. Reg. 9678, effective May 23, 1988; amended at 12 Ill. Reg. 9922, effective June 1, 1988; amended at 12 Ill. Reg. 11463, effective June 30, 1988; amended at 12 Ill. Reg. 12824, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 14045, effective August 19, 1988, for a maximum of 150 days; preemptory amendment at 12 Ill. Reg. 15704, effective October 1, 1988; preemptory amendment at 12 Ill. Reg. 16271, effective October 1, 1988; amended at 12 Ill. Reg. 20161, effective November 30, 1988; amended at 13 Ill. Reg. 3890, effective March 10, 1989; amended at 13 Ill. Reg. 13619, effective August 14, 1989; preemptory amendment at 13 Ill. Reg. 15859, effective October 1, 1989; amended at 14 Ill. Reg. 729, effective January 1, 1990; amended at 14 Ill. Reg. 6349, effective April 13, 1990; amended at 14 Ill. Reg. 13202, effective August 6, 1990; preemptory amendment at 14 Ill. Reg. 15158, effective October 1, 1990; amended at 14 Ill. Reg. 16983, effective September 30, 1990; amended at 15 Ill. Reg. 11150, effective July 22, 1991; amended at 15 Ill. Reg. 11957, effective August 12, 1991; preemptory amendment at 15 Ill. Reg. 14134, effective October 1, 1991; emergency amendment at 16 Ill. Reg. 757, effective January 1, 1992, for a maximum of 150

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days; amended at 16 Ill. Reg. 10011, effective June 15, 1992; amended at 16 Ill. Reg. 13900, effective August 31, 1992; emergency amendment at 16 Ill. Reg. 16221, effective October 1, 1992, for a maximum of 150 days; preemptory amendment at 16 Ill. Reg. 16345, effective October 1, 1992; amended at 16 Ill. Reg. 16624, effective October 23, 1992; amended at 17 Ill. Reg. 644, effective December 31, 1992; amended at 17 Ill. Reg. 4333, effective March 19, 1993; amended at 17 Ill. Reg. 14625, effective August 26, 1993; emergency amendment at 17 Ill. Reg. 15149, effective September 7, 1993, for a maximum of 150 days; preemptory amendment at 17 Ill. Reg. 17477, effective October 1, 1993; expedited correction at 17 Ill. Reg. 21216, effective October 1, 1993; amended at 18 Ill. Reg. 2033, effective January 21, 1994; emergency amendment at 18 Ill. Reg. 2509, effective January 27, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 3427, effective February 28, 1994; amended at 18 Ill. Reg. 8921, effective June 3, 1994; amended at 18 Ill. Reg. 12829, effective August 5, 1994; amended at 18 Ill. Reg. 14103, effective August 26, 1994; amended at 19 Ill. Reg. 5626, effective March 31, 1995; amended at 19 Ill. Reg. 6648, effective May 5, 1995; emergency amendment at 19 Ill. Reg. 12705, effective September 1, 1995, for a maximum of 150 days; preemptory amendment at 19 Ill. Reg. 13595, effective October 1, 1995; amended at 20 Ill. Reg. 1593, effective January 11, 1996; preemptory amendment at 20 Ill. Reg. 2229, effective January 17, 1996; amended at 20 Ill. Reg. 7902, effective June 1, 1996; amended at 20 Ill. Reg. 11935, effective August 14, 1996; emergency amendment at 20 Ill. Reg. 13381, effective October 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 13668, effective October 8, 1996, for a maximum of 150 days; amended at 21 Ill. Reg. 3156, effective February 28, 1997; amended at 21 Ill. Reg. 7733, effective June 4, 1997; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; emergency amendment at 22 Ill. Reg. 1954, effective January 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 5502, effective March 4, 1998; amended at 22 Ill. Reg. 7969, effective May 15, 1998; emergency amendment at 22 Ill. Reg. 10660, effective June 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 12167, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16230, effective September 1, 1998; amended at 22 Ill. Reg. 19787, effective October 28, 1998; emergency amendment at 22 Ill. Reg. 19934, effective November 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 20099, effective November 1, 1998; emergency amendment at 23 Ill. Reg. 2601, effective February 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 3374, effective March 1, 1999; amended at 23 Ill. Reg. 7285, effective June 18, 1999; emergency amendment at 23 Ill. Reg. 13253, effective October 13, 1999, for a maximum of 150 days; emergency amendment at 24 Ill. Reg. 3871, effective February 24, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 4180, effective March 2, 2000; amended at 24 Ill. Reg. 10198, effective June 27, 2000; amended at 24 Ill. Reg. 15428, effective October 10, 2000; emergency amendment at 24 Ill. Reg. 15468, effective October 1, 2000, for a maximum of 150 days; amended at 25 Ill. Reg. 845, effective January 5, 2001; amended at 25 Ill. Reg. 2423, effective January 25, 2001; emergency amendment at 25 Ill. Reg. 2439, effective January 29, 2001, for a

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maximum of 150 days; emergency amendment at 25 Ill. Reg. 3707, effective March 1, 2001, for a maximum of 150 days; emergency expired July 28, 2001; amended at 25 Ill. Reg. 7720, effective June 7, 2001; amended at 25 Ill. Reg. 10823, effective August 12, 2001; amended at 25 Ill. Reg. 11856, effective August 31, 2001; emergency amendment at 25 Ill. Reg. 13309, effective October 1, 2001, for a maximum of 150 days; amended at 26 Ill. Reg. 151, effective January 1, 2002; amended at 26 Ill. Reg. 2025, effective February 1, 2002; amended at 26 Ill. Reg. 13530, effective September 3, 2002; preemptory amendment at 26 Ill. Reg. 15099, effective October 1, 2002; amended at 26 Ill. Reg. 16484, effective October 25, 2002; amended at 27 Ill. Reg. 2889, effective February 7, 2003; expedited correction at 27 Ill. Reg. 14262, effective February 7, 2003; amended at 27 Ill. Reg. 4583, effective February 28, 2003; amended at 27 Ill. Reg. 7273, effective April 7, 2003; amended at 27 Ill. Reg. 12569, effective July 21, 2003; preemptory amendment at 27 Ill. Reg. 15604, effective October 1, 2003; amended at 27 Ill. Reg. 16108, effective October 6, 2003; amended at 27 Ill. Reg. 18445, effective November 20, 2003; amended at 28 Ill. Reg. 1104, effective December 31, 2003; amended at 28 Ill. Reg. 3857, effective February 13, 2004; amended at 28 Ill. Reg. 10393, effective July 6, 2004; preemptory amendment at 28 Ill. Reg. 13834, effective October 1, 2004; emergency amendment at 28 Ill. Reg. 15323, effective November 10, 2004, for a maximum of 150 days; emergency expired April 8, 2005; amended at 29 Ill. Reg. 2701, effective February 4, 2005; amended at 29 Ill. Reg. 5499, effective April 1, 2005; preemptory amendment at 29 Ill. Reg. 12132, effective July 14, 2005; emergency amendment at 29 Ill. Reg. 16042, effective October 4, 2005, for a maximum of 150 days; emergency expired March 2, 2006; preemptory amendment at 29 Ill. Reg. 16538, effective October 4, 2005; emergency amendment at 30 Ill. Reg. 7804, effective April 6, 2006, for a maximum of 150 days; emergency expired September 2, 2006; amended at 30 Ill. Reg. 11236, effective June 12, 2006; amended at 30 Ill. Reg. 13863, effective August 1, 2006; amended at 30 Ill. Reg. 15681, effective September 12, 2006; preemptory amendment at 30 Ill. Reg. 16470, effective October 1, 2006; amended at 31 Ill. Reg. 6991, effective April 30, 2007; amended at 31 Ill. Reg. 10482, effective July 9, 2007; amended at 31 Ill. Reg. 11318, effective July 23, 2007; preemptory amendment at 31 Ill. Reg. 14372, effective October 1, 2007; amended at 32 Ill. Reg. 2813, effective February 7, 2008; amended at 32 Ill. Reg. 4380, effective March 12, 2008; amended at 32 Ill. Reg. 4813, effective March 18, 2008; amended at 32 Ill. Reg. 9621, effective June 23, 2008; preemptory amendment at 32 Ill. Reg. 16905, effective October 1, 2008; preemptory amendment to Sections 121.94(c), 121.96(d)(2) and 121.150(b) suspended at 32 Ill. Reg. 18908, effective November 19, 2008; suspension withdrawn by the Joint Committee on Administrative Rules at 33 Ill. Reg. 200, effective February 5, 2009; preemptory amendment repealed by emergency rulemaking at 33 Ill. Reg. 3514, effective February 5, 2009, for a maximum of 150 days; preemptory amendment at 32 Ill. Reg. 18092, effective November 15, 2008; emergency amendment at 33 Ill. Reg. 4187, effective February 24, 2009, for a maximum of 150 days; emergency expired on July 23, 2009; preemptory amendment at 33 Ill. Reg. 5537, effective April 1, 2009; emergency amendment at 33 Ill. Reg. 11322, effective July 20, 2009, for

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a maximum of 150 days; emergency expired December 16, 2009; amended at 33 Ill. Reg. 12802, effective September 3, 2009; amended at 33 Ill. Reg. 14121, effective September 22, 2009; emergency amendment at 33 Ill. Reg. 14627, effective October 13, 2009, for a maximum of 150 days; emergency expired March 11, 2010; amended at 33 Ill. Reg. 16875, effective November 30, 2009; amended at 33 Ill. Reg. 17350, effective December 14, 2009; amended at 34 Ill. Reg. 4777, effective March 17, 2010; amended at 34 Ill. Reg. 5295, effective April 12, 2010; amended at 34 Ill. Reg. 5823, effective April 19, 2010.

SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section 121.26 Periods~~Period~~ of Sanction

- a) If an individual fails to comply with work registration requirements (Section 121.23), or fails to comply with the FSE&T program requirements (Section 121.184), or fails to comply with TANF work and training requirements (89 Ill. Adm. Code 112.72), or voluntarily quits a job or reduces work hours (Section 121.27), a ~~3-month~~ sanction shall be imposed on that individual for:-
 - 1) 3 months for the first violation;
 - 2) 3 months for the second violation; and
 - 3) 6 months for the third or subsequent violations.
- b) The period of sanction may end early if:
 - 1) the individual becomes exempt from the requirements; or
 - 2) the individual is no longer a household member. However, if the individual becomes part of another household, the remainder of that sanction period will still be in effect, and that individual's income will be calculated for the new household in accordance with Section 121.73.
- c) Participation may be resumed following the end of the last fiscal month of the sanction period if:
 - 1) an application is filed (if the case was canceled as a result of the sanction), or a request is made to add the individual to an active case (if the case remained eligible when the individual was sanctioned); and

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- 2) the individual complies with the program requirements for which the individual was sanctioned; and
- 3) all other eligibility requirements are met.
- d) For individuals in GA/FS households who are sanctioned for failure to cooperate with comparable requirements of FSE&T, the SNAP benefit~~food stamp~~ sanction period does not have to coincide with the GA sanction period.

(Source: Amended at 34 Ill. Reg. 5823, effective April 19, 2010)

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- 1) Heading of the Part: Construction and Filing of Life Insurance and Annuity Forms
- 2) Code Citation: 50 Ill. Adm. Code 1405
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
1405.10	Amendment
1405.15	New Section
1405.20	Amendment
1405.30	Amendment
1405.40	Amendment
1405.50	Amendment
1405.70	Amendment
1405.80	Amendment
1405.90	Amendment
- 4) Statutory Authority: Implementing Section 143 and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/143 and 401]
- 5) Effective Date of Rulemaking: April 7, 2010
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rulemaking, including any material incorporated by reference, is on file in the principal office of the Division of Insurance and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 33 Ill. Reg. 5139; April 10, 2009
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version:
 - a) Made multiple nonsubstantive changes requested by JCAR.
 - b) Deleted or changed "Department of Financial and Professional Regulation" and "Division of Insurance" to "Department of Insurance" throughout the rule.

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- c) Deleted the second sentence in Section 1405.20(e)(7).
- d) In Section 1405.40(v) and (v)(1), changed "Incontestable" to "Incontestability".
- 12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The primary substantive amendment to this Part, found in Section 1405.40(p), addresses the fact that disability benefits may only be added to a life policy if the disability is total and permanent. The amendments to this Part define total and permanent disability as one that results in the insured's inability to work and earn money because of an injury or illness from which recovery is unlikely at any time in the future and that is expected to continue indefinitely or result in death. This is consistent with Section 4 of the Illinois Insurance Code [215 ILCS 5/4].
- 16) Information and questions regarding this adopted rulemaking shall be directed to:

Cindy Colonius
Consumer Market Division
Department of Insurance
320 West Washington Street
Springfield, Illinois 62767-0001

217/782-4572

The full text of the Adopted Amendments begins on the next page:

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TITLE 50: INSURANCE
CHAPTER I: DEPARTMENT OF INSURANCE
SUBCHAPTER s: LEGAL RESERVE LIFE INSURANCEPART 1405
CONSTRUCTION AND FILING OF LIFE INSURANCE AND ANNUITY FORMS

Section

1405.10	Authority
<u>1405.15</u>	<u>Definitions</u>
1405.20	Illinois Guidelines for Filing and Approval of Life and Annuity Forms
1405.30	Applications
1405.40	Policy Forms
1405.50	Group Insurance
1405.60	Franchise Life Insurance
1405.70	Annuities
1405.80	Alternate and/or Insert Pages
1405.90	Substitution Filings

AUTHORITY: Implementing Section 143 and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/143 and 401].

SOURCE: Filed July 11, 1972, effective August 1, 1972; codified at 7 Ill. Reg. 3466; amended at 12 Ill. Reg. 22184, effective December 16, 1988; amended at 34 Ill. Reg. 5835, effective April 7, 2010.

Section 1405.10 Authority

This Part is issued by the Director of the Department of Insurance (Director) pursuant to Section 401 of the Illinois Insurance Code, which empowers the Director ~~to make reasonable rules and regulations as may be necessary for making effective~~ the insurance laws of this State. This Part implements Section 143 of the Illinois Insurance Code [215 ILCS 5/143](~~Ill. Rev. Stat. 1987, ch. 73, par. 755~~) by establishing a "Policy Form Manual" designed to make uniform the requirements and practices in the filing of certain policy forms with the Director.

(Source: Amended at 34 Ill. Reg. 5835, effective April 7, 2010)

Section 1405.15 Definitions

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Code means the Illinois Insurance Code [215 ILCS 5].

Department means the Department of Insurance.

Director means the Director of the Department of Insurance.

(Source: Added at 34 Ill. Reg. 5835, effective April 7, 2010)

Section 1405.20 Illinois Guidelines ~~for~~ Filing and Approval of Life and Annuity Forms

Following are some general requirements ~~that~~~~which~~ should be helpful to industry personnel involved in drafting and filing policy forms.

a) Policy Forms

- 1) "Policy Form" Defined. The term "policy form" as used in ~~this Part~~~~these rules~~ is defined in the Insurance Code. It means any policy, certificate, endorsement, rider, by-law or other matter incorporated by reference or an application blank. It does not include riders or endorsements issued or made at the request of the individual policyholder relating to the manner of distribution of benefits or to the reservation of rights and benefits under a life insurance policy.
- 2) Policy forms exempt from filing are as follows:
 - A) Notice Regarding Replacement (see 50 Ill. Adm. Code 917.70).
 - B) Policy Summaries.
 - C) Buyer's Guides (see 50 Ill. Adm. Code 930.40(a)).
- 3) Policy forms prohibited pursuant to Sections 143(1) and 224(1)(c) of the ~~Illinois Insurance Code~~ are as follows: ~~(Ill. Rev. Stat. 1987, ch. 73, pars. 755(1) and 836(1)(c)).~~
 - A) Certificates issued in lieu of a duplicate insurance policy.
 - B) Forms containing provisions excluding scuba diving, hang-gliding, motorcycle racing, race car or stock car racing, or hazardous

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sports.

b) Form Numbers

1) Each "policy form" must be designated by a suitable form number ~~that~~which may be made up of numerical digits or letters, or both, in the lower left-hand corner of the first page. The form number shall be sufficient to distinguish the basic form from all others used by the insurer. Edition date and/or designation of a state where a special edition is required is permitted in ~~this~~such space, and if printed as a continuation of the form number, will be considered a part ~~of the form~~thereof. The appearance of a company's stock number and/or printing date in proximity to the form number is permitted.

A) ~~If~~Where a descriptive title is in close proximity to the form number, it will not be considered a part of that number for approval purposes unless inclusion is requested by the company.

B) Refer to Section 1405.80 ~~of this Part~~ for instructions relating to form numbers when filing a policy on an insert page basis.

2) Since the form number must be sufficient to identify any form ~~that~~which has been issued by a company, each submission must bear a unique number. A recently approved but unissued form may be corrected or changed by filing a substitute page or form, which may retain the original form number.

c) General Form Requirements pursuant to Section 149 of the ~~Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, par. 761).~~

1) The name of the company shall appear on the form.

2) Policy shall show location of the ~~home office~~Home Office and ~~principal office~~Principal Office, if different.

3) Policy shall indicate the ~~issue~~Issue or ~~policy date~~Policy Date and the ~~effective date~~Effective Date, if different.

4) Rubber stamp deletions, mechanical overprints or paste-over "stickers" are

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permitted with the prior approval of the Department (~~for~~For rubber stamp endorsements, see Section 1405.20(d)(~~78~~)-of this Part).

- 5) The name or title of any policy or class of policies may not misrepresent the nature of the policy thereof. The title shall be specifically descriptive, such as: Universal, Term, Annuity, Endowment or Whole Life. Inclusion of words such as "special", "select", "preferred" or "inflation" are not allowed in the title as they imply receiving something not normally offered in a life policy, in violation of Sections 143(1) and 149 of the Illinois Insurance Code.

d) Preparation of Forms

- 1) "Policy ~~forms~~Forms" must be submitted pursuant to 50 Ill. Adm. Code 916 in duplicate.
- 2) "Policy ~~forms~~Forms" submitted for formal approval shall be submitted in the form intended for actual issue. Typewritten forms may be used only for single cases or when their use will be too infrequent to justify other preparation.
- 3) All blank spaces of each policy form must be filled in (completed in John Doe manner). The purpose and use of the form shall be explained in the submission letter.
- 4) When submitting a "policy form" to which a previously approved copy of the application will be attached when issued, a copy of the application shall be attached to the policy form, or if previously approved, reference must be made to approval date and form number of the previously approved application.
- 5) On applicable life policy forms, nonforfeiture values, if any, for the age and plan of insurance used in filling in the form, must be included.
- 6) On group forms, variable material may be indicated for language that which may vary from case to case. Variable material shall consist of benefit provisions and benefit levels.
- 7) ~~Procedures for filing and approval without review of life policies as well~~

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~~as the completion of Certifications of Compliance are set forth in 50 Ill. Adm. Code 916.~~

~~7)8)~~ All rubber stamp endorsements should be submitted for approval, ~~in duplicate~~, under the insurer's letterhead and filed in accordance with 50 Ill. Adm. Code 916.

