



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

Regulations

As amended through
December 19, 2019



**The Educational Employees' Supplementary Retirement System
of Fairfax County (ERFC)**

Applicable to *ERFC* and *ERFC 2001*

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Amended: 6/15/2017
Amended: 12/19/19

ERFC REGULATIONS – ACCUMULATED CONTRIBUTIONS

(Applicable to *ERFC and 2001*)

Pursuant to their authority under §§1.01 and 15.03 of the *ERFC* Plan Document and §§1.01(b) and 10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations to interpret and administer §1.01 of the *ERFC* Plan Document and §§1.01 and 7.04 of the *ERFC 2001* Plan Document pertaining to the calculation of Accumulated Contributions and the re-deposit of withdrawn contributions.

1.01A **Purpose of Regulations.** These regulations are adopted to specify the method for calculating and crediting the “additional amount” provided by §1.01(b) in the *ERFC 2001* Plan Document effective through June 30, 2004, especially in cases of Members who terminate Eligible Employment and later return, either once or multiple times; and also to specify the rate of interest that will be charged to Members who re-deposit withdrawn contributions. These regulations also are amended to set forth the interest rate on Accumulated Contributions adopted by the Board of Trustees for a particular Fiscal Year.

1.01B **Calculation and Crediting of the “Additional Amount.”** The “additional amount” provided by §1.01(b) of the *ERFC 2001* Plan Document for periods before July 1, 2004, shall be calculated as the total of (1), (2), and (3), as modified by (4) in the case of a Member who terminated Eligible Employment before July 1, 2004, and later returns:

- (1) all amounts contributed by a Member to *ERFC 2001* under §3.03 of the *ERFC 2001* Plan Document;
- (2) interest on the amount described in (1), as provided by §1.01(d) of the *ERFC 2001* Plan Document as it was in effect through June 30, 2004;
- (3) plus an additional amount if the Member completed at least 12 months of Credited Service on or before June 30, 2004. The additional amount shall be equal to the following percentage of the sum of (1) plus (2), calculated as of June 30, 2004, or, if earlier, when the Member terminates Eligible Employment:

<u>Completed Months of Credited Service</u>	<u>% of (1) plus (2)</u>
at least 12 but fewer than 24	20%
at least 24 but fewer than 36	40%
36 months	60%

The additional amount specified in this paragraph will be credited to the Member on the earlier of June 30, 2004, or termination of Eligible Employment. Thereafter, for as long as the Member's contributions remain on deposit, the additional amount shall accrue interest at the same rates, for the same time periods, and calculated in the same manner, as the interest specified in §1.01(d) of the *ERFC 2001 Plan Document* as in effect through June 30, 2004, and §1.01(c) of the *ERFC 2001 Plan Document* as in effect on and after July 1, 2004.

- (4) If a Member terminates Eligible Employment and later returns (whether once or more) before July 1, 2004, the additional amount will be calculated and credited as of June 30, 2004, based upon the percentages specified in subparagraph (3), as follows:
- (a) the number of months will be the total months of Credited Service that the Member has earned in all cumulative periods of Eligible Employment under *ERFC 2001* before July 1, 2004, including any Credited Service that was previously forfeited because the Member withdrew Accumulated Contributions upon termination; and
 - (b) the sum of (1) plus (2) that is used in the calculation will be only those amounts that are actually on deposit at the time the additional amount is calculated, and will not include any amounts previously withdrawn unless they were re-deposited at the time and in the manner specified by §7.04 of the *ERFC 2001 Plan Document* and Paragraph 1.01C.

1.01C **Return to Eligible Employment after Withdrawing Contributions.** Under §7.04 of the *ERFC 2001 Plan Document*, a Member forfeits the right to re-deposit withdrawn contributions (and thus to reinstate prior service credit) by either failing to return to Eligible Employment within five years after termination or failing to re-deposit withdrawn contributions within 90 days after re-entry into Eligible Employment. For purposes of calculating the 90-day period to re-deposit

withdrawn contributions, “re-entry into Eligible Employment” will mean the first business day of the month following the month in which contributions are first made to ERFC following the Member’s return to Eligible Employment.

- (1) A Member who returns to Eligible Employment and forfeits the right of reinstatement by failing to exercise the right to re-deposit withdrawn contributions within the period specified in §7.04 of the *ERFC 2001* Plan Document will not be permitted, upon a subsequent termination and return to Eligible Employment, to re-deposit any amounts with respect to which the right of reinstatement was forfeited. A Member thus has only one opportunity to re-deposit withdrawn contributions, and it must be exercised upon the first return to Eligible Employment following a withdrawal. For example, if a Member who has failed to re-deposit contributions upon return subsequently terminates Eligible Employment and returns again, the only contributions that may be re-deposited upon the second return will be those contributions that were credited to the Member’s account during the second period of Eligible Employment.
- (2) A Member who returns to Eligible Employment, exercises the right to re-deposit withdrawn contributions within the period specified in §7.04 of the *ERFC 2001* Plan Document, subsequently terminates Eligible Employment and withdraws his or her contributions, and later returns again to Eligible Employment will be permitted to re-deposit any contributions previously withdrawn and re-deposited and withdrawn again provided that each re-entry to Eligible Employment occurred within five years of the preceding termination and that on each re-entry, the Member re-deposited all previously withdrawn contributions. If those conditions are satisfied, there is no limit on the number of times that a Member may withdraw and re-deposit contributions in the manner specified by §7.04 of the *ERFC 2001* Plan Document and this Paragraph.
- (3) Following re-deposit, the Accumulated Contributions account shall be equal to
 - (a) the portion of the re-deposit that represents amounts described in Paragraph 1.01B(1) and (2) plus the interest on those amounts, if the re-deposit occurs before June 30, 2004, or
 - (b) the full amount of the re-deposit, if the re-deposit occurs after June 30, 2004.

- (4) The rate of interest that a Member must pay under §7.04 of the *ERFC 2001* Plan Document for each Fiscal Year (or fraction of a Fiscal Year) between the withdrawal and the re-deposit shall be the same as the rate of interest that was applied to the Accumulated Contributions accounts of active Members during that same Fiscal Year pursuant to §1.01(d) of the *ERFC 2001* Plan Document as it was in effect through June 30, 2004, or §1.01(c) of the *ERFC 2001* Plan Document effective on and after July 1, 2004.
- (5) The interest due on re-deposit shall be calculated on the actual time elapsed from the date on which ERFC processed the refund to the date on which ERFC receives the re-deposit.

1.01D **Interest on Accumulated Contributions.** Effective for interest accrued after July 1, 2017, on amounts described in §1.01 of the *ERFC* Plan Document and §1.01 of the *ERFC 2001* Plan Document, the interest rate is four percent. The interest rate specified in this regulation shall remain in effect until the regulation is amended. The Trustees may change the interest rate by amending this regulation with respect to the interest rate to be credited for a Fiscal Year beginning after the amendment is adopted.

Adopted: 11/03/2002
Amended: 5/17/2005
Amended: 5/16/2006
Amended: 6/27/2013
Amended: 6/15/2017

ERFC REGULATIONS - SERVICE CREDIT CALCULATION

(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §§1.06 and 15.03 of the *ERFC* Plan Document and §§1.05 and 10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations regarding the determination of Credited Service.

1.06A **Purpose of Regulations.** The purpose of these regulations is to provide administratively efficient, uniform, and nondiscriminatory rules for the crediting of service for years and months when a Member has an employment change, including, but not limited to, periods in which the Member has taken leave without pay.

1.06B **Source of Credit Data.** Fairfax County Public Schools (FCPS) provides data to the Virginia Retirement System (VRS) for all Members of *ERFC*. Periodically, VRS provides *ERFC* a report of total months of VRS credited service for *ERFC* Members, showing separately each Member's total months of Credited Service earned while working for FCPS.

