



**The Educational Employees' Supplementary
Retirement System *of Fairfax County***

ERFC 2001
Benefit Plan Structure

As restated effective January 1, 2016



**THE EDUCATIONAL EMPLOYEES OF FAIRFAX COUNTY
DEFINED BENEFIT PLAN**

ERFC 2001 BENEFIT STRUCTURE

Effective July 1, 2001
As Restated Effective January 1, 2016

TABLE OF CONTENTS

| | |
|--|-----------|
| ARTICLE I - Definitions | 6 |
| Section 1.01 - Accumulated Contributions..... | 6 |
| Section 1.02 - Actuarial Equivalent..... | 7 |
| Section 1.03 - Age..... | 7 |
| Section 1.04 - Board of Trustees..... | 7 |
| Section 1.05 - Credited Service | 7 |
| Section 1.06 - Effective Retirement Date | 7 |
| Section 1.07 - Eligible Employment | 8 |
| Section 1.08 - Employer | 8 |
| Section 1.09 - Enabling Ordinance..... | 8 |
| Section 1.10 - <i>ERFC</i> | 8 |
| Section 1.11 - ERFC 2001..... | 8 |
| Section 1.12 - Final Average Compensation | 9 |
| Section 1.13 - Fiscal Year or Plan Year | 9 |
| Section 1.14 - Member..... | 9 |
| Section 1.15 - Named Beneficiary | 9 |
| Section 1.16 - Nominated Beneficiary..... | 9 |
| Section 1.17 - Pension..... | 9 |
| Section 1.18 - Plan | 9 |
| Section 1.19 - Plan Document | 9 |
| Section 1.20 - Reserve Value | 9 |
| Section 1.21 - Retirement Fund or Fund | 10 |
| Section 1.22 - Salary | 10 |
| Section 1.23 - Service Retirement Date | 10 |
| Section 1.24 - Spouse..... | 10 |
| Section 1.25 - System..... | 10 |
| ARTICLE II – Name, Effective Date and Purpose | 11 |
| Section 2.01 - Name..... | 11 |
| Section 2.02 - Effective Date | 11 |
| Section 2.03 - Purpose..... | 11 |
| ARTICLE III – Membership in <i>ERFC 2001</i> | 12 |

| | |
|--|-----------|
| Section 3.01 - Eligibility | 12 |
| Section 3.02 - Employees who Earned Credited Service under ERFC Before July 1, 2001 | 12 |
| Section 3.03 - Member Contributions..... | 12 |
| Section 3.04 - Contributions by Members on Leave Without Pay While serving an Employee Organization..... | 13 |
| Section 3.05 - Employer Contributions..... | 13 |
| Section 3.06 - No Contributions for Certain Retired Members While Re-Employed | 13 |
| ARTICLE IV – Service Retirement..... | 15 |
| Section 4.01 - When Payable | 15 |
| Section 4.02 - Amount | 15 |
| Section 4.03 - Optional Methods of Payment..... | 15 |
| ARTICLE V – Death Benefit..... | 19 |
| Section 5.01 - When Payable | 19 |
| Section 5.02 - Amount | 19 |
| Section 5.03 - If There is No Named Beneficiary | 21 |
| Section 5.04 - Members Who Die in Qualified Military Service..... | 21 |
| ARTICLE VI – Deferred Vested Retirement Pension | 22 |
| Section 6.01 - Eligibility | 22 |
| Section 6.02 - Amount | 22 |
| Section 6.03 - Options | 22 |
| Section 6.04 - Inability to Locate Member Entitled to a Deferred Vested Pension..... | 22 |
| Section 6.05 - Death While in Deferred Vested Status | 23 |
| ARTICLE VII – Termination and Disposition of Accumulated Contributions | 24 |
| Section 7.01 - Refund of Accumulated Contributions | 24 |
| Section 7.02 - Right to Leave Accumulated Contributions on Deposit | 24 |
| Section 7.03 - Return to Eligible Employment Without Having Previously Withdrawn Accumulated Contributions..... | 24 |
| Section 7.04 - Right to Reinstatement Within Five Years of Termination | 25 |
| Section 7.05 - Return of Residual Accumulated Contributions..... | 26 |
| ARTICLE VIII – Cost of Living Adjustment..... | 27 |
| Section 8.01 - Benefit Increases After Monthly Benefit Payments Begin | 27 |
| Section 8.02 - Potential Increase in Annual Adjustment Formula..... | 27 |
| ARTICLE IX - Modification,Amendment,and Discontinuance of the System or the Plan..... | 29 |
| Section 9.01 - Power to Modify, Amend, or Discontinue System and Plan Reserved.. | 29 |
| Section 9.02 - Distribution Upon Termination of the Plan..... | 29 |
| Section 9.03 - No Diversion of Assets..... | 31 |
| Section 9.04 - Terms in This Article Include <i>ERFC</i> | 31 |
| ARTICLE X – Administration of the Plan | 32 |
| Section 10.01 - Trustees | 32 |
| Section 10.02 - Investment of Contributions..... | 32 |
| Section 10.03 - Trustees' Right to Administer and Interpret the Plan | 32 |
| Section 10.04 - Immunity of Trustees | 32 |
| Section 10.05 - Protection of the Trustees | 33 |
| Section 10.06 - Indemnification of Trustees | 33 |

| | |
|--|-----------|
| Section 10.07 - Trustees Not Under Duty to Investigate Mailing Addresses | 33 |
| Section 10.08 - Trustees' Power to Require Further Evidence | 33 |
| Section 10.09 - Court Action at Discretion of Trustees | 33 |
| Section 10.10 - Successor Trustees Not Responsible for Prior Actions of Trustees ... | 34 |
| Section 10.11 - Bond | 34 |
| Section 10.12 - Trustee's Participation | 34 |
| ARTICLE XI – General Provisions | 35 |
| Section 11.01 - Right to Employment | 35 |
| Section 11.02 - Incapacity | 35 |
| Section 11.03 - General Financial Objective and Employer Contributions | 35 |
| Section 11.04 - Assignment and Loan | 35 |
| Section 11.05 - Settlement of Small Pensions | 36 |
| Section 11.06 - Forfeitures | 36 |
| Section 11.07 - Gender and Pronoun | 37 |
| Section 11.08 - Permissible Purchase of Annuity Contracts..... | 37 |
| Section 11.09 - Liability | 37 |
| Section 11.10 - Governing Law..... | 37 |
| Section 11.11 - Tax Qualification | 38 |
| Section 11.12 - Application for Benefits | 38 |
| Section 11.13 - Return to Active Employment After Retirement..... | 38 |
| Section 11.14 - Appeals | 40 |
| Section 11.15 - Time Limits for Legal Action | 40 |
| ARTICLE XII – Regulatory Provisions | 41 |
| Section 12.01 - Limitation on Benefits | 41 |
| Section 12.02 - Distribution of Benefits | 42 |
| Section 12.03 - Limit on Compensation | 43 |
| Section 12.04 - Provision for Investment in Pooled Trusts | 44 |
| Section 12.05 - Authorization to Establish a Benefit Restoration Plan | 45 |
| ARTICLE XIII – Direct Rollovers..... | 47 |
| Section 13.01 - Effective Date | 47 |
| Section 13.02 - Definitions | 47 |
| Section 13.03 - Election of Direct Rollover by Distributee | 48 |
| Section 13.04 - Election of Direct Rollover by Other Beneficiaries | 48 |



**THE EDUCATIONAL EMPLOYEES OF FAIRFAX COUNTY
DEFINED BENEFIT PLAN**

***ERFC 2001* BENEFIT STRUCTURE**

**Effective July 1, 2001
As Restated Effective January 1, 2016**

**ARTICLE I
Definitions**

When used in this Plan Document, the words and phrases hereinafter defined shall have the following meaning, unless a different meaning is clearly required by the context of the Plan Document.

