# RESPONSES OF AUDITOR GENERAL TO QUESTIONS PRESENTED REGARDING ACT 21 (72 P.S. § 1703-N) AD HOC POST RETIREMENT COLA ADJUSTMENTS

**1) Are surviving spouses of retirees eligible for COLA adjustment under Act 21?**

No. Surviving spouses are not eligible for additional COLA adjustments subsequent to the death of the retiree. Act 21 specifies that the ad hoc adjustment is to be provided "to a retired police officer or firefighter" and as such, surviving spouses/beneficiaries are not included in the language of the Act.

Surviving spouses or beneficiaries are only entitled to their portion of the benefit that the retiree was actually receiving at the time of death. A surviving spouse is entitled to any COLA adjustments made prior to the decedent's date of death and those payments are eligible for reimbursement under Act 21. The inclusion of the additional COLA benefits for surviving spouses or the provision of any COLAs directly to surviving spouses will not be eligible for reimbursement.

**2) What COLA amounts are included for calculation of the 65% offset amounts for COLAs received?**

The 65% offset in Act 21 includes local cost of living adjustments. Benefits provided under Act 147 or Act 64 are not included for the offset calculation in Act 21.

A retiree's 2026 special ad hoc postretirement adjustment will be reduced by 65% of the amount of COLAs awarded and paid to the retiree in 2002-2025. If the retiree had COLAs awarded and paid prior to 2002, those COLA amounts would not be included in the total for calculating 65%. The 1989 and 2002 special ad hoc adjustments should not be included in the total COLAs for calculating the 65%.

**3) Receiving a pension before 1/1/21 seems to mean that a retiree must have collected a pension as of December 2020 to qualify. Is that correct?**

Yes unless a retiree is **actually** receiving regular retirement/pension payments prior to 1/1/21, they are not eligible to receive the Act 21 COLAs. The specific language from the Act states that it is a requirement that the "retiree began receiving the retirement benefit before January 1, 2021". To be eligible for the Act 21 COLA, a retiree must be separated from employment and in actual receipt of retirement benefits paid on a regular basis prior to 1/1/21, consistent with prior definitions of what constitutes regular retirement payments.

**4) Is a DROP participant eligible for Act 21 COLA adjustments?**

Only if they separated from employment and were receiving retirement benefit payments on a regular basis before 1/1/21.

It is incorrect to interpret "receipt" of pension payments to include those payments set aside by the employer to a participant's DROP account as such funds are not accessible to the participant until their actual separation from employment and these are not "regular payments".

A simple rule of thumb is that it will not be considered a "receipt" of a pension benefit for eligibility purposes if such receipt is not an immediately taxable event. Any such payments made by a municipality will not be eligible for reimbursement under Act 21.

Section 1703-N(a) of Act 21 is clear and unambiguous in its language regarding eligibility for receipt of the ad hoc adjustment and all four conditions in Section 1703-N must be met for eligibility, which requires termination of active employment.

Entry into a DROP does not end active employment (see Erie). In a DROP, employment continues until the separation from employment at the conclusion of the DROP.
Therefore, any member who continued on payroll on or after January 1, 2021, is ineligible under the statute.

> **Section 1703-N. 2026 special ad hoc municipal police and firefighter postretirement adjustment.**
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> **(a) Entitlement.--A municipal retirement system shall pay a retired police officer or firefighter a special ad hoc postretirement adjustment under this section if all of the following apply:**
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> **(1) The retiree terminated active employment with a municipality as a police officer or firefighter.**
> **(2) The retiree receives a retirement benefit from a municipal retirement system on the basis of active employment with the municipality as a police officer or firefighter.**
> **(3) The retiree began receiving the retirement benefit before January 1, 2021.**
> **(4) The retiree has not filed a written notice with the municipal retirement system requesting that the additional monthly postretirement adjustment not be paid.**

If the DROP participant has entered a DROP prior to the eligibility date of 1/1/21 but has not exited the DROP AND separated from employment nor begun to receive regular recurring retirement payments (not a lump sum), they are NOT eligible for an Act 21 COLA benefit adjustment.

It is an incorrect interpretation of Act 21 to use the entry date of a DROP to determine eligibility for Act 21 benefits. While the entry date of a DROP can be used to determine pension longevity payments under Act 21, the entry date in a DROP does not meet the eligibility determination requirements in Act 21's specific language.

Act 21 specifically requires "receipt" of benefits "paid on a regular basis" if a retiree was not receiving regular retirement payments as defined under the Act, they would not be eligible for the ad hoc adjustment under Act 21.

Act 21 also states that a police officer or firefighter is only eligible for such adjustment "after active employment ceases". Active employment is defined in Act 21 as "an individual …who performs for compensation regular services …and who is regularly entered on the payroll…" As a result, if an individual has not exited a DROP and is still receiving payroll wages from a municipality, they are not eligible for the adjustment.

Because the DROP entry date can be used for calculation of a "retirement date" for pension longevity calculation purposes, otherwise eligible retirees' retirement dates for longevity amounts pursuant to Act 21 can be based upon a DROP entry date.

Any payments made by a municipality to DROP participants who have not received regular retirement pension benefits and who have remained employed as of 1/1/21 will not be eligible for reimbursement under Act 21.

**5) Is an ACT 21 COLA benefit payable for those on a disability pension provided they are being paid from a pension system?**

Yes. The Act defines a retirement benefit as "the amount paid on a regular basis to a retired or disabled police officer or firefighter…by a municipal retirement system …" so a disability retirement recipient would be eligible for the Act 21 COLAs provided that all other requirements of the Act were met.

**6) Would a police officer or firefighter retiree in a non-uniformed plan qualify for an ad hoc adjustment (they are not in a police or firefighter only pension plan)?**

Yes. The requirements of Act 21 are simply that the individual had been actively employed with the municipality as a police officer or firefighter. Section 1703-N(a)(2) simply refers to a "municipal retirement system" and does not specify a police or firefighter plan.

**7) Are vested members in receipt of pension payments as of 1/1/21 eligible to receive a COLA?**

Retiree members receiving regular pension payments and no longer actively employed as of 1/1/21 are entitled to receive a COLA provided that all other requirements of the Act have been met.

**8) For pensions subject to a Qualified Domestic Relations Order, do they apply COLA based on each individual QDRO agreement details? Would the ex-spouse be due a percentage of any ad hoc benefit increase if provided for in the QDRO?**

QDRO's are a separate agreement and Order of Court and are specific to the parties that have entered into the QDRO. The COLA provided in Act 21 does not automatically apply

to QDRO's. Additionally, a QDRO agreement/Order cannot provide benefits in excess of Act 21. Parties to a QDRO must seek interpretation of their specific QDRO from private counsel.

**9) When will Act 21 reimbursement payments commence?**

It is anticipated that due to the Act 205 Actuarial Valuation Report (AVR) filing dates, Act 21 COLA payments made in 2026 will be eligible for reimbursement in 2029 following the filing of the 2027 AVRs. 2027 AVRs are to be filed by March 31, 2028 and the commencement of the reimbursement payments to municipalities is expected to be September 2029.

**10) As it pertains to Act 600 COLA caps, does the 2026 ad hoc COLA get included in total COLA received by a retiree and go toward their plans' COLA cap amount?**

No. Pursuant to 53 P.S. §896.1101 the special ad hoc COLAs are not to be included in the calculation of the COLA limitations under Act 600 of 1955.