1.06C **Calculation of Credited Service in *ERFC*.** A Member's *ERFC* Credited Service will be determined by the following steps:

- (1) Determining the total Credited Service earned while working for FCPS, as reported by VRS.
- (2) Adding the service that the Member has earned after the date of the most recent VRS report.
- (3) Adding the service credit that the Member is entitled to receive from *ERFC* that is not credited by VRS, including Purchased Service Credit, Military Service Credit, Unused Sick Leave, or leave periods that are credited pursuant to §1.06(e) or (g) of the *ERFC* Plan Document and §1.05(b) of the *ERFC 2001* Plan Document . Because certain purchases of service credit that were made before January 1, 2001 were calculated on a 10-month or 11-month basis, adjustments may be

necessary to provide the Member with the value that was anticipated from those purchases. For that reason, if a Member purchased service credit before January 1, 2001, in an amount that was calculated to provide sufficient credit to qualify for service retirement at a certain Age, and the Member satisfies all other prerequisites for retirement at that Age, the Member's purchased credit will be adjusted to provide the Member with the amount of credit that is needed to qualify for service retirement at that Age.

1.06D **Calculation of Credited Service for ERFC 2001.** Each Member of ERFC 2001 will be credited with service as the System receives contributions for Eligible Employment.

1.06E **Credited Service Earned Before July 1, 2013.** This Paragraph 1.06E applies to service earned before July 1, 2013. A Member on a 10-month or 11-month contract will receive credit according to a uniform practice that results in granting a full year of Credited Service for each 10-month or 11-month contract that is completed. A Member on a 12-month contract, or a Member whose Salary is not established by contract, will be credited with a month of service for each calendar month in which he or she receives any amount of pay from FCPS. The table below specifies the number of months of Credited Service that are granted each month for which contributions are received on behalf of the Member, beginning with the first month in each Fiscal Year that the Member works and for which contributions are received.

Month of Work	1 st	2 nd	3 rd	4 th	5 th	6 th	7 th	8 th	9 th	10 th	11 th	12 th
10-month Contract	1	1	2	1	1	1	1	2	1	1	N/A	N/A
11-month Contract	1	1	1	1	1	2	1	1	1	1	1	N/A
12-month Contract	1	1	1	1	1	1	1	1	1	1	1	1

1.06F **Credited Service Earned On and After July 1, 2013.** This Paragraph 1.06F applies to service earned on and after July 1, 2013. The table below specifies the amount of service credit that is granted each month for which contributions are received on behalf of the Member, beginning with the first month in each Fiscal Year that the Member works and for which contributions are received.

Contract Period	Monthly Service Credit	Total Service Credits Per Year
10 Months	1.2000	12
11 Months	1.0909	12
12 Months	1.0000	12

A Member whose Salary is not established by contract will be credited with a month of service for each month for which contributions are received on behalf of the Member.

1.06G **Calculation of the Retirement Benefit.** When a Member applies for retirement, the determination of eligibility and the amount of the benefit will be based upon the Credited Service determined in accordance with Paragraphs 1.06C, 1.06D, 1.06E, and 1.06F, as applicable, plus service credit projected to retirement on the assumption that the Member will earn full service credit for the period between the date of calculation and the date of retirement. If the Retirement Office subsequently determines that there was any month in that period for which the Member received no pay from FCPS, or for which Member or Employer contributions were not paid, the Member's Credited Service and benefit amount will be adjusted. Any such adjustment will be made as soon as administratively practicable after the Member retires. If the Member already has been overpaid at the time of the adjustment, the excess benefits previously paid will be deducted from subsequent retirement payments.

Approved: 10/6/2000
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Amended: 7/17/2007
Amended: 6/27/2013
Amended: 6/15/2017

ERFC REGULATIONS - FINAL AVERAGE COMPENSATION

(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §§1.17 and 15.03 of the *ERFC* Plan Document and §§1.12 and 10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations regarding the determination of Final Average Compensation.

1.19A **Purpose of Regulations.** The purpose of these regulations is to provide an administratively efficient, uniform, and non-discriminatory method for determining Final Average Compensation.

1.19B **Data Sources.** The Retirement Office will use the PensionGold® Database (the Database) to determine a Member's Final Average Compensation under §1.17 of the *ERFC* Plan Document or §1.12 of the *ERFC 2001* Plan Document. The Database lists the actual amounts received by each Member monthly as contract Salary (or base compensation for Members without contracts) from Fairfax County Public Schools (FCPS) beginning in 1976. Effective July 1, 2013, the Database lists monthly the annual Salary divided by the contract period, or by 12, in the case of a Member whose annual Salary is not established by contract. Additional sources of data that may be used, as necessary, include:

- (1) Manual salary cards for years before 1976;
- (2) Records showing the Salary on which contributions have been made pursuant to §3.03 of the *ERFC* Plan Document or §3.04 of the *ERFC 2001* Plan Document on behalf of Members on approved leave without pay for purposes of serving an employee organization in a full-time capacity;
- (3) Payroll records showing leave without pay used by the Member between the date of the benefit calculation and the date of retirement (as described in Paragraph 1.19D below).
- (4) Any other school system or *ERFC* records providing relevant Salary and employment data, to the extent that data necessary for the Final Average Compensation calculation cannot be obtained from the sources listed above.

1.19C **Calculation of Final Average Compensation.** The Member's current Salary as shown on the Database will be projected to the date of retirement. For all *ERFC* Members and *ERFC 2001* Members who entered Eligible Employment before July 1, 2017, the Final Average Compensation then will be determined by identifying the three consecutive years in the Database for which the Member's Salary is highest. For *ERFC 2001* Members who enter Eligible Employment on or after July 1, 2017, the Final Average Compensation then will be determined by identifying the five consecutive years in the Database for which the Member's Salary is highest.

1.19D **Benefits upon Retirement.** The Member's benefit initially will be paid based upon the projection to retirement that is described in Paragraph 1.19C. Before July 1, 2013, if the Retirement Office subsequently determines that the Member used 160 or more hours of leave without pay in any month during the period between the calculation and retirement, the Retirement Office will re-determine the Member's Final Average Compensation as described in Paragraph 1.19C, but using actual data. On and after July 1, 2013, if the Retirement Office subsequently determines that there was any month during the period between the calculation and retirement for which the Member received no pay from FCPS, or for which Member or Employer contributions were not paid, the Retirement Office will re-determine the Member's Final Average Compensation as described in Paragraph 1.19C, but using actual data. If a redetermination produces a lower benefit amount, the Member's benefit will be adjusted prospectively. Any such adjustment will be made as soon as administratively practicable after the Member retires. If the Member already has been overpaid at the time the Final Average Compensation is re-determined, any excess benefits will be deducted from subsequent retirement payments.

Amended: 10/31/2001
Amended: 5/17/2005
Amended: 5/16/2006
Amended: 7/17/2007
Amended: 6/27/2013

ERFC REGULATIONS – MILITARY SERVICE CREDIT

(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §15.03 of the *ERFC* Plan Document and §10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations regarding Military Service Credit.

1.22A **Purpose of Regulations.** The purpose of these regulations is to implement §1.22 of the *ERFC* Plan Document and §1.05(c) of the *ERFC 2001* Plan Document in accordance with applicable law and the intention of the Plan's drafters.

1.22B **Entitlement to Credit.** There are two types of Military Service Credit, depending on when the Member's military service occurs, and on the *ERFC* benefit structure in which the Member participates.

- (1) **ERFC-only.** Members of *ERFC* are entitled to credit for active military service up to a maximum of three years, regardless of whether the Member's military service occurred before or during Eligible Employment. No application for Military Service Credit pursuant to this subparagraph may be made prior to the school year in which the Member is eligible to retire, or would be eligible to retire if granted Military Service Credit. This credit is provided in addition to any credit a Member of *ERFC* is entitled to receive under Paragraph 1.22B (2).
- (2) **ERFC and ERFC 2001.** Members of *ERFC* and *ERFC 2001* who leave school system employment for military service, shall be entitled on their return, to Military Service Credit for the period of their service to the extent required by federal law. Such Members must (a) provide advance notice of their leave (if required by law), (b) return within the time periods specified by law, (c) otherwise comply with the requirements of federal law.