1.01 “Accumulated Contributions” shall mean

- (a) all amounts contributed by a Member to *ERFC 2001* under Section 3.03 and all amounts paid as Member contributions to *ERFC 2001* under Section 3.04;
- (b) additional amounts credited as of June 30, 2004, to Members who completed at least 12 months of Credited Service before July 1, 2004, as provided by Section 1.01(b) of the Plan Document in effect at that time and in accordance with regulations adopted by the Trustees pursuant to that section;
- (c) Interest on the amounts described in (a) and (b) at the rate of 5% (five percent) annually, unless the Board of Trustees adopts a different rate for a particular Fiscal Year. This interest shall be credited as of the first day of each Fiscal Year and up to the first day of the month in which a refund is processed, on all amounts that have been on deposit for a full Fiscal Year. No interest shall accrue after the Member’s Effective Retirement Date.

1.02 “Actuarial Equivalent” shall mean a benefit of equal Reserve Value.

1.03 “Age” shall mean attained age.

1.04 “Board of Trustees” shall mean the body of officials having purview over the operation of the System pursuant to the Enabling Ordinance.

1.05 “Credited Service” shall mean the following:

- (a) contributory membership service in *ERFC 2001* pursuant to Section 3.03;
- (b) service for which contributions are made pursuant to Section 3.04; and
- (c) Military service credit to the extent required by federal law, including section 414(u) of the Internal Revenue Code, but Member contributions are not required as a condition of receiving such credit.

The Trustees shall adopt uniform and non-discriminatory regulations for the purpose of determining how Credited Service shall be calculated. In no event will a Member receive more than one year of Credited Service for any Fiscal Year. All Credited Service shall be forfeited upon a refund of Accumulated Contributions pursuant to Section 7.01, subject to the reinstatement provisions of Section 7.04.

1.06 “Effective Retirement Date” shall mean the first day of the month coinciding with or following:

- (a) in the case of a death in service, the date on which the System receives the beneficiary’s application for benefits or some later date designated by the beneficiary in the application for benefits;
- (b) in the case of a Member age 65 or over who elects, pursuant to Section 11.13(d), to receive benefits while working for the Employer in a position that is part-time and not Eligible Employment, the later of:
 - (1) the Member’s 65th birthday; or

- (2) the date on which the System receives the application for benefits;
- (c) in all other cases, the latest of:
 - (1) the date on which the Member's employment with the Employer terminates,
 - (2) the date on which the Member becomes eligible for benefits; or
 - (3) some later date designated by the Member in the application for benefits.

1.07 “Eligible Employment” shall mean any employment by the Employer (or approved leave with pay) in positions classified as teacher, instructional assistant, technical, clerical, or administrative, but shall not include

- (a) employment that is seasonal, part-time, or casual, as defined by the Employer, or
- (b) leave without pay other than approved leave without pay, for such periods as School Board policy or regulation may permit, to serve an employee organization in a full-time capacity.

1.08 “Employer” shall mean the School Board of Fairfax County, Virginia.

1.09 “Enabling Ordinance” shall mean Sections 3-4-1 through 3-4-7 of the Fairfax County Code, as it may be amended from time to time.

1.10 “ERFC” shall mean the benefit structure of the Educational Employees of Fairfax County Defined Benefit Plan that has been in effect (with various amendments) since July 1, 1973, and that is described in a separate document.

1.11 “ERFC 2001” shall mean the benefit structure of the Educational Employees of Fairfax County Defined Benefit Plan which is described in this Plan Document, and which is effective July 1, 2001.

- 1.12 “**Final Average Compensation**” shall mean the average of the Member’s three highest years of Salary during Eligible Employment, as defined by the Board of Trustees in uniform and nondiscriminatory regulations.
- 1.13 “**Fiscal Year**” or “**Plan Year**” shall mean the twelve-month period ending any June 30th.
- 1.14 “**Member**” shall mean any employee who satisfies membership requirements pursuant to Article III.
- 1.15 “**Named Beneficiary**” shall mean the person designated by a Member to receive a return of Accumulated Contributions or a Pension following the Member's death, pursuant to Article V or VI. The designation of Named Beneficiary shall be made in accordance with uniform and nondiscriminatory regulations adopted by the Trustees, and shall be effective upon receipt by the System.
- 1.16 “**Nominated Beneficiary**” shall mean a person who has been nominated by a Member to receive payments following the Member's death pursuant to an optional method of payment described in Section 4.03. The designation of Nominated Beneficiary shall be in writing and notarized, and shall be effective upon receipt by the System.
- 1.17 “**Pension**” shall mean a monthly amount payable throughout the life of a person or for a temporary period.
- 1.18 “**Plan**” shall mean the Educational Employees of Fairfax County Defined Benefit Plan, and comprises both *ERFC* and *ERFC 2001*.
- 1.19 “**Plan Document**” shall mean this document, which describes *ERFC 2001*. *ERFC* is described in a separate document.
- 1.20 “**Reserve Value**” shall mean the present value of all payments to be made on account of any benefit, using such reasonable rates of interest

and tables of experience as the Board of Trustees shall adopt from time to time after consulting with the actuary. The applicable rates and assumptions will be stated in regulations adopted by the Trustees.

1.21 “Retirement Fund” or “Fund” shall mean the trust fund held by the Trustees for the benefit of System Members generally. Such Fund shall be part of the System.

1.22 “Salary” shall mean, in the case of a Member whose salary is established by contract with the Employer, the Member's contractual salary. In the case of a Member whose annual salary is not established by contract, "Salary" shall mean the Member's base compensation. In either case, effective July 1, 2009, "Salary" shall also include any amounts paid by the Employer as differential wage payments to Members in the uniformed services, as defined in section 3401(h) of the Internal Revenue Code.

1.23 “Service Retirement Date” shall mean the first day of the calendar month coinciding with or next following the earlier of:

- (a) the Member's 60th birthday and the completion of five years of Credited Service; or
- (b) The Member's completion of 30 years of Credited Service.

1.24 “Spouse” shall mean the person legally married to the Member, according to the law of the Commonwealth of Virginia.

1.25 “System” shall mean the Educational Employees' Supplementary Retirement System of Fairfax County. It includes a defined benefit retirement plan that is maintained by the Employer for the benefit of members of *ERFC* and *ERFC 2001*.

ARTICLE II
Name, Effective Date and Purpose

- 2.01 Name.** The name of the Plan is the “EDUCATIONAL EMPLOYEES OF FAIRFAX COUNTY DEFINED BENEFIT PLAN.” It is a single Plan with two benefit structures: *ERFC* and *ERFC 2001*. *ERFC 2001* is described in this document.
- 2.02 Effective Date.** The original effective date of *ERFC 2001* was July 1, 2001. The Plan was amended and restated as of June 30, 2004, as of January 1, 2011 and is again amended and restated as of January 1, 2016.
- 2.03 Purpose.** The purpose of *ERFC 2001* is to provide a systematic plan for retirement benefits for its Members, and under the conditions set forth herein, to provide a Pension upon retirement, the amount of which takes into account the Member's years of Credited Service and compensation from the Employer.

