

LOSAP FREQUENTLY ASKED QUESTIONS

LOSAP

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FEES

- 1. How are administrative service fees to be paid? Are they paid from the award appropriation or from a separate appropriation?**

All administrative fees/service charges are paid from the original appropriation approved by the public referendum. *N.J.A.C. 5:30-14.50* prohibits the sponsoring agency from paying the administrative fees on behalf of the volunteers. ([Return to top](#))

- 2. What are acceptable administrative expenses?**

The contractor establishes administrative fees. The fees are approved by the sponsoring agency through the execution of the Length of Service Award Program Plan Document with the contractor. In this manner, the sponsoring agency has the discretion to determine what are acceptable administrative fees. ([Return to top](#))

- 3. When invested funds are returned to a vested volunteer, what are acceptable administrative fees?**

Fees are taken from the individual's account on a pro-rated or individual account basis. This may not include any penalties that may be assessed by the approved plan for early withdrawal or state or federal taxes. ([Return to top](#))

GENERAL

- 4. If a member responds while 'on the clock/payroll' for the municipality, is the member entitled to receive LOSAP credits?**

P.L. 2001, chapter 72—approved December 26, 2001—amended the Emergency Service Volunteer Length of Service Award program to permit active volunteers who also serve as paid employees within a local government unit of the State, to receive credit for activities performed during the individual's regularly assigned work periods. ([Return to top](#))

- 5. Are "Junior" or "Explorer" members of a volunteer service organization eligible to participate in a LOSAP?**

Junior or explorer member eligibility is a local matter. It depends on the emergency service organization's definition of "active volunteer member" and whether the junior members are able to acquire the type and number of service points during a year to qualify for the LOSAP award. ([Return to top](#))

- 6. Can a new volunteer who joins an emergency a service organization after the start of a calendar year, but accumulates the annually required number of points, still qualify for the LOSAP credit that year?**

Yes, if a volunteer is able to satisfy the local plan's qualification requirements for a year of active emergency service in less than the first 12 month period, the volunteer is entitled to the credit and can be added to the certified list of qualifying volunteers. ([Return to top](#))

- 7. Can a volunteer qualify for a LOSAP award in a year where he or she earns fewer than the maximum annually required number of points?**

Yes, if the local LOSAP Plan permits the pro-rating of both the number of qualifying points and the amount of the award earned. ([Return to top](#))

VESTING

8. How does a volunteer firefighter or rescue squad member become vested?

The volunteer must complete five (5) cumulative years as an active member of any volunteer service organization in the State of New Jersey. If a volunteer has already been an active volunteer in the State for five or more years, then the volunteer is vested as soon as funds have been deposited into his or her account.

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9. If a vested volunteer takes a leave of absence, do they need to become vested again if they return to active duty?

No, as long as the organization grants the volunteer a leave of absence, when they return they are still recognized as a vested volunteer. [\(Return to top\)](#)

10. If a volunteer terminates service prior to vesting, are the funds automatically returned to the sponsoring agency?

Yes. Unless the volunteer requests and receives approval from the sponsoring agency for a leave of absence, the funds are automatically returned to the sponsoring agency. [\(Return to top\)](#)

11. Under what circumstances can a volunteer withdraw funds from his or her LOSAP account?

Information on length of service award plans may be found in section 457 of the [Internal Revenue Code](#). LOSAP's are designed to provide tax-deferred income benefits to active volunteers of emergency service organizations. Funds are only available to volunteers under statutorily defined situations:

- 1) Retirement -- The volunteer retires from the LOSAP Program (If the volunteer met vesting requirements)
- 2) Death--a death benefit will be paid to the volunteer's beneficiary(s).
- 3) Financial Hardship -- A retirement plan may, but is not required to, provide for hardship distributions for unforeseeable emergencies. An unforeseeable emergency is a severe financial hardship resulting from an illness or accident, loss of property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary. Examples of events that may be considered unforeseeable emergencies include imminent foreclosure on, or eviction from, the volunteer's home, medical expenses, and funeral expenses. Generally, the purchase of a home and the payment of college tuition are not unforeseeable emergencies.
- 4) Disability (If the volunteer met vesting requirements)
- 5) Separation from volunteer service (If the volunteer met vesting requirements) Funds may be transferred to another LOSAP account or can be withdrawn from the account. You will have to contact your LOSAP contractor for more specific details regarding early withdrawal fees and/or penalties.

Please note that if a volunteer terminates his or her association with the emergency service organization

and withdraws funds awarded (If the volunteer met vesting requirements), but returns a year or more later and once again becomes an active volunteer of the emergency service organization, they may participate in LOSAP, however, they must begin a new vesting track. No credit for prior years of service will be given. [\(Return to top\)](#)

- 12. If an exempt member of a volunteer fire company has maintained the required certifications, but not actively participated for several years and returns to full active membership could the “non-participation” time be considered for vesting purposes?**

Yes, the “non-participation” time could be considered for vesting purposes. However, because the member is exempt, the member had already served as an active volunteer in the State of New Jersey for the minimum five years. This means that an exempt member will be vested as soon as they become active, qualify for a LOSAP award and have funds deposited into his or her account.