1.22C **Applications for Military Service Credit.** In order to receive Military Service Credit under *ERFC* or *ERFC 2001*, a Member must apply for that credit by:

- (1) Completing the *ERFC* Application for Benefits.
- (2) Completing the *ERFC* Application for Military Service Credit.

- (3) Submitting a copy of the DD-214 or other discharge papers.
- (4) Submitting such other documents as may be required by law for credit pursuant to Paragraph 1.22B (2).

A Member may withdraw his or her application for Military Service Credit at any time.

1.22D Military Service Credit Estimates. A Member may request an estimate of his or her pension benefits, including his or her Military Service Credit, at any time, regardless of whether he or she is yet eligible to retire. This estimate will not bind the System and is subject to recalculation at the time of retirement, or thereafter, as appropriate.

1.22E Failure to Provide Information. Because it is imperative that the Retirement Office have complete and accurate information in determining the eligibility of a Member for benefits, a Member's failure to provide, upon request, information relevant to his or her eligibility for Military Service Credit will be grounds for denying his or her application for such credit.

1.22F Compensation to Be Used in Calculating Benefits. Final Average Compensation for a Member who received Military Service Credit pursuant to Paragraph 1.22B(2) will be calculated as if the Member has received, during each such period of military service that is credited, Salary from the Employer at the rate of Salary that the Member would have received if the Member had not taken leave for the period of military service (including any changes in Salary that would have taken effect if the Member had continued in his position for the Employer instead of taking the leave). If it is not reasonably certain what Salary the Member would have received from the Employer during any such period of military service, the Member will be treated as if he or she had received Salary during such service on the basis of the Member's average rate of Salary in effect during the twelve-month period immediately preceding that period of military service (or, if shorter, the period of employment immediately preceding that period of military service).

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Amended: 5/19/2011
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Amended: 6/27/2013
Amended: 6/15/2017
Amended: 5/16/2019

ERFC REGULATIONS – DESIGNATION OF NAMED BENEFICIARIES

(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §15.03 of the *ERFC* Plan Document and §10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations to interpret and administer §1.23 of the *ERFC* Plan Document and §1.16 of the *ERFC 2001* Plan Document pertaining to the designation of Named Beneficiaries to receive a return of Accumulated Contributions or a Pension following a Member's death.

1.23A **Purpose of Regulations.** These regulations are adopted to specify the procedure for naming a beneficiary under §1.23 of the *ERFC* Plan Document and §1.16 of the *ERFC 2001* Plan Document, and to delegate authority to the Executive Director to make certain determinations regarding such beneficiary designations.

1.23B **Procedure for Naming a Beneficiary.** In order to reduce the risk of confusion or ambiguity in beneficiary designations, Members are required to make their designation of beneficiaries either through the "Named Beneficiaries" feature on *ERFCDirect* in accordance with the instructions provided there, or in writing on the form that *ERFC* prescribes for that purpose.

1.23C **Use of *ERFCDirect*.**

- (1) A Member may make or change a beneficiary designation to name one or more individuals, charities, or companies by logging onto *ERFCDirect* (i.e., the web member service program that provides *ERFC* Members online access to their benefit information) with the password that has been previously assigned to, or selected by, the Member. Any designation of a trust as beneficiary must be made through a written beneficiary designation pursuant to Paragraph 1.23D.
- (2) The Member must follow the instructions provided by the "Named Beneficiaries" feature of *ERFCDirect*. The Member's beneficiary designation will become effective only if, after providing all of the information that *ERFCDirect* requests, the Member subsequently inputs the command "Update."

- (3) An email confirming that the beneficiary designation has been updated will be sent to the Member at the email address that is registered with *ERFCDirect*.
- (4) It is the Member's responsibility to safeguard his or her password from use by unauthorized persons, to assure that the correct email address has been provided to ERFC, to follow up upon receiving an error message or if no confirming email is delivered, and to contact ERFC if the email confirmation indicates that the beneficiary designation was unintended or unauthorized.
- (5) ERFC will honor any beneficiary designation or change in a beneficiary designation that is made in accordance with instructions on *ERFCDirect*, using the Member's password, unless the Member notifies ERFC that the beneficiary designation was unintended or unauthorized. Upon receiving such notice from the Member, ERFC will annul the unintended or unauthorized *ERFCDirect* transaction and, until the Member makes a new beneficiary designation, will honor the designation that was in effect immediately before that *ERFCDirect* transaction.

1.23D Use of ERFC's Written Form.

- (1) The prescribed form shall be available for downloading from the ERFC website, and shall also be available from the Retirement Office.
- (2) In case of a documented emergency, the Executive Director may accept a written beneficiary designation in a different form upon determining that the Member could not reasonably obtain the prescribed form and that the particular beneficiary designation is clear and unambiguous.
- (3) In all cases, a written beneficiary designation must be notarized.
- (4) The Retirement Office will accept a beneficiary designation bearing the signature of a person who provides the Retirement Office a valid ERFC Durable Power of Attorney, a valid power of attorney, or a certified copy of a court order authorizing the person to perform such acts on behalf of the Member. No power of attorney, including the ERFC Durable Power of Attorney, will be accepted unless it is notarized.
- (5) A beneficiary designation will take effect only when the signed, notarized form is actually received by the Retirement Office. A facsimile or electronic copy will be

accepted if the original notarized form bearing the Member's original signature is actually received by the Retirement Office within a reasonable period of time following receipt of the facsimile or electronic copy.

1.23E **Rejection of a Beneficiary Designation Form.** The Retirement Office may reject a written beneficiary designation if:

- (1) It is not on the prescribed form;
- (2) It is not complete, e.g., it lacks a date or a signature, or it is not notarized or it is notarized incorrectly;
- (3) It is not legible; or
- (4) It contains a beneficiary designation that is unduly complex, as determined in the discretion of the Executive Director, who may consider whether the beneficiary designation exposes the System to an undue risk of confusion, error, or litigation, or whether the beneficiary designation would impose undue administrative burden or cost on the System.

1.23F **Procedure upon Rejection of a Beneficiary Designation.** If a beneficiary designation form is rejected, the Retirement Office will promptly notify the Member of the reasons for the rejection. If the Retirement Office has been advised of an urgent need for the Member to complete a beneficiary designation, the Retirement Office will use the most expeditious means available to notify the Member of the rejection and the reasons for it.

Amended: 5/16/2006
Amended: 7/17/2007
Amended: 6/27/2013
Amended: 6/15/2017

ERFC REGULATIONS-
DEFINITION OF NOMINATED BENEFICIARY

(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §§1.24, 4.06, and 15.03 of the *ERFC* Plan Document, and §§1.17, 4.03, and 10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations to clarify the definition of “persons” who qualify to receive survivor benefits after the death of a Member who has elected a survivor option under §4.06 of the *ERFC* Plan Document, or §4.03 of the *ERFC 2001* Plan Document.

1.24A **Purpose of Regulations.** The purpose of these regulations is to provide uniform and nondiscriminatory rules to govern the circumstances under which a trust may be a “Nominated Beneficiary” eligible to receive survivor benefits under §4.06 of the *ERFC* Plan Document or §4.03 of the *ERFC 2001* Plan Document. The Retirement Office will determine in every instance whether the trust meets these requirements.

1.24B **Trust Requirements.** A Member may designate a trust as the “Nominated Beneficiary” to receive payments following the Member’s death pursuant to an optional method of payment described in §4.06 of the *ERFC* Plan Document or in §4.03 of the *ERFC 2001* Plan Document if the trust meets the following requirements:

- (1) In the case of a trust nominated as beneficiary under Option A or Option B, the trust:
 - (a) is irrevocable following the Member’s death;
 - (b) provides that distributions of income and principal may be made to provide for the health, support, maintenance or education of one natural person; and
 - (c) provides that during the lifetime of such person, no distributions may be made to or for the benefit of anyone other than such person.
- (2) If the trust is nominated as beneficiary under Option C, the trust is irrevocable for at least 120 months following the Member’s Effective Retirement Date.