ARTICLE III
Membership in *ERFC 2001*

- 3.01 Eligibility.** An employee shall automatically become a Member of *ERFC 2001* upon entering Eligible Employment on or after July 1, 2001, unless
- (a) the employee is covered by Virginia Code Section 51.1-125A(3) and pursuant to that section elects to remain a member of the Fairfax County Employees Retirement System; or
 - (b) The employee will accrue benefits under *ERFC* pursuant to Section 3.02.
- 3.02 Employees who Earned Credited Service under *ERFC* before July 1, 2001.** Employees who earned credited service under *ERFC* prior to July 1, 2001, will accrue benefits under *ERFC* and will not become members of *ERFC 2001*, with only the following exception: an employee who was previously a member of *ERFC*, terminated Eligible Employment, and received a refund of all accumulated contributions from *ERFC* shall become a Member of *ERFC 2001*, without credit for any prior service, upon returning to Eligible Employment on or after July 1, 2001.
- 3.03 Member Contributions.**
- (a) Except as provided in Section 3.06, each Member of *ERFC 2001* shall contribute a percentage of his or her Salary for each month during which he or she receives pay for Eligible Employment, in accordance with uniform and nondiscriminatory regulations adopted by the Trustees. The Employer shall make Member contributions, and such contributions shall be treated as Employer contributions in determining tax treatment under the Internal Revenue Code. Such contributions are being made by the Employer in lieu of Member contributions.

- (b) Member contributions made under subsection (a) shall be paid from the same source of funds as are used in paying wages to Members.
- (c) No provision in this section shall be construed so as to permit or extend an option to Members to directly receive the contributions made by the Employer pursuant to subsection (a) instead of having them paid to *ERFC 2001*.
- (d) Notwithstanding any contractual or other provisions, the wages of Members shall be reduced by the amount of Member contributions made by the Employer pursuant to this Section.

3.04 Contributions by Members on Leave Without Pay While Serving an Employee Organization. Each Member of *ERFC 2001* on approved leave without pay for purposes of serving an employee organization in a full-time capacity shall contribute to *ERFC 2001* the sum of the required Member contributions pursuant to Section 3.03 and the required Employer contributions pursuant to Section 3.05. The Salary on which contributions and benefits shall be based for the period of approved leave without pay shall be the Salary that the Member would have been paid by the Employer if the Member had not been on leave.

3.05 Employer Contributions. The Employer shall contribute a percentage of each Member's Salary for each month during which the Member receives pay for Eligible Employment, at a rate to be determined by the actuary in accordance with the funding policy set forth in Section 11.03, and in accordance with uniform and nondiscriminatory regulations adopted by the Trustees.

3.06 No Contributions for Certain Retired Members While Re-Employed. No Member contributions and no Employer contributions shall be made on behalf of retired Members who return to Eligible Employment and qualify

pursuant to regulations of the Employer for an exception to the suspension of benefits from *ERFC 2001*.

ARTICLE IV
Service Retirement

4.01 When Payable. A Service Retirement Pension shall be granted to each Member who retires on or after the Service Retirement Date.

4.02 Amount. The Service Retirement Pension shall equal 0.8% (eight-tenths of one percent) of Final Average Compensation at retirement multiplied by years of Credited Service, increased, if necessary, to make the Reserve Value of the Pension equal to the Member's Accumulated Contributions as of the Effective Retirement Date. The Pension will be paid as an annuity for the life of the Member unless the Member elects an optional form of benefit pursuant to Section 4.03.

4.03 Optional Methods of Payment.

(a) Before the Effective Retirement Date, a retiring Member may elect in writing to receive a reduced Pension and nominate a beneficiary in accordance with the provisions of Option A, B, or C set forth below.

(1) **Option A.** Under Option A, the Member's Pension shall be reduced to a certain percent of the Pension otherwise payable. Such percent shall be 85 percent if the Member's Age and the Nominated Beneficiary's Age are the same on the Member's Effective Retirement Date. If the Ages of the Member and the Nominated Beneficiary are different, the Pension shall be decreased by an additional six-tenths of one percent for each year that the beneficiary's Age is less than the Member's Age, or shall be increased by six-tenths of one percent, up to a maximum of 94 percent, for each year that the beneficiary's Age is greater than the Member's Age. Upon the Member's death, 100 percent of the reduced Pension to which the Member would have been entitled had

he or she lived shall be paid to the surviving beneficiary during the beneficiary's lifetime.

- (2) **Option B.** Under Option B, the Member's Pension shall be reduced to a certain percent of the Pension otherwise payable. Such percent shall be 91 percent if the Member's Age and the Nominated Beneficiary's Age are the same on the Member's Effective Retirement Date. If the Ages of the Member and the Nominated Beneficiary are different, the Pension shall be decreased by an additional three-tenths of one percent for each year that the beneficiary's Age is less than the Member's Age, or shall be increased by three-tenths of one percent, up to a maximum of 97 percent, for each year that the beneficiary's Age is more than the Member's Age. Upon the Member's death, one-half of the reduced Pension to which the Member would have been entitled had he or she lived shall be paid to the surviving beneficiary during the beneficiary's lifetime.
- (3) **Option C.** Under Option C, the Member's Pension shall be reduced to 96 percent of the Pension otherwise payable. If the Member dies before receiving 120 monthly Pension payments, the reduced payments will be continued for the remainder of the period of 120 months and will be paid in equal shares to the person or persons nominated by the Member. If such Nominated Beneficiary or beneficiaries predecease the Member, the Member may nominate a successor beneficiary or beneficiaries. If no Nominated Beneficiary survives the Member, the Reserve Value of the remainder Pension payments shall be paid to the Member's estate. If the last Nominated Beneficiary receiving Pension payments dies before all such Pension payments are made,

the Reserve Value of the remainder Pension payments shall be paid to such beneficiary's estate.

(4) **Eligibility for Option A Pensions.** The Nominated Beneficiary must be one of the following to receive a Pension under Option A :

- (A) The Member's Spouse, or
- (B) The Member's former Spouse, but only if provided by a domestic relations order described in Section 11.04.

(5) **Eligibility for Option B Pensions.** The Nominated Beneficiary must be one of the following to receive a Pension under Option B:

- (A) the Member's Spouse or former Spouse,
- (B) the Member's dependent child who has been ruled physically or mentally incompetent by a court of competent jurisdiction or by the Board of Trustees, or
- (C) another person at least 40 years of Age who received more than one-half support from the Member for at least one year immediately preceding the Effective Retirement Date.

(b) **Changes after Retirement.** The following changes are the only ones that the Member is permitted to make after the Effective Retirement Date.

(1) If, after the Effective Retirement Date, the Nominated Beneficiary dies or the Member's marriage to a Spouse nominated as beneficiary is dissolved, the Member may make a written election to cancel Option A or B and return the Member to the unreduced benefit that would have been payable if no option had been elected under this section, to be effective the month following the System's receipt of the written election.

- (2) A Member who is receiving an unreduced benefit and who marries after retirement may elect Option B for the benefit of the new Spouse, provided such election is received by the System within six months following the date of such marriage. Such election shall be effective the first day of the month following its receipt by the System.