~~8)9)~~ Combination forms (for Life and Accident and Health) shall be submitted ~~in duplicate~~ to both the Life Unit and the Accident and Health Unit of the Product Evaluation Section.

~~10)~~ ~~Use of a 'pilot' form is recommended before submission of an entirely new series of policy forms.~~

e) Letters of Submission

The letter of submission must be ~~in duplicate~~, signed by a representative of the company authorized to submit forms for filing or approval and must contain the following information:

- 1) The letterhead of the company shall show the name of the company for whom the forms are being submitted.
- 2) The identifying form number of each form submitted.
- 3) If the form is a new one, not replacing an existing form, a statement to that effect.
- 4) If the form is intended to supersede another approved form, the form number and the approval date of the superseded form must be stated, together with a statement ~~describing all~~ ~~to any~~ material changes to the previously approved forms.
- 5) If a company submits a form ~~that which~~ has been previously submitted, but has not been approved, the company shall advise the Department of the date of submission or disapproval of the previously submitted form and any material changes.
- 6) If the form is other than a policy or contract, give the form number of the policy or contract form or forms with which it will be used, or, if for more

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general use, describe the type or group of such forms.

- 7) When a form is approved, in the case of a SERFF filing, a final disposition will be issued in the SERFF filing. one copy of the submission letters will be stamped "approved" and returned to the company. To expedite individual approval, the Department of Insurance (Department) encourages companies to submit separate submission letters with each form submitted.
- 8) Reference to previously approved forms shall provide date of approval of thosesuch forms.

(Source: Amended at 34 Ill. Reg. 5835, effective April 7, 2010)

Section 1405.30 Applications

a) General

- 1) The application for a policy shall contain spaces for the name and signature of the producer or other licensee who solicited and wrote the application, as required by Section 500-75493.2 of the Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, par. 1065.40-2) and the policy or contract shall contain spaces for a resident producer's countersignature if the policy has been negotiated, solicited or effected by a non-resident producer as required by Section 497.2 of the Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, par. 1065.55-2).
- 2) The size of the type in the declaration portion of an application must meet a reasonable standard of legibility.
- 3) In applications providing for home office endorsement, there shall be no change in the amount of insurance or benefits, unless agreed to in writing by the applicant.
- 4) Applications shall fully comply with the applicable Sectionssections of Article XL of the Illinois Insurance Code, (Insurance Information and Privacy Protection (Ill. Rev. Stat. 1987, ch. 73, pars. 1065.701 et seq.).

b) Health Questions

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- 1) Questions requiring applicant's opinion regarding past or present health of a person proposed for coverage shall be asked as to the best of the applicant's knowledge and belief.
- 2) Questions regarding an applicant's past or present health ~~that~~which are phrased so as to require factual information rather than a statement of the applicant's opinion need not be ~~so~~qualified as described in subsection (b)(1)~~above~~.
- 3) Medical Authorization in an application may be handled in one of the following ways:
 - A) By a direct question to be answered "yes" or "no" ~~that~~which clearly indicates ~~that~~the applicant has or has not waived the privilege; or
 - B) By a statement in the declaration immediately above or in close conjunction to the signature line; or
 - C) By a separate authorization requiring a separate signature of the applicant or other person granting the authorization.
- c) Automatic Premium Loan Provision
The application may provide for a specific election of an automatic premium loan provision if ~~that~~such provision is offered in the policy. Failure to elect on the part of the applicant shall result in no election of the automatic premium loan provision, as provided for in Section 1405.40(c)~~of this Part~~.
- d) Dividend Election
If the contract applied for is participating, the application ~~shall~~may provide for election of ~~all~~available dividend ~~options~~,~~option~~ as provided for in Section 1405.40(j)~~of this Part~~.
- e) Premium Mode
"Salary Savings", "Salary Deduction", "Payroll Deduction" and similar designations may be used.
- f) Replacement
Applications shall be drafted to comply with the replacement provisions of 50 Ill.

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Adm. Code 917.

(Source: Amended at 34 Ill. Reg. 5835, effective April 7, 2010)

Section 1405.40 Policy Forms

a) Payment of Premiums

- 1) Receipt – Section 224(1)(a) of the ~~Illinois Insurance~~ Code requires that a policy of life insurance shall contain in substance the following: *A provision that all premiums after the first shall be payable in advance either at the home office of the company or to an agent of the company, upon delivery of a receipt signed by one or more of the officers who shall be designated in the policy, when such receipt is requested by the policyholder.*
- 2) Premium Deposits – Contractual premiums under individual policy forms may be captioned as "Premium deposits" (50 Ill. Adm. Code 909).
- 3) Prepayment of Premiums – Specific premiums may be paid in advance, subject to discount.
- 4) Advance Premium Deposits – A fund or account for payment of unspecified premiums (whether by policy or by rider) must conform to the requirements of Section 240 of the ~~Illinois Insurance~~ Code (~~Ill. Rev. Stat. 1987, ch. 73, pars. 852~~).
- 5) Grace Period – Policy must provide for continuance in force during the grace period and deduction (not necessarily payment) of any unpaid premium in settlement under the policy pursuant to Section 224(1)(b) of the ~~Illinois Insurance~~ Code.

b) Continuation of Premiums Beyond Maturity

If a policy provides for continuation of premiums, on an optional basis, beyond an initial or normal maturity date, it must be made clear that coverage and all applicable policy provisions also continue while premiums are being paid. The policyholder must be made aware of applicable policy values while premiums are so continued: either by including ~~those such~~ values in the policy; or by specifying that notices of the current value will be sent to the policyholder upon request.

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c) Automatic Premium Loan Provision

- 1) Policy may provide benefit on a positive elective basis, but not as an automatic nonforfeiture benefit. For provisions regarding automatic premium loans in applications, see Section 1405.30(c).
- 2) Provision must conform to the loan provision of the policy, subject to Sections 224(1)(f), 229.3 and 229.5 of the ~~Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, pars. 836(1)(f), 841.3 and 841.5)~~. The provision must permit revocation of election upon written request.
- 3) *Notification of the policyholder with respect to the initial interest rate on an automatic premium loan must be made as soon as it is reasonably practicable after making the initial loan, but in no event more than 90 days after the initial loan is made. Notification need not be given to the policyholder when a further premium loan is added unless a loan rate increase occurs.* ~~(Section 229.5(b)(5)(ii) and (iii) of the Code).~~ ~~When a loan rate increase occurs,~~ reasonable advance notice of any increase in rate must be made, ~~but in~~ In no event shall the notice be given less than 15 days prior to the increase in rate. ~~(Ill. Rev. Stat. 1987, ch. 73, par. 841.5(b)(5)(ii) and (iii)).~~

d) Loan Interest Rate

- 1) Provision must conform to Sections 224(1)(f), 229.3 and 229.5 of the ~~Illinois Insurance Code~~. Any variable rate must include a specified maximum rate of interest. The Department requires filing of a description of procedure for changing a variable rate and notifying those policyowners who have outstanding loans of ~~the rates~~ such change, which must be made on a non-discriminatory basis.
- 2) The interest rate charged on a policy loan or the interest rate charged upon reinstatement of any policy form ~~that~~ which was made under a policy issued after January 1, 1982, will not exceed the rate prescribed in Section 229.5 of the ~~Illinois Insurance Code~~, either as a maximum rate of not more than 8% or an adjustable maximum interest rate established from time to time by the life insurer as permitted by law, unless the policyholder agrees in writing to the applicability of ~~those~~ such provisions.

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- e) Contestability in Life Policies
- 1) The period of contestability is limited~~Limited~~ to a maximum of two years. Permissible exceptions are *"provisions relative to benefits in the event of total and permanent disability, and provisions which grant additional insurance specifically against death by accident and except for violations of the conditions of the policy relating to naval or military service in time of war or for violation of an express condition, if any, relating to aviation (except riding as a fare-paying passenger of a commercial air line flying on regularly scheduled routes between definitely established airports)"*~~as provided by~~ (Section 224(1)(c) of the ~~Illinois Insurance~~ Code).
 - 2) The period of contestability shall be determinable from the policy, i.e., by reference to a specified issue date, policy date or effective date, as referred to in subsection (v)~~of this Part~~.
- f) Limitation of Coverage
- Any limitation of coverage in event of death by suicide or other specified causes must be confined within the contestability period of the policy to comply with Section 225(1)(c) and ~~225~~(1)(f) of the ~~Illinois Insurance~~ Code. Exceptions to this restricted limitation are given in Section 224(1)(c) of the ~~Illinois Insurance~~ Code and ~~subsection~~Section 1405.40(v)(2) of this ~~Section~~Part.
- g) Proof of Death
- Section 224(1)(j) of the ~~Illinois Insurance~~ Code requires due proof of death. The Department requires that "proof" be singular (not proofs) and not further qualified, i.e., to require submission of "interest of the claimant". Insurers shall not require that a specific form be used when submitting a claim.
- h) Time Limit on Claims
- 1) Filing of Death Claims – There is no time limit for filing death claims if the claim is not conditioned upon other contingencies, i.e., prior disability or accident. Section 224(1)(j) of the ~~Illinois Insurance~~ Code requires, when there is a claim on a policy due to the death of the insured, then~~then~~ settlement shall be made upon receipt of due proof of death. For purposes of this subsection (h)(1), due proof shall consist of sufficient evidence to establish in a court a prima facie case for payment of the claim.

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Therefore, any limitation with respect to death claims arising during and contingent upon the insured's continued disability must be limited to a requirement that proof of disability be furnished within a stipulated period as a condition precedent to consideration of a death claim.

- 2) Filing of Disability Claims – Reasonable limits are permitted. The form may require notification of disability during lifetime and continuance of disability and may eliminate accrual of benefits because of any disability ~~that~~^{which} was in existence more than one year prior to furnishing proof of disability.

- i) Participating ~~or~~– Non-Participating
A policy must indicate whether the policy is participating or non-participating.

- j) Dividend Provisions
The following is applicable to individual policy forms:

- 1) Required Options – The policy must provide the dividend options required under Section 224(1)(e) of the ~~Illinois Insurance~~ Code.
- 2) Disposition of Dividends Left With the Company – The policy must indicate what disposition will be made of outstanding dividend credits in event of lapse, termination or maturity of the policy.
- 3) Other Dividend Options – In addition to the dividend options required under Section 224(1)(e) of the ~~Illinois Insurance~~ Code, other options (such as a one-year term insurance dividend option) may also be provided by the policy. Provisions pertaining to the automatic withdrawal of any accumulated dividends, or current and unapplied dividends for the purpose of paying premiums unpaid at the end of a grace period, may be included if the policy provides for the notification of the policyholder of the application of dividends and the policyholder is given a minimum of 30 days after the date of the notice within which to direct the insurer to reverse the dividend transaction.
- 4) One-Year Term Insurance Dividend Option – Provision must be made for the disposition of the value of any one-year term insurance addition in the event of lapse of the policy. The policy may either provide for application of any cash value of the remaining one-year term insurance under

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nonforfeiture options, or a continuation of ~~thesuch~~ term insurance.

- 5) Prohibited Provisions – Prohibited provisions regarding individual life policy dividends are cited in 50 Ill. Adm. Code 914.

k) Nonforfeiture Values

The nonforfeiture value table must illustrate loan values and options available for each of the first 20 years of the policy or its term, if less, and include a provision that, upon request, the company will furnish an extension of the table. Values and statements in the policy must fulfill the requirements of Section 229.2 of the ~~Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, par. 229.2)~~.

l) Standard Nonforfeiture Law – Paid-up Insurance Upon Death of Insured (Family Policy)-

A spouse or children entitled to ~~paid-up insurance~~~~Paid-up Insurance~~ upon the death of a covered person under a ~~family~~~~Family~~ or ~~parent-child~~~~Parent-Child~~ policy, shall be given the right to obtain the net cash surrender value of ~~the paid-up insurance~~~~such Paid-up Insurance~~, and the form shall so state. In lieu of a ~~table~~~~Table~~ of such values, a statement may be included that a notice of the current values will be furnished by the company on request, as provided for in Section ~~229.2(6)~~~~229.1(6)~~ of the ~~Illinois Insurance Code~~.

m) Inapplicable Language

Inapplicable language is prohibited if the inclusion of ~~thatsuch~~ language results in inconsistencies ~~or~~, ambiguities or is misleading, as is required by Section 143 of the ~~Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, par. 755)~~.

n) Back Dating of Life Policy

While the Code prohibits a provision under which any policy purports to be issued or take effect more than six months before the original application was made, this limitation is not applicable in conversion from or exchanges of one form of policy or annuity to or for another form provided credit is given for the reserve accumulation of the converted or terminated policy, and the form clearly spells out acceptable provisions relating to indebtedness, tabular cash values, dividends, effective date, and dividend accumulations, if any, under the new policy, as is prohibited by Section 225(1)(b) of the ~~Illinois Insurance Code~~. The conversion or exchange may not result in the policyholder being charged for insurance protection that was not received.

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- o) Settlement at Maturity – Commuted Value of Unpaid Installments
The form shall:
- 1) provide the basis for determining any commuted value, as is provided for by Section 224(1)(k) of the ~~Illinois Insurance~~ Code; and
 - 2) indicate whether benefits at death shall be payable to an estate or to a named beneficiary.
- p) Supplemental Benefits ~~—Accidental Death and Dismemberment Benefits; Prohibited Language~~
- 1) ~~Supplemental Benefits may be added to a life policy, even though the Supplemental Death and; Dismemberment benefits may be added to a life policy when and Loss of Eyesight Benefits are limited to accidental cause only as is provided for by Sections 4 and 362a of the Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, pars. 616 and 974a).~~
 - 2) Language in such supplemental benefits ~~that~~which does not employ "result" language, and ~~that~~which establishes an accidental means test or uses words such as "external," "violent," or "visible wound" is prohibited. Additionally, contributory language (e.g., "or indirectly," "wholly or in part," or "contributed to by") is also prohibited. For purposes of this subsection (p)(2), "result" language includes, but is not limited to, death as a result of war, death as a result of suicide and death as a result of flying. For purposes of this subsection (p)(2), accidental means test requires that both the cause and result of the accident ~~to~~be an accident.
 - 3) Provisions for loss due to accident or accidental injury shall not contain language limiting, reducing or excluding liability for a loss resulting from purely accidental circumstances (e.g., involuntary, or unintentional ingestion of poison or an infectious organism, or inhalation of poisonous gases or fumes) as provided for by Section 143 of the ~~Illinois Insurance~~ Code.
 - 4) Other supplemental benefits may be added to the policy for conditions that result in a total and permanent disability, as provided by Section 4 of the Code. For purposes of this subsection (p)(4), "total and permanent

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disability" means an inability to work and earn money because of an injury or illness from which recovery is unlikely at any time in the future and that is expected to continue indefinitely or result in death.

- q) Combination Life and Accident and Health Coverages in Individual Policies
Life and Accident and Health coverages may be combined in an individual policy, provided, ~~of course,~~ all statutory requirements are met and the form meets the other tests for approval in Section 143. All individual policies submitted must contain a premium breakdown as to coverages and contain a provision to allow for separation of either part.
- r) Spendthrift and Creditor Clause
The policy may include a Spendthrift and Creditor Clause providing in substance that, except as may be otherwise provided in the policy, a Beneficiary may not, at or after the maturity of the policy, assign, transfer or encumber any benefits payable under the policy hereunder, and, to the extent permitted by law, any such benefits shall not be subject to the claims of any creditor of any Beneficiary. Because of the limitations in the statutory provisions relating to the exemption from execution, attachment, garnishment or other process for the debts or liabilities of the insured, no reference to these statutory exemptions is required as is provided for by Sections 238 and 241 of the ~~Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, pars. 850 and 853).~~
- s) Family Policy – Names of Spouse and Children
- 1) It is necessary to name the spouse and/or children in either the application or policy only when a separate premium is charged for the individual insured in either of such categories.
 - 2) For additional family policy guidelines, refer to 50 Ill. Adm. Code 1403.
- t) Term Life Insurance – Conversion of Term Life Insurance
A form providing term life insurance~~Term Life Insurance~~ with conversion rights without evidence of insurability may not withhold such right of conversion because the covered person has established a waiver~~Waiver~~ of premium disability claim~~Premium Disability Claim~~. The form may, however, withhold waiver~~Waiver~~ of premium benefits~~Premium Benefits~~ under any new policy resulting from the conversion, or, as an alternative, reduce the face amount in the~~such~~ new policy by not exceeding 25% if waiver~~Waiver~~ of premium

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~~benefits~~Premium Benefits is requested and provided in the new policy.

