

## **Summary Plan Description for the New York State Correctional Officers & Police Benevolent Association, Inc. Legal Defense Fund**

### **Introduction**

New York State Correctional Officers and Police Benevolent Association, Inc. (NYSCOPBA) has established and maintains a prepaid legal services plan known as the NYSCOPBA Legal Defense Fund (the “Legal Defense Fund” or “Fund”). This document is only a summary (the “Summary”) of the key parts of the Legal Defense Fund and a brief description of your rights as a participant, it is not a policy itself. Only the Constitution and Bylaws and the Legal Defense Fund Policy shall govern the Legal Defense Fund.

This summary is dated [November] 2022.

### **General information**

#### ***What is the purpose of the Legal Defense Fund?***

The purpose of the Legal Defense Fund is to provide legal defense against criminal investigations and criminal charges for qualifying members for actions that occur while the member was engaged in the lawful performance of his or her duties. A “member” is an employee in the Security Services Unit of New York State represented by NYSCOPBA who is in good standing, per the NYSCOPBA Constitution and Bylaws, at the time of the incident in question.

This Fund is a benefit NYSCOPBA provides its members.

The Fund is a dedicated fund, held in trust, which cannot be used for any other purpose other than providing the benefits described in this Summary and defraying the reasonable expenses of administering the Fund.

#### ***When did the Legal Defense Fund take effect?***

NYSCOPBA created the Legal Defense Fund on August 8, 2012.

### **Eligibility/Enrollment**

#### ***Who can receive the benefits of the Legal Defense Fund?***

Any active NYSCOPBA member in good standing at the time of the incident in question can participate in the Legal Defense Fund upon fulfillment of each of the following three criteria:

- Filing with the Plan Administrator (NYSCOPBA Executive Board) a properly completed application;
- Approval of the application by the Plan Administrator; and
- Commencement and continuation of the required contribution to the Legal Defense Fund.

***How do I apply to receive the benefits of the Legal Defense Fund?***

If you are an active member in good standing, or were such at the time of the incident leading to criminal investigation or criminal charges, you are eligible to apply for the Legal Defense Fund. The Plan Administrator, in its sole discretion, determines your eligibility to receive Fund benefits (subject to the review procedure described for denied claims).

**Contributions**

***How is the Legal Defense Fund funded? How much do I have to pay to receive the benefits of the Legal Defense Fund?***

The Legal Defense Fund is funded by participant contributions. Your contribution amounts are \$1.00 per bi-weekly pay, which will be deducted from your paycheck. Specific information about your required contributions will be provided before enrollment in the Legal Defense Fund.

**Commencement/Termination of Benefits**

***When does my coverage begin?***

Legal Defense Fund benefits are available to members upon the Plan Administrator's approval of your application and commencement of payment of required contributions.

***When does my coverage end?***

Except insofar as to the acts or omissions giving rise to the claim occurred prior to such termination of coverage, your benefits will automatically terminate when one or more of the following situations occur:

- You exhaust the monetary limits of the benefit set forth in the Legal Defense Fund Policy; or
- The Legal Defense Fund is terminated.

**Legal Defense Fund Benefits**

The coverage is only for members' acts or omissions that occurred in the course and scope of the members' performance of duty which result in a criminal investigation and/or

criminal charges. The defense of such acts or omissions must be consistent with the overall interest of general membership.

### **Amount of Coverage**

The maximum benefit per occurrence is \$25,000. The \$25,000 shall be broken down in the following manner:

- \$5,000 may be provided up to the time of arraignment.
- When a criminal information and/or indictment is issued, the member may request from the Legal Defense Fund additional funds in increments disbursements up to \$10,000 at a time.
- The total benefit available from the Legal Defense Fund [for any qualifying incident] may not exceed \$25,000.

### **Exclusions from Coverage**

The Fund does not cover acts or omissions as the result of off-duty conduct or while on a leave of absence, including but not limited to domestic incidents, outside drug and/or alcohol charges, and theft. No benefits under the Fund will be provided with respect to workers' compensation claims; all civil defense; or criminal post-sentencing or appellate review.

