

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program

Chapter 28B. Supplemental Contributions Program

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TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / Annotations

HISTORY

Revision notes. Act No. 6905, § 7 amends Title 3, Chapter 27 by inserting a new subchapter III comprising §§ 901 through 913. This new subchapter has been redesignated as Chapter 28B under Title 3. See revision note under § 750 of this chapter.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770m. Program established

§ 770m. Program established

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770m. Program established / Text

(a) The Supplemental Contributions Program is hereby established to be a defined contribution plan pursuant to Title 26, Section 414, subsection (i) United States Code. This program shall operate solely at the option of the participants and shall in no way obligate employers for lifetime annuity payments to participating employees of their beneficiaries.

(b) This chapter establishes a new program, and defines the Supplemental Contributions Program.

(c) The Supplemental Contributions Program Fund is established as a special trust fund in the Treasury of the Government of the Virgin Islands to accept participant contributions to the plan.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770m. Program established / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, p. 341.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770n. Design and administration

§ 770n. Design and administration

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770n. Design and administration / Text

The design and administration of the Supplemental Contributions Program must conform to the applicable provisions of Title 26 of the United States Code and the Internal Revenue Code.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770n. Design and administration / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, p. 341.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770o. Severability

§ 770o. Severability

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770o. Severability / Text

If any provision of this chapter or application thereof to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application by a court of competent jurisdiction, and to this end the provisions of this chapter are severable.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / §

770o. Severability / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, p. 341.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770p. Definitions

§ 770p. Definitions

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770p. Definitions / Text

(a) “Account” means the account maintained with respect to the participant which reflects the aggregate value of the following amounts credited to the participants:

(1) Employee after-tax contributions to the plan.

(2) Net earnings of the Supplemental Contributions Program allocable to the participant.

(3) Any amount credited to the participant's account by reason of a transfer from another plan or arrangement in accordance with applicable laws.

(b) “Board” means the Board of Trustees of the Government Employees Retirement System.

(c) “Compensation” means the total amount paid to an employee for a plan year as required to be reported on the employee's Internal Revenue Service form W-2 for income tax withholding purposes. This amount includes employee contributions picked up by the employer under Title 26, Section 414, subsection (h), paragraph (2) of the United States Code; and any amounts deducted by the employer from the participant's salary, including deductions for tax-deferred retirement plans or insurance programs; deductions for participation in a tax-sheltered annuity within the meaning of Title 26, Section 403(b), of the United States Code; deductions for participation in an eligible deferred compensation plan within the meaning of Title 26, Section 457 of the United States Code; and deductions for participation in a plan that meets the requirements of Title 26, Section 125 or Section 401, subsection (k) of the United States Code.

(d) “Disability” means disability of permanent or extended and uncertain duration, as determined by the Board.

(e) “Early retirement age” means the age at which the participant attains age 50 or qualifies for early retirement under the provisions of this title.

(f) “Eligible employee” means:

(1) Any person employed by the Government of the Virgin Islands and its instrumentalities or autonomous agencies.

(2) Any legislators as defined pursuant to sections 714 and 763.

(3) Any justice or judge, as defined in section 733.

The Board shall determine when the members of the system or a contracting agency shall become eligible employees.

(g) “Employee contribution” means the amount contributed by the participating employee to his or her account in the plan.

(h) “Fund” means the Supplemental Contributions Program Fund.

(i) “Net earnings” means the income earned, or losses incurred, on the Supplemental Contributions Program Fund, less the cost of administering the plan.

(j) “Participant” means an eligible employee who has contributions credited under the plan.

(k) “Plan” means the Supplemental Contributions Program.

(l) “Plan year” means the 12-month period commencing on any January 1 and ending on the following December 31.

(m) “Retirement” means termination of all employment for the employer and completion of all conditions precedent to receiving a distribution for retirement.

(n) “System” means the Government Employees Retirement System.

(o) “Termination” means termination of employment by reason of separation from all service for all employees that participate in the system.

(p) “Valuation date” means the date as of which the assets of the fund are valued.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770p. Definitions / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, pp. 341–343.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770q. Administration

§ 770q. Administration

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770q. Administration / Text

(a) Except as provided in this chapter, the Board shall administer the plan in conformity with its powers and duties for administration of the system as set forth in section 715 of this chapter. The Board shall, to the extent that it determines feasible, establish the procedures for the administration of this program.