- u) War Clauses – Life Policies
War clauses in life policies shall comply with 50 Ill. Adm. Code 1402.
- v) Option to Purchase Additional Life Insurance – ~~Incontestability~~Incontestable and Suicide Clause
 - 1) Any new policy issued pursuant to a ~~purchase option~~Purchase Option guaranteeing insurability shall provide that the period specified in the ~~incontestability clause~~Incontestable Clause shall expire no later than two years from the latter of date of issue of the original policy, date of issue of the rider containing the purchase option, date of change of the original policy requiring proof of insurability or date of last reinstatement of original policy, as is provided for by Section 224(1)(c) of the ~~Illinois Insurance~~Code.
 - 2) Any new policy issued pursuant to a ~~purchase option~~Purchase Option may contain a limitation of coverage with respect to death by suicide during the period the policy would be contestable in the absence of issuance under the ~~purchase option~~Purchase Option, as provided for by ~~subsection Section 1405.40(f) of this Part~~subsection Section 1405.40(f) of this Part.
 - 3) Company shall indicate to the Department how the ~~incontestability~~Incontestability provision of the new policy will be amended.
 - 4) The request form for the exercise of a purchase option shall be furnished to the Department. It may contain medical questions provided it is clearly stated that such questions are to be answered only if coverages additional to those permitted under the ~~option~~Option are applied for.
- w) Insurable Interest at time of Exercising Option
In a ~~guaranteed purchase option~~Guaranteed Purchase Option a provision may not be included requiring the existence of an insurable interest when the person exercising the right to purchase is other than the insured.
- x) Riders and Endorsements

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- 1) Descriptive Title – Unless the nature of the rider or endorsement is obvious (e.g., Home Office Endorsement), the form shall contain a correct descriptive title. Use of words such as "preferred", "special", "select" or "inflation" is prohibited as provided for by Section 143 of the ~~Illinois Insurance~~ Code.
- 2) Effective Date – Rider or endorsement shall show its effective date, if other than effective date of policy, either within the text or by reference to a policy provision or in the schedule of benefits.
- 3) Format – Riders and endorsements ~~that~~which are forwarded to the policyowner for attachment to the policy shall contain the following information:
 - A) Name of company.
 - B) Identity of policy and insured, e.g., Attached to and made a part of Policy No. _____ Insured: _____.
 - C) ~~Effective~~Its effective date of the rider or endorsement.
 - D) Signature of at least one company official.
- 4) Reduction of Benefits – If benefits are reduced, the reduction may be made only pursuant to a signed request or acceptance of the policy owner.
- 5) ~~Riders or endorsements may not be used to amend another rider or endorsement.~~

(Source: Amended at 34 Ill. Reg. 5835, effective April 7, 2010)

Section 1405.50 Group Insurance

- a) Group Insurance is defined in Section 230.1 of the ~~Illinois Insurance~~ Code (~~Ill. Rev. Stat. 1987, ch. 73, par. 842.1~~). Standard Provisions for Group Policies are cited in Section 231.1 of the ~~Illinois Insurance~~ Code (~~Ill. Rev. Stat. 1987, ch. 73, par. 843.1~~).
- b) Group Insurance —Contributory or Non-Contributory

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The policy shall state whether it is either contributory or non-contributory.

- c) If a group policy terminates or is amended to terminate any class of insured persons, Section 231.1(k) of the ~~Illinois Insurance~~ Code requires a limited conversion privilege for every insured person who, at termination, had been insured for at least 5 years prior to ~~the~~ termination.
- d) **Paid-Up Term Life Insurance Benefit in Group Ordinary Life**
Any group ordinary life insurance form providing a paid-up term life insurance benefit may contain a limitation to the effect that, when ~~the~~ paid-up benefit amounts to less than \$1,000, only the alternative cash value as provided in the form shall be payable.
- e) ~~File and Use
Procedures for filing and approval without review of group term life policies and certificates as well as the completion of Certifications of Compliance and Waiver are set forth in 50 Ill. Adm. Code 916.~~

(Source: Amended at 34 Ill. Reg. 5835, effective April 7, 2010)

Section 1405.70 Annuities

- a) Standard ~~provisions~~ **Provisions** for ~~annuities~~ **Annuities** and ~~pure endowment~~ **Pure Endowment** contracts are stated in Section 226 of the ~~Illinois Insurance~~ Code (~~Ill. Rev. Stat. 1987, ch. 73, par. 838~~) and for ~~reversionary~~ **Reversionary** or ~~survivorship annuity~~ **Survivorship Annuity** contracts in Section 227 of the ~~Illinois Insurance~~ Code (~~Ill. Rev. Stat. 1987, ch. 73, par. 839~~).
- b) **Group Annuities**
Required and prohibited provisions are not specifically set forth in the ~~Illinois Insurance~~ Code. Contracts are subject to requirements of ~~Sections~~ **Section** 143 and 236 of the ~~Illinois Insurance~~ Code (~~Ill. Rev. Stat. 1987, ch. 73, pars. 755 and 848~~).
- c) **Group Variable Annuities**
The applicable jurisdiction for ~~group variable annuity~~ **Group Variable Annuity** contracts is the jurisdiction where the group master policy is delivered.
- d) **Fixed Dollar or Flexible Premium Individual Annuity Contracts – Options to**

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Purchase Additional Annuity

If options for the purchase of additional annuity benefits are provided, including a ~~flexible~~Flexible annuity plan, it must be made clear that the payments are considered "premiums" or purchase payments, rather than deposits, to distinguish annuity premiums from premiums placed in a Premium Deposit Reserve Account, as provided for by Section 240 of the ~~Illinois Insurance Code (Ill. Rev. Stat. 1987, ch. 73, par. 852).~~

- e) Notice to Policyholder
 - 1) The policyholder must be made aware of the amount of annuity purchased, either by including a table of values in the contract, or by specifying in the contract~~therein~~ that notices of the current or other values will be sent to the policyholder upon request.
 - 2) The charges, including but not limited to withdrawal and surrender charges, minimum guaranteed interest rates, and a statement of the mortality table to be used must be incorporated in the policy as provided for by Section 229.4a~~229.4~~ of the ~~Illinois Insurance Code~~.
- f) Reinstatement
Evidence of insurability may not be required in order to reinstate an annuity benefit. However, such evidence may be a requirement for reinstatement of any supplemental benefits that may be attached to an annuity contract.
- g) An annuity contract must be incontestable from the date of issue unless it includes an application asking health questions, as provided for by Section 226(1)(b) of the Code File and Use Procedures for filing and approval without review of annuity policies as well as the completion of Certifications of Compliance are set forth in 50 Ill. Adm. Code 916.

(Source: Amended at 34 Ill. Reg. 5835, effective April 7, 2010)

Section 1405.80 Alternate and/or Insert Pages

For "alternate" and/or "insert" pages, a company may use the following guideline:

- a) If the policy jacket or the outside covers are to be used with more than one plan of

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insurance, the form shall be submitted on this basis. The usual title and brief explanation of the type of policy need not be placed on the jacket or covers if the front cover is less than a full policy page, or if the cover contains a window. In those instances, the applicable material shall be placed in a position on the first (or specification) page so that it would be exposed even when the cover jacket is over the first page, as provided for by Section 224(1)(m) of the [Illinois Insurance Code](#).

- b) [If](#)Where the policy is submitted and the review is desired with consideration given to each individual page, the insert pages shall be properly identified and the letter of submittal shall list each page as a form.
- c) For submittal of alternate or insert pages to be used with existing policies in supply, if the page is to be inserted at the date of issue of the policy, consideration will be given if the form is properly identified. The submittal letter shall fully explain the changes that would be made.
- d) If a change is to be made on a previously issued policy, with the consent of the policyholder, this change shall be accomplished by an endorsement or rider approved for use in the State of Illinois, as provided for by Section 1405.40(x)(2) [of this Part](#).

(Source: Amended at 34 Ill. Reg. 5835, effective April 7, 2010)

Section 1405.90 Substitution Filings

A substitution filing of a new form for a previously approved form having the same form number must contain the following:

- a) ~~The certification required by 50 Ill. Adm. Code 916 if the original form was approved pursuant to the File and Use provision of Part 916; and~~
- a)b) The approval date of the original form and a statement that the original form was never used; and;
- b) A red-lined version of the changes to the previously approved form.

(Source: Amended at 34 Ill. Reg. 5835, effective April 7, 2010)

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- 1) Heading of the Part: Pre-Licensing and Continuing Education
- 2) Code Citation: 50 Ill. Adm. Code 3119
- 3)

<u>Section Numbers</u> :	<u>Adopted Action</u> :
3119.10	Amendment
3119.20	Amendment
3119.30	Amendment
3119.45	Amendment
3119.50	Amendment
3119.60	Amendment
3119.65	Amendment
3119.70	Amendment
3119.75	New Section
- 4) Statutory Authority: Implementing Sections 500-25, 500-30 and 500-35 and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/500-25, 500-30, 500-35, and 401]
- 5) Effective Date of Rulemaking: April 7, 2010
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rulemaking, including any material incorporated by reference, is on file in the principal office of the Division of Insurance and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 33 Ill. Reg. 5161; April 10, 2009
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
 - a) Made multiple nonsubstantive changes requested by JCAR.
 - b) Deleted or changed "Department of Financial and Professional Regulation" and "Division of Insurance" to "Department of Insurance" throughout the rule.
 - c) Updated the Department's website address in the 13th line of Section 3119.30(a).

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- d) Changed "to the Director on computer diskette or other" to "by an" in lines 7-8 of Section 3119.30(e).
 - e) Changed "3119.62" to "3119.65" in the 12th line of Section 3119.30(e).
 - f) Changed "30" to "24" in the 1st line of Section 3119.45(b)(1); after the first sentence, added "Three of the 24 hours of continuing education must consist of classroom ethics.".
 - g) Changed "45" to "36" in Section 3119.45(b)(4).
 - h) Changed "disqualification" to "disqualifications" in Section 3119.75.
- 12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? Yes
- 15) Summary and Purpose of Rulemaking: The amendments to this Part establish disqualification standards together with noncompliance penalty provisions for education providers. The Department has also added a pre-licensing exemption waiver to Section 3119.45(a)(2) for those applicants who have a college degree. In order to make our State licensure standards uniform with those set by the NAIC, the Department is amending Section 3119.65(d) to be consistent with the licensure cycle by permitting courses to be repeated every two years instead of every three. A simple technical revision is being made throughout this regulation which removes the distinction between traditional and partnership long-term care education credits. This revision was prompted by the repeal of the long-term care partnership statute.
- Finally, several additional changes not published at First Notice were needed to implement provisions of Public Act 96-839, which was signed into law December 23, 2009 and became effective January 1, 2010. These changes include a reduction in continuing education requirements from 30 to 24 hours with 3 of the hours to consist of classroom ethics instruction.
- 16) Information and questions regarding this adopted rulemaking shall be directed to:

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Kelly Kruger, Assistant Deputy Director
Producer Section
Department of Insurance
320 West Washington Street
Springfield, Illinois 62767-0001

217/785-2263

The full text of the Adopted Amendments begins on the next page:

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NOTICE OF ADOPTED AMENDMENTS

TITLE 50: INSURANCE

CHAPTER I: DEPARTMENT OF ~~INSURANCE~~
~~FINANCIAL AND PROFESSIONAL~~
~~REGULATION~~SUBCHAPTER ii: INSURANCE PRODUCERS, LIMITED INSURANCE
REPRESENTATIVES AND BUSINESS ENTITIES

PART 3119

PRE-LICENSING AND CONTINUING EDUCATION

Section

3119.10	Purpose
3119.20	Definitions
3119.30	Provider Responsibilities
3119.40	Responsibilities of Applicant for Insurance Producer Licenses and Licensed Insurance Producers Until 1/1/97 (Repealed)
3119.45	Responsibilities of the Applicant for Insurance Producer Licenses and the Licensed Insurance Producers
3119.50	Pre-Licensing – Course of Study Requirements
3119.60	Continuing Education Requirements
3119.65	Course Credit
3119.70	Course and Provider Disqualification
<u>3119.75</u>	<u>Additional Penalties</u>
3119.80	Severability
3119.EXHIBIT A	Request for Certification of a Pre-Licensing Course (Repealed)
3119.EXHIBIT B	Request for Certification of a Continuing Education Course (Repealed)
3119.EXHIBIT C	Provider List – Proof of Completion (Repealed)
3119.EXHIBIT D	Provider List – Proof of Completion (Continuing Education) (Repealed)
3119.EXHIBIT E	Course of Study – Life
3119.EXHIBIT F	Course of Study – Accident/Health
3119.EXHIBIT G	Course of Study – Fire
3119.EXHIBIT H	Course of Study – Casualty/Motor Vehicle

AUTHORITY: Implementing Sections 500-25, 500-30 and 500-35 and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/500-25, 500-30, 500-35, and 401].

SOURCE: Adopted at 9 Ill. Reg. 80, effective January 1, 1985; amended at 15 Ill. Reg. 69, effective January 1, 1991; amended at 16 Ill. Reg. 126, effective January 1, 1992; amended at 18 Ill. Reg. 16568, effective November 1, 1994; amended at 20 Ill. Reg. 10340, effective July 19, 1996; amended at 21 Ill. Reg. 13820, effective October 15, 1997; amended at 25 Ill. Reg. 6480,

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effective May 3, 2001; amended at 26 Ill. Reg. 16522, effective October 28, 2002; amended at 29 Ill. Reg. 15515, effective September 29, 2005; amended at 34 Ill. Reg. 5856, effective April 7, 2010.

Section 3119.10 Purpose

The purpose of this Part is to establish pre-licensing education requirements for applicants for an insurance producer license, establish continuing education requirements for licensed insurance producers, and establish requirements for providers and instructors of pre-licensing and continuing education courses. Additionally, this Part establishes disqualification and non-compliance penalty provisions for providers.

(Source: Amended at 34 Ill. Reg. 5856, effective April 7, 2010)

Section 3119.20 Definitions

For the purposes of this Part, the following definitions shall apply:

Code means the Illinois Insurance Code [215 ILCS 5].

Contact instruction means a course presented in a classroom or seminar format.

Course means any course of study certified to the Director that meets the requirements of this Part, including but not limited to seminar, classroom, and self-study formats.

Date of Original Issue means the date of the issuance of a producer's license. Any lapse or suspension of 1 year or more shall establish a new date of original issue and subject the person to this Part.

Department means the Department of ~~Insurance~~Financial and Professional Regulation.

Director means the Director of the Department of ~~Financial and Professional Regulation Division~~ of Insurance of the State of Illinois or anyone to whom the Director's responsibilities and authority are lawfully delegated.

~~Division means the Department of Financial and Professional Regulation-Division of Insurance.~~

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Interactive Online means self-study courses only presented on the Internet that do not require a proctored final exam.

~~Long Term Care Training (LTCT) Traditional Long Term Care (TLTC) and Long Term Care Partnership (LTCP) Training Credit~~ means prescribed training required by licensed producers prior to the producer being allowed to sell long term care insurance coverage ~~TLTC and LTCP~~. This training is required pursuant to 50 Ill. Adm. Code ~~2012.121~~ 2012.122(d)(1) and ~~2018.80(d)~~ and may satisfy a part of the continuing education requirement if the course is filed with the Department ~~Division~~ as a continuing education course.

Provider means any person who offers a course for which certification has been received by the Director.

Successful Completion means passing an examination with a score of 70% or above in accordance with criteria established by the provider.

Supervised Examination means a proctored, timed and closed book examination.

(Source: Amended at 34 Ill. Reg. 5856, effective April 7, 2010)

Section 3119.30 Provider Responsibilities

- a) Each provider shall submit a certification to the Director for each course it intends to offer for pre-licensing or continuing education credit. Certification is to be submitted to the Department ~~Division~~ of Insurance at least 30 days prior to the first date the course will be offered. Certification must be accompanied by the appropriate fee (see 215 ILCS 5/500-135(a)(6) or (7)), be signed and dated by the provider, and contain: the provider's name; Federal Employer Identification Number (FEIN) and/or Social Security number of the individual provider; contact person and that person's telephone number; published provider telephone number; course title; first date course will be offered; whether the course is for public education; class of insurance to which the course is applicable; and type of course instruction (see 215 ILCS 5/500-35(b)(1)). The certification format and content have also been posted to the ~~Department's~~ Division's website at: www.insurance.illinois.gov/Producer/producer_information.asp ~~www.idfpr.com/D~~ ~~OI/Producer/producer_information.asp~~ and will be made available upon request from the Department ~~Division~~. Use of the National Association of Insurance

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Commissioners (NAIC) Midwest Zone Form is also permissible for purposes of certification.

- b) Each provider shall submit a new certification when there is a significant change in the course. No provider shall submit the same or substantially the same course content for more than one course.
- c) Each provider shall maintain a copy of all instructional materials for each course. If the provider ceases to offer a course or makes a significant change in the course materials, the provider shall maintain the original material for 1 year from the date the course was terminated or significantly changed.
- d) Each provider shall maintain the following records for 3 years at a central location:
 - 1) Classroom or seminar – roster for each classroom course or seminar identifying the instructors, the student, the course, the location, the date and hours of attendance, the completion date, the examinations and the results of any examinations administered.
 - 2) Self-study online – name of student, name of course, date of completion, the examinations, the results of examinations, and other applicable proof of completion.
- e) Each provider shall provide to the Director a list of students who have successfully completed a pre-licensing or continuing education course. The list shall contain course number; credit hours; course title; reporting week being submitted; provider name; FEIN and/or Social Security number for the individual provider; and student data (including student name and Social Security number, date course completed and either class of insurance for pre-licensing or credit hours for continuing education). The information shall be submitted ~~to the Director~~ ~~by an on-computer diskette or other~~ electronic method of transfer prescribed by the Director and in the specifications established by the Director. Each list shall be received by the Director within 10 days following the end of the week in which the course was completed. The list shall be compiled pursuant to the criteria established in Section 3119.50(b) and (e) or Section ~~3119.653-19.62~~ ~~of this Part~~. The date of completion for a course with an examination shall be the date the examination is graded by the provider. Other than the original course fee, no additional fee shall be charged to the student for reporting the student's

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successful completion to the ~~Department~~Division. If the initial report contains an error, no additional charge shall be given for re-reporting the credits to the ~~Department~~Division.

- f) Instructors shall have either a Bachelor's degree or 3 years experience in the course subject matter. Providers must maintain evidence of such qualifications while the instructor is actively engaged in instructing the course and for 1 year thereafter.
- g) Providers shall, upon the request of the Director, provide a copy of all course material, provider records, and evidence of instructor's qualifications to the Director. All such requests shall be subject to a warrant of the Director and for the express purpose of gauging compliance with the ~~Illinois Insurance~~ Code and Department of ~~Insurance~~Financial and Professional Regulation regulations pertaining to the ~~Insurance~~ Code.
- h) The Director may make arrangements, including contracting with an outside service administrator, for the purpose of administrating and collecting the educational data from the providers. Under such an arrangement, all or a portion of the reporting requirements of the provider shall be made to the servicing administrator.
- i) Providers may not advertise a pre-licensing or continuing education course unless it has been approved by the ~~Department~~Division of Insurance.