In addition, if the Plan Administrator determines that fund benefits have been provided to a member as a result of misrepresentations of that member, and/or a member does not cooperate with the Plan Administrator during the course of such member's claim for benefits, payment of such benefits may cease and the Fund will have the right to seek reimbursement from the member of any benefits already paid.

### **Plan Administration**

#### ***Who is the Legal Defense Fund Administrator?***

The Executive Board of the New York State Correctional Officers & Police Benevolent Association, Inc. shall serve as the Plan Administrator for the Legal Defense Fund. The NYSCOPBA Executive Board is located at:

20 Computer Drive West  
Albany, NY 12205  
(518) 427-1551

Federal ID Number: 14-1802469

#### ***Who is the Legal Defense Fund Sponsor?***

The Plan Administrator is also the Plan Sponsor.

***Who are the Fund trustees?***

The trustees are the current officers of NYSCOPBA serving as Treasurer and Recording Secretary.

***Who is the Review Panel?***

The Review Panel is selected by the Executive Assembly of NYSCOPBA to review claims denied by the Executive Board and appealed by the member.

***What is the Legal Defense Fund plan number?***

The Legal Defense Fund number assigned by the Plan Administrator is 501.

***When does the Legal Defense Fund year end?***

The Legal Defense Fund's plan year is a 12-month period that commences on January 1st and ends on December 31st of each year.

***Who is the agent designated for service of process?***

Service of process may be made on a Fund Trustee or the Plan Administrator.

**Making Claims**

***How do I make a claim for benefits under the Legal Defense Fund?***

If a member seeks an allocation from the Legal Defense Fund, he/she must submit a Legal Defense Fund Application to the NYSCOPBA Executive Board or to the Regional Vice President of his or her Region who shall immediately accept and forward the Application to the Plan Administrator. The member may initially seek up to \$5,000 up to the time of arraignment as set forth in Amount of Coverage.

After the member has been arraigned, he or she may request additional funds from the Plan Administrator with an explanation of how (i) the action occurred while the member was engaged in the lawful performance of his or her duties and (ii) assisting in such defense shall be consistent with the overall interests of the general membership. The coverage is only for lawful acts or omissions that occurred in the course of employment. The member must make clear in his or her application how his or her request is related to such events. The payments will be made only after the member complies with all

requests of the Plan Administrator. If the Plan Administrator approves the member's request, the check will be transmitted directly to the member's criminal attorney. To the extent the member already paid the attorney, the member will need to request reimbursement of fees from the attorney.

In order to ensure timely processing of a member's claim application, the Legal Defense Fund Application should be completed accurately, including providing sufficient information for the Plan Administrator to determine that the member's actions that which are the subject of the complaint are within the course and scope of employment covered by the Legal Defense Fund.

If criminal charges are brought, the member must file for, and appear qualified to receive, reimbursement of legal fees and expenses under NYS Public Officers Law (POL) Section 19, with the understanding that the member will have access to Legal Defense Fund benefits prior to his or her qualification and in instances of criminal investigations that may not warrant reimbursement under POL Section 19. The member must submit proof of such filing immediately to the Executive Board. As a condition of receiving Fund benefits per the Policy, if the member receives Fund benefits and subsequently qualifies for reimbursement of legal fees under POL Section 19, the member must execute a signed assignment of any funds received back from New York State to NYSCOPBA and direct his/her attorney to refund to the NYSCOPBA Legal Defense Fund any funds received pursuant to POL Section 19. This assignment and direction must be completed within thirty (30) days of receipt of POL Section 19 funds. NYSCOPBA may enforce this right to reimbursement through legal action.

### **Benefit Claims and Review**

A member is only treated as filing a claim for Fund benefits when the member submits a Legal Defense Fund Application to the Plan Administrator directly or via the member's Regional Vice President. For purposes of the Plan's claims and review procedures, a member is not treated as filing a claim for Fund benefits when the member or the member's attorney asks the Plan Administrator by telephone if coverage is available to the member for a particular incident or legal action.

The Plan Administrator will notify a member in writing if the member's claim for Fund benefits is denied, within the time periods described below. The notice will set forth:

- The specific reason or reasons for the denial;
- Reference to the specific Fund provisions on which the denial is based;
- A description of any additional material or information necessary for the Participant to perfect the claim and an explanation of why the material or information is necessary; and

- A description of the Fund's review procedures and the time limits applicable to the review procedures, including a statement of the Participant's right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if the claim for benefits is denied on review.