1.24C **Filing Requirements.**

- (1) The Member must provide the following upon retirement as a condition of electing the optional form of benefits and designating the trust as Nominated Beneficiary:
 - (a) A copy of the trust document for the trust that he or she wishes to designate as beneficiary;
 - (b) Such other documents and information as the Retirement Office may reasonably require to establish the identity or eligibility of the beneficiary of the trust.
- (2) The following must be provided after the Member's death and before payment:
 - (a) A notice of the Member's death;
 - (b) A copy of the trust document in effect;
 - (c) Such other documents and information as the Retirement Office may reasonably require in order to verify the continuing eligibility for benefits;
 - (d) The name and address of the current trustee of the trust;
 - (e) An agreement signed by the trustee of the trust, promising to notify the Retirement Office promptly upon the occurrence of any of the following events:
 - (i) the death of the trust's beneficiary;
 - (ii) the amendment or termination of the trust;
 - (iii) the resignation of the trustee or appointment of a successor trustee.

1.24D **Limitations on ERFC Payments to Trusts.**

- (1) The Retirement Office shall be authorized to suspend payments to a trust nominated as beneficiary if the trust fails to provide documents requested or required pursuant to Paragraph 1.24C. Suspended payments will be resumed on the Retirement Office's determination that the trust complies with this regulation and the terms of the applicable Plan.
- (2) If, after the Member's death, the Retirement Office determines that a trust cannot comply or has not complied with these regulations or the terms of the applicable Plan, the Retirement Office shall have the discretion to make payments directly to

the person(s) designated by the Member as the beneficiary of the trust; provided, however, that no payments shall be made if such person(s) do not qualify to receive benefits under the option elected by the Member.

- (3) ERFC benefit payments to the trust shall terminate when the beneficiary of a trust nominated as beneficiary under Option A or B dies. The value of the Member's residual Accumulated Contributions, if any, shall be paid in accordance with §12.04 of the *ERFC* Plan Document or §7.05 of the *ERFC 2001* Plan Document.

Adopted: 6/5/1992
Amended: 10/31/2001
Amended: 3/18/2004
Amended: 5/17/2005
Amended: 5/16/2006
Amended: 7/17/2007
Amended: 6/27/2013

ERFC REGULATIONS – PURCHASED SERVICE CREDIT
(QUALIFICATIONS FOR PURCHASE)

(Applicable to *ERFC* only)

Pursuant to their authority under §1.28 and §15.03 of the *ERFC* Plan Document, the Trustees have adopted the following regulations pertaining to Purchased Service Credit.

1.28A **Purpose of Regulations.** The purpose of these regulations is to provide uniform and nondiscriminatory rules to govern the purchase of credit pursuant to §1.28 and Article XI of the *ERFC* Plan Document. The Retirement Office will determine in every instance whether a Member’s application for Purchased Service Credit meets the requirements of these regulations.

1.28B **Prerequisites for Purchase of Credit.**

- (1) In order for a Member to purchase service credit under §1.28(a) or (b) of the *ERFC* Plan Document, for prior employment as an “educational employee,” each position that the Member occupied during the period for which he or she wishes credit must meet the following conditions:
 - (a) It must satisfy the definition of “educational employee” that appears in Paragraph 1.28C;
 - (b) It must have been full-time employment, as defined in Paragraph 1.28D; and
 - (c) It must not be disqualified from purchase of credit by virtue of Paragraph 1.28I.
- (2) In order for a Member to purchase service credit under §1.28(c) of the *ERFC* Plan Document, for employment other than as an “educational employee,” each position that the Member occupied during the period for which he or she wishes credit must meet the following conditions:
 - (a) It must satisfy the definition of “employment” that appears in Paragraph 1.28E;
 - (b) It must satisfy the definition of “favorable impact on FCPS employment” that appears in Paragraph 1.28F or Paragraph 1.28G, in relation to an

FCPS position that satisfies the definition of “subsequent employment” that appears in Paragraph 1.28H; and

- (c) It must not be disqualified from purchase of credit by virtue of Paragraph 1.28I.
- (3) In order for a Member to purchase service credit under §1.28(d) of the *ERFC* Plan Document, each position that the Member occupied during the period for which he or she wishes credit must meet the following conditions:
- (a) It must satisfy the definition of “employment” that appears in Paragraph 1.28E;
 - (b) It must not be disqualified from purchase of credit by virtue of Paragraph 1.28I.
- (4) Credit may be purchased under §1.28(c) or (d) of the *ERFC* Plan Document for periods of employment with FCPS on the same terms and under the same conditions that apply to non-FCPS employment, except, of course, that a Member cannot obtain “double credit” by purchasing credit for service that already qualifies as “Credited Service” under the Plan.
- (5) In order for a Member to purchase service credit for leaves of absence under §1.28(e) of the *ERFC* Plan Document, each period of service for which the Member wishes credit must meet the following conditions:
- (a) The leave of absence must have been approved by FCPS;
 - (b) The Member must show that VRS has approved the purchase for VRS credit; and
 - (c) The leave of absence must not be creditable under another provision of the Plan (i.e., a Member cannot obtain “double credit” for leave that already qualifies as “Credited Service”).

Examples of leaves of absence that may qualify under §1.28(e) of the *ERFC* Plan Document are periods of childcare leave, maternity leave, and study leave.

1.28C Definition of “Educational Employee.”

- (1) For purposes of §1.28(a) of the *ERFC* Plan Document, an FCPS position will be considered an “educational employee” position if it was classified as an “educational employee” position either:
- (a) during the time period for which the Member now wishes to purchase credit; or

- (b) at the time of the Member's application to purchase credit, provided that the duties of the position have not materially changed.
- (2) For purposes of §1.28(b) of the *ERFC* Plan Document, a position that a Member occupied with another school system will be considered an "educational employee" position if it was the same as, or substantially identical to, a position that FCPS classified at that time, or classifies at the time of application, as an "educational employee" position.

1.28D Definition of Full-Time Employment in "Educational Employee" Positions.

- (1) For purposes of §1.28(a) and (b) of the *ERFC* Plan Document, prior employment as an "educational employee" will be considered full-time if it meets either of the following criteria:
 - (a) it was considered full-time employment by the school system by which the Member was then employed (whether FCPS or another school system); or
 - (b) the position was subject to a work schedule of at least 7.5 hours per day and at least 190 days per year, or some similar schedule that the Retirement Office determines to be its equivalent.
- (2) In order to qualify for Purchased Service Credit, the prior employment must have been paid employment.
- (3) Work as an "educational employee" will not be eligible for purchase of service credit if, for any reason other than that specified in (1), the same work, when performed for FCPS, is not considered "Eligible Employment" under §1.10 of the *ERFC* Plan Document. For example, credit cannot be purchased for seasonal or casual employment, such as teaching in summer school, or substitute teaching "as needed."

1.28E Definition of "Employment." In order to purchase service credit under §1.28(c) of the *ERFC* Plan Document, the position that the Member occupied during the period for which he or she wishes credit must satisfy the following conditions:

- (1) It must have been full-time employment, that is, employment with a regular work schedule of 37.5 or more hours per week.
- (2) It must have been a continuous duration of 6 months or more.
- (3) It must have been paid employment.