(Source: Amended at 34 Ill. Reg. 5856, effective April 7, 2010)

Section 3119.45 Responsibilities of the Applicant for Insurance Producer Licenses and the Licensed Insurance Producers

- a) Applicants for Insurance Producer Licenses
 - 1) Prior to taking the licensing examination, each applicant shall complete the pre-licensing education requirements for each class of insurance for which an examination is being taken. The pre-licensing education course must be used within 1 year after completion.
 - 2) Applicants who either have earned a college degree in insurance or hold any of the following designations listed below will be exempt from the

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pre-licensing requirement [of this Part](#). [A copy of the college degree or certification for the following designations must be provided to the Department at the time of licensure application.](#)

Class of Insurance	Designation
Life	CEBS, ChFC, CIC, CFP, CLU, FLMI, and LUTCF
Accident and Health	RHU, CEBS, REBC, and HIA
Property and Casualty	AAI, ARM, CIC, and CPCU

- 3) The following abbreviations and acronyms are used in subsection (a)(2):

Life Designations

CEBS	Certified Employee Benefits Specialist
ChFC	Chartered Financial Consultant
CIC	Certified Insurance Counselor
CFP	Certified Financial Planner
CLU	Chartered Life Underwriter
FLMI	Fellow Life Management Institute
LUTCF	Life Underwriting Training Council Fellow

Accident and Health Designations

RHU	Registered Health Underwriter
CEBS	Certified Employee Benefits Specialist
REBC	Registered Employee Benefits Consultant
HIA	Health Insurance Associate

Property and Casualty Designations

AAI	Accredited Advisor Insurance
ARM	Associate in Risk Management
CIC	Certified Insurance Counselor
CPCU	Chartered Property and Casualty Underwriter

- b) Licensed Insurance Producers

- 1) Each producer shall complete [2430](#) hours of continuing education

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requirements prior to requesting an extension of an insurance producer license. [Three of the 24 hours of continuing education must consist of classroom ethics.](#) The producer should complete the course no later than 1 month prior to the license extension date to allow time for the provider to submit proof of completion to the Director. Each producer shall maintain a record of each course completed for 3 years from the date of completion. The record shall include the name of the provider, the course title, and the date of completion.

- 2) Hours taken, course material provided or presented, in whole or in part, or in conjunction with a pre-licensing course that is not certified as pre-licensing education requirement, shall not be used to meet continuing education requirements.
- 3) Courses initiated or completed prior to the original issue date of the license shall not be used to meet continuing education requirements.
- 4) The producer may accumulate a maximum of [3645](#) credit hours on file with the [Department](#)~~Division~~.

(Source: Amended at 34 Ill. Reg. 5856, effective April 7, 2010)

Section 3119.50 Pre-Licensing – Course of Study Requirements

- a) The certification form must be received by the Director at least 30 days prior to any course being offered.
- b) A course to be certified by the provider as a pre-licensing course of study shall meet the content requirements of Section 500-30(b) of the [Illinois Insurance Code](#) ~~[215 ILCS 5/500-30(b)]~~ and time distribution requirements as set forth in Exhibit E, F, G or H of this Part, whichever is applicable.
- c) For purposes of this Section, the minimum number of hours may be made up of any combination of classroom, seminar, or self-study hours. A self-study course must have an examination.
- d) One credit will be awarded for each 50 minutes of contact instruction.

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- e) No credit shall be given for a self-study course if the student does not successfully complete the examination. If the student fails an examination and successive examinations are given, the successive examinations must be substantially different from each other. Self-study courses are subject to the following additional requirements:
- 1) No students shall evaluate their own examination. The evaluation of the examination must be completed by the provider;
 - 2) No provider shall furnish the answers to an examination prior to the student completing the examination;
 - 3) Self-study exams must contain at least 25 questions. The number of questions must increase proportionately as the amount of material increases;
 - 4) No more than a third of the questions shall be true/false;
 - 5) Credit hours shall be determined by the time it may take a student to study the material using 10 8½" by 11" full pages per credit hour (10-12 point font text), single line spacing with 1" margins; and
 - 6) Graphs, charts, forms and pictures may be used in course materials; however, only a total of 10 percent will count toward the course content. The graphs, charts, forms and pictures must pertain to the course content.
- f) **Interactive Online Courses**
Interactive online is considered a type of self-study course. Interactive online courses are, by definition, only presented on the Internet and do not require a proctored final exam. To be eligible for certification under Section 3119.30-~~of this Part~~, an interactive online course must meet the following additional requirements:
- 1) The course must provide at least 5 questions after each unit or chapter. The questions must be answered prior to proceeding to the next unit or chapter. The material may be reviewed while answering questions;
 - 2) The course must provide clear instructions on how to navigate through the course;

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- 3) The course must provide the ability to go back and review any unit at any time;
- 4) The course must provide online viewing access to the [Department](#)~~Division~~ at all times;
- 5) The course must include a statement that the student information will not be sold or distributed to any third party without prior written consent of the student. Taking the course shall not constitute consent;
- 6) The course must provide some type of encryption. All personal information, including credit card number, name and address of the student must be encrypted so that the information cannot be read as it passes across the Internet;
- 7) Students must affirm that they, and only they, completed the course; and
- 8) The course must include the ability to contact an instructor (i.e., automated e-mail).

(Source: Amended at 34 Ill. Reg. 5856, effective April 7, 2010)

Section 3119.60 Continuing Education Requirements

- a) The certification must be received by the Director at least 30 days prior to any course being offered.
- b) For purposes of this Section, "full credit" shall mean the reasonable amount of time, as certified by the provider, that is necessary for a student to study for and pass an examination, or in the case of a course with no examination, the number of documented classroom attendance hours.
- c) Courses shall be intended to increase the knowledge and understanding of insurance principles and coverages, applicable laws, insurance regulations, agency management, customer service and sales. The following courses shall not be considered for continuing education:

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- 1) Courses used for insurance pre-licensing training or insurance qualifying examination preparation.
- 2) Courses with less than 1 hour of certified continuing education credit.
- d) For purposes of this Section, the minimum number of hours may be made up of any combination of classroom, seminar, or self-study hours.
- e) One credit will be awarded for each 50 minutes of contact instruction.
- f) No credit shall be given for a self-study course if the student does not successfully complete the examination. If the student fails an examination and successive examinations are given, the successive examinations must be substantially different from each other. Self-study courses are subject to the following additional requirements:
 - 1) No students shall evaluate their own examination. The evaluation of the examination must be completed by the provider;
 - 2) No provider shall furnish the answers to an examination prior to the student completing the examination;
 - 3) Self-study exams must contain at least 25 questions. The number of questions must increase proportionately as the amount of material increases;
 - 4) No more than a third of the questions shall be true/false; and
 - 5) Credit hours shall be determined by the time it may take a student to study the material using 10 8½" by 11" full pages per credit hour (10-12 point font text), single line spacing with 1" margins.
- g) **Interactive Online Courses**
Interactive online is considered to be a type of self-study course. Interactive online courses are, by definition, only presented on the Internet and do not require a proctored final exam. To be eligible for certification under Section 3119.30 ~~of this Part~~, an interactive online course must meet the following additional requirements:

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- 1) The course must provide at least 5 questions after each unit or chapter. The questions must be answered prior to proceeding to the next unit or chapter. The material may be reviewed while answering questions;
 - 2) The course must provide clear instructions on how to navigate through the course;
 - 3) The course must provide the ability to go back and review any unit at any time;
 - 4) The course must provide online viewing access to the [Department Division](#) at all times;
 - 5) The course must include a statement that the student information will not be sold or distributed to any third party without prior written consent of the student. Taking the course shall not constitute consent;
 - 6) The course must provide some type of encryption. All personal information, including credit card number, name and address of the student must be encrypted so that the information cannot be read as it passes across the Internet;
 - 7) Students must affirm that they, and only they, completed the course; and
 - 8) The course must include the ability to contact an instructor (i.e., automated e-mail).
- h) [LTCTLTC and LTCP](#) Training Credit
- 1) Continuing education credit may be earned based on the criteria established in Section 3119.65.
 - 2) Training credit may be obtained after a failed examination if the provider gives, and the student successfully completes, a substantially different examination.
 - 3) If a student receives training credit only, the provider shall issue a proof of completion certificate to the student but the certificate shall be prominently stamped "NO CON-ED CREDIT".

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(Source: Amended at 34 Ill. Reg. 5856, effective April 7, 2010)

Section 3119.65 Course Credit

The value of course credit for purposes of this Section shall be determined as follows:

- a) Supervised Examinations
 - 1) Successful Completion
Students who successfully complete a supervised examination will receive full credit for the course.
 - 2) Unsuccessful Completion
Students who do not successfully complete a supervised continuing education examination shall receive one hour of credit for each hour of documented classroom attendance not to exceed 50% of full credit.
- b) Non-Supervised Examination
 - 1) Successful Completion
Students who successfully complete a non-supervised examination will receive full credit for the course.
 - 2) Unsuccessful Completion
Students who do not successfully complete a non-supervised examination will receive no credit. If the student fails a non-supervised examination and successive examinations are given, the successive examinations must be substantially different from each other.
- c) Courses Without Examination
Students will receive credit for documented attendance based on the certified hours assigned to the course.
- d) A producer will not be permitted to take a course for credit more than once in a license continuation period. ~~No additional credit will be given to a producer for a repeated course unless 3 years have passed since credit was given for the course.~~

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- e) Continuing education instructors may receive continuing education credit for courses they teach. The credit earned shall be determined pursuant to the criteria established in this Section.

(Source: Amended at 34 Ill. Reg. 5856, effective April 7, 2010)

Section 3119.70 Course and Provider Disqualification

- a) The Director may disqualify any provider and/or any provider's courses if the Director finds that:
- 1) the provider or course has not met the requirements of this Part;
 - 2) the provider has made a material misstatement or intentional misrepresentation on a certification form filed with the Director; a misstatement will be considered material if the course would not have been certified in the absence of such statement;
 - 3) the provider has intentionally misrepresented itself or its course to students or prospective students;
 - 4) the provider has violated any commitment made in the request for certification and supplementary attachments to the certification, including failure to maintain the standards and method of operation set forth in the request for certification and any supplementary attachments;
 - 5) the provider has employed instructors who do not meet the requirements of Section 3119.30(f) ~~of this Part~~;
 - 6) the provider is deemed by the Director to have failed to act in good faith in providing a course. A failure to act in good faith may ~~only~~ be evidenced by the following:
 - A) a student pass/fail ratio inconsistent with those of other providers for courses which are similar in content and difficulty;
 - B) the number of complaints received by the Director that specifically relate to the provider's courses;

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- C) provides to the student a proof of completion form that contains false or incomplete information;
 - D) provides to the student a partially completed proof of completion form;
 - 7) the provider has failed to maintain the materials and records pursuant to Section 3119.30 ~~of this Part~~;
 - 8) the provider failed to furnish the Director with information and records required by Section 3119.30 ~~of this Part~~, or the provider supplied false or incomplete information or records;
 - 9) the provider ~~frequently~~ fails to furnish the Director with an accurate student proof of completion list required by Section 3119.30(e) ~~of this Part~~ within 10 days following the end of the week in which the course was completed;
 - 10) The provider has, while conducting business as a provider, used fraudulent or dishonest practices, or has demonstrated incompetence or untrustworthiness.
- b) Disqualification of a provider or course shall be by order of the Director and will be sent to the provider by certified or registered mail at the address specified in the [Department's Division's](#) records. The provider may request a hearing in writing in accordance with 50 Ill. Adm. Code 2402, within 30 days from the date of mailing. If no written request is made, the order shall be final upon the expiration of 30 days.
 - c) If the provider requests a hearing within 30 days, then the Director shall issue within 30 days after receipt of the request a written notice of hearing to the provider by certified or registered mail and it will be sent to the provider at the address specified in the [Department's Division's](#) records. The notice of hearing must state:
 - 1) The grounds, charges or conduct that justifies disqualification under this Section;
 - 2) A specific time for the hearing, which may not be less than 20 days nor

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more than 30 days after the mailing of the notice of hearing; and

- 3) A specific place for the hearing.
- d) Upon disqualification, the provider shall immediately discontinue offering its courses as certified courses. The Director shall publish all final disqualifications.
- e) In any order of disqualification, the Director shall give consideration for credit hours to present students.
- f) An education provider who has been disqualified will be ineligible to apply to the Department for 3 years after the date of the disqualification. A provider whose certification has been disqualified may not be employed, contracted or engaged in any insurance education related capacity during the time the disqualification is in effect.

(Source: Amended at 34 Ill. Reg. 5856, effective April 7, 2010)

Section 3119.75 Additional Penalties

In addition to, or instead of, course and provider disqualifications as set forth in Section 3119.70, the Director may take any appropriate regulatory action authorized by Article XXIV of the Code or any other provision of the Code or rule against a provider who fails to meet the requirements of this Part.

(Source: Added at 34 Ill. Reg. 5856, effective April 7, 2010)

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- 1) Heading of the Part: IRS Qualification Status Requirements for Article 3 Police Pension Funds
- 2) Code Citation: 50 Ill. Adm. Code 4440
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
4440.10	New Section
4440.20	New Section
4440.30	New Section
4440.40	New Section
4440.50	New Section
4440.60	New Section
4440.70	New Section
4440.80	New Section
4440.85	New Section
4440.90	New Section
4440.100	New Section
4440.110	New Section
4440.120	New Section
4440.130	New Section
4440.140	New Section
4440.150	New Section
4440.160	New Section
4440.170	New Section
4440.180	New Section
4440.190	New Section
4440.200	New Section
4440.210	New Section
4440.220	New Section
4440.230	New Section
4440.240	New Section
4440.250	New Section
4440.260	New Section
4440.270	New Section
4440.280	New Section
4440.290	New Section
4440.300	New Section
4440.310	New Section

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- 4) Statutory Authority: Implementing Section 1A-103 of the Illinois Pension Code [40 ILCS 5/1A-103]
- 5) Effective Date of Rulemaking: April 9, 2010
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rulemaking, including any material incorporated by reference, is on file in the principal office of the Department of Insurance and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: October 9, 2009; 33 Ill. Reg. 14067
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version:
 - a. Made multiple punctuation, stylistic and grammatical changes at JCAR's request.
 - b. Changed "Code Section" and "Section . . . of the Illinois Revenue Code" references to "IRC Section" throughout the rule at JCAR's request.
 - c. Changed Register issue numbers from "33" to "34" in the Source Notes.
 - d. Added "Requirements" after "Status" in the title of the Part.
 - e. In the Table of Contents, Section 4440.250 – changed "Under" to "under IRC" and deleted "Section".
 - f. In Section 4440.20, second line – added "Illinois Pension" before "Code".
 - g. In Section 4440.30, definition of "Internal Revenue Code" – changed "herein after "Code"" to "or IRC".
 - h. In Section 4440.30, definition of "Member" – changed "Article 3" to "under Article 3 of the Illinois Pension Code [40 ILCS 5]" after "fund".

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- i. In Section 4440.30, definition of "Nonqualified Service Credit", 6th line and in Section 4440.250(e)(1), 3rd line – changed "thereof" to "of the United States".
- j. In Section 4440.30, definition of "Nonqualified Service Credit", 11th line – changed "clause (A)" to "the preceding paragraph"; 19th line – changed "clause (1) above," to "the first indented paragraph of this definition;".
- k. In Section 4440.30, definition of "Public Pension Division" – deleted "employee".
- l. Relabeled the paragraphs in subsections (a), (b) and (c) of Section 4440.50.
- m. In Section 4440.50(c), 1st line – added "The provisions of subsection (b) apply only if the account, annuity or plan" before "agrees".
- n. In Section 4440.60(f) and (g) and Section 4440.70 – changed "Rule" to "Part".
- o. In Section 4440.90, 3rd line – changed "Section" to "section (26 CFR 1.401(a)(9))".
- p. In Section 4440.120 – deleted "of 1986".
- q. In Section 4440.140(a) and (b) – changed "this plan" to "the pension fund".
- r. Relabeled the paragraphs in Section 4440.170.
- s. In Section 4440.170(b) – changed "the preceding sentence" to "subsection (a)".
- t. In Section 4440.240(b) – changed "below" to "in subsection (c)".
- u. In Section 4440.240(c)(3) – changed "definition" to "subsection (c)".
- v. In Section 4440.250 heading – added "IRC" before "Section".
- w. In Section 4440.250(c) – after subsection (b), added "c) Permissive Service Credit".
- x. Relabeled paragraphs of Section 4440.250 following subsection (c).

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- y. In Section 4440.250(c)(2) – deleted "clause (d)(2) of this", and added "(c)(1)(B)" after "subsection".
 - z. In Section 4445.250(d), (d)(1) and (d)(2) – deleted "4445.250" and added "this" before "Section".
 - aa. In Section 4440.250(e) – changed "4440.250(e)" to "(d)".
 - bb. In Section 4440.250(e)(2) – changed "clause A" to "subsection (e)(1)".
 - cc. In Section 4440.250(e)(3) – changed "4440.250(f)" to "(e)(1)".
 - dd. In Section 4440.250(f) – changed "subsection 4440.250(f)" to "subsections (e)".
 - ee. In Section 4440.250(g)(2) – changed first "such" to "the transferred" and the second "such" to "those".
 - ff. In Section 4440.250(h) – changed "4440.250(i)" to "(h)".
 - gg. In Section 4440.280(b) – added "b) Except as otherwise provided in subsection (c), the" and changed "to" to "shall".
 - hh. Relabeled paragraphs in Section 4440.280 following (b).
- 12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rules: The Part is intended to incorporate language into the "plan document" and administrative rules for the purpose of meeting Internal Revenue Service (IRS) regulations to obtain a "Qualified Status" under the IRS regulations for the Article 3 police pension funds in Illinois. The recognition as a qualified plan allows pension plans to maintain pretax status as well as to benefit from preferential tax treatment in other areas, such as duty disabilities being nontaxed federally and the ability to transfer monies from one qualified plan to another qualified plan with a tax penalty and the transferred money being taxed at the time of the transfer. In order for the pension

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funds to be recognized as qualified plans, the plan document or State statutes and pension-related Administrative Code need to incorporate federal tax law changes as they are adopted, which the plan document for Illinois Article 3 funds has not done. Additional language regarding three topics is required: (1) rule text on rollovers; (2) rule text on required distributions; and (3) rule text on 415 limitations.