ARTICLE V

Death Benefit

5.01 When Payable.

- (a) The benefits provided in Section 5.02 will be paid to the Named Beneficiary or Beneficiaries of the following Members:
 - (1) A Member with five or more years of Credited Service who dies in Eligible Employment and before beginning to receive a Pension; or
 - (2) A Member who was not in Eligible Employment at the time of death, but only in the circumstances described in Section 6.05(a) and (b).
- (b) If no Named Beneficiary survives the Member, benefits shall be paid as provided in Section 5.03.
- (c) Any person who would be entitled to a Pension under this Article may elect to receive a refund of Accumulated Contributions in lieu of that Pension.

5.02 Amount.

- (a) **Benefits Payable to a Person Eligible for Benefits under Option A or Option B.**
 - (1) If the Member reached Service Retirement Date prior to death, and if the Named Beneficiary is a person eligible to receive a Pension under Option A or Option B as described in Section 4.03(a)(4) or (5), the Named Beneficiary shall receive a Pension under Option A or Option B, whichever is applicable, in the amount provided by Section 4.03(a)(1) or 4.03(a)(2).
 - (2) If the Member did not reach Service Retirement Date prior to death, a Named Beneficiary described in Section 4.03(a)(4) or (5) shall receive a Pension under Option A, in the amount provided by Section 4.03(a)(1), or under Option B, in the

amount provided by Section 4.03(a)(2), whichever is applicable, but the Pension shall be reduced for each month that the Member was younger than Age 60 on the date of death or, if the Beneficiary selects a later date for the commencement of benefits, by each month that the Member would have been younger than Age 60 on the date selected for benefit commencement. If the Member was in Eligible Employment or on leave from Eligible Employment at the time of death, the number of months used in calculating this reduction will not exceed the difference between the Member's Credited Service and 30 years. Such reduction shall be one-half of one percent for each of the first 60 such months, and four-tenths of one percent for each month beyond 60, if any.

- (b) **Benefits Payable to Other Named Beneficiaries.** A Named Beneficiary who is not eligible for a benefit under Option A or Option B, as defined in Section 4.03(a)(4) and (5), shall receive the Accumulated Contributions in a lump sum.
- (c) **Multiple and Contingent Beneficiaries.** Members may name more than one beneficiary to share benefits under Section 5.02(b) and may name contingent beneficiaries to receive benefits in the event that primary beneficiaries do not survive the Member. Only one beneficiary may receive benefits under Section 5.02(a), although a Member may name a contingent beneficiary. If benefits are payable under Section 5.02(a), no benefits will be payable under Section 5.02(b) except as Section 7.05 may provide.
- (d) **Other Types of Beneficiaries.** The Board of Trustees may prescribe uniform and non-discriminatory regulations for the purpose of allowing a charity, company or trust to be named as beneficiary under this Article.

5.03 If There is No Named Beneficiary. If no Named Beneficiary survives the Member, benefits shall be payable as follows:

- (a) to the Member's surviving Spouse, in the amounts prescribed by Section 5.02(a);
- (b) if the Member had no surviving Spouse, a refund of Accumulated Contributions shall be paid to the Member's estate.

5.04 Members Who Die in Qualified Military Service. For all purposes of this Article, a Member who dies on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code shall receive Credited Service for that period of qualified military service and shall be considered to be in Eligible Employment on the date of death.

ARTICLE VI
Deferred Vested Retirement Pension

- 6.01 Eligibility.** Any Member of *ERFC 2001* with five or more years of Credited Service, who terminates employment with the Employer prior to Service Retirement Date, shall be eligible to receive a deferred vested Pension commencing at Age 60. Effective July 1, 2007, a deferred vested Pension may be paid to any Member who has completed five or more years of Credited Service, is Age 65 or older, is employed by the Employer in a position that is not Eligible Employment and that is part-time (as defined by the Employer), and who applies for such a benefit.
- 6.02 Amount.** The amount of benefits shall be determined pursuant to Section 4.02.
- 6.03 Options.** The Member may elect optional methods of payment in accordance with Section 4.03.
- 6.04 Inability to Locate Member Entitled to a Deferred Vested Pension.** If, after reasonable effort, the Retirement Office is unable to locate a Member who has terminated employment with the Employer with an entitlement to a deferred vested Pension, and the Member (if still living) would be 70 years of age or older, all of the Member's rights under the Plan shall be forfeited and become the property of the Plan. If the Plan is subsequently contacted by such a Member, the Member may elect to receive either the Accumulated Contributions amount credited to the Member as of the date of the forfeiture (with no interest after that date) or the monthly benefit amounts payable for months following the date of application, without any payment for prior months. If the Plan is subsequently contacted by the estate of such a Member or a beneficiary with proof of the Member's death, benefits will be payable as provided by Section 6.05 for months following the date of the application. Any refund of Accumulated

Contributions will be equal to the amount credited to the Member as of the date of the forfeiture (with no interest after that date).

6.05 Death While in Deferred Vested Status. In the event that a Member who has completed five years or more of Credited Service and terminated Eligible Employment dies before beginning to receive a pension, benefits shall be payable as follows:

- (a) If the Member died while in employment with the Employer or within 90 days after termination of such employment, benefits shall be payable under Article V.
- (b) If the Member died more than 90 days after terminating from employment with the Employer, but had reached Service Retirement Date, benefits shall be payable pursuant to Section 5.02(a)(1) to a Named Beneficiary who is eligible for benefits under that section, or to a surviving Spouse under the circumstances described in Section 5.03(a).
- (c) In all other cases, benefits shall not be payable under Article V, but the Named Beneficiary or the estate of the Member (if there is no surviving Named Beneficiary) shall be entitled, upon application, to a refund of the Accumulated Contributions.

ARTICLE VII
Termination and Disposition of Accumulated Contributions

7.01 Refund of Accumulated Contributions. A Member who terminates Eligible Employment at any time and for any reason may apply for a refund of Accumulated Contributions, in lieu of any other benefit that would be payable from *ERFC 2001*. If the Member is no longer in service with the Employer, or is Age 65 or older, the refund may be paid to the Member or as a Direct Rollover pursuant to Article XIII. If the Member is still in service with the Employer, but not in Eligible Employment, and is younger than Age 65, the Accumulated Contributions may only be transferred to another retirement plan maintained by the Employer. If the Member dies and no benefits are payable under any other Article of the Plan, the Member's Named Beneficiary (or if there is no surviving Named Beneficiary, the Member's estate) may apply for the refund.

7.02 Right to Leave Accumulated Contributions on Deposit. A Member who terminates Eligible Employment prior to completion of five years of Credited Service may protect Credited Service by leaving all Accumulated Contributions on deposit in the Plan. If such a Member is not Employed by the Employer at any time within a continuous period of ten years, and fails to return to Eligible Employment or apply for a refund by the end of that ten-year period, all Accumulated Contributions then on deposit shall become the property of the Plan, subject however, to refund at the written request of the Member or the Member's estate, but with no interest after the end of that ten-year period.