1.28F Definition of "Favorable Impact on FCPS Employment." Service for which a Member seeks to purchase credit will be found to "have favorably impacted on [his or her]"

experience to address his subsequent employment by the employer” under §1.28(c) of the *ERFC* Plan Document if it satisfies any one of the following criteria:

- (1) In the former employment, the Member regularly performed the same type of work, or substantially the same type of work, that the subsequent FCPS employment requires. For example, an FCPS teacher could purchase credit for any other work in an instructional capacity, and an FCPS secretary could purchase credit for any other work as a secretary.
- (2) In the former employment, the Member regularly and substantially used skills, techniques, or knowledge that the subsequent FCPS employment requires, or that are beneficial in the subsequent FCPS employment, even though the use of those skills, techniques, or knowledge, or their level of difficulty, may have been different from those required by the subsequent FCPS employment. The incidental or occasional use of such skills, techniques, or knowledge would not be sufficient to meet this criterion. For example, an FCPS physics teacher could purchase credit for work as a professional researcher in a physics laboratory; an FCPS political science teacher could purchase credit for professional work on a congressional staff; but an FCPS supervisor could not purchase credit for work unrelated to the school function that only incidentally involved the supervision of other employees.
- (3) In the former employment, the Member developed, improved upon, or performed research in relation to, or beneficial in, the subsequent FCPS employment. For example, an FCPS teacher could purchase credit for work performing research into development or improvement of teaching techniques or teaching materials, even though the FCPS employment does not use research techniques or skills.
- (4) In the case of a Member whose subsequent FCPS employment is a supervisory position, in the former employment, the Member regularly performed the same type of work, or substantially the same type of work, that is performed by a significant percentage of the FCPS employees whom he or she supervises in the subsequent position. For example, an FCPS keypunch supervisor could purchase credit for prior experience as a keypunch operator.

1.28G **Cases That Do Not Satisfy the Criteria of Paragraph 1.28F.** If the Member’s former employment does not meet any of the criteria listed in Paragraph 1.28F, it will not be found to be eligible for Purchased Service Credit under §1.28(c) of the *ERFC* Plan Document unless the Retirement Office finds that it bears some substantial relation to a particular FCPS

position the Member subsequently held, or that it otherwise has a substantial potential for benefit to FCPS; the intent of the Plan is not to allow Purchased Service Credit for work that merely counts as general work experience and that would equip a person equally for any employment.

1.28H **Definition of “Subsequent Employment.”** Paragraph 1.28(c) of the *ERFC* Plan Document requires that the former employment have a favorable impact on the Member’s “Subsequent Employment” by FCPS.

- (1) A Member satisfies this requirement if the former employment preceded the date of his or her initial hire by FCPS; in that case, Paragraph 1.28F and Paragraph 1.28G may be applied with respect to any of the jobs the Member has held in FCPS.
- (2) In any other case, the criteria of Paragraph 1.28F and Paragraph 1.28G may be applied with respect to any FCPS job the Member held after the employment for which he or she seeks credit; the job for which the Member seeks credit must have preceded the FCPS job as to which a “favorable impact” is claimed.

1.28I **Credit in another Retirement System.** Under §11.02 of the *ERFC* Plan Document, a Member may not purchase service credit for any service that has been credited in another retirement system (other than VRS, Social Security, or military reserve retired pay under Chapter 1223 of Title 10 of the U.S. Code) under which the Member, at the time of applying for Purchased Service Credit, is receiving retirement benefits, or has established a right to receive future retirement benefits unless one of the following conditions applies:

- (1) The Member withdraws all of his or her Member contributions from the other system in either the form of a direct payment, as a rollover to an individual retirement account, or as a rollover or trustee-to-trustee transfer to *ERFC* or to *VRS* for the purpose of purchasing service credit; or
- (2) The Member waives the entitlement to receive benefits from the other system, using procedures that are accepted as effective by that system. The Member may be required to obtain written verification that the other system has accepted the waiver of benefit entitlement.

1.28J **Procedure for Purchasing Service Credit.** A Member may apply to purchase service credit at any time. The Member will be required to furnish the following information regarding the employment for which credit is to be purchased:

- (1) The dates of the entire period of employment in the job in question, even if the Member wishes to purchase credit for only a fraction of the period;

- (2) The name and address of the employer;
- (3) The job title and a description of the principal duties of the job;
- (4) A statement whether he or she earned credit under any retirement system other than VRS, Social Security, or military reserve retired pay under Chapter 1223 of Title 10 of the U.S. Code, while employed in the job for which he or she wishes to purchase service credit. If any such credit was earned, the Member will be required to furnish such additional information as the Retirement Office may consider necessary in order to determine whether the period of employment in question is disqualified from purchase of credit by virtue of Paragraph 1.28I;
- (5) If credit is sought under §1.28(c) of the *ERFC* Plan Document, a written detailed description of the nature and functions of the former employment and a written statement of reasons in support of the Member's claim that the former employment had a favorable impact on his or her ability to perform a subsequent FCPS job. The statement should identify whether credit is being sought under Paragraph 1.28F (1), (2), (3), or (4) or Paragraph 1.28G;
- (6) Written verification from the prior employer, when possible, of the information described in (1) through (4). This requirement will be waived if the prior employer cannot be located, if records for the period of prior employment are unavailable, or in any other circumstances that would make obtaining written verification excessively inconvenient or costly. If this requirement is waived, however, the Member will be required to sign a sworn, notarized statement containing the information described in (1) through (4), and may also be required, if possible, to obtain from a responsible person a sworn, notarized statement, verifying, on the basis of personal knowledge, that the information in the Member's statement is correct.
- (7) In addition to the verification required by (6), the Retirement Office retains the right to require the Member to provide appropriate verification, in a form satisfactory to the Retirement Office, of any information that is material to the decision whether the application for Purchased Service Credit should be approved.

Adopted: 5/19/2011
Amended: 6/27/2013
Amended: 12/17/2015
Amended: 6/15/2017
Amended: 10/19/2017

ERFC REGULATIONS — ACTUARIAL ASSUMPTIONS

(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §§1.29 and 15.03 of the *ERFC* Plan Document and §§1.21 and 10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations to specify the actuarial assumptions that are currently used in the Plan's actuarial valuations and that will be used for calculation of Actuarial Equivalent benefits. These regulations, as amended October 19, 2017, are effective January 1, 2018. The assumptions identified in this regulation shall remain in effect until the regulation is amended.

1.29A **General Rules.** With the exception stated in Paragraph 1.29B, the actuarial assumptions that will be used in the calculation of Actuarial Equivalent benefits shall be:

- (1) an interest rate equal to the assumed rate of investment return used in the Plan's actuarial valuations, provided that assumption was adopted by the Trustees on or before the end of the calendar year preceding the Effective Retirement Date of the Member who is electing an Actuarial Equivalent benefit; and
- (2) the mortality table used in the Plan's actuarial valuations, modified as described in this Paragraph 1.29A(2), provided that the table was adopted by the Trustees on or before the end of the calendar year preceding the Effective Retirement Date of the Member who is electing an Actuarial Equivalent benefit. The mortality rate at each age shall consist of 80% of the female rate plus 20% of the male rate for individuals who attained that age in 2014.

1.29B **Interest Rate Assumption.** For all purposes, except the payment of small pensions pursuant to Section §16.05 of the *ERFC* Plan Document and §11.05 of the *ERFC 2001* Plan Document and Paragraph 16.15D, the assumed investment return rate is 7.25%, compounded annually.

1.29C **Mortality Assumption.** For all purposes, except as modified in Paragraph 1.29A(2), mortality is assumed as 90% of the male rates and 79% of the female rates as stated in the RP-2014 Total Dataset Healthy Annuitant Mortality Table adjusted for mortality

improvement back to the base year of 2006 and then projected forward from 2006 with the MP-2016 projection scale in a fully generational manner.

Adopted: 9/19/2002
Amended: 5/16/2006
Amended: 6/27/2013
Amended: 6/15/2017

ERFC REGULATIONS - SALARY
(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §§1.31, 15.03, and 17.03 of the *ERFC* Plan Document and §§1.23, 10.03, and 12.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations regarding the determination of Salary.

1.31A **Purpose of Regulations.** The purpose of these regulations is to clarify the amount of Salary as it pertains to the calculation of Member contributions under Article III in the *ERFC* and *ERFC 2001* Plan Documents.