- 16) Information and questions regarding these adopted rules shall be directed to:

Scott Brandt
Public Pension Division
Department of Insurance
320 West Washington Street
Springfield, Illinois 62767-0001

217/785-7410

The full text of the Adopted Rules begins on the next page:

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TITLE 50: INSURANCE
CHAPTER I: DEPARTMENT OF INSURANCE
SUBCHAPTER aaa: PENSIONS

PART 4440
IRS QUALIFICATION STATUS REQUIREMENTS FOR
ARTICLE 3 POLICE PENSION FUNDS

SUBPART A: GENERAL PROVISIONS

Section	
4440.10	Purpose
4440.20	Applicability
4440.30	Definitions

SUBPART B: RULE ON ROLLOVERS

Section	
4440.40	General Rule
4440.50	Eligible Rollover Distribution
4440.60	Eligible Retirement Plan
4440.70	Distributee
4440.80	Direct Rollover
4440.85	Involuntary Lump Sum Distributions

SUBPART C: RULE ON REQUIRED DISTRIBUTIONS

Section	
4440.90	General Rule
4440.100	Minimum Required Distributions
4440.110	Incidental Benefit Rule

SUBPART D: RULE ON 415 LIMITATIONS

Section	
4440.120	Basic 415 Limitations
4440.130	Limitation Year
4440.140	Participation in Other Qualified Plans: Aggregation of Limits
4440.150	Basic 415(b) Limitation

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4440.160	Definition of Annual Benefit
4440.170	Adjustments to Basic 415(b) Limitation for Form of Benefit
4440.180	Benefits Not Taken into Account for 415(b) Limit
4440.190	Other Adjustments in 415(b) Limitation
4440.200	Less than 10 Years of Service Adjustment for 415(b) Limitations
4440.210	\$10,000 Limit
4440.220	Effect of COLA without a Lump Sum Component on 415(b) Testing
4440.230	Effect of COLA with a Lump Sum Component on 415(b) Testing
4440.240	415(c) Limit
4440.250	Service Purchases under IRC 415(n)
4440.260	Modification of Contributions for 415(c) and 415(n) Purposes
4440.270	Repayments of Cashouts
4440.280	Reduction of Benefits Priority

SUBPART E: RULE ON GENERAL COMPLIANCE

Section

4440.290	Compliance with Internal Revenue Code
4440.300	Plan Termination
4440.310	Vesting and Forfeitures

AUTHORITY: Implementing Section 1A-103 of the Illinois Pension Code [40 ILCS 5/1A-103].

SOURCE: Adopted at 34 Ill. Reg. 5874, effective April 9, 2010.

SUBPART A: GENERAL PROVISIONS

Section 4440.10 Purpose

This Part sets forth the procedural requirements for the submission of the annual compliance fee by pension funds to the Department of Insurance as required by Section 1A-112 of the Illinois Pension Code [40 ILCS 5/1A-112].

Section 4440.20 Applicability

This Part applies to every Article 3 police pension fund that is required to file an annual statement with the Department of Insurance pursuant to Section 1A-109 of the Illinois Pension Code [40 ILCS 5/1A-109].

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Section 4440.30 Definitions

Annual Benefit means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to IRC section 415(n)) and to rollover contributions (as defined in IRC section 415(b)(2)(A)).

Benefit Attributable means a benefit determined in accordance with Treasury Regulations (see 26 CFR 1.415(b)(2)(A)).

Department means the Illinois Department of Insurance.

Internal Revenue Code or IRC means 26 USC.

Member means participant in a police pension fund under Article 3 of the Illinois Pension Code [40 ILCS 5].

Nonqualified Service Credit means permissive service credit other than that allowed with respect to:

service (including parental, medical, sabbatical and similar leave) as an employee of the Government of the United States, any state or political subdivision of the United States, or any agency or instrumentality of any of the foregoing (other than military service or service for credit that was obtained as a result of a repayment described in IRC section 415(k)(3));

service (including parental, medical, sabbatical and similar leave) as an employee (other than as an employee described in the preceding paragraph) of an education organization described in IRC section 170(b)(1)(A)(ii) that is a public, private or sectarian school that provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

service as an employee of an association of employees who are described in the first indented paragraph of this definition; or

military service (other than qualified military service under IRC section 414(u)) recognized by the plan.

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Non-spousal Beneficiary means minor children, disabled children or dependent parents receiving survivor benefits.

Pension Fund means any public pension fund established under Article 3 of the Illinois Pension Code [40 ILCS 5/Art. 3].

Permissive Service Credit means service credit:

recognized by the plan for purposes of calculating a member's benefit under the plan;

that the member has not received under the plan; and

that the member may receive only by making a voluntary additional contribution, in an amount determined under the plan, that does not exceed the amount necessary to fund the benefit attributable to the service credit.

Public Pension Division means the Public Pension Division of the Department of Insurance.

Treasury Regulation means 26 CFR.

SUBPART B: RULE ON ROLLOVERS

Section 4440.40 General Rule

Beginning January 1, 1993, pursuant to 40 ILCS 5/1-106(b), a pension fund may, and to the extent required by federal law shall, at the request of any person entitled to receive an eligible rollover distribution from the pension fund, pay any portion of that eligible rollover distribution directly to an eligible retirement plan designated in writing by the person.

Section 4440.50 Eligible Rollover Distribution

- a) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

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- 1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;
 - 2) any distribution to the extent that distribution is required under IRC section 401(a)(9);
 - 3) the portion of any distribution that is not includible in gross income; and
 - 4) any other distribution that is reasonably expected to total less than \$200 during the year.
- b) Effective:
- 1) January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, that portion may be transferred only:
 - A) to an individual retirement account or annuity described in IRC section 408(a) or (b);
 - B) to a qualified defined contribution plan described in IRC section 401(a); or
 - C) to a qualified plan described in IRC section 403(a); or
 - 2) on or after January 1, 2007:
 - A) to a qualified defined benefit plan described in IRC section 401(a); or
 - B) to an annuity contract described in IRC section 403(b).
- c) The provisions of subsection (b) apply only if the account, annuity or plan agrees to separately account for amounts transferred (and earnings on that amount),

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including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not includible.

- d) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse.

Section 4440.60 Eligible Retirement Plan

An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

- a) an individual retirement account described in IRC section 408(a);
- b) an individual retirement annuity described in IRC section 408(b);
- c) an annuity plan described in IRC section 403(a);
- d) a qualified trust described in IRC section 401(a);
- e) effective January 1, 2002, an annuity contract described in IRC section 403(b);
- f) effective January 1, 2002, a plan eligible under IRC section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this Part; or
- g) effective January 1, 2009, to the extent required by federal law and permitted under a retirement or pension system subject to this Part, a Roth IRA described in IRC section 408A.

Section 4440.70 Distributee

A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse. Effective January 1, 2008, to the extent permitted under a pension plan subject to this Part, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by IRC section 401(a)(9)(E). However, a nonspouse beneficiary may roll over the distribution only to an individual retirement account or individual

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retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

Section 4440.80 Direct Rollover

A direct rollover is a payment by the pension plan to the eligible retirement plan specified by the distributee.

Section 4440.85 Involuntary Lump Sum Distributions

Involuntary lump sum distributions shall not be made except in the following situations:

- a) The distribution is made to a member who is at least normal retirement age under the plan.
- b) The distribution to be made to a member does not exceed \$1000 (excluding rollover contributions).
- c) The distribution is made to a survivor or beneficiary of a member.

SUBPART C: RULE ON REQUIRED DISTRIBUTIONS

Section 4440.90 General Rule

Notwithstanding any other provision to the contrary, and pursuant to 40 ILCS 5/1-116.1, distributions from a pension fund shall conform with a good faith interpretation of IRC section 401(a)(9) and the regulations under that section (26 CFR 1.401(a)(9)) as applicable to a governmental plan within the meaning of IRC section 414(d).

Section 4440.100 Minimum Required Distributions

Effective on and after January 1, 2003, each pension fund shall be subject to the following provisions:

- a) Benefit payments must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the plan member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the plan member terminates employment. If a plan member fails to apply for retirement benefits by April 1 of the calendar year following the

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calendar year in which he or she reaches 70½ years of age or April 1 of the calendar year following the calendar year in which he or she terminates employment, whichever is later, the plan will begin distributing the benefit as required by this Section.

- b) The plan member's entire interest must be distributed over the plan member's life or the lives of the plan member and a designated beneficiary or beneficiaries, or over a period not extending beyond the life expectancy of the plan member or of the plan member and a designated beneficiary. Death benefits must be distributed in accordance with IRC section 401(a)(9), including the incidental death benefit requirement in IRC section 401(a)(9)(G), and the regulations implementing that Section.
- c) The life expectancy of a plan member, the plan member's spouse or the plan member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.
- d) If a plan member dies after the required distribution of benefits has begun, the remaining portion of the plan member's interest must be distributed at least as rapidly as under the method of distribution before the plan member's death and no longer than the remaining period over which distributions commenced.
- e) If a plan member dies before required distribution of the plan member's benefits has begun, the plan member's entire interest must be either:
 - 1) distributed (in accordance with federal regulations (26 CFR 1.401(a)(9))) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year of the plan member's death; or
 - 2) distributed by December 31 of the calendar year containing the fifth anniversary of the plan member's death.

Section 4440.110 Incidental Benefit Rule

- a) The amount of survivor benefits paid to a plan member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Internal Revenue Code.

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- b) The death and disability benefits provided by a plan are limited by the incidental benefit rule set forth in IRC section 401(a)(9)(G) and 26 CFR 1.401-1(b)(1)(i).

SUBPART D: RULE ON 415 LIMITATIONS

Section 4440.120 Basic 415 Limitations

Notwithstanding any other provisions to the contrary, and pursuant to 40 ILCS 5/1-116, the member contributions made to, and retirement benefits paid from, a pension fund shall be limited to such extent as may be necessary to conform to the requirements of section 415 of the Internal Revenue Code, for a qualified pension plan.

Section 4440.130 Limitation Year

For purposes of this Part, pursuant to IRC section 415, the limitation year for a Police Pension Fund is the calendar year.

Section 4440.140 Participation in Other Qualified Plans: Aggregation of Limits

- a) The limit established by IRC section 415(b), with respect to any member who at any time has been a member of any other defined benefit plan as defined in IRC section 414(j), that was maintained by the member's same employer in the pension fund shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.
- b) The limit established by IRC section 415(c), with respect to any member who at any time has been a member of any other defined contribution plan, as defined in IRC section 414(i), that was maintained by the member's same employer in the pension fund shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable to one plan.

Section 4440.150 Basic 415(b) Limitation

Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in IRC section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in IRC section 415(b)(1)(A), subject to the applicable adjustments in IRC

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section 415(b), and subject to any additional limits that may be specified in this Section. In no event shall a member's annual benefit payable in any limitation year from a pension fund be greater than the limit applicable at the pension benefit starting date, as increased in subsequent years pursuant to IRC section 415(d) and related Treasury Regulations (26 CFR 1.415(d)).

Section 4440.160 Definition of Annual Benefit

For purposes of IRC section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to IRC section 415(n)) and to rollover contributions (as defined in IRC section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations (26 CFR 1.415(b)(2)(A)).

Section 4440.170 Adjustments to Basic 415(b) Limitation for Form of Benefit

- a) If the benefit under the pension fund is other than the form specified in Section 4440.160, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations (26 CFR 1.415(b)).
- b) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then subsection (a) is applied by either reducing the IRC section 415(b) limit applicable at the pension benefit starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in 26 CFR 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:
 - 1) For a benefit paid in a form to which IRC section 417(e)(3) does not apply (a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date that is the "lesser of", when adjusted in accordance with the following assumptions):
 - A) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

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- B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and the applicable mortality tables described in IRC section 417(e)(3)(B) (see Notice 2008-85, published by the Internal Revenue Service on September 29, 2008); or
- 2) For a benefit paid in a form to which IRC section 417(e)(3) applies (a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced 415(b) limit applicable at the annuity starting date that is the "least of", when adjusted in accordance with the following assumptions):
- A) The annual amount of the straight life annuity commencing at the pension benefit starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;
- B) The annual amount of the straight life annuity commencing at the pension benefit starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5% interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under IRC section 417(e)(3)(B) (see IRS Notice 2008-85); or
- C) The annual amount of the straight life annuity commencing at the pension benefit starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under 26 CFR 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement and, on and after January 1, 2007, using the rate then in effect for the first day of the plan year, with a one-year stabilization period)) and the applicable mortality rate for the distribution under IRC section 417(e)(3)(B) (see IRS Notice 2008-85), divided by 1.05.

Section 4440.180 Benefits Not Taken into Account for 415(b) Limit

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For purposes of this Section, the following benefits shall not be taken into account in applying these limits:

- a) Any ancillary benefit that is not directly related to retirement income benefits;
- b) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- c) Any other benefit not required under IRC section 415(b)(2) and related Treasury Regulations (26 CFR 1.415(b)) to be taken into account for purposes of the limitation of IRC section 415(b)(1).

Section 4440.190 Other Adjustments in 415(b) Limitation

- a) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this Subpart shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of IRC section 415(b), so that the limit (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) equivalent to a \$160,000 (as adjusted) annual benefit beginning at age 62.
- b) In the event the member's benefit is based on at least 15 years of service as a full-time employee of any police department or on 15 years of military service, the adjustments provided for in subsection (a) shall not apply.
- c) The reductions provided for in subsection (a) shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

Section 4440.200 Less than 10 Years of Service Adjustment for 415(b) Limitations

The maximum retirement benefits payable to any member who has completed less than 10 years of service shall be the amount determined under Section 4440.150 multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is 10. The reduction provided by this Section cannot reduce the maximum benefit below 10%. The reduction provided by this Section shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

Section 4440.210 \$10,000 Limit

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Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the IRC section 415 limit if the benefits payable, with respect to the member under the plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and for any prior limitation year, and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

Section 4440.220 Effect of COLA without a Lump Sum Component on 415(b) Testing

Effective on and after January 1, 2003, for purposes of applying the IRC section 415(b) limit to a member with no lump sum benefit, the following will apply:

- a) a member's applicable 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments;
- b) to the extent that the member's annual benefit equals or exceeds the limit, the member will no longer be eligible for cost of living increases until the benefit plus the accumulated increases are less than the 415(b) limit;
- c) in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the IRC section 415(b)(1)(A) dollar limit under IRC section 415(d), and the related Treasury Regulations (26 CFR 1.415(b)).

Section 4440.230 Effect of COLA with a Lump Sum Component on 415(b) Testing

On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit will be applied taking into consideration cost of living increases as required by IRC section 415(b) and applicable Treasury Regulations (26 CFR 1.415(b)).

Section 4440.240 415(c) Limit

After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to IRC section 415(d)) or 100% of the member's compensation.

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- a) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.
- b) For purposes of applying the 415(c) limits only and for no other purpose, the definition of compensation, where applicable, will be compensation actually paid or made available during a limitation year, except as noted in subsection (c) and as permitted by 26 CFR 1.415(c)-2; however, member contributions picked up under IRC section 414(h) shall not be treated as compensation.
- c) Unless another definition of compensation that is permitted by 26 CFR 1.415(c)-2 is specified by the plan, compensation will be defined as wages within the meaning of IRC section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under IRC sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under IRC section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC section 3401(a)(2).
 - 1) However, for limitation years beginning on and after January 1, 1998, compensation will also include amounts that would otherwise be included in compensation but for an election under IRC section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of IRC section 132(f)(4).
 - 2) For limitation years beginning on and after January 1, 2009, compensation for the limitation year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:
 - A) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or

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shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

- B) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.
- 3) Back pay, within the meaning of 26 CFR 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this subsection (c).

Section 4440.250 Service Purchases under IRC Section 415(n)

- a) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of IRC section 415(n) will be treated as met only if:
 - 1) the requirements of IRC section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC section 415(b); or
 - 2) the requirements of IRC section 415(b) are met, determined by treating all such contributions as annual additions for purposes of IRC section 415(c).
- b) For purposes of applying this Section, a pension fund will not fail to meet the reduced limit under IRC section 415(b)(2)(C) solely by reason of this Section and will not fail to meet the percentage limitation under IRC section 415(c)(1)(B) solely by reason of this Section.
- c) Permissive Service Credit
 - 1) For purposes of this Section, the term "permissive service credit" means service credit:

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- A) recognized by the plan for purposes of calculating a member's benefit under the plan;
 - B) that the member has not received under the plan; and
 - C) that the member may receive only by making a voluntary additional contribution, in an amount determined under the plan, that does not exceed the amount necessary to fund the benefit attributable to the service credit.
- 2) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term may include service credit for periods for which there is no performance of service and, notwithstanding subsection (c)(1)(B), may include service credited in order to provide an increased benefit for service credit a member is receiving under the plan.
- d) A pension fund will fail to meet the requirements of this Section if:
- 1) more than 5 years of nonqualified service credit are taken into account for purposes of this Section; or
 - 2) any nonqualified service credit is taken into account under this Section before the member has at least five years of participation under the plan.
- e) For purposes of subsection (d), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:
- 1) service (including parental, medical, sabbatical and similar leave) as an employee of the Government of the United States, any state or political subdivision of the United States, or any agency or instrumentality of any of the foregoing (other than military service or service for credit that was obtained as a result of a repayment described in IRC section 415(k)(3));
 - 2) service (including parental, medical, sabbatical and similar leave) as an employee (other than as an employee described in subsection (e)(1)) of an education organization described in IRC section 170(b)(1)(A)(ii) that is a

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public, private or sectarian school that provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

- 3) service as an employee of an association of employees who are described in subsection (e)(1); or
 - 4) military service (other than qualified military service under IRC section 414(u)) recognized by the plan.
- f) In the case of service described in subsections (e)(1) through (3), the service will be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one plan.
- g) In the case of a trustee-to-trustee transfer after December 31, 2001 to which IRC section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):
- 1) the limitations of subsection (d) will not apply in determining whether the transfer is for the purchase of permissive service credit; and
 - 2) the distribution rules applicable under federal law to the plan will apply to the transferred amounts and any benefits attributable to those amounts.
- h) For an eligible participant, the limitation of IRC section 415(c)(1) shall not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount allowed to be purchased under the terms of the plan as in effect on August 5, 1997. For purposes of this subsection (h), an eligible participant is an individual who first became a participant in the plan before January 1, 1998.

Section 4440.260 Modification of Contributions for 415(c) and 415(n) Purposes

Notwithstanding any other provision of law to the contrary, a pension fund may modify a request by a member to make a contribution under this Part if the amount of the contribution would exceed the limits provided in IRC section 415 by using the following methods:

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- a) If the law requires a lump sum payment for the purchase of service credit, a pension fund may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under IRC section 415(c) or 415(n).
- b) If payment pursuant to this Section will not avoid a contribution in excess of the limits imposed by IRC section 415(c) or 415(n), a pension fund may either reduce the member's contribution to an amount within the limits of those IRC sections or refuse the member's contribution.

Section 4440.270 Repayments of Cashouts

Any repayment of contributions (including interest) to a pension fund with respect to an amount previously refunded upon a forfeiture of service credit under a pension fund shall not be taken into account for purposes of IRC section 415, in accordance with applicable Treasury Regulations (26 CFR 1.415).

Section 4440.280 Reduction of Benefits Priority

- a) Reduction of benefits and/or contributions to all plans, when required, shall be accomplished by first reducing the member's defined benefit component under any defined benefit plans in which the member participated.
- b) Except as otherwise provided in subsection (c), the reduction shall be made:
 - 1) first, with respect to the plan in which the member most recently accrued benefits and thereafter in the priority determined by the plan and the plan administrator of the other plans; then
 - 2) by reducing the member's defined contribution component benefit under any defined benefit plans; then
 - 3) by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, with the reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in the priority established by the plan and the plan administrator for the other plans.