(b) The Board may retain a third-party administrator to perform investment management, record keeping, customer service, or other plan administration services and the expenses associated with such retention shall be paid from the fund.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770q. Administration / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, p. 343.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770r. Rules and regulations

§ 770r. Rules and regulations

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770r. Rules and regulations / Text

(a) The Board shall adopt rules and regulations embodying the material terms and conditions of the plan consistent with this chapter and the applicable provisions of Title 26 of the United States Code.

(b) The Board may, as it considers necessary or appropriate, amend the plan consistent with this chapter and the applicable provisions of Title 26 of the United States Code.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770r. Rules and regulations / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, pp. 343, 344.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770s. Conditions

§ 770s. Conditions

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770s. Conditions / Text

(a) With regard to the plan, the board may not engage in any transaction prohibited by Title 26, Section 503, subsection (b) of the United States Code.

(b) The Board may require a third-party administrator, record keeper, custodian, or investment manager that is contracted with, or appointed by, the system to be subject to the duties set forth in subsection (a) of this section.

(c) The Board shall have control of the investment of the assets of the fund.

(d) Notwithstanding any other provision of law, the Board may retain a bank or trust company to serve as a custodian for safekeeping, record keeping, delivery, securities valuation, investment performance reporting, or other services in connection with investment and administration of the fund.

(e) All monies in the fund are annually appropriated, without regard to fiscal years or plan years, to the Board to carry out the purposes of this chapter.

(f) The assets of the fund must be valued annually, and may be valued more frequently as prescribed by the Board.

(g) Any person who is an eligible employee may elect, in a manner prescribed by the Board, to participate in the plan.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770s. Conditions / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, p. 344.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770t. Contributions

§ 770t. Contributions

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770t. Contributions / Text

(a) Employee contributions to the plan are made solely at the option of the participant.

(b) Employee contributions may be made directly by the participant to the plan on a periodic basis as specified by the Board, or may be withheld from the employee's compensation after taxes and submitted by the employer through payroll deduction.

(c) The Board shall establish the minimum contribution amount.

(d) Notwithstanding any other provision of law to the contrary, contributions to the plan are subject to the applicable limitations imposed by Title 26, Section 415 of the United States Code, as that section may be amended from time to time and as these limits may be adjusted by the Commissioner of the Internal Revenue Service.

(e) Notwithstanding any other provision of law to the contrary, the amount of compensation that is taken into account in determining the allocations to each participant's account under the plan may not exceed the applicable annual compensation limitations prescribed by Title 26, Section 401, subsection (9a) [sic], paragraph (17) of the United States Code, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of the Internal Revenue Service.

(f) The plan must provide for the return of excess annual additions and the gain attributable thereto in accordance with Title 26, Section 415 of the United States Code. In the event a participant participates in more than one plan of the employer, any annual additions shall be deemed to consist first of annual additions to this plan.

(g) There are no employer contributions to the plan.

(h) There are no employer payment of participant contributions on behalf of a participant in accordance with Title 26, Section 414, subsection (h), paragraph (2) of the United States Code.

(i) Contributions made by the participant to the plan must be credited to the participant's account.

(j) In the case of a contribution that is made under a mistake of fact, nothing in this part may prohibit the return of that contribution to the participant within one year after discovery of the mistake.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770t. Contributions / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, pp. 344, 345.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770u. Participant provisions

§ 770u. Participant provisions

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770u. Participant provisions / Text

(a) The net earnings of the fund must be allocated to the participant's account as of each

valuation date.

(b) The value of each participant's account must be determined at least once annually in a manner prescribed by the Board.

(c) A participant shall receive a statement that displays the value, or balance, of the participant's account and summarizes any credits to the account or other transactions.

(d) A participant has a vested right to one hundred percent of the value of the participant's account. The right accrues when the person becomes a participant.

(e) The right of a participant to allocations to the participant's account is not subject to execution or any other process whatsoever, except to the extent permitted by this chapter, and is unassignable except as specifically provided under this chapter.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770u. Participant provisions / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, pp. 345, 346.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770u. Participant provisions / Annotations

HISTORY

Revision notes. As approved, this section contained two subsections (c), therefore the second one was redesignated as (d) and former (d) was redesignated as (e).