1.31B **Plan Provisions.** Section 3.02(a) of the *ERFC* Plan Document and §3.03(a) of the *ERFC 2001* Plan Document require that Members make contributions as a percentage of Salary each year. Salary is defined in §1.31 of the *ERFC* Plan Document and §1.23 of the *ERFC 2001* Plan Document as each Member's contractual salary or (for Members who do not have contractual salary) base compensation. Section 17.03 of the *ERFC* Plan Document and §12.03 of the *ERFC 2001* Plan Document provide, as the Internal Revenue Code requires, that in determining all benefits under each Plan the annual compensation taken into account will not exceed the amount permitted by §401(a)(17)(B) of the Internal Revenue Code. That amount is \$270,000 in plan years beginning on and after July 1, 2017, with periodic adjustments for cost-of-living increases as permitted by §401(a)(17)(B) of the Internal Revenue Code.

1.31C **Member Contributions.** Because it is most equitable to deduct Member contributions only from that portion of compensation that the Internal Revenue Code permits to be taken into consideration when benefits are calculated, the Salary that is taken into account in calculating Member contributions under §3.02(a) of the *ERFC* Plan Document and §3.03(a) of the *ERFC 2001* Plan Document will not exceed the amount that is permitted to be taken into account under §401(a)(17)(B) of the Internal Revenue Code in any plan year.

1.31D **Salary in a Month for which a Member Receives Partial Pay.** In a month for which a Member receives partial pay but is entitled to Credited Service for the month, Salary that is taken into account in calculating contributions under §§3.02(a) and 3.05 of the *ERFC* Plan Document and §§3.03(a) and 3.05 of the *ERFC 2001* Plan Document shall mean the amount of Salary that the Member would have received if the Member had worked for the entire month.

Adopted: 11/3/2000
Amended: 10/31/2001
Amended: 3/18/2004
Amended: 6/27/2013
Amended: 6/15/2017

ERFC REGULATIONS - CONVERSION OF UNUSED SICK LEAVE

(Applicable to *ERFC* only)

Pursuant to their authority under §§1.35 and 15.03 of the *ERFC* Plan Document, the Trustees have adopted the following regulations regarding the conversion of Unused Sick Leave to service credit.

1.35A **Purpose of Regulations.** The purpose of these regulations is to specify the method by which Unused Sick Leave will be converted to Credited Service for all vested Members upon termination of employment with FCPS.

1.35B **Calculation Method.** Credited Service is calculated by dividing the number of hours of Unused Sick Leave by the number of days in the Member's employment contract, divided by the Member's daily scheduled hours worked for the final year of employment, and adding the result to the Member's other Credited Service.

1.35C **Benefit Estimates Before Retirement.** The Retirement Office will include in all retirement estimates for a retirement date within the next 12 months any Credited Service based on Unused Sick Leave as of the time the estimate is prepared, plus Credited Service based on sick leave projected to be accrued and unused as of the earlier of the date of retirement or the end of the current fiscal year.

1.35D **Benefits upon Retirement.**

- (1) Credited Service based on Unused Sick Leave will be determined based upon the Member's latest sick leave balance available as of the date the Member's application for retirement is processed, and projected to the proposed retirement date. That Credited Service will not be recalculated at the time of retirement, provided that:
 - (a) the Member's proposed retirement date remains the same; and
 - (b) the Member has not used more than 160 hours of sick leave between the date of the calculation and the date of retirement.
- (2) If the conditions stated in subparagraph (1) are not satisfied, the Member's Credited Service will be recalculated as soon as administratively practicable after the Member retires, and the Member's future benefit payments will be adjusted

accordingly. If the Member has been overpaid, any excess benefits will be deducted from subsequent retirement payments. If the member has been underpaid, any unpaid benefits will be added to subsequent retirement payments.

Adopted: 5/17/2012
Amended: 6/21/2012
Amended: 6/27/2013
Amended: 6/15/2017

ERFC REGULATIONS – MEMBER CONTRIBUTIONS

(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to authority under §§ 3.02 and 15.03 of the *ERFC* Plan Document and §§ 3.03 and 10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations to specify the Member contributions that are required under the Plan. The Member contributions specified in this regulation shall remain in effect until the regulation is amended.

3.02A **Member Contributions.** Effective June 1, 2004, the Member contribution rate shall be 4% of a Member’s Salary as such term is defined in §1.31 of the *ERFC* Plan Document and §1.23 of the *ERFC 2001* Plan Document and as further described in ERFC regulation Paragraph 1.31. Effective July 1, 2012, the Member contribution rate shall be 3% of a Member’s Salary as such term is defined in §1.31 of the *ERFC* Plan Document and §1.23 of the *ERFC 2001* Plan Document and as further described in ERFC regulation Paragraph 1.31.

3.02B **Changes to Member Contributions.** The Trustees may change the Member contribution rate in Paragraph 3.02A by amending these regulations.

ERFC REGULATIONS-AMOUNT

(Applicable to ERFC only)

Pursuant to their authority under §15.03 of the *ERFC* Plan Document, the Trustees have adopted the following regulations regarding the election of the type of service Pension benefit.

4.02A **Purpose of Regulations.** The purpose of these regulations is to provide uniform and nondiscriminatory rules to govern the election of the type of service Pension benefit, pursuant to the provisions of §§4.02, 5.02, and 5.03 of the *ERFC* Plan Document.

4.02B **Service Pension Benefit Payment Type.** The Member may make an election before the Member's Effective Retirement Date to receive:

- (1) the Standard Benefit under §4.02(a) of the *ERFC* Plan Document;
- (2) if eligible, the Alternative "Guarantee" Benefit under §4.02(b) of the *ERFC* Plan Document; or
- (3) the Optional Level Lifetime Benefit under §4.02(c) of the *ERFC* Plan Document.

Election of a service Pension benefit payment type is irrevocable as of the Effective Retirement Date. Election of a service Pension benefit payment type binds all persons eligible to receive benefits or a refund under a Member's account.

4.02C **Applicability to Other Plan Provisions.** The Member may make an election under §§5.02 and 5.03 of the *ERFC* Plan Document, as applicable, before the Member's Effective Retirement Date to receive:

- (1) the Standard Benefit under §5.02(a) or §5.03(a) or the *ERFC* Plan Document;
- (2) if eligible, the Alternative "Guarantee" Benefit under §5.02(b) or §5.03(b) of the *ERFC* Plan Document;
- (3) if eligible, the Alternative Level "Guarantee" Benefit for Members Electing VRS "50/10" or VRS "50/30" Retirement under §5.02(c) of the *ERFC* Plan Document; or
- (4) the Optional Level Lifetime Benefit under §5.02(d) or §5.03(c) of the *ERFC* Plan Document.

Election of a service Pension benefit payment type is irrevocable as of the Effective Retirement Date. Election of a service Pension benefit payment type binds all persons eligible to receive benefits or a refund under a Member's account.

Adopted: 10/1989
Amended: 10/31/2001
Amended: 3/18/2004
Amended: 5/16/2006
Amended: 7/17/2007
Amended: 6/27/2013
Amended: 6/15/2017

ERFC REGULATIONS-
OPTIONAL METHODS OF PAYMENT
(Applicable to ERFC and ERFC 2001, as applicable)

Pursuant to their authority under §§4.06(a) and 15.03 of the *ERFC* Plan Document and §§4.03(a) and 10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations regarding the election of optional forms of payment.

4.06A **Purpose of Regulations.** The purpose of these regulations is to provide uniform and nondiscriminatory rules to govern the election of Option D, pursuant to the service retirement provisions of §4.06 of the *ERFC* Plan Document. The Retirement Office will determine in every instance whether a Member's election of Option D meets these requirements.

4.06B **Benefit Amount.** The Member electing Option D shall elect the amount of his or her single sum payment, subject to the following restrictions:

- (1) The minimum for a single sum payment shall be \$1,000, unless the Member's total contributions are less than \$1,000, in which case the minimum shall be the Member's total contributions.
- (2) The maximum for a single sum payment shall be the amount of the Member's contributions. For purposes of Option D, "contributions" means the Member's contributions from Salary during Eligible Employment, and does not include payment for Purchased Service Credit or interest.