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- c) However, the necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering the member.

SUBPART E: RULE ON GENERAL COMPLIANCE

Section 4440.290 Compliance with Internal Revenue Code

Each of the plans established under Article 3 of the Pension Code is intended to be a qualified defined benefit plan under IRC sections 401(a) and 414(d).

Section 4440.300 Plan Termination

Upon plan termination, a member's interest in a pension fund will be nonforfeitable.

Section 4440.310 Vesting and Forfeitures

- a) A plan member shall be 100% vested in his or her accumulated contributions at all times.
- b) In conformity with IRC section 401(a)(8), any forfeitures of benefits by members or former members of the plan will not be used to pay benefit increases. However, forfeitures shall be used to reduce employer contributions.

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- 1) Heading of the Part: IRS Qualification Status Requirements for Article 4 Firefighter Pension Funds
- 2) Code Citation: 50 Ill. Adm. Code 4445
- 3)

<u>Section Numbers:</u>	<u>Adopted Action:</u>
4445.10	New Section
4445.20	New Section
4445.30	New Section
4445.40	New Section
4445.50	New Section
4445.60	New Section
4445.70	New Section
4445.80	New Section
4445.90	New Section
4445.100	New Section
4445.110	New Section
4445.120	New Section
4445.130	New Section
4445.140	New Section
4445.150	New Section
4445.160	New Section
4445.170	New Section
4445.180	New Section
4445.190	New Section
4445.200	New Section
4445.210	New Section
4445.220	New Section
4445.230	New Section
4445.240	New Section
4445.250	New Section
4445.260	New Section
4445.270	New Section
4445.280	New Section
4445.290	New Section
4445.300	New Section
4445.310	New Section

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- 4) Statutory Authority: Implementing Section 1A-103 of the Illinois Pension Code [40 ILCS 5/1A-103]
- 5) Effective Date of Rulemaking: April 9, 2010
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rulemaking, including any material incorporated by reference, is on file in the principal office of the Department of Insurance and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: October 9, 2009; 33 Ill. Reg. 14089
- 10) Has JCAR issued a Statement of Objection to this Rulemaking? No
- 11) Differences between proposal and final version:
 - a. Made multiple punctuation, stylistic and grammatical changes at JCAR's request.
 - b. Changed "Code Section" and "Section . . . of the Illinois Revenue Code" references to "IRC Section" throughout the rule at JCAR's request.
 - c. Changed Register issue numbers from "33" to "34" in the Source Notes.
 - d. Added "Requirements" after "Status" in the title of the Part.
 - e. In the Table of Contents, Section 4445.250 – changed "Under" to "under IRC" and deleted "Section".
 - f. In Section 4445.20, second line – added "Illinois Pension" before "Code".
 - g. In Section 4445.30, definition of "Internal Revenue Code" – changed "herein after "Code"" to "or IRC".
 - h. In Section 4445.30, definition of "Member" – changed "Article 4" to "under Article 4 of the Illinois Pension Code [40 ILCS 5]" after "fund".

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- i. In Section 4445.30, definition of "Nonqualified Service Credit", 6th line and in Section 4445.250(e)(1), 3rd line – changed "thereof" to "of the United States".
- j. In Section 4445.30, definition of "Nonqualified Service Credit", 11th line – changed "clause (A)" to "the preceding paragraph"; 19th line – changed "clause (1) above," to "the first indented paragraph of this definition".
- k. In Section 4445.30, definition of "Public Pension Division" – deleted "employee".
- l. Relabeled the paragraphs in subsections (a), (b) and (c) of Section 4445.50.
- m. In Section 4445.50(c), 1st line – added "The provisions of subsection (b) apply only if the account, annuity or plan" before "agrees".
- n. In Section 4445.60(f) and (g) and Section 4445.70 – changed "Rule" to "Part".
- o. In Section 4445.120 – changed "Section 415 of the Internal Revenue Code" to "IRC section 415"; deleted "of 1986 (26 USC 415)".
- p. In Section 4445.140(a) and (b) – changed "this plan" to "the pension fund".
- q. Relabeled the paragraphs in Section 4445.170.
- r. In Section 4445.170(b) – changed "the preceding sentence" to "subsection (a)".
- s. In Section 4445.240(b) – changed "below" to "in subsection (c)".
- t. In Section 4445.240(c)(3) – changed "definition" to "subsection (c)".
- u. In Section 4445.250 heading – added "IRC" before "Section".
- v. In Section 4445.250 – after subsection (b), added "(c) Permissive Service Credit".
- w. Relabeled paragraphs of Section 4445.250 following subsection (c).
- x. In Section 4445.250(c)(2) – deleted "clause (d)(2) of this", and added "(c)(1)(B)" after "subsection".

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- y. In Section 4445.250(d), (d)(1) and (d)(2) – deleted "4445.250" and added "this" before "Section".
 - z. In Section 4445.250(e) – changed "4445.250(e)" to "(d)".
 - aa. In Section 4445.250(e)(2) – changed "clause (A)" to "subsection (e)(1)".
 - bb. In Section 4445.250(e)(3) - changed "4445.250(f)" to "(e)(1)".
 - cc. In Section 4445.250(f) – changed "subsection 4445.250(f)" to "subsections (e)".
 - dd. In Section 4445.250(g)(2) – changed first "such" to "the transferred" and the second "such" to "those".
 - ee. In Section 4445.250(h) – changed "4445.250(i)" to "(h)".
 - ff. In Section 4445.280 – added "b) Except as otherwise provided in subsection (c), the" and changed "to" to "shall".
 - gg. Relabeled paragraphs in Section 4445.280 following (b).
- 12) Have all changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: The Part is intended to incorporate language into the "plan document" and administrative rules for the purpose of meeting Internal Revenue Service (IRS) regulations to obtain a "Qualified Status" under the IRS regulations for the Article 4 firefighter pension funds in Illinois. The recognition as a qualified plan allows pension plans to maintain pretax status as well as to benefit from preferential tax treatment in other areas, such as duty disabilities being nontaxed federally and the ability to transfer monies from one qualified plan to another qualified plan with a tax penalty and the transferred money being taxed at the time of the transfer. In order for the pension funds to be recognized as qualified plans, the plan document or State statutes and pension-related Administrative Code need to incorporate federal tax law changes as

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they are adopted, which the plan document for Illinois Article 4 funds has not done. Additional language regarding three topics is required: (1) rule text on rollovers; (2) rule text on required distributions; and (3) rule text on 415 limitations.

- 16) Information and questions regarding this adopted rulemaking shall be directed to:

Scott Brandt
Public Pension Division
Department of Insurance
320 West Washington Street
Springfield, Illinois 62767-0001

217/785-7410

The full text of the Adopted Rules begins on the next page:

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TITLE 50: INSURANCE
CHAPTER I: DEPARTMENT OF INSURANCE
SUBCHAPTER aaa: PENSIONS

PART 4445
IRS QUALIFICATION STATUS REQUIREMENTS FOR
ARTICLE 4 FIREFIGHTER PENSION FUNDS

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4445.190	Other Adjustments in 415(b) Limitation
4445.200	Less than 10 Years of Service Adjustment for 415(b) Limitations
4445.210	\$10,000 Limit
4445.220	Effect of COLA without a Lump Sum Component on 415(b) Testing
4445.230	Effect of COLA with a Lump Sum Component on 415(b) Testing
4445.240	415(c) Limit
4445.250	Service Purchases under IRC 415(n)
4445.260	Modification of Contributions for 415(c) and 415(n) Purposes
4445.270	Repayments of Cashouts
4445.280	Reduction of Benefits Priority

SUBPART E: RULE ON GENERAL COMPLIANCE

Section

4445.290	Compliance with Internal Revenue Code
4445.300	Plan Termination
4445.310	Vesting and Forfeitures

AUTHORITY: Implementing Section 1A-103 of the Illinois Pension Code [40 ILCS 5/1A-103].

SOURCE: Adopted at 34 Ill. Reg. 5898, effective April 9, 2010.

SUBPART A: GENERAL PROVISIONS

Section 4445.10 Purpose

This Part sets forth the procedural requirements for the submission of the annual compliance fee by pension funds to the Department of Insurance as required by Section 1A-112 of the Illinois Pension Code [40 ILCS 5/1A-112].

Section 4445.20 Applicability

This Part applies to every Article 4 firefighter pension fund that is required to file an annual statement with the Department of Insurance pursuant to Section 1A-109 of the Illinois Pension Code [40 ILCS 5/1A-109].

Section 4445.30 Definitions

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Annual Benefit means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to IRC section 415(n)) and to rollover contributions (as defined in IRC section 415(b)(2)(A)).

Benefit Attributable means a benefit determined in accordance with Treasury Regulations (see 26 CFR 1.415(b)(2)(A)).

Department means the Illinois Department of Insurance.

Internal Revenue Code or IRC means 26 USC.

Member means participant in a firefighter pension fund under Article 4 of the Illinois Pension Code [40 ILCS 5].

Nonqualified Service Credit means permissive service credit other than that allowed with respect to:

service (including parental, medical, sabbatical and similar leave) as an employee of the Government of the United States, any state or political subdivision of the United States, or any agency or instrumentality of any of the foregoing (other than military service or service for credit that was obtained as a result of a repayment described in IRC section 415(k)(3));

service (including parental, medical, sabbatical and similar leave) as an employee (other than as an employee described in the preceding paragraph) of an education organization described in IRC section 170(b)(1)(A)(ii) that is a public, private or sectarian school that provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

service as an employee of an association of employees who are described in the first indented paragraph of this definition; or

military service (other than qualified military service under IRC section 414(u)) recognized by the plan.

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Non-spousal Beneficiary means minor children, disabled children or dependent parents receiving survivor benefits.

Pension Fund means any public pension fund established under Article 4 of the Illinois Pension Code [40 ILCS 5/Art. 4].

Permissive Service Credit means service credit:

recognized by the plan for purposes of calculating a member's benefit under the plan;

that the member has not received under the plan; and

that the member may receive only by making a voluntary additional contribution, in an amount determined under the plan, that does not exceed the amount necessary to fund the benefit attributable to the service credit.

Public Pension Division means the Public Pension Division of the Department of Insurance.

Treasury Regulation means 26 CFR.

SUBPART B: RULE ON ROLLOVERS

Section 4445.40 General Rule

Beginning January 1, 1993, pursuant to 40 ILCS 5/1-106(b), a pension fund may, and to the extent required by federal law shall, at the request of any person entitled to receive an eligible rollover distribution from the pension fund, pay any portion of that eligible rollover distribution directly to an eligible retirement plan designated in writing by the person.

Section 4445.50 Eligible Rollover Distribution

- a) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
 - 1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life

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expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

- 2) any distribution to the extent that distribution is required under IRC section 401(a)(9);
- 3) the portion of any distribution that is not includible in gross income; and
- 4) any other distribution that is reasonably expected to total less than \$200 during the year.

b) Effective:

- 1) January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, that portion may be transferred only:
 - A) to an individual retirement account or annuity described in IRC section 408(a) or (b);
 - B) to a qualified defined contribution plan described in IRC section 401(a); or
 - C) to a qualified plan described in IRC section 403(a); or
- 2) on or after January 1, 2007:
 - A) to a qualified defined benefit plan described in IRC section 401(a); or
 - B) to an annuity contract described in IRC section 403(b).

c) The provisions of subsection (b) apply only if the account, annuity or plan agrees to separately account for amounts transferred (and earnings on that amount), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not includible.

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- d) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse.

Section 4445.60 Eligible Retirement Plan

An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

- a) an individual retirement account described in IRC section 408(a);
- b) an individual retirement annuity described in IRC section 408(b);
- c) an annuity plan described in IRC section 403(a);
- d) a qualified trust described in IRC section 401(a);
- e) effective January 1, 2002, an annuity contract described in IRC section 403(b);
- f) effective January 1, 2002, a plan eligible under IRC section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this Part; or
- g) effective January 1, 2009, to the extent required by federal law and permitted under a retirement or pension system subject to this Part, a Roth IRA described in IRC section 408A.

Section 4445.70 Distributee

A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse. Effective January 1, 2008, to the extent permitted under a pension plan subject to this Part, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by IRC section 401(a)(9)(E). However, a nonspouse beneficiary may roll over the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

Section 4445.80 Direct Rollover

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A direct rollover is a payment by the pension plan to the eligible retirement plan specified by the distributee.

SUBPART C: RULE ON REQUIRED DISTRIBUTIONS

Section 4445.90 General Rule

Notwithstanding any other provision to the contrary, and pursuant to 40 ILCS 5/1-116.1, distributions from a pension fund shall conform with a good faith interpretation of IRC section 401(a)(9) and the regulations under that section (26 CFR 1.401(a)(9)) as applicable to a governmental plan within the meaning of IRC section 414(d).

Section 4445.100 Minimum Required Distributions

Effective on and after January 1, 2003, each pension fund shall be subject to the following provisions:

- a) Benefit payments must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the plan member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the plan member terminates employment. If a plan member fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which he or she reaches 70½ years of age or April 1 of the calendar year following the calendar year in which he or she terminates employment, whichever is later, the plan will begin distributing the benefit as required by this Section.
- b) The plan member's entire interest must be distributed over the plan member's life or the lives of the plan member and a designated beneficiary or beneficiaries, or over a period not extending beyond the life expectancy of the plan member or of the plan member and a designated beneficiary. Death benefits must be distributed in accordance with IRC section 401(a)(9), including the incidental death benefit requirement in IRC section 401(a)(9)(G), and the regulations implementing that Section.
- c) The life expectancy of a plan member, the plan member's spouse or the plan member's beneficiary may not be recalculated after the initial determination for purposes of determining benefits.

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- d) If a plan member dies after the required distribution of benefits has begun, the remaining portion of the plan member's interest must be distributed at least as rapidly as under the method of distribution before the plan member's death and no longer than the remaining period over which distributions commenced.
- e) If a plan member dies before required distribution of the plan member's benefits has begun, the plan member's entire interest must be either:
 - 1) distributed (in accordance with federal regulations (26 CFR 1.401(a)(9))) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year of the plan member's death; or
 - 2) distributed by December 31 of the calendar year containing the fifth anniversary of the plan member's death.

Section 4445.110 Incidental Benefit Rule

- a) The amount of survivor benefits paid to a plan member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Internal Revenue Code.
- b) The death and disability benefits provided by a plan are limited by the incidental benefit rule set forth in IRC section 401(a)(9)(G) and 26 CFR 1.401-1(b)(1)(i).

SUBPART D: RULE ON 415 LIMITATIONS

Section 4445.120 Basic 415 Limitations

Notwithstanding any other provisions to the contrary, and pursuant to 40 ILCS 5/1-116, the member contributions made to, and retirement benefits paid from, a pension fund shall be limited to such extent as may be necessary to conform to the requirements of IRC section 415, for a qualified pension plan.

Section 4445.130 Limitation Year

For purposes of this Part, pursuant to IRC section 415, the limitation year for a Firefighters' Pension Fund is the calendar year.

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Section 4445.140 Participation in Other Qualified Plans: Aggregation of Limits

- a) The limit established by IRC section 415(b), with respect to any member who at any time has been a member of any other defined benefit plan as defined in IRC section 414(j), that was maintained by the member's same employer in the pension fund shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.
- b) The limit established by IRC section 415(c), with respect to any member who at any time has been a member of any other defined contribution plan, as defined in IRC section 414(i), that was maintained by the member's same employer in the pension fund shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable to one plan.

Section 4445.150 Basic 415(b) Limitation

Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in IRC section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in IRC section 415(b)(1)(A), subject to the applicable adjustments in IRC section 415(b), and subject to any additional limits that may be specified in this Section. In no event shall a member's annual benefit payable in any limitation year from a pension fund be greater than the limit applicable at the pension benefit starting date, as increased in subsequent years pursuant to IRC section 415(d) and related Treasury Regulations (26 CFR 1.415(d)).

Section 4445.160 Definition of Annual Benefit

For purposes of IRC section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to IRC section 415(n)) and to rollover contributions (as defined in IRC section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations (26 CFR 1.415(b)(2)(A)).

Section 4445.170 Adjustments to Basic 415(b) Limitation for Form of Benefit

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- a) If the benefit under the pension fund is other than the form specified in Section 4445.160, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations (26 CFR 1.415(b)).
- b) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then subsection (a) is applied by either reducing the IRC section 415(b) limit applicable at the pension benefit starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in 26 CFR 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:
 - 1) For a benefit paid in a form to which IRC section 417(e)(3) does not apply (a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date that is the "lesser of", when adjusted in accordance with the following assumptions):
 - A) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or
 - B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and the applicable mortality tables described in IRC section 417(e)(3)(B) (see Notice 2008-85, published by the Internal Revenue Service on September 29, 2008); or
 - 2) For a benefit paid in a form to which IRC section 417(e)(3) applies (a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced 415(b) limit applicable at the annuity starting date that is the "least of", when adjusted in accordance with the following assumptions):
 - A) The annual amount of the straight life annuity commencing at the pension benefit starting date that has the same actuarial present

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value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

- B) The annual amount of the straight life annuity commencing at the pension benefit starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5% interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under IRC section 417(e)(3)(B) (see IRS Notice 2008-85); or
- C) The annual amount of the straight life annuity commencing at the pension benefit starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under 26 CFR 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement and, on and after January 1, 2007, using the rate then in effect for the first day of the plan year, with a one-year stabilization period)) and the applicable mortality rate for the distribution under IRC section 417(e)(3)(B) (see IRS Notice 2008-85), divided by 1.05.

Section 4445.180 Benefits Not Taken into Account for 415(b) Limit

For purposes of this Section, the following benefits shall not be taken into account in applying these limits:

- a) Any ancillary benefit that is not directly related to retirement income benefits;
- b) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;
- c) Any other benefit not required under IRC section 415(b)(2) and related Treasury Regulations (26 CFR 1.415(b)) to be taken into account for purposes of the limitation of IRC section 415(b)(1).