The Plan Administrator will provide the written notice to the member as soon as possible, but not more than 90 days after the Plan Administrator receives the Participant's claim, unless the Plan Administrator determines that an additional period of time, not to exceed 90 days, is required because of matters beyond the control of the Plan. If an additional period of time is required, the Plan Administrator will notify the Participant in writing of the circumstances requiring the extension of time and the date by which the Plan Administrator expects to render a decision.

If the Plan Administrator notifies a Participant that the Plan Administrator has denied all or part of the Participant's claim, the Participant may request a review of the denial. The Participant or the participant's authorized representative must notify the Review Panel of the Plan Sponsor in writing of the Participant's request for a review of the denial within 60 days after the Participant receives written notice of the denial from the Plan Administrator.

The Review Panel will give the Participant or the Participant's authorized representative the opportunity to submit written comments, documents, records, and other information relating to the Participant's claim for Fund benefits.

Upon request and free of charge, the Participant or the Participant's authorized representative will be provided reasonable access to, and copies of, all documents, records, and other information relevant to the Participant's claim for benefits.

The Review Panel's review will take into account all comments, documents, records, and other information submitted by the Participant or the Participant's authorized representative relating to the claim, without regard to whether the information was submitted or considered by the Plan Administrator.

The Review Panel will notify a Participant in writing of the Review Panel's decision upon review. The notice will set forth:

- The specific reason or reasons for the decision;
- Reference to the specific Fund provisions on which the decision is based;
- A statement that the Participant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Participant's claim and benefits; and
- A statement of the Participant's right to bring an action under Section 502(a) of ERISA.

The Review Panel will make its decision no later than 60 days after the date the Review Panel received the request for review. However, if the Review Panel determines that special circumstances require an extension of time for processing the review request, the Review Panel will notify the Participant in writing before the end of the initial 60-day period. The notice to the Participant will indicate the special circumstances requiring the extension of time and the date as of which the Review Panel will make its decision, which must be within 120 days after the date the Review Panel received the request for review.

If a Participant's claim for benefits under the Fund is denied after exhausting the claims procedures set forth above, the Participant may commence legal action in a court of appropriate jurisdiction contesting the denial provided such legal action is commenced within 180 days after the final denial decision is communicated to the Participant in writing.

### **Amendment or termination of Legal Defense Fund**

#### ***Can the Legal Defense Fund be amended or terminated?***

Yes; the Plan Sponsor reserves the right to amend or terminate the Fund at any time.

### **ERISA Rights**

#### ***What are my ERISA rights?***

As a participant in the Legal Defense Fund, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

- Examine without charge all plan documents and copies of all documents filed with the U.S. Department of Labor, such as detailed annual reports and plan descriptions of the Legal Defense Fund, at the Plan Administrator's office and at other specified locations.
- Obtain copies of all plan documents and other plan information upon written request to the Plan Administrator. The Plan Administrator may make a reasonable charge for the copies.
- Receive a summary of the Fund's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Legal Defense Fund:

- The Plan Administrator is a "fiduciary" of the Legal Defense Fund and has a duty to administer the Legal Defense Fund prudently and in the interest of you and other fund participants and beneficiaries.

- No one, including your employer or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA.
- If your claim for a benefit is denied in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the Legal Defense Fund review and reconsider your claim.

### ***How do I enforce my ERISA rights?***

Under ERISA, there are steps you can take to enforce the above rights.

- For instance, if you request materials from the Legal Defense Fund and do not receive them within 30 days, you may file suit in Federal Court. In such a case, the court may require the Plan Administrator to provide the materials and pay up to \$110 a day until you receive the materials unless the materials were not sent because of reasons beyond the control of the Plan Administrator.
- If you have a claim for benefits that is denied or ignored, in whole or in part, you may file a suit in State or Federal Court.
- If it should happen that any fiduciaries of the Legal Defense Fund insure the Legal Defense Fund's money or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor or you may file suit in a Federal Court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees.

If you have any questions about the Legal Defense Fund, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Injuries, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

[END OF SUMMARY]