4.06C **Conditions of Electing Option D.** In electing Option D, the Member agrees to the following conditions:

- (1) The Member's Pension amount will be reduced from the amount that would have been payable had the Member not elected the single sum option. The amount shall be the Actuarial Equivalent of the difference between (1) the Reserve Value at retirement of the Member's unreduced Pension and (2) the amount of such single sum payment. The reduced Pension amount shall be determined pursuant to a table or other program developed by the Plan actuary.

- (2) A Member electing Option D will be deemed to have applied for the lump sum payment and reduced monthly benefit to begin at the Effective Retirement Date or as soon thereafter as is administratively feasible. The Member making such an election will not be permitted to defer receipt of either the lump sum or monthly benefits to later months or a new tax year.
- (3) A Member may elect only one single sum payment and must make that election prior to the Effective Retirement Date. Successive or multiple elections of single sum payments are prohibited, regardless of the amount of contributions remaining in the Member's account.
- (4) Election of Option D is irrevocable as of the Effective Retirement Date. Election of Option D binds all persons eligible to receive benefits or a refund under a Member's account.
- (5) If a Member dies after electing Option D but before a lump sum or any other benefits have been paid, death in service benefits will be payable in accordance with the provisions of Article VIII, IX or X of the *ERFC* Plan Document, depending on whether or not the Member was in service at the time of death.

4.06D **Applicability to Other Plan Provisions.** These regulations shall also apply to the election of single sum/reduced benefit options under §§5.06, 6.03, and 7.03 of the *ERFC* Plan Document.

4.06E **Benefits Following Return to Active Employment.** If a Member who has elected Option D returns to Eligible Employment and subsequently retires again pursuant to §16.14(b)(2) of the *ERFC* Plan Document (i.e., the Member has not made the election described in Section 16.14(e) of the *ERFC* Plan Document and upon subsequent retirement has not elected a refund of additional Accumulated Contributions), any additional benefits that the Member has earned during re-employment will be paid solely in the form of additional monthly benefits. No additional lump sum benefit will be payable at the time of the subsequent retirement, and no other options may be elected.

4.06F **Delegation of Authority to Retirement Office.** The Trustees delegate to the Retirement Office the authority to determine whether a dependent child is eligible for an Option B benefit under *ERFC* and *ERFC 2001*.

4.06G **Appeal of Retirement Office Determinations.** Any determination made by the Retirement Office pursuant to this delegation of authority may be appealed to the Trustees as provided in §16.16 of the *ERFC* Plan Document or §11.14 of the *ERFC 2001* Plan Document.

Adopted: 1/8/1993
Amended: 11/11/1994
Amended: 10/31/2001
Amended: 5/16/2006
Amended: 7/17/2007
Amended: 6/27/2013
Amended: 5/16/2019

ERFC REGULATIONS - PAYMENTS TO TRUSTS ON BEHALF OF SURVIVORS ENTITLED TO DEATH-IN-SERVICE BENEFITS

(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §§8.02(d) and 15.03 of the *ERFC* Plan Document, and §§5.02(d) and 10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations regarding the designation of a trust as beneficiary for death-in-service benefits.

8.01A **Purpose of Regulations.** The purpose of these regulations is to provide uniform and non-discriminatory rules to govern the circumstances under which a trust may receive:

- (1) benefits on behalf of surviving Spouses or other dependents who are eligible to receive monthly benefits; or
- (2) a return of contributions on behalf of other persons, which may be payable as a result of a Member's death in service, pursuant to Article VIII or Article IX of the *ERFC* Plan Document, or Article V of the *ERFC 2001* Plan Document. The Retirement Office will determine in every instance whether the trust meets these requirements.

8.01B **Trust Requirements for Monthly Benefits.** A trust may be designated to receive monthly benefit payments following a Member's death pursuant to Article VIII or Article IX of the *ERFC* Plan Document, or Article V of the *ERFC 2001* Plan Document, if the trust meets the following requirements:

- (1) The trust:
 - (a) is irrevocable following the Member's death,
 - (b) provides that distributions of income and principal may be made to provide for the health, support, maintenance or education of one or more natural persons,
 - (c) provides that while such person or persons are alive and remain eligible for monthly benefits, no distribution may be made to or for the benefit of anyone other than such person or persons.

- (2) The trust may not receive monthly benefits specified in §8.02 of the *ERFC Plan Document*, or §5.02 of the *ERFC 2001 Plan Document*, unless it has only one beneficiary and that beneficiary is a natural person described in §8.02(a) of the *ERFC Plan Document* or in §5.02(a) of the *ERFC 2001 Plan Document*.
- (3) If the trust has more than one beneficiary, except as provided in (4) below, benefits will be paid only as a refund of Accumulated Contributions.
- (4) Contingent beneficiaries may be named to receive benefits following the death of or loss of eligibility by a primary beneficiary or beneficiaries before the Member's death. If a contingent beneficiary is not eligible to receive a monthly benefit, the trust will receive only a refund of any remaining Member contributions.
- (5) The amount of benefits payable to the trust in all circumstances will be the amount that would be payable if the trust beneficiary or beneficiaries were receiving direct payments of benefits under Article VIII or Article IX of the *ERFC Plan Document*, or under Article V of the *ERFC 2001 Plan Document*.

8.01C **Trust Requirements for Return of Contributions.** If the Member wishes to designate as a trust beneficiary a person who does not qualify for a monthly benefit, the Member may do so. The only requirement is that the trust be valid under state law; however, the trust will only receive a return of the Member's contributions, not a monthly benefit from ERFC.

8.01D **Filing Requirements.**

- (1) Members may designate a trust as the beneficiary at any time by filing a designation in the form prescribed by the Trustees.
- (2) The following must be provided after the Member's death and before payment of survivor benefits may begin:
 - (a) A notice of the Member's death;
 - (b) A copy of the trust document for the trust designated as beneficiary;
 - (c) Such other documents and information as the Retirement Office may reasonably require in order to establish the identity or eligibility of the beneficiary of the trust;
 - (d) The name and address of the current trustee of the trust;
 - (e) An agreement signed by the trustee of the trust, promising to notify the Retirement Office promptly upon the occurrence of any of the following events:
 - (i) the death of any beneficiary of the trust;

- (ii) the amendment or termination of the trust;
 - (iii) the resignation of the trustee or appointment of a successor trustee.
- (3) Once benefits have begun, the beneficiary shall provide on request such documents and other information as the Retirement Office may reasonably require in order to verify the beneficiary's continuing eligibility for benefits.

8.01E Limitations on ERFC Payments to Trusts.

- (1) The Retirement Office shall be authorized to suspend payments to a trust designated as beneficiary if the trust fails to comply with these regulations or the terms of the applicable Plan. Suspended payments will be resumed on the Retirement Office's determination that the trust complies with this regulation and the terms of the Plan.
- (2) If after the Member's death, the Retirement Office determines that a trust cannot comply or has not complied with these regulations or the terms of the applicable Plan, the Retirement Office shall have the discretion to make payments directly to the beneficiary or beneficiaries described in Paragraph 8.01B(2); provided, however, that no payments shall be made if such beneficiary or beneficiaries do not meet the eligibility conditions stated in §8.02 of the *ERFC* Plan Document or §5.02 of the *ERFC 2001* Plan Document.
- (3) ERFC benefit payments to the trust shall terminate when the last eligible beneficiary for the trust dies or ceases to be eligible for benefits under Article VIII or Article IX of the *ERFC* Plan Document or Article V of the *ERFC 2001* Plan Document. The value of the Member's residual Accumulated Contributions, if any, shall be paid in accordance with the terms of the relevant applicable Plan Document.

8.01F Elections to Be Made by Trustee. If an election may be made by a beneficiary or beneficiaries of the trust pursuant to §8.05 of the *ERFC* Plan Document, that election shall be made by the trustee of the trust within 60 days after the Member's death.