Section 4445.190 Other Adjustments in 415(b) Limitation

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- a) In the event the member's retirement benefits become payable before age 62, the limit prescribed by this Subpart shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of IRC section 415(b), so that the limit (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) equivalent to a \$160,000 (as adjusted) annual benefit beginning at age 62.
- b) In the event the member's benefit is based on at least 15 years of service as a full-time employee of any fire department or on 15 years of military service, the adjustments provided for in subsection (a) shall not apply.
- c) The reductions provided for in subsection (a) shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

Section 4445.200 Less than 10 Years of Service Adjustment for 415(b) Limitations

The maximum retirement benefits payable to any member who has completed less than 10 years of service shall be the amount determined under Section 4445.150 multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is 10. The reduction provided by this Section cannot reduce the maximum benefit below 10%. The reduction provided by this Section shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

Section 4440.210 \$10,000 Limit

Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the IRC section 415 limit if the benefits payable, with respect to the member under the plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and for any prior limitation year, and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

Section 4445.220 Effect of COLA without a Lump Sum Component on 415(b) Testing

Effective on and after January 1, 2003, for purposes of applying the IRC section 415(b) limit to a member with no lump sum benefit, the following will apply:

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- a) a member's applicable 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments;
- b) to the extent that the member's annual benefit equals or exceeds the limit, the member will no longer be eligible for cost of living increases until the benefit plus the accumulated increases are less than the 415(b) limit;
- c) in any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the IRC section 415(b)(1)(A) dollar limit under IRC section 415(d), and the related Treasury Regulations (26 CFR 1.415(b)).

Section 4445.230 Effect of COLA with a Lump Sum Component on 415(b) Testing

On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit will be applied taking into consideration cost of living increases as required by IRC section 415(b) and applicable Treasury Regulations (26 CFR 1.415(b)).

Section 4445.240 415(c) Limit

After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to IRC section 415(d)) or 100% of the member's compensation.

- a) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.
- b) For purposes of applying the 415(c) limits only and for no other purpose, the definition of compensation, where applicable, will be compensation actually paid or made available during a limitation year, except as noted in subsection (c) and as permitted by 26 CFR 1.415(c)-2; however, member contributions picked up under IRC section 414(h) shall not be treated as compensation.

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- c) Unless another definition of compensation that is permitted by 26 CFR 1.415(c)-2 is specified by the plan, compensation will be defined as wages within the meaning of IRC section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under IRC sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under IRC section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC section 3401(a)(2)).
- 1) However, for limitation years beginning on and after January 1, 1998, compensation will also include amounts that would otherwise be included in compensation but for an election under IRC section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of IRC section 132(f)(4).
 - 2) For limitation years beginning on and after January 1, 2009, compensation for the limitation year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:
 - A) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or
 - B) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.
 - 3) Back pay, within the meaning of 26 CFR 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to

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the extent the back pay represents wages and compensation that would otherwise be included under this subsection (c).

Section 4445.250 Service Purchases under IRC Section 415(n)

- a) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of IRC section 415(n) will be treated as met only if:
 - 1) the requirements of IRC section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC section 415(b); or
 - 2) the requirements of IRC section 415(b) are met, determined by treating all such contributions as annual additions for purposes of IRC section 415(c).
- b) For purposes of applying this Section, a pension fund will not fail to meet the reduced limit under IRC section 415(b)(2)(C) solely by reason of this Section and will not fail to meet the percentage limitation under IRC section 415(c)(1)(B) solely by reason of this Section.
- c) Permissive Service Credit
 - 1) For purposes of this Section, the term "permissive service credit" means service credit:
 - A) recognized by the plan for purposes of calculating a member's benefit under the plan;
 - B) that the member has not received under the plan; and
 - C) that the member may receive only by making a voluntary additional contribution, in an amount determined under the plan, that does not exceed the amount necessary to fund the benefit attributable to the service credit.
 - 2) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term may include service

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credit for periods for which there is no performance of service and, notwithstanding subsection (c)(1)(B), may include service credited in order to provide an increased benefit for service credit a member is receiving under the plan.

- d) A pension fund will fail to meet the requirements of this Section if:
- 1) more than 5 years of nonqualified service credit are taken into account for purposes of this Section; or
 - 2) any nonqualified service credit is taken into account under this Section before the member has at least five years of participation under the plan.
- e) For purposes of subsection (d), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:
- 1) service (including parental, medical, sabbatical and similar leave) as an employee of the Government of the United States, any state or political subdivision of the United States, or any agency or instrumentality of any of the foregoing (other than military service or service for credit that was obtained as a result of a repayment described in IRC section 415(k)(3));
 - 2) service (including parental, medical, sabbatical and similar leave) as an employee (other than as an employee described in subsection (e)(1)) of an education organization described in IRC section 170(b)(1)(A)(ii) that is a public, private or sectarian school that provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;
 - 3) service as an employee of an association of employees who are described in subsection (e)(1); or
 - 4) military service (other than qualified military service under IRC section 414(u)) recognized by the plan.

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- f) In the case of service described in subsections (e)(1) through (3), the service will be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one plan.
- g) In the case of a trustee-to-trustee transfer after December 31, 2001 to which IRC section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):
 - 1) the limitations of subsection (d) will not apply in determining whether the transfer is for the purchase of permissive service credit; and
 - 2) the distribution rules applicable under federal law to the plan will apply to the transferred amounts and any benefits attributable to those amounts.
- h) For an eligible participant, the limitation of IRC section 415(c)(1) shall not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount allowed to be purchased under the terms of the plan as in effect on August 5, 1997. For purposes of this subsection (h), an eligible participant is an individual who first became a participant in the plan before January 1, 1998.

Section 4445.260 Modification of Contributions for 415(c) and 415(n) Purposes

Notwithstanding any other provision of law to the contrary, a pension fund may modify a request by a member to make a contribution under this Part if the amount of the contribution would exceed the limits provided in IRC section 415 by using the following methods:

- a) If the law requires a lump sum payment for the purchase of service credit, a pension fund may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under IRC section 415(c) or 415(n).
- b) If payment pursuant to this Section will not avoid a contribution in excess of the limits imposed by IRC section 415(c) or 415(n), a pension fund may either reduce the member's contribution to an amount within the limits of those IRC sections or refuse the member's contribution.

Section 4445.270 Repayments of Cashouts

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Any repayment of contributions (including interest) to a pension fund with respect to an amount previously refunded upon a forfeiture of service credit under a pension fund shall not be taken into account for purposes of IRC section 415, in accordance with applicable Treasury Regulations (26 CFR 1.415).

Section 4445.280 Reduction of Benefits Priority

- a) Reduction of benefits and/or contributions to all plans, when required, shall be accomplished by first reducing the member's defined benefit component under any defined benefit plans in which the member participated.
- b) Except as otherwise provided in subsection (c), the reduction shall be made:
 - 1) first, with respect to the plan in which the member most recently accrued benefits and thereafter in the priority determined by the plan and the plan administrator of the other plans; then
 - 2) by reducing the member's defined contribution component benefit under any defined benefit plans; then
 - 3) by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, with the reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in the priority established by the plan and the plan administrator for the other plans.
- c) However, the necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering the member.

SUBPART E: RULE ON GENERAL COMPLIANCE

Section 4445.290 Compliance with Internal Revenue Code

Each of the plans established under Article 4 of the Pension Code is intended to be a qualified defined benefit plan under IRC sections 401(a) and 414(d).

Section 4445.300 Plan Termination

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Upon plan termination, a member's interest in a pension fund will be nonforfeitable.

Section 4445.310 Vesting and Forfeitures

- c) A plan member shall be 100% vested in his or her accumulated contributions at all times.
- d) In conformity with IRC section 401(a)(8), any forfeitures of benefits by members or former members of the plan will not be used to pay benefit increases. However, forfeitures shall be used to reduce employer contributions.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of April 6, 2010 through April 12, 2010 and have been scheduled for review by the Committee at its May 11, 2010 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
5/20/10	<u>Department of Public Health</u> , Minimum Health Care Standards for Health Maintenance Organizations (77 Ill. Adm. Code 240)	1/15/10 34 Ill. Reg. 746	5/11/10
5/26/10	<u>Department of Labor</u> , State Construction Minority and Female Building Trades Act (56 Ill. Adm. Code 270)	11/20/09 33 Ill. Reg. 15986	5/11/10
5/26/10	<u>Department of Labor</u> , Use of Illinois Resident Labor (56 Ill. Adm. Code 330)	11/20/09 33 Ill. Reg. 15988	5/11/10
5/26/10	<u>Illinois Racing Board</u> , Advance Deposit Wagering (ADW) (11 Ill. Adm. Code 325)	2/19/10 34 Ill. Reg. 2672	5/11/10
5/26/10	<u>Illinois Racing Board</u> , Other Gaming (11 Ill. Adm. Code 455)	2/19/10 34 Ill. Reg. 2676	5/11/10

DEPARTMENT OF REVENUE

NOTICE OF PUBLIC INFORMATION

2010 FIRST QUARTER SALES & MISCELLANEOUS TAX SUNSHINE INDEX

1. Statute requiring agency to publish information concerning Private Letter Rulings and General Information Letters in the Illinois Register:

Name of Act: Illinois Department of Revenue Sunshine Act

Citation: 20 ILCS 2515/1

2. Summary of information:

Index of Department of Revenue Sales and Miscellaneous Tax Private Letter Rulings and General Information Letters issued for the First Quarter of 2010. Private letter rulings are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. Private letter rulings are binding on the Department only as to the taxpayer who is the subject of the request for ruling. (See 2 Ill. Adm. Code 1200.110) General information letters are issued by the Department in response to written inquiries from taxpayers, taxpayer representatives, business, trade, industrial associations or similar groups. General information letters contain general discussions of tax principles or applications. General information letters are designed to provide general background information on topics of interest to taxpayers. General information letters do not constitute statements of agency policy that apply, interpret, or prescribe tax laws administered by the Department. *General information letters may not be relied upon by taxpayers in taking positions with reference to tax issues and create no rights for taxpayers under the Taxpayers' Bill of Rights Act.* (See 2 Ill. Adm. Code 1200.120)

The letters are listed numerically, are identified as either a General Information Letter or a Private Letter Ruling and are summarized with a brief synopsis under the following subjects:

Computer Software	Manufacturing Machinery & Equipment
Construction Contractors	Medical Appliances
Exempt Organizations	Miscellaneous
Farm Machinery & Equipment	Motor Fuel Tax
Food	Nexus
Food, Drugs & Medical Appliances	Rolling Stock Exemption
Gross Receipts	Sale at Retail
Hotel Operators' Tax	Sale for Resale
Leasing	

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2010 FIRST QUARTER SALES & MISCELLANEOUS TAX SUNSHINE INDEX

Service Occupation Tax
Telecommunications Excise Tax
Use Tax
Watercraft Use Tax

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2010 FIRST QUARTER SALES & MISCELLANEOUS TAX SUNSHINE INDEX

Copies of the ruling letters themselves are available for inspection and may be purchased for a minimum of \$1.00 per opinion plus 50¢ per page for each page over one. Copies of the ruling letters may be downloaded free of charge from the Department's World Wide Web site at www.tax.illinois.gov/.

The annual index of Sales and Excise Tax letter rulings (all four quarters) is available for \$3.00.

3. Name and address of person to contact concerning this information:

Marie Keeney
Legal Services Office
101 West Jefferson Street
Springfield, Illinois 62794
Telephone: (217) 782-2844

COMPUTER SOFTWARE

ST 10-0003-GIL 01/29/2010 If transactions for the licensing of computer software meet all of the criteria provided in subsection (a)(1) of Section 130.1935, neither the transfer of the software nor the subsequent software updates will be subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.1935.

CONSTRUCTION CONTRACTORS

ST 10-0001-GIL 01/12/2010 When a construction contractor permanently affixes tangible personal property to real property, the contractor is deemed the end user of that tangible personal property. As the end user, the contractor incurs Use Tax on the cost price of that tangible personal property. See 86 Ill. Adm. Code 130.1940 and 86 Ill. Adm. Code 130.2075.

EXEMPT ORGANIZATIONS

ST 10-0020-GIL 03/19/2010 Exclusively religious, educational, or charitable organizations that have an exemption number issued by the Department are allowed to

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2010 FIRST QUARTER SALES & MISCELLANEOUS TAX SUNSHINE INDEX

engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005.

FARM MACHINERY & EQUIPMENT

ST 10-0026-GIL 03/31/2010 The sale of certain types of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. See 35 ILCS 120/2-5(2).

ST 10-0027-GIL 03/31/2010 The sale of certain types of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. See 35 ILCS 120/2-5(2).

FOOD

ST 10-0002-GIL 01/12/2010 This letter provides a brief summary of when the high rate of tax for food and the low rate of tax for food apply. See 86 Ill. Adm. Code 130.310.

FOOD, DRUGS & MEDICAL APPLIANCES

ST 10-0001-PLR 01/12/2010 Medicines and medical appliances are not taxed at the normal State rate of 6.25%. These items are taxed at a lower State rate of 1%. See 86 Ill. Adm. Code 130.310(c).

GROSS RECEIPTS

ST 10-0011-GIL 02/26/2010 If a seller receives a reimbursement or rebate for a discount, the amount of that reimbursement or rebate is considered part of the gross receipts received by the seller and is subject to Retailers' Occupation Tax. If a seller provides a discount to a purchaser and does not receive a reimbursement or rebate for that discount, only the (discounted) amount received by the seller is taxable. See 86 Ill. Adm. Code 130.2125.

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2010 FIRST QUARTER SALES & MISCELLANEOUS TAX SUNSHINE INDEX

- ST 10-0012-GIL 03/01/2010 This letter discusses sales of prescription drugs by servicemen. See 86 Ill. Adm. Code Part 140.
- ST 10-0014-GIL 03/02/2010 Illinois Retailers' Occupation Tax is imposed upon gross receipts from the sale of tangible personal property to end-users and no deductions shall be taken by a taxpayer from gross receipts on account of the cost of the property sold, the cost of materials used, labor costs, or any other expense whatsoever. See 86 Ill. Adm. Code 130.410.
- ST 10-0021-GIL 03/19/2010 If a retailer accepts a coupon for which he will receive full or partial reimbursement, the value of that reimbursement must be included in the retailer's "gross receipts" that are subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2125.

HOTEL OPERATORS' TAX

- ST 10-0004-GIL 02/24/2010 Under the Hotel Operators' Occupation Tax, hotel is defined to mean any building in which the public may for consideration obtain sleeping accommodations. See 86 Ill. Adm. Code 480.101.

LEASING

- ST 10-0018-GIL 03/15/2010 Information regarding the tax liabilities in lease situations may be found at 86 Ill. Adm. Code 130.220 and 86 Ill. Adm. Code 130.2010.
- ST 10-0028-GIL 03/31/2010 Information regarding sales tax liabilities in lease situations may be found at 86 Ill. Adm. Code 130.220 and 86 Ill. Adm. Code 130.2010.

MANUFACTURING MACHINERY & EQUIPMENT

- ST 10-0025-GIL 03/31/2010 Mold release agents generally do not qualify for the manufacturing machinery and equipment exemption. See 86 Ill. Adm. Code 130.330.

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2010 FIRST QUARTER SALES & MISCELLANEOUS TAX SUNSHINE INDEX

ST 10-0029-GIL 03/31/2010 This letter concerns applicability of the machinery and equipment exemption to a sublessee-manufacturer situation. See 86 Ill. Adm. Code 130.330.

ST 10-0030-GIL 03/31/2010 The manufacturing machinery and equipment exemption does not apply to refrigeration machinery or equipment used by non-manufacturers, such as wholesale food and produce distributors. See 86 Ill. Adm. Code 130.330.

MEDICAL APPLIANCES

ST 10-0023-GIL 03/30/2010 A medical appliance is defined as an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See 86 Ill. Adm. Code 130.310(c).

MISCELLANEOUS

ST 10-0002-PLR 03/08/2010 If a retailer accepts a return of merchandise and provides the customer with a full or partial refund, the retailer should refund all of the tax to the customer from the original sale. See 86 Ill. Adm. Code 130.401(b).

ST 10-0005-GIL 02/24/2010 Information or data that is electronically downloaded is not considered the transfer of tangible personal property in this State. See 86 Ill. Adm. Code 130.2105.

MOTOR FUEL TAX

ST 10-0022-GIL 03/30/2010 This letter describes documentation requirements under the Motor Fuel Tax Law. See 86 Ill. Adm. Code 500.335, 500.340 and 500.345.

NEXUS

ST 10-0010-GIL 02/26/2010 This letter discusses nexus. See Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992).

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2010 FIRST QUARTER SALES & MISCELLANEOUS TAX SUNSHINE INDEX

ROLLING STOCK EXEMPTION

ST 10-0019-GIL 03/19/2010 This letter concerns the rolling stock exemption. See 86 Ill. Adm. Code Section 130.340.

SALE AT RETAIL

ST 10-0006-GIL 02/25/2010 The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101.

SALE FOR RESALE

ST 10-0009-GIL 02/25/2010 This letter discusses the requirements for Certificates of Resale. See 5 ILCS 175/5-120 and 86 Ill. Adm. Code 130.1405.

ST 10-0016-GIL 03/03/2010 This letter describes the standard drop-shipment scenario and certificates of resale. 86 Ill. Adm. Code 130.225.

SERVICE OCCUPATION TAX

ST 10-0003-PLR 03/26/2010 03/26/2010 Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101.

ST 10-0013-GIL 03/02/2010 If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation tax liability or Use Tax liability for the serviceman depending upon his or her activities. See 86 Ill. Adm. Code 140.101.

ST 10-0024-GIL 03/30/2010 The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this

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State, based on the tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140.

TELECOMMUNICATIONS EXCISE TAX

ST 10-0008-GIL 02/25/2010 The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 35 ILCS 630/1 *et seq.*

USE TAX

ST 10-0007-GIL 02/25/2010 Persons who provide cleaning or janitorial services and use cleaning supplies as part of those services incur Use Tax liability on the cost price of those cleaning supplies. See, generally, 86 Ill. Adm. Code 150.101.

ST 10-0017-GIL 03/12/2010 A person who purchases tangible personal property for the purpose of giving it away makes a taxable use of the property and incurs Use Tax upon such purchase. See 86 Ill. Adm. Code 150.305(c).

WATERCRAFT USE TAX

ST 10-0015-GIL 03/02/2010 The Watercraft Use Tax is a privilege tax imposed on the privilege of using, in this State, watercraft acquired by gift, transfer, or non-retail purchase after September 1, 2004. 86 Ill. Adm. Code 153.105.

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2010 FIRST QUARTER INCOME TAX SUNSHINE INDEX

1. Statute requiring agency to publish information concerning Private Letter Rulings and General Information Letters in the Illinois Register:

Name of Act: Illinois Department of Revenue Sunshine Act

Citation: 20 ILCS 2515/1 et seq.