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770v. Distribution, death benefit provisions

§ 770v. Distribution, death benefit provisions

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770v. Distribution, death benefit provisions / Text

(a) The participant may designate any person or persons as beneficiaries to receive any amount that may be payable upon the death of the participant pursuant to the provisions of this chapter. The beneficiary or beneficiaries must be designated on a form prescribed by the board, signed by the participant, and delivered to a plan representative prior to the participant's death.

(b) The participant's beneficiary designation shall not be given effect and shall be overridden to the extent that such a designation would impair the rights of any surviving spouse

under applicable federal, state or territorial law.

(c) Unless otherwise provided in the beneficiary designation form, each designated beneficiary shall be entitled to equal shares of the lump sum distribution that may be payable from the participant's account upon the death of the participant.

(d) In the event the participant dies without a valid beneficiary designation on file, any balance remaining in the participant's account shall be payable to the participant's survivors in the following order:

- (1) The participant's spouse.
- (2) The participant's natural or adopted children.
- (3) The participant's parents.
- (4) The participant's estate.

(e) Upon receipt of proof of a participant's death. The beneficiary or beneficiaries shall be entitled to a death benefit that is a lump sum distribution of the balance remaining in the participant's account.

(f) If the participant died prior to termination of employment or distribution of all of the contributions and earnings credited to the participant's account, lump sum distribution shall be an amount that is equal to the balance remaining in the participant's account.

(g) Application for the distribution shall be made on an application form and in the manner prescribed by the board.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770v. Distribution, death benefit provisions / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, pp. 346, 347.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770w. Distribution, termination, retirement, disability

§ 770w. Distribution, termination, retirement, disability

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770w. Distribution, termination, retirement, disability / Text

(a) Upon termination for any reason other than death, disability, or retirement, a participant is entitled to a lump sum distribution of the balance of the participant's account within a reasonable time following the valuation date immediately following the date of the application.

(b) Application for a distribution for termination of employment shall be made on a distribution request form and in the manner prescribed by the Board.

(c) All employers with which the participant is employed as a member of the system shall certify on a form prescribed by the board that the participant's employment has terminated.

(d) Upon termination, a participant may apply for a distribution for retirement, provided the retirement date is no earlier than the date on which the participant attains the early retirement age pursuant to the provisions of this chapter. The retirement benefit is a distribution of the balance of the participant's account within a reasonable time following the valuation date immediately following the date of the application.

(e) Application for a distribution for retirement shall be made on a distribution request form and in the manner prescribed by the board.

(f) All employers with which the participant is employed as a member of the system, shall certify on a form prescribed by the Board that the participant's employment has terminated because of retirement.

(g) Upon termination, a participant may apply for a distribution for disability. A distribution for disability shall become payable only upon a determination by the board that the participant has a disability of permanent or extended and uncertain duration. The disability benefit is a distribution of the balance of the participant's account within a reasonable time following the valuation date immediately following the date of the application.

(h) Application for a distribution for disability shall be made on a distribution request form and in the manner prescribed by the board.

(i) All employers with which the participant is employed as a member of the system shall certify on a form prescribed by the board that the participant's employment has terminated because of disability.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770w. Distribution, termination, retirement, disability / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, pp. 347, 348.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770w. Distribution, termination, retirement, disability / Annotations

HISTORY

Revision notes. As approved, this section contained two subsections (h), therefore the second one

was redesignated as (i).

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770x. Distribution, payment

§ 770x. Distribution, payment

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770x. Distribution, payment / Text

(a) Any participant who is entitled to a distribution may elect to receive the distribution in either of the following forms:

(1) A single lump sum payment.

(2) Substantially level installment payments for a period or years that extends no longer [than] the life expectancy of the participant.

(b) Any beneficiary who is entitled to a distribution may elect to receive the distribution in either of the following forms.

(1) A single lump sum payment.

(2) Substantially level installment payments for a period or years that extends no longer than the life expectancy of the beneficiary.

(c) Notwithstanding any other provision of this chapter, a participant or beneficiary shall not be permitted to elect a distribution under this chapter that [does] not satisfy the requirements of Title 26, Section 401, subsection (a), paragraph (9) of the United States Code, including the incidental death benefit requirements of title 26, Section 401, subsection (a), paragraph (9), subparagraph (g) of the United States Code and the regulations thereunder. The required beginning date of distributions that reflect the entire interest of the participant shall be as follows:

(1) In the case of a lump sum distribution to the participant, the lump sum payment shall be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70 1/2 years or the calendar year in which the participant terminates employment.