7.03 Return to Eligible Employment Without Having Previously Withdrawn Accumulated Contributions. Any Member of *ERFC 2001* who (a) terminates Eligible Employment and (b) thereafter returns to Eligible Employment without having received a refund of Accumulated Contributions, shall be reinstated as a Member of *ERFC 2001* with all

Credited Service that had accrued before termination of Eligible Employment. In the case of a Member whose Accumulated Contributions had previously become the property of the Plan pursuant to Section 7.02, the Accumulated Contributions shall be restored to the Member's account but with interest applied only until the end of the tenth Fiscal Year following the termination of employment with the Employer.

7.04 Right to Reinstatement Within Five Years of Termination. A Member who (a) terminates Eligible Employment and (b) thereafter returns to Eligible Employment, may redeposit all previously withdrawn Accumulated Contributions with interest at a rate prescribed by the Board of Trustees. Any such redeposit may be made with distributions from a retirement plan qualified under section 401(a) of the Internal Revenue Code ("Code") or an eligible rollover distribution from an individual retirement account, or by means of a direct trustee-to-trustee transfer from an annuity contract described in section 403(b) of the Code or an eligible plan under section 457(b) of the Code. The Board may adopt such rules and regulations as are necessary or appropriate to ensure the proper tax treatment of such rollover contributions. Upon redeposit, all Credited Service that had accrued before termination of Eligible Employment shall be restored and the Accumulated Contributions account shall be equal to the amount of the redeposit. The right of reinstatement shall be forfeited if the Member fails either to return to Eligible Employment within five years of termination, or to exercise the option to reinstate within 90 days of the first reentry into Eligible Employment after withdrawing the Accumulated Contributions. To the extent necessary to comply with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and applicable regulations, all time limits stated in this Section shall be extended for Members returning to Eligible Employment with re-employment rights protected by USERRA.

- 7.05 Return of Residual Accumulated Contributions.** If all Pensions payable on account of a Member terminate before payment in total of benefits equal to Accumulated Contributions, any remaining difference shall be paid to the Member's Named Beneficiary. If there is no surviving Named Beneficiary, any remaining difference shall be paid as follows:
- (a) if a beneficiary has been paid monthly benefits following the Member's death, to the last such beneficiary's estate;
 - (b) if no beneficiary has been paid monthly benefits, to the Member's estate.

If the Member elected Option C, Section 4.03(a)(3) governs the payment of residual amounts, and this section shall not apply.

ARTICLE VIII
Cost-of-Living Adjustments

8.01 Benefit Increases After Monthly Benefit Payments Begin.

- (a) **Benefits Subject to Adjustment.** All benefits payable under Article IV, Section 5.02(a), Section 5.03(a), and Article VI will be increased annually as provided in this Article.
- (b) **Amount of Adjustment.** The amount of the monthly benefit shall be adjusted effective each March 31, beginning with the March 31 that is more than three full months after the Member's Effective Retirement Date. The adjusted amount shall be the amount of the benefit at retirement, increased by three percent annually, compounded annually, for the number of years, and fraction of a year measured in completed months, from the Member's COLA base date to the January 1 preceding the adjustment. The "COLA base date" means July 1 of the calendar year in which the Member's Effective Retirement Date occurred.

8.02 Potential Increase in Annual Adjustment Formula.

- (a) The System establishes reserves for the payment of future benefits to retirees and their beneficiaries. Should the Board of Trustees determine, after consulting with the actuary, that the established reserves are more than sufficient to provide such benefits, the Board of Trustees may increase the annual adjustment formula provided for in Section 8.01(b), but not beyond an annual rate of four percent; provided such an action by the Board of Trustees shall not increase an Employer contribution rate then in effect.
- (b) Should the Board of Trustees determine that the operation of subsection (a) is jeopardizing the financial solvency of the Plan, the Board of Trustees shall suspend these provisions increasing the annual adjustment rate for such periods of time as the Board of Trustees deems appropriate. The power to suspend these

provisions shall include the power, if the Board of Trustees deems it necessary, to reduce cost-of-living adjustments that were previously granted under the authority of subsection (a), but not below three percent.

ARTICLE IX
Modification, Amendment, and
Discontinuance of the System or the Plan

9.01 Power to Modify, Amend, or Discontinue System and Plan Reserved.

While the System is intended to be permanent, the School Board reserves the right, at any time, and from time to time, to modify, amend, or terminate in whole or in part, any and all provisions of this System or the Plan or any benefit structure within the Plan, and such modification, amendment or termination shall be binding on the Board of Trustees. This right is subject to the condition that no part of the assets of the Plan shall, by reason of any modification, amendment, or termination, be used for or diverted to purposes other than for the exclusive benefit of Members, retired Members, and their beneficiaries under the Plan.

9.02 Distribution Upon Termination of the Plan. If the Plan is terminated at any time or there is a complete discontinuance of contributions to the Plan, the rights of all Members to the benefits accrued under *ERFC* and *ERFC 2001* to the date of termination or discontinuance, to the extent then funded, shall be fully vested and non-forfeitable. The funds then held by the Trustees, in excess of the portion of the assets representing the unexpended value of Accumulated Contributions under *ERFC* and *ERFC 2001*, and such portion as is required to meet estimated expenses of liquidation and distribution, shall be allocated and applied by the Trustees in amounts which, when added to the value of Accumulated Contributions under *ERFC* and *ERFC 2001*, will provide benefits in the following order of priority:

- (a) First, to provide for the continued payment of retirement benefits to all Members or former Members and their beneficiaries who, as of the date of termination or discontinuance, were receiving benefits under the Plan. Any reduction in the retirement benefits within this group necessitated by any insufficiency of assets at or after the date of termination or discontinuance of the Plan shall be shared

proportionately on the basis of similar annuity values, taking into consideration the contingent benefits attributable to the benefit being paid.

- (b) Second, if any such assets remain after complete allocation for the purposes of (a) above, to provide service retirement Pensions to all Members who, at the date of termination or discontinuance of the Plan, have reached their Service Retirement Date under the Plan and have not as yet begun to receive retirement benefits. The amount, if any, to be allocated for this purpose shall be based on immediate annuity values, and shall be subject to any reduction necessitated by any insufficiency of the assets as in (a) above.
- (c) Third, if any such assets remain after complete allocation for the purposes of (a) and (b) above, to provide reduced service Pensions to all other Members and former Members who, at the date of termination or discontinuance of the Plan, have 25 years of Credited Service under *ERFC*. The amount, if any, to be allocated shall be based on immediate annuity values, as in (b) above, and shall be subject to reduction for insufficiency of assets as in (a) above.
- (d) Fourth, if any such assets remain after complete allocation for the purposes of (a), (b) and (c) above, to provide deferred vested retirement Pensions to all other Members and former Members who are eligible to receive a deferred vested retirement Pension and have not as yet begun to receive that Pension. The amounts, if any, to be allocated shall be based on deferred life annuity values and shall be subject to reduction for insufficiency of assets as in (a) above.
- (e) Fifth, if any such assets remain after complete allocation for the purposes of (a), (b), (c) and (d) above, to provide deferred vested retirement Pensions for all other Members in the Plan as of the date

of termination or discontinuance. The amount, if any, to be allocated for this purpose shall be determined as in (c) above.

- (f) Sixth, if any such assets remain after complete allocation for the purposes of (a), (b), (c), (d) and (e) above, to provide for increases in all the above Pensions not in excess of ten percent thereof.

If any funds remain after having provided in full for the benefits of all persons in the groups identified above, the Board of Trustees shall determine the method to be used to distribute such excess funds to Members of the Plan terminating in prior years.