2. Summary of information:

Index of Department of Revenue income tax Private Letter Rulings and General Information Letters issued for the First Quarter of 2010. Private letter rulings are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. Private letter rulings are binding on the Department only as to the taxpayer who is the subject of the request for ruling. (See 2 Ill. Adm. Code 1200.110) General information letters are issued by the Department in response to written inquiries from taxpayers, taxpayer representatives, business, trade, industrial associations or similar groups. General information letters contain general discussions of tax principles or applications. General information letters are designed to provide general background information on topics of interest to taxpayers. General information letters do not constitute statements of agency policy that apply, interpret, or prescribe tax laws administered by the Department. *General information letters may not be relied upon by taxpayers in taking positions with reference to tax issues and create no rights for taxpayers under the Taxpayers' Bill of Rights Act.* (See 2 Ill. Adm. Code 1200.120)

The letters are listed numerically, are identified as either a General Information Letter or a Private Letter Ruling and are summarized with a brief synopsis under the following subjects:

Apportionment – Financial Organizations

Apportionment – Sales Factor

Credit – Replacement Tax Investment

Exemptions

Net Operating Loss And Net Operation Loss Deduction

Subtraction Modifications – Other Rulings

Copies of the ruling letters themselves are available for inspection and may be purchased for a minimum of \$1.00 per opinion plus 50 cents per page for each page over one.

DEPARTMENT OF REVENUE

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2010 FIRST QUARTER INCOME TAX SUNSHINE INDEX

Copies of the ruling letters may be downloaded free of charge from the Department's World Wide Web site at www.tax.illinois.gov.

The indexes of Income Tax letter rulings for 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009 are available for \$3.00. A cumulative Income Tax Sunshine Index of 1981 through 1989 letter rulings may be purchased for \$4.00.

3. Name and address of person to contact concerning this information:

Linda Settle
Illinois Department of Revenue
Legal Services Office
101 West Jefferson Street
Springfield, Illinois 62794
Telephone: (217) 782-7055

APPORTIONMENT – FINANCIAL ORGANIZATIONS

IT 10-0001-PLR 02/09/2010 If a disregarded entity is a bank, the owner of the entity is a bank which cannot be included in a unitary business group with a non-financial organization, and any subsidiary of the owner is deemed to be a financial organization as a subsidiary of a bank.

APPORTIONMENT – SALES FACTOR

IT 10-0004-GIL 02/16/2010 Various issues in the sales factor statute for broadcasting income are addressed.

CREDIT – REPLACEMENT TAX INVESTMENT

IT 10-0007-GIL 03/10/2010 A taxpayer that is not primarily engaged in retailing, in manufacturing or in mining of coal or fluorite may not claim the replacement tax investment credit on property that is used in one of those activities.

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2010 FIRST QUARTER INCOME TAX SUNSHINE INDEX

EXEMPTIONS

IT 10-0006-GIL 02/26/2010 Taxpayers are allowed the same number of exemptions for dependents in computing Illinois net income as are allowed for federal income tax purposes.

NET OPERATING LOSS AND NET OPERATING LOSS DEDUCTION

IT 10-0001-GIL 01/04/2010 Unless a timely election is made to carry losses forward only, an Illinois net loss incurred in a taxable year for which carrybacks are allowed must first be carried back.

SUBTRACTION MODIFICATIONS – OTHER RULINGS

IT 10-0002-GIL 01/04/2010 No subtraction is allowed for depreciation on gain deferred under IRC Section 1031 on the exchange of property located outside Illinois.

IT 10-0003-GIL 01/12/2010 IITA Section 203(d)(2)(J) allows partnerships to subtract expenses whose deduction is disallowed under IRC Section 280C.

IT 10-0005-GIL 02/19/2010 A correction is made to the reference to Form IL-1065 in IT 10-0003 GIL.

OFFICE OF THE TREASURER

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NOTICE OF NAMES OF PERSONS APPEARING
TO BE OWNERS OF ABANDONED PROPERTY WHOSE
LAST KNOWN ADDRESSES ARE IN CERTAIN STATES

Pursuant to Public Act 91-0016, the Illinois State Treasurer's Office is publishing the names and last known addresses of abandoned property owners whose last known addresses are allegedly in a state other than Illinois. The other state does not have a reciprocity arrangement with Illinois.

If your name or that of a person you represent appears below, you may contact this Agency for further information about the assets.

INQUIRIES MUST BE IN WRITING. The written inquiry should include the name and address as listed, and the correct name and address for reply. If inquiring about a name other than your own, you must indicate your authority to act on behalf of that person.

Address written inquiries to:

ILLINOIS STATE TREASURER'S OFFICE
UNCLAIMED PROPERTY DIVISION
P.O. Box 19495
Springfield, Illinois 62794-9495

AUTHORITY: Implementing and required by the Illinois Uniform Disposition of Unclaimed Property Act, [765 ILCS 1025/12].

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AMAD JORGE BUENOSAIREARGENTINA LAKE ZURICH

ASTD PO BOX 1567 MERRIFIELD

BROMBEREK JEANETTE

BROMBEREK JOAN

BROWN LORETT E 40 BOWHILL LN WINNIPEG MAMITOBA

CEYLAN INTERCONTINENTAL

ASKER OCAGI CAD NO 1 TAKSIM

CLERK OF SUPERIOR COURT IN ARIZONA

COLE COUNTY TREASURER

COMFORT INN LONDON HEATHROW

SHEPISTON LANE

COMPTROLLER OF MARYLAND

CONNECTICUT STATE

COOK DOREEN J CHISLEHURST 8 WYKEHAM CT OLD P KENT

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CROWNE PLAZA BIRMINGHAM CITY CENTRE HOLLIDAY STREET

CROWNE PLAZA BIRMINGHAM NEC PENDIGO WAY

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CROWNE PLAZA DARLING HARBOUR 150 DAY STREET

CROWNE PLAZA DUBAI PO BOX 23215

CROWNE PLAZA DUBAI SHEIKH ZAYED AL NAHYAN ROAD PO

CROWNE PLAZA JEDDAH ALCORNICHE AL ANOALOS ST PO B

CROWNE PLAZA KUWAIT PO BOX 18544

CROWNE PLAZA KUWAIT PO BOX 18544 FARWANIYA

CROWNE PLAZA MADRID CITY CENTER PLAZA DE ESPANA

CROWNE PLAZA MANCHESTER MIDLAND PETER STREET

CROWNE PLAZA MUSCAT BLDG 1730 QURUM STREET

CROWNE PLAZA PERTH 54 TERRACE ROAD

CROWNE PLAZA TOULOUSE 7 PLACE DU CAPITOLE

CROWNE PLAZA WIESBADEN BAHNHOFSTR 1012

DAR AL TAQWA I C MADINAH OFF SITTEEN STREET

DAWSON CHERYL G 2433 WHITHIRE BLVD 30 MIDLAND

DENIA MARRIOTT LA SELLA GOLF RESORT & SP

PARTIDA NEGRALS POLIGONO 29 PA

DEVERE CAMERON HOUSE LOCH LOMOND ALEXANDRIA DUNBART

DEVERE CAMERON HOUSE HOTEL LOCH LOMOND ALEXANDRIA DUNBAR

DIENETHAL HELEN PO BOX 413 WILMOT

DIENETHAL RANDALL S PO BOX 413 WILMOT

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DOM PEDRO LISBOA AV ENG DUARTE PACHECO 24 VAT 5

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EDUCATIONAL TESTING SERVICE

PO BOX 6666 PRINCETON

EMIRATES TOWERS DUBAI PO BOX 72127

EVENS HOLLIE S 3035 CADILLAC BLVD DETROIT

EVENS ROSE L 3035 CADILLAC BLVD DETROIT

EXEDRA A BOSCOLO EXCLUSIVE HOTEL

VIA URUGUAY 47 PIVA 0412302028

FINLEY JUDITH 1213 ASBURY WAY BOYNTON BEACH

FORT WAYNE RADIOLOGY

FURUBAYASHI KEIKO

ANATANOIED HOKUMON CHU 11290ASAHIKAWA HOKKAI

GARRETT JAMES W 252 MILL SPRINGS COATESVILLE

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GENERAL REVENUE CORP PO BOX 42951 CINCINNATI

GILLE JONATHAN 5400 MARCELLA RD MERREVILLE

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GRAND HYATT DUBAI PO BOX 7978

OFFICE OF THE TREASURER

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GRAND HYATT MELBOURNE 123 COLLINS STREET

GRAND HYATT TAIPEI NO 2 SUNG SHOU ROAD

GRAND PLAZA PARKROYAL RESORT PENANG

BATU FERRINGHI BEACH 11100 BAT

GRAND PLAZA PARKROYAL SINGAPORE 10 COLEMAN STREET

GRANT EMMA L 958 GENESSE AVE GENESSE

GRANT LAFE D 958 GENESSE AVE GENESSE

HALVANON INSURANCE COMPAN IN LIQUIDATION

3 ST PHILIPS CENTRAL BRISTOL

HASKELL BRADLEY J 4720 KINGSWAY DR INDIANAPOLIS

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AGIOU GEROGIOU 9 15234 HALANDRI ATHENS

HOKAMA MORITOMO

973123 AKAMICKI DANCHI GUSHIKAWA CITY OKINAWA

HOLIDAY INN AL KHOBAR RAKKA OLD AIRPORT ROAD

HOLIDAY INN AL MADINAH MUSCAT PO BOX 692

HOLIDAY INN AL SALAM KING KHALED STREET AND MAKKA R

HOLIDAY INN AMMAN AL MADINA ALMUNAWARA STREET

HOLIDAY INN BRUSSELS CITY CENTER CHAUSSEE DE CHARLEROI 40

HOLIDAY INN DUBAI DOWNTOWN PO BOX 29499 AL RIQUA STREET

HOLIDAY INN DUNES DUNES CENTER VERDUN STREET

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HOLIDAY INN GDANSK ALEJE JEROZOLIMSKIE 56 NIP PL5
HOLIDAY INN KRAKOW UL WIELOPOLE 4 NIP 6762274
HOLIDAY INN LEICESTER 129 ST NICHOLAS CIRCLE
HOLIDAY INN LONDON KENSINGTON FORUM 97 CROMWELL ROAD
HOLIDAY INN MADRID PLAZA CARLOS TRIAS BERTRAN 4 V
HOLIDAY INN MELBOURNE CNR FLINDERS & SPENCER STREETS
HOLIDAY INN NEWCASTLE UPON TYNE
GREAT NORTH ROAD SEATON BURN
HOLIDAY INN PARIS PLACE D ITALIE EXPRESS
178 BOULEVARD VINCENT AURIOL
HOLIDAY INN RIYADHMINHAL KING ABDUL AZIZ ROAD
HOLIDAY INN ROISSY EN FRANCE CDG AIRPORT 1 ALLEE DU VERGER
HOLIDAY INN RUNGIS CEDEX PARIS ORLY AIRP
4 AVENUE CHARLES LINDBERGH
HOLIDAY INN SILOM BANGKOK 981 SILOM ROAD
HOLIDAY INN STUTTGART MITTLERER PFAD 2527 STUTTGAR
HOLIDAY INN WROCLAW ALEJE JEROZOLIMSKIE 56 NIP PL5
HOTEL ASTORIA ST PETERSBURG 39 BOLSHAYA MORSKAYA STR
HOTEL ASTORIAST PETERSBURG ST ISAACS SQUARE 39 BOLSHAYA M
HOTEL INTER CONTINENTAL DOHA AL ISTIGLAL ROAD WEST BAY LAGO
HOTEL INTERCONTINENTAL MUSCAT SULTANATE OF OMAN POST OFFICE

OFFICE OF THE TREASURER

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HOTEL INTERCONTINENTAL SINGAPORE 80 MIDDLE ROAD

HOTEL QUALITY MONCLOA GARDEN SERRANO JOVER 1

HOTEL RAFAEL VENTAS ALCALA 269

HOTEL VILLA REAL PLAZA DE LAS CORTES 10

HRM CLAIM MANAGEMENT PO BOX 4089 KALAMAZOO

HURGHADA INTERCONTINENTAL RESORT
EL CORNICHE ROAD POST OFFICE B

IBIS ROISSY EN PARIS CDG 2 AVENUE DE LA RAPERIE ROISSY

INTER CONTINENTAL CANNES CARLTON
58 BOULEVARD LA CROISSETTE PO B

INTER CONTINENTAL DUBAI BANIYAS ROAD

INTER CONTINENTAL EDINBURGH GEORGE 21 GEORGE STREET

INTER CONTINENTAL LONDON CHURCHILL 30 PORTMAN SQUARE

INTER CONTINENTAL NAIROBI CITY HALL WAY POST OFFICE BOX

INTER CONTINENTAL PRINCESA SOFIA PLAZA P10 XII

INTER CONTINENTAL ROME DE LA VILLE VIA SISTINA 6769

INTERCITY HOTEL FREIBURG BISMARCKALLEE 3

INTERCITY HOTEL NUERNBERG EILGUTSTRASSE 8

INTERCITYHOTEL BERLIN AM OSTBAHNHOF 5

INTERCITYHOTEL STUTTGART ARNULF KLETT PLATZ 2

INTERCONTINENTAL MADRID PASEO DE LA CASTELLANA 49

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INTERCONTINENTAL SHANGHAI PUDONG 777 ZHANG YANG ROAD

INTERCONTINENTAL SHANGHAI PUDONG

777 ZHANG YANG ROAD PUDONG

INTERCONTINENTAL WARSAW UL EMILII PLATER 49 NIP 525 21

JAHED FAQIR 10 RUE DE TURKHEM CENTRE HOS ROUFFACH

JEDDAH INTERCONTINENTAL HOTEL

AL HAMRA CORNICHE PO BOX 41855

JORDAN INTERCONTINENTAL QUEEN ZEIN STREET POST OFFICE

JUMEIRAH BEACH HOTEL JUMEIRAH BEACH ROAD PO BOX 114

JUMEIRAH BEACH HOTEL PO BOX 11416

KATZ OFER 21 MORDEHAY ST TALLASSEE

KEMPINSKI FRANKFURT GRAVENBRUCH AN DER BUNDESSTRASSE 459

KEMPINSKI HOTEL CORVINUS BUDAPEST ERZSEBET TER 78

KEMPINSKI MOSCOW BALTSCHUG 1 UL BALCHUG

KEMPINSKI MUNICH VIER 4 JAHRESZEITEN MAXIMILIANSTRASSE 17

KERLUKU UDIJE 221 BRIDGE AVE WINDSOR ONTARIO

KIM SANG HWAN

SAMIK GREEN 11 CHA IND SEOUL 134072

LABCORP OF AMERICA PO BOX 2270 BRIDGETON

LARSSON MATS E HAMNGATAN 2 11147 STOCKHOLM

LEE BAEK DO 110601 TAEYOUNG SEOUL

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OHIO DEPARTMENT OF INSURANCE

OKLAHOMA COUNTY TREASURER

OKURA AMSTERDAM FERDINAND BOLSTRAAT 333

PALACE NOORDWIJK AAN ZEE PICKEPLEIN 8

PALFI MARY J 110 MULLIGAN MICHIGAN CITY

PEPLOW BRIAN CAIXA POSTAL 52 781 FORTALEZA-CEARA

PEPPERMILL RENO HOTEL AND CASINO 2707 SOUTH VIRGINIA STREET

PINELLAS COUNTY FLA

RADISSON BASEL SAS POSTFASH 503

RADISSON BRUSSELS SAS RUE DU FOSSE AUX LOUPS 47

RADISSON DUSSELDORF SAS KARLARNOLPLATZ 5

RADISSON SAS PORTMAN HOTEL 22 PORTMAN SQUARE

RADISSON SYDNEY 27 OCONNELL STREET

RADISSON WARSAW CENTRUM HOTEL UL EMILII PLATER 53 NIP 525214

RAFAEL MADRID ATOCHA MENDEZ ALVARO 30

RAFFLES SINFAPORE 1 BEACH ROAD

RAFFLES THE PLAZA SINGAPORE 80 BRAS BASAH ROAD

RAMADA GLASGOW AIRPORT MARCHBURN DRIVE ABBOTSINCH

READING MOAT HOUSE HOTEL MILL LANE SINDLESHAM NR WORKIN

REGENCY INTERCONTINENTAL BAHRAIN

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KING FAISAL HIGHWAY POST OFFIC

RENAISSANCE MOSCOW OLYMPIJSKIJ PROSPECT 181

RITZ LONDON 150 PICCADILLY

RIYADH INTERCONTINENTAL HOTEL MAAZER STREET

ROYAL WINDSOR BRUSSELS 5 RUE DUQUESNOY

SCHWARZSTEIN FANY DORA

1062 JUNCAL 1770 BUENOS AIRES

SEMIRAMIS INTERCONTINENTAL PO BOX 60 CORNICHE EL NIL

SENTARA VI GEN HOSP PO BOX 79603 ABILENE

SHANGRI LA HOTEL SYDNEY 176 CUMBERLAND ST

SHEPPERTON MOAT HOUSE QUEENS COURT 917 EASTERN ROAD

SHERATON CAIRO EL GEZIRAH HOTEL AND TOWE EL ORMAN

SHERATON WARSAW HOTEL AND TOWERS AL JEROZLIMSKIE 56C

SMITH MICHAEL L RT 1 BOX 1 VERBENA

SOFITEL VICTORIA WARSAW UL 11 KROLEWSKA

SUNSET MOTORSPORTS 115 SACKVILLE DR LOWER SACKVILLE

SWISSOTEL BEIJING NO 2 CHAO YANG MEN BEI DA JIE

SWISSOTEL DALIAN 21 WU HUI ROAD ZHONGSHAN DISTR

SWISSOTEL LONDON HOWARD 12 TEMPLE PLACE

SWISSOTEL MERCHANT COURT SINGAPORE 20 MERCHANT ROAD

SWISSOTEL NANKAI OSAKA 160 NANBA 5CHOME CHUOKU

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SWISSOTEL SYDNEY 68 MARKET STREET

TANDETER NOE ENRIQUE 1062 JUNCAL 1770 BUENOS AIRES

TKATCHEV IGOR CERN THEORY DIVISION CH1211 GENEVA

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VIKTORS RESIDENZ SAARBRUECKEN AM DEUTSCHMUEHLENTAL

WESTIN BELLEVUE DRESDEN L TZOWUFER 15

WOLYN REGINA 19124 JASWILY 98 WOJ BIALYSTOK

ZAIFMAN ALLEN

ISRAEL NETANYA YEHUDA HALEVI 8 16

ZAIFMAN FRIDA

ISRAEL NETANYA YEHUDA HALEVI 8 16

ZIMMERMAN WERNER 453 PINEVIEWBAY THUNDER BAY

ILLINOIS ADMINISTRATIVE CODE
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