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- 13. If a volunteer is vested in Town A and relocates to Town B, can the volunteer still be considered vested?**

Yes. The volunteer is considered to be vested in Town B’s LOSAP upon commencement of performance as active emergency volunteer in Town B. The volunteer may transfer funds to Towns B’s LOSAP from his/her LOSAP account in Town A’s LOSAP subject to any administrative fees imposed by either contractor. (N.J.S.A. 40A:14-188(6)(a)). [\(Return to top\)](#)

- 14. If a vested member decides that he or she wishes to withdraw funds, must the member resign from the company altogether or just from the LOSAP program?**

The LOSAP rules and regulations do not require a member to resign from the company in order to receive a distribution of funds. However, funds can only be withdrawn under certain statutorily defined situations (see Question #11).

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- 15. When can a volunteer receive a distribution of funds and are there any penalties involved?**

A volunteer is eligible to receive a distribution of funds upon completing the 5-year vesting period. Funds can only be withdrawn under certain statutorily defined situations (see Question #11). Distributions are subject to state and federal taxes as well as any penalties or fees imposed by the provider. Individuals should consult with their providers about penalties and distribution requirements that may exist when funds are distributed. [\(Return to top\)](#)

FISCAL ISSUES

- 16. If a volunteer does not vest, what happens to the funds that are returned to the sponsoring agency?**

The funds are returned to the sponsoring agency’s surplus (fund balance). [\(Return to top\)](#)

- 17. May returned funds be used to offset next year’s appropriation?**

The funds must be returned as general revenue to surplus. At the discretion of the governing body, surplus may be used to offset next year’s appropriation. However, money returned to the surplus cannot be dedicated for a specific use or purpose. [\(Return to top\)](#)

- 18. Are the municipal appropriations for LOSAP excluded from the municipal budget cap?**

Yes, municipal appropriations for LOSAP are exceptions to the municipal cap. ([Return to top](#))

19. If a volunteer receives a clothing allowance or stipend as a driver, is the volunteer prohibited from participating in a LOSAP?

No, clothing allowances, reimbursements and stipends do not prohibit a volunteer from participating in a LOSAP. ([Return to top](#))

20. The law says the maximum contribution is \$1,150. Does the amount ever increase and if so, how?

Pursuant to *N.J.A.C. 5:30-14.9*, the maximum contribution may be increased by a percentage annually determined by the Director of the Division of Local Government Services based on the Consumer Price Index of Trenton/Philadelphia. Increases to a plan's award are **optional**, at the discretion of the sponsoring agency. If the original adopting resolution or ordinance included language allowing for CPI adjustments, then the local unit may adjust the maximum allowance by resolution since the public has already approved the increase. If the original resolution or ordinance did not include language allowing for CPI adjustments, the sponsoring agency must amend the original documents to provide for the increase. If a sponsoring agency wants to increase the maximum contribution and by doing so its LOSAP budget does not exceed the amount previously approved by public question, the CPI index factor may be used and is not subject to a public hearing. If, however, the approved budget amount will increase by using the calculated CPI increase, the sponsoring agency must pass an amending ordinance or resolution that is subject to public hearing. See Local Finance Notice – LFN 2004-8 for a full discussion of using the CPI adjustment. http://www.state.nj.us/dca/lgs/lfns/04lfns/2004_8.doc. ([Return to top](#))

21. N.J.S.A. 40A:14-34 or 40:5-2 limits the annual contribution a municipality may make to a volunteer fire company or first aid organization. Does the amount the municipality contributes toward the LOSAP plan count as a portion of the allowable annual contribution?

No, LOSAP is not considered a contribution as defined in *N.J.S.A. 40A:14-34* or *40:5-2*. ([Return to top](#))

22. Is a vested volunteer who receives money as a ranking officer in the volunteer fire company or volunteer first aid squad prohibited from participating in LOSAP?

No, as long as the volunteer is not considered an employee. ([Return to top](#))

23. How is the appropriation determined?

The sponsoring agency may determine the amount of the appropriation by multiplying the amount of the award by either the total number of volunteers or by an estimated number of volunteers expected to qualify. Be sure to take into account those volunteers who may be both firefighters and emergency medical services volunteers.

The sponsoring agency **may not** budget a fixed amount to be divided among the qualifying volunteers. This would result in the amount of the award varying from year to year depending upon the number of volunteers that qualified. The LOSAP ordinance is required to identify the maximum annual contribution for an active volunteer member. (*N.J.S.A. 40A:14-185(3)(d)(3)*). ([Return to top](#))

LOSAP PLAN AMENDMENTS

24. Can the point system or award contribution amount be amended? If so, how is it done?

Yes, amending the enabling ordinance or resolution is the proper method to change award amounts, point schedules, change the LOSAP to include either automatic or periodic CPI increases, and other LOSAP elements. As required for a municipal ordinance amendment, fire district resolutions of this nature must be subject to a public hearing on the change. Increases to base award contribution amounts that exceed cumulative CPI adjustments, or point schedule adjustments that increase the number of eligible recipients over the amount projected when the referendum passed, are considered major amendments. They require a referendum to implement them because the such actions go beyond the policy originally approved by the voters.