The distribution of benefits, in accordance with this Section 9.02, may be carried out through the continuance of the existing Retirement Fund, the retention and/or purchase of insurance or annuity contracts, the creation of a new fund or funds, or by the payment of cash, or by any combination of the foregoing as the Board of Trustees shall determine.

9.03 No Diversion of Assets. No part of the assets accumulated for this System shall be used directly or indirectly for any purpose other than the exclusive benefit of Members under the System as it is established, or as the System may be changed by modification, amendment, or termination.

9.04 Terms in This Article Include ERFC. As used in this Article, the term “Members” includes the members of *ERFC* as well as the Members of *ERFC 2001*. “Accumulated Contributions” and “Service Retirement Date” have the meaning for each such Member that those terms are given in the Plan Document that governs that Member’s benefit rights.

ARTICLE X
Administration of the Plan

- 10.01 Trustees.** The general administration and proper operation of the System, including the implementation of the provisions of the Plan as it may be amended (not including, however, the power to revoke or terminate the System or the Plan), is hereby vested in the Board of Trustees, subject to the final approval of the Fairfax County School Board.
- 10.02 Investment of Contributions.** The Trustees shall invest contributions through the Retirement Fund and in accordance with the provisions of the Enabling Ordinance and the Plan.
- 10.03 Trustees' Right to Administer and Interpret the Plan.** The Board of Trustees shall have the discretionary power and authority to administer and to interpret the Plan, including but not limited to the power to establish policies, practices, rules and regulations, pay refunds and interest to those who have been underpaid benefits, determine questions of eligibility or entitlement to benefits, recoup benefits from those who have been overpaid, compromise claims regarding payments or assets, employ administrative and clerical staff, expend System funds to administer the Plan, suspend benefit payments to those not complying with regulations or reasonable directives, enter contracts and take such other action as may be necessary to administer the System and the Plan efficiently. The Board may adopt such rules and regulations as, in the discretion of the Board of Trustees, are necessary or advisable to implement, administer, and interpret the Plan, or to transact its business. Such rules and regulations as are adopted by the Board of Trustees shall be binding upon any persons having interest in or under the Plan.
- 10.04 Immunity of Trustees.** The Trustees shall not be liable for the making, retention, or sale of any investment or reinvestment made by them, as herein provided, nor for any loss to, or diminution of, the Retirement Fund,

unless due to their own gross negligence, willful misconduct, or lack of good faith.

10.05 Protection of the Trustees. The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons. The Trustees shall be under no duty to investigate any such writing, but may accept it as true and accurate.

10.06 Indemnification of Trustees. The School Board agrees to indemnify the Retirement Fund and the Trustees against any liability imposed as a result of a claim asserted by any person where the Trustees have acted in good faith or in reliance on a written direction of the School Board.

10.07 Trustees Not Under Duty to Investigate Mailing Addresses. The Trustees shall not be required to make any investigation to determine the addresses of persons entitled to benefits but shall be entitled to rely upon addresses provided to them by the School Board, the Member or the beneficiary. A notice or check shall be deemed to have been sent if enclosed in a securely sealed postpaid envelope and deposited in a United States Post Office or letter box addressed to the person to whom it is to be mailed at such address as was last furnished to the Trustees.

10.08 Trustees' Power to Require Further Evidence. The Trustees, in their sole and absolute discretion, may require such further or additional evidence of the genuineness, truth, or accuracy of any instrument as to them may seem reasonable.

10.09 Court Action at Discretion of Trustees. The Trustees may, if they desire, require any fact or question to be adjudicated in court before taking any action.

10.10 Successor Trustees Not Responsible for Prior Actions of Trustees.

No successor Trustee shall be in any way liable or responsible for anything done or omitted in the administration of the Retirement Fund prior to the date he or she became a Trustee.

10.11 Bond. The Trustees shall not be required to give any bond for the faithful performance of their duties hereunder, unless their duties involve the handling of money or securities. Trustees and all other persons handling money or securities shall be bonded, and the expense of such bond shall be paid from the Retirement Fund.

10.12 Trustee's Participation. A Trustee may be a Member of the System, and such participation will not result in any limitation of powers or other disqualification to act in the capacity of Trustee.

ARTICLE XI

General Provisions

- 11.01 Right to Employment.** Nothing contained in the Plan or the establishment of the Retirement Fund hereunder or any modification thereof, or the creation of any fund or account for the payment of any benefit shall be construed to give any employee, Member, or beneficiary any right to employment or continued employment by the Employer or any legal or equitable rights against the Employer, any agent or employee of the Employer, or against the Board of Trustees or their agents or employees, except as herein provided.
- 11.02 Incapacity.** In the event that any recipient of benefits is unable to care for his or her affairs because of illness or accident, and no duly qualified guardian or other legal representative has been appointed, any payment due may be paid to the recipient's Spouse, parent, brother, sister, or other person deemed by the Board of Trustees to have incurred expenses for the care of such recipient.
- 11.03 General Financial Objective and Employer Contributions.** The funding policy of the Plan shall be to establish and receive contributions which will remain approximately level from generation to generation of citizens, and which, when combined with other assets, and investment return thereon, will be sufficient to pay benefits when due while providing a reasonable margin for adverse experience. Such margin shall be measured using assumptions regarding future experiences that the Trustees and the Actuary determine to be reasonable. When the Retirement System has unfunded accrued liabilities, the Trustees shall cause them to be amortized over a reasonable period.
- 11.04 Assignment and Loan.** The right of any recipient to any benefit, separate account, or any other right under the provisions of this Plan shall not be subject to alienation or assignment; nor, except as required

by federal or state law, shall monies covered by this Plan be subject to attachment, execution, garnishment, sequestration, operation of bankruptcy law or other legal or equitable process. In the event that any such attempt to alienate or attach monies is made, the Trustees may hold the Pension (or Accumulated Contributions) for, or apply it to the benefit of, the recipient or of the recipient's beneficiaries or other relatives in such proportions as the Trustees deem proper. Any appointment made by the Trustees hereunder may be revoked by the Trustees at any time, and a further appointment made by them.

The preceding paragraph shall not preclude the Plan from paying retirement benefits directly to the Member's Spouse or former Spouse (or solely pursuant to orders accepted by the Plan before May 16, 2006, the beneficiary of a Spouse or former Spouse) when such direct payments are required by a domestic relations order that complies with the applicable requirements of the Internal Revenue Code, of the Code of Virginia, and of any uniform and non-discriminatory regulations that the Board of Trustees may adopt. In addition, the preceding paragraph shall not preclude the Plan from complying with administrative actions pursuant to Chapter 19 of Title 63.2 of the Code of Virginia, or with court process to enforce a child or child and spousal support obligation, consistent with uniform and non-discriminatory regulations adopted by the Board of Trustees.

11.05 Settlement of Small Pensions. The Board of Trustees may provide by regulation for small pensions to be satisfied by the payment of a Pension of Actuarial Equivalent value in periodic installments or in a lump sum.

11.06 Forfeitures. Forfeitures, if any, must not be applied to increase Pension benefits any Member would otherwise receive under the Plan, but shall be used to pay administrative expenses of the Plan.