(2) In the case of a distribution to the participant in the form of periodic payments, payment shall begin not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of 70 1/2 years or the calendar year in which the participant terminates employment.

(3) In the case of a benefit payable on account of the participant's death after distributions to the participant have commenced in the form of periodic payments, the remainder of the participant's account shall be distributed at least as rapidly as if the participant had not died.

(4) In the case of a benefit payable on account of the participant's death before distributions to the participant have commenced, distributions shall be paid no later than December 31 of the calendar year in which the fifth anniversary of the participant's date of death occurs unless the benefit is paid over a period not extending beyond the life expectancy of the beneficiary and distributions commence not later than December 31 of the calendar immediately following the calendar year in which the participant died, or in the event that the beneficiary is the participant's spouse, distributions must commence on or before the later of either:

(i) December 31 of the calendar year immediately following the calendar year in which the participant dies.

(ii) December 31 of the calendar year, in which the participant would have attained the age of 70 1/2 years.

(d) Distributions from the plan shall be made as soon as practicable after the first valuation date immediately following the date of request for distribution calculated based upon the valuation date immediately preceding the distribution.

(e) Notwithstanding any other law to the contrary, the death benefit payable under the plan may be requested by the beneficiary and paid as soon as practicable following receipt of proof of the participant's death.

(f) If a person becomes entitled to a distribution from the plan that constitutes an eligible rollover distribution within the meaning of Title 26, Section 401, subsection (a), paragraph (31) of the United States Code, the person may elect under terms and conditions established by the board to have the eligible rollover distribution or a portion thereof paid directly to a plan that constitutes an eligible retirement plan within the meaning of Section 401, subsection (a), paragraph (31), as specified by that person. Upon the exercise of the election by a person with respect to a distribution or a portion thereof, the distribution by the plan of the amount so designated, once distributable under the terms of the plan, shall be made in the form of a direct rollover to the eligible retirement plan so specified.

(g) Notwithstanding any other provision of this chapter, a participant may, at any time, in writing, authorize the Board to apply any or all of the participant's account to payment of any contributions required as a member of the system or payable to the system at the option of the member pursuant to any provision of this chapter, except normal monthly contributions required by this chapter. Any distribution or transfer made pursuant to this subsection shall comply with the applicable provisions of Title 26 of the United States Code.

(h) Except as otherwise provided in this chapter, all distributions shall be made directly from the fund to the participant or beneficiary. To the extent required by federal or territorial law, income and other taxes shall be withheld from each distribution, and the payment shall be reported to the appropriate governmental agency or agencies.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770x. Distribution, payment / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, pp. 348–350.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770y. Plan's obligations

§ 770y. Plan's obligations

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770y. Plan's obligations / Text

(a) The plan's obligations to a participant, beneficiary, or nonparticipant spouse who elected a lump sum distribution cease upon distribution of the lump sum benefit.

(1) Deposit in the United States mail of a warrant drawn in favor of the participant, beneficiary, or nonparticipant spouse and addressed to the latest address on file for that person constitutes distribution of the benefit.

(2) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant, beneficiary, or nonparticipant spouse constitutes distribution of the benefit.

(3) If the participant, beneficiary, or nonparticipant spouse has elected on a form prescribed by the Board to transfer all or a specific portion of the account that is eligible for a direct trustee-to-trustee under Title 26, Section 401, subsection (a), paragraph (31) of the United States Code to the trustee of a qualified plan under Title 26, Section 401 of the [United] States Code, deposit in the United States mail of a notice that the requested transfer has been made constitutes distribution of the benefit.

(b) The plan's obligations to a participant or beneficiary who elected to receive a benefit in the form of partial distributions cease upon distribution of the final payment.

(1) Deposit in the United States mail of a warrant drawn in favor of the participant, beneficiary, or nonparticipant spouse and addressed to the latest address on file for that person constitutes distribution of the benefit.

(2) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant, beneficiary, or nonparticipant spouse constitutes distribution of the benefit.

(c) Distribution under subsections (a) or (b) pursuant to the Board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons constitutes a complete discharge and release of the Board, system and plan from liability for payments.

TITLE THREE Executive / Chapter 28B. Supplemental Contributions Program / § 770y. Plan's obligations / History

—Added Dec. 29, 2006, No. 6905, § 7, Sess. L. 2006, pp. 350, 351.