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SPECIAL CIRCUMSTANCES

- 25. What happens to funds awarded to a volunteer who dies prior to vesting? Does it make a difference if the volunteer dies in the line duty?**

There is no distinction between a volunteer who dies in the line of duty or elsewhere. At the discretion of the sponsoring agency, the funds may be awarded to the estate of the deceased volunteer. [\(Return to top\)](#)

- 26. What happens to funds awarded to a volunteer who becomes disabled before vesting? Does it make a difference if the volunteer becomes disabled in the line of duty?**

There is no distinction between a volunteer who becomes disabled in the line of duty or elsewhere. However, depending on the disability, as long as the volunteer is active they are still eligible to become vested. There are various tasks a disabled volunteer can perform within a volunteer organization to maintain active volunteer status. [\(Return to top\)](#)

- 27. Are there any regulations in order to hold the benefits of volunteer members who are called to active duty? Can their qualifying percentages be held so that they will not lose the award benefit for the upcoming year?**

‘Freezing’ the benefits of active volunteer members who are called to active duty is a matter of local choice and is left to the discretion of the local government unit. A valuable resource that may prove helpful in determining how to handle such situations however, is the New Jersey Department of Military and Veteran Affairs (DMAVA) website: <http://www.njesgr.org>. The site contains a Frequently Asked Questions Section that addresses leaves of absence for public employees while performing military duty. [\(Return to top\)](#)

PROCEDURAL ISSUES

- 28. If a municipality has a fire district that covers part of the municipality and volunteer fire company for the remainder, can the volunteer fire company participate in a LOSAP?**

Yes, the municipality would have to sponsor the LOSAP by a referendum. [\(Return to top\)](#)

- 29. Does the governing body or a member of the public have the right to challenge the qualification of a “qualified volunteer member?”**

Yes, the list of LOSAP recipients must be posted for the general public. Anyone who wishes to challenge the list or a portion of the list must do so in compliance with *N.J.A.C. 5:30-14.11*.

- * Appeals must be mailed to the Municipal Clerk or Fire Commission Secretary no later than 30 days from the time the list was posted.
- * Within 10 days, the sponsoring agency must forward the appeal to the volunteer organization.
- * If no action is taken by the volunteer organization within 30 days, the sponsoring agency shall investigate and submit a non-binding recommendation to the volunteer organization.
- * The emergency service organization shall accept, modify, or deny the recommendation and decide the matter.
- * Final decisions are subject to judicial review. ([Return to top](#))

30. What is the appeal process for denial of past service credit?

The appeal process for denial of past service credit is the same as the challenge of qualifications. It is highly recommended that past service credit be addressed in the enabling referendum. ([Return to top](#))

31. Can two fire districts have a single LOSAP?

No, each fire district must have their own LOSAP because a fire district is a separate governing body that provides a service to a specific portion of the community. While each sponsoring agency creates its own LOSAP through the referendum process, there is nothing to stop fire districts from jointly administering the LOSAP through an Interlocal Service Agreement. ([Return to top](#))

32. What occurs when the list of qualified volunteers is not certified within 30 days as required by *N.J.S.A. 40A:14-191* and *N.J.A.C. 5:30-14.10*?

The list can be certified and the review and appeal process can commence as described in the enabling statute and implementing Rules. The only party harmed by the delay in certification is the volunteer because no funds may be transferred for investment until the review process has been completed. Nonetheless, volunteer organizations should meet the statutory requirements to comply with the spirit and letter of the law. ([Return to top](#))

POINT SYSTEM

33. Can a person receive more than one LOSAP award if they are an active volunteer firefighter and/or emergency medical service volunteer for more than one sponsoring agency?

Yes, as long as the individual meets the criteria for each of the LOSAP programs. ([Return to top](#))

34. If a person is both a volunteer firefighter and an emergency medical service volunteer under the same sponsoring agency, is the individual eligible to receive two separate LOSAP awards?

Yes, as long as the individual is active and qualifies for credit under two separate point systems. The volunteer, however, must respond to each emergency call as **either** a volunteer firefighter **or** an emergency medical service volunteer. The volunteer cannot receive LOSAP credit for both point systems for the same emergency call. The volunteer only needs one account with the Plan Administrator. Regardless of where the award comes from, the money for the volunteer is deposited into a single account. Pursuant to *N.J.S.A. 40A:14-189(a)*, a volunteer in this situation cannot receive more than the statutory LOSAP award amount of \$1,150 from a single sponsoring agency. ([Return to top](#))

35. Who adopts the point system used to determine eligibility of participating in a LOSAP?

The point system is adopted by the sponsoring agency in the ordinance or resolution establishing the LOSAP. [\(Return to top\)](#)

36. If there is one sponsoring agency with multiple volunteer fire companies or first aid squads, can the individual fire companies or first aid squads establish their own point system for vesting?

Yes, however, the Division strongly recommends that the sponsoring agency create the point system to ensure equity and harmony among the different fire companies or first aid squads. [\(Return to top\)](#)