- 11.07 Gender and Pronoun.** The masculine pronoun, wherever used, shall include the feminine pronoun, and the singular number shall include the plural number, unless the context requires otherwise.
- 11.08 Permissible Purchase of Annuity Contracts.** The Board of Trustees, in lieu of paying the Pension to which a recipient is entitled directly from the funds of the Plan, may purchase from an insurance company any type of annuity contract which will provide retirement benefits in an amount identical to that to which the recipient was entitled under this Plan, provided such annuity is not transferable by the recipient. Upon the purchase of an annuity contract for the benefit of a recipient, such contract may either be assigned to the recipient or retained by the Board of Trustees for the benefit of the recipient.
- 11.09 Liability.** No liability shall attach to or be incurred by the Board of Trustees or employees of the Employer by reason of the terms or conditions contained in this Plan. The employees of the Employer and the Board of Trustees shall be entitled to rely upon any and all certificates and reports or opinions given by any duly appointed accountant, actuary, investment advisor, or legal counsel (who may be counsel for the Employer), and shall be fully protected against any action taken in good faith in reliance upon such tables, valuations, certificates, reports, or opinions.
- 11.10 Governing Law.** The Plan shall be construed, administered and enforced in accordance with the laws of the Commonwealth of Virginia. All references to provisions of the Virginia Code, the Fairfax Code, or the Internal Revenue Code shall be construed to include any subsequently adopted amendments to, or renumbering of, such provisions, unless the Trustees determine that such an interpretation would change the meaning or intent of the Plan.

11.11 Tax Qualification. This Plan has been adopted and is based upon the condition precedent that the Plan be initially qualified by the Internal Revenue Service as meeting the requirements of the Internal Revenue Code and regulations issued thereunder with respect to qualified pension plans, so as to exempt the Retirement Fund from tax on its income. Notwithstanding any other provisions of the Plan, if the Commissioner of Internal Revenue or his or her delegate determines that the Plan, or the amended Plan as it may be further amended in an effort to receive such approval, does not initially qualify under the applicable provisions of the Internal Revenue Code, the Plan shall be void and retirement funds shall be returned to the parties in proportion to the amounts contributed.

11.12 Application for Benefits. Members and beneficiaries must apply in writing to the System in order to receive benefits to which they are entitled, and shall be notified that an application is a prerequisite to the payment of benefits. Application shall be made on forms prescribed by the Trustees, and the applicant shall furnish proof of Age, marriage, or other material facts as may be reasonably requested.

11.13 Return to Active Employment After Retirement.

(a) If a retired Member returns to employment with the Employer, the benefits otherwise payable to such Member from *ERFC 2001* shall be suspended for the period of such re-employment, unless the Member qualifies for the exception provided in subsection (d), or for another exception to this suspension rule pursuant to regulations of the Employer. If the position to which the Member returns is Eligible Employment, he or she shall make Member contributions as provided by Article III.

(b) Upon subsequently retiring, a Member whose benefits were suspended may elect:

(1) the Pension that was payable following the previous retirement, subject to all applicable cost-of-living

- adjustments, plus a refund of any Accumulated Contributions made during re-employment; or
- (2) a Pension in the form the Member elected at the time of the previous retirement, but based upon the Member's entire service and salary record to the date of the subsequent retirement, including the period of re-employment.
 - (3) Under either alternative (1) or (2) above, the Member may make changes in the form of the retirement benefit pursuant to Section 4.03(b).
- (c) If, following re-employment, a Member whose benefits are suspended dies in service, benefits will be payable under Article IV in accordance with any optional form of benefit that the Member elected prior to the Effective Retirement Date. The Nominated Beneficiary who is entitled to a Pension under that optional form of benefit may make the election described in subsection (b)(1) and (2). If the Member did not elect an optional form of benefit before the Effective Retirement Date, a refund of Accumulated Contributions will be paid in accordance with Section 7.05.
- (d) A Member who has completed five or more years of Credited Service and who is Age 65 or older may receive a benefit pursuant to Section 6.01 while employed by the Employer in a position that is not Eligible Employment and that is part-time (as defined by the Employer). If such a Member dies during such part-time employment after the Effective Retirement Date, no benefits will be payable under Article V; benefits will be payable only if provided under the form of benefit that the Member elected or under Section 7.05. If a Member receiving benefits under this subsection returns to Eligible Employment after the Effective Retirement Date, the provisions of Section 11.13(a) through (c) will apply.

11.14 Appeals. Any Member, beneficiary, or other individual who claims a benefit under the Plan, and is denied that benefit in whole or in part, may appeal to the Board of Trustees by using the procedure described in this section. Appeals shall be submitted in writing, addressed to the Chair, and may be accompanied by any documents relevant to the appeal. An individual, who has submitted a written appeal, has the option of making an oral presentation at the meeting in which that appeal is first presented to the Trustees. The filing of an appeal satisfying the requirements of this section shall be a prerequisite to the filing of any further claims or actions in any court or other forum.

11.15 Time Limits for Legal Action. Any action at law or in equity relating to the Plan must be commenced within two years after the cause of action accrues. If the challenged decision relates to eligibility for or the amount of pension credit or benefits, the cause of action accrues when the application for benefits is denied or when the first payment of benefits is made. In any case of an overpayment of benefits or payment of benefits to an ineligible recipient, the cause of action accrues when the Trustees determine that an erroneous payment has occurred.

ARTICLE XII
Regulatory Provisions

12.01 Limitation on Benefits.

(a) General Rules

- (1) Notwithstanding any other provision of this Plan Document, the annual benefit to which any Member may be entitled shall not exceed the Section 415(b) Limitations. Under no circumstances shall a Member receive a distribution that is in excess of the Section 415(b) Limitations.
- (2) For purposes of this Article, the following definitions shall apply:
 - (A) "Section 415(b) Limitations" shall mean the limitations on benefits applicable to *ERFC 2001* under section 415(b) of the Code and applicable Treasury regulations issued thereunder as they are in effect for each Limitation Year, in accordance with the Rules of Operation set forth in Section 12.01(b).
 - (B) "Limitation Year" shall mean the calendar year.
 - (C) "Code" shall mean the Internal Revenue Code.

(b) Rules of Operation

- (1) For the purposes of testing compliance with the Section 415(b) Limitations, the dollar limitation described in section 415(b)(1)(A) of the Code shall be automatically adjusted to reflect each annual increase under section 415(d) of the Code. Each such adjustment shall also apply to the remaining payments payable to Members who have already commenced payment of benefits pursuant to Treasury regulations § 1.415(d)-1(a)(4) and the safe harbor at § 1.415(d)-1(a)(5) .
- (2) To the extent that benefits under VRS and *ERFC 2001* are required to be aggregated for purposes of applying the

Section 415(b) Limitations, and to the extent that annual benefits payable to a Member under VRS and *ERFC 2001*, as aggregated under both plans, exceed the Section 415(b) Limitations, the Section 415(b) Limitations shall operate first on the benefits payable to the Member under *ERFC 2001*.

- (3) With respect to benefits that were accrued or payable as of December 31, 2008, pursuant to plan provisions that were both adopted and in effect before April 5, 2007, the amounts payable in any Limitation Year shall not exceed the limits in effect on April 4, 2007, as provided by section 415, applicable regulations and published guidance, in accordance with Treasury regulations § 1.415(a)-1(g)(4).
- (4) Pursuant to the exception for certain automatic benefit increase features under Treasury Regulations § 1.415(b)-1(c)(5), an individual's benefit under the Plan shall not be adjusted to take into account the present value of the expected cost-of-living adjustments under Article VIII to the extent that such benefit is eligible for the exception in § 1.415(b)-1(c)(5). In the event that a benefit is paid in more than one distribution form, the exception in § 1.415(b)-1(c)(5) shall be applied separately to each distribution form.

12.02 Distribution of Benefits. Notwithstanding any other provision of this Plan Document, the entire interest of each Member shall be distributed to such Member not later than the required beginning date specified below, or will be distributed, beginning not later than the required beginning date, over the life of such Member or over the lives of such Member and a beneficiary or over a period not extending beyond the life expectancy of such Member or the life expectancy of such Member and a beneficiary. For this purpose, the term "required beginning date" means April 1 of the calendar year following the later of the calendar year in which the Member

attains Age 70½, or the calendar year in which the Member retires. If a Member dies after distribution of the Member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a Member dies before the distribution of the Member's interest has begun, any death benefit shall be distributed within five years after the death of such Member, unless:

- (a) any portion of the Member's interest is payable to (or for the benefit of) a surviving Spouse or former Spouse;
- (b) such portion will be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary; and
- (c) (1) distributions shall begin on or before the latest of one year after the date of the Member's death, such later date as the Secretary of the Treasury may by regulations prescribe, or the date on which the Member would have attained Age 70½; and
(2) if the surviving Spouse dies before the distributions to such Spouse begin, the distribution rules specified in this paragraph shall be applied as if the surviving Spouse were the Member.

12.03 Limit on Compensation. Notwithstanding any other provision of the Plan Document, the annual compensation of each member taken into account in determining benefits provided under the Plan for any Plan Year, and for applying the limitations described in Section 17.01, shall not exceed \$150,000, as adjusted for the cost-of-living adjustment in accordance with section 401(a)(17)(B) of the Code. For Plan Years on and after July 1, 2002, the limit shall be \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or

within such calendar year. Compensation for purposes of this Section has the same meaning as Salary under Section 1.22.

12.04 Provision for Investment in Pooled Trusts. The Board of Trustees is authorized, in their discretion and to the extent they deem it prudent, to invest in units of any group trust that is created or organized in the United States and is maintained at all times as a domestic trust in the United States, and the Trust Agreement of which:

- (a) is adopted as a part of each adopting benefit plan and by the Board of Trustees as part of the Plan for so long as the assets of the Plan are so invested (such adoption by the Board of Trustees shall take effect automatically — without the need for a formal resolution — when the Plan assets are first invested in the group trust, and shall terminate automatically when the Plan assets are no longer invested in the group trust);
- (b) expressly limits participation to (i) individual retirement accounts which are exempt under Section 408(e) of the Code, (ii) pension, profit-sharing and stock bonus trusts or custodial accounts which are exempt under Section 501(a) of the Code by qualifying under section 401(a) of the Code, (iii) eligible governmental plan trusts or custodial accounts under section 457(b) of the Code that are exempt under section 457(g) of the Code, (iv) custodial accounts under section 403(b)(7) of the Code, (v) retirement income accounts under section 403(b)(9) of the Code, and (vi) governmental plans under section 401(a)(24) of the Code;
- (c) expressly prohibits any part of its corpus or income that equitably belongs to any adopting retiree benefit plan from being used for, or diverted to, any purpose other than for the exclusive benefit of the participants and the beneficiaries of that adopting retiree benefit plan;
- (d) provides that each adopting retiree benefit plan entity is itself a trust, custodial account, or similar entity that is tax-exempt under

sections 408(e) or 501(a) of the Code (or is treated as tax-exempt under section 501(a) of the Code) (for purposes of this requirement a retirement benefit plan that is a section 401(a)(24) governmental plan is treated as meeting this requirement if it is not subject to federal income taxation);

- (e) requires each adopting retiree benefit plan to expressly provide in its governing document a provision prohibiting any part of the corpus or income of the retiree benefit plan from being used for, or diverted to, any purposes other than for the exclusive benefit of the individual or the employees respectively, or their beneficiaries who are entitled to benefits under such retiree benefit plan;
- (f) expressly limits the assets that may be held by the group trust to assets that are contributed by, or transferred from, an adopting retiree benefit plan to the group trust (and the earnings thereon), and the group trust instrument expressly provides for separate accounts (and appropriate records) to be maintained to reflect the interest which each adopting retiree benefit plan has in the group trust, including separate accounting for contributions to the group trust from the adopting plan, disbursements made from the adopting plan's account in the group trust, and investment experience of the group trust allocable to that account; and
- (g) prohibits assignment by an adopting retiree benefit plan, of any part of its equity or interest in the group trust.

12.05 Authorization to Establish a Benefit Restoration Plan.

The Board of Trustees shall have authority to establish and administer a benefit restoration plan to provide benefits to Members whose annual benefit is reduced pursuant to Section 12.01. Such plan shall meet the requirements to be treated as a plan established under section 415(m) of the Code. Benefit restoration plan benefits shall be paid from the contributions required under Section 3.05. If it deems it advisable, the

Board may create a trust or other special fund for segregation of the funds or assets relating to the benefit restoration plan.

ARTICLE XIII

Direct Rollovers

13.01 Effective Date. This Article applies to distributions from the Plan made until such time as section 401(a)(31) of the Code or any successor provision thereto no longer applies to the Plan.

13.02 Definitions. When used in this Article, the words and phrases hereinafter shall have the following meaning, unless a different meaning is clearly required by the context of the Plan Document.

(a) “Eligible Rollover Distribution” shall mean any distribution of all or any portion of the balance to the credit of a Member, 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 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 ten years or more;
- (2) any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and
- (3) the portion of any distribution that is not includible in gross income.

(b) “Eligible Retirement Plan” shall mean:

- (1) an individual retirement account described in section 408(a) of the Code;
- (2) an individual retirement annuity described in section 408(b) of the Code;
- (3) a Roth IRA described in section 408A of the Code;
- (4) an annuity plan described in section 403(a) of the Code;
- (5) a qualified trust described in section 401(a) of the Code;

- (6) an annuity contract described in section 403(b) of the Code;
or
 - (7) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.
- (c) “Distributee” shall mean only:
- (1) a Member;
 - (2) a Member's surviving Spouse;
 - (3) a Member's Spouse or former Spouse who is the alternate payee with respect to a Member's benefit under a domestic relations order which meets the requirements of section 414(p)(1)(A)(I) of the Code and Plan regulations; or
 - (4) a trust for the benefit of a person described in Section 13.02(c)(2) or (c)(3).
- (d) “Direct Rollover” shall mean a payment by the System to the Eligible Retirement Plan specified by the Distributee.
- (e) “Code” shall mean the Internal Revenue Code.

13.03 Election of Direct Rollover by Distributee. Notwithstanding any provision of this Plan Document, a Distributee may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified in writing by the Distributee in a Direct Rollover.

13.04 Election of Direct Rollover by Other Beneficiaries. Notwithstanding any provision of this Plan Document, if amounts due on account of a Member’s death are payable to a beneficiary who is not a Distributee or an estate, that beneficiary may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an Eligible

Rollover Distribution paid directly to an account or annuity that is described in Section 13.02(b)(1), (b)(2), or (b)(3) and that was established for the purpose of receiving such a distribution. This Section applies to distributions made on or after January 1, 2007, and until such time as section 402(c)(11) of the Code or any successor provision thereto no longer applies to the System.