Adopted: 11/11/1994
Amended: 5/16/2006
Amended: 7/17/2007
Amended: 6/27/2013

FACT SHEET FOR ERFC MEMBERS:
DESIGNATING A TRUST AS YOUR BENEFICIARY

If you choose to do so, you may designate a trust, rather than a particular person, as your beneficiary under the *ERFC* and *ERFC 2001 Plan Documents* (hereafter “*ERFC*”).

1. For refund of your contributions. If you want a trust to be your beneficiary only to receive a refund of your contributions, plus interest, then you can name any valid trust as your beneficiary, regardless of who will receive the benefits of the trust, or the form of the trust. After you die, the trust will receive the contributions you made during your employment, plus interest, but less the amount of any *ERFC* benefits you received before death.
2. For a monthly benefit. You also may designate a trust to receive monthly benefits following your death. In order for a trust to receive monthly benefits, however, the trust’s beneficiary or beneficiaries must be persons who are otherwise eligible to receive monthly benefits under *ERFC*. If a person is not otherwise qualified to receive monthly benefits from *ERFC*, then that person may not receive monthly *ERFC* benefits through a trust. Consequently, your trust must be in a form that would prohibit ineligible persons from being beneficiaries of the *ERFC* monthly benefits.

If your intended beneficiary would qualify to receive a monthly *ERFC* benefit, you may designate a trust for that person as your *ERFC* beneficiary. For example, if you die in service, a trust could receive a survivor’s benefit in accordance with the terms of the *ERFC* Plan. Or, if you retired under an optional form of benefit, which provided reduced benefits to your survivor, a trust could receive those reduced benefits after your death in accordance with the *ERFC* Plan.

In order to be sure that the trust meets your own financial needs, is valid under state law, and (in the case of trusts designated to receive monthly benefits) qualifies under the *ERFC* Plan, you should consult your attorney. You should provide your attorney with a copy of this fact sheet, the *ERFC* regulations regarding trusts for death in service (Regulations 8.01A through 8.01F), and trusts for survivor benefits following retirement under one of the optional forms of pensions (Regulations 1.24A through 1.24D), and Articles IV, VIII and IX of the *ERFC* Plan Document, or Article V of the *ERFC 2001 Plan Document*, depending on which plan applies to you. These

documents will assist you and your attorney in ensuring that your trust complies with ERFC requirements.

The Retirement Office, however, will make the decision whether your trust qualifies under the Plan.

If you would like copies of the ERFC Regulations and *ERFC* or *ERFC 2001* Plan Document, or if you have any questions, please visit the ERFC website at www.fcps.edu/erfc or call the Retirement Office.

Amended: 10/31/2001
Amended: 3/18/2004
Amended: 4/19/2006
Amended: 5/27/2010
Amended: 6/27/2013
Amended: 5/29/2014

ERFC REGULATIONS –
PURCHASE AND RE-PURCHASE OF SERVICE CREDIT
(Applicable to *ERFC* only)

Pursuant to their authority under §§11.05 and 15.03 of the *ERFC* Plan Document, the Trustees have adopted the following regulations regarding purchase of service credit:

11.05A **Purpose of Regulations.** The purpose of these regulations is to provide uniform and nondiscriminatory rules regarding the rates at which Members who are in Eligible Employment may purchase credit pursuant to Article XI of the *ERFC* Plan Document, and the procedures under which they will purchase service credit.

11.05B **Purchase Schedule.** In order for any Member to purchase service credit under *ERFC*, the Member must apply for that credit by submitting an application request specifying the number of years and/or fractions of a year that he or she wishes to purchase, and a lump sum payment for the amount of the purchase. The Retirement Office must receive the application and the full payment while the Member is in Eligible Employment.

11.05C **Supporting Documentation.** No purchase application will be approved and no payment will be accepted or processed until the following information has been received by the Retirement Office:

- (1) Satisfactory verification of Age.
- (2) Satisfactory verification of employment.
- (3) Satisfactory verification that the Member is not eligible for a pension benefit from another retirement system based on the period of employment for which credit is sought.
- (4) Documentation supporting the Member's claim for favorable impact service, if favorable impact service is being claimed. This documentation must be approved by the Retirement Office before the Member's payment can be accepted or processed.
- (5) Any other pertinent or relevant documentation requested by the Retirement Office.

For purchases of fewer than five years, the Member need not provide documentation listed in (2) and (3) if information about prior employment was submitted and accepted by the school system at the time of hire.

Purchase applications, supporting documentation, and payment must be received in the Retirement Office no later than the last working day of the calendar month prior to the Member's birthday, or the purchase rate will be recalculated.

If the Member's Salary increases before payment has been made, the purchase application will be void. Any subsequent application will reflect the new Salary.

11.05D **Purchase Rates.** The basic rate shall consist of a percentage of the Member's highest Salary based on his or her Age at the time of payment. The following rates apply:

Member's Age At Purchase	Member's Payment For One Year of Service
30	5.3%
31	5.4%
32	5.4%
33	5.4%
34	5.4%
35	5.4%
36	5.4%
37	5.5%
38	5.5%
39	5.6%
40	5.6%
41	5.7%
42	5.7%
43	5.8%
44	5.8%
45	5.9%
46	6.0%
47	6.0%
48	6.2%
49	6.3%

Member's Age At Purchase <i>(Continued)</i>	Member's Payment For One Year of Service <i>(Continued)</i>
50	6.5%
51	6.6%
52	6.7%
53	6.8%
54	7.1%
55	7.2%

56	6.4%
57	5.8%
58	5.4%
59	4.9%
60	4.4%
61	4.0%
62	3.7%
63	2.7%
64	2.4%
65	2.0%

There is an additional penalty of 15% per year for purchases within 5 years of retirement

When service credit is purchased less than five years before the retirement date, a penalty of 15% of applicable Salary will be charged for each full or partial year between the purchase and the actual retirement date. There is no proration of the penalty. The Salary used for this purpose will be the Member’s highest Salary as of the time the purchase was made. If a Member retires earlier than planned, so that the purchase is not made five or more years prior to retirement, the Member will have two options:

- (1) The Member may elect to pay the difference between the original cost of the service and the cost with the additional 15% penalty, so long as the Retirement Office receives payment of the additional amount while the Member is in Eligible Employment.
- (2) The Member may elect to receive a recalculated amount of service credit reflecting the increased cost of the purchase after application of the penalty. In some circumstances, the recalculated amount of credit may be zero.

Regardless of the option selected, the Member’s purchase will not be refunded.

11.05E Cost Estimates for Purchases of More than Five Years of Service. Members seeking cost estimates for a purchase of five or more years of service must submit the supporting documentation listed in Paragraph 11.05C with their request for an estimate. The Retirement Office will not provide the cost estimate until all such documentation has been received.

11.05F Cost of Re-Purchase of Refunded Service Credit. Pursuant to §11.07 of the *ERFC* Plan Document, any Member who receives a refund of Purchased Service Credit because of disability retirement may re-purchase that credit on return to Eligible Employment. The cost of such re-purchase shall be the amount of the refund, plus interest at the rate used as the actuarial assumption of investment return in the Plan’s actuarial valuation report as of December 31 immediately preceding the calendar year in which the re-purchase is made.

Adopted: 10/23/2003
Amended: 5/16/2006
Amended: 6/19/2008
Amended: 5/17/2012
Amended: 6/27/2013

ERFC REGULATIONS –
REFUNDS OF PURCHASED SERVICE CREDIT
(Applicable to *ERFC* only)

Pursuant to their authority under Section §15.03 of the *ERFC* Plan Document, the Trustees have adopted the following regulations regarding refunds of service credit purchased in *ERFC*.

11.07A **Purpose of Regulations.** The purpose of these regulations is to define the conditions for refunds of Purchased Service Credit pursuant to §§11.07(b) and 11.07(c) of the *ERFC* Plan Document.

11.07B **Qualifications for Refund under § 11.07(b).** Section 11.07(b) of the *ERFC* Plan Document permits a Member to receive a refund of any portion of Purchased Service Credit that will not result in increased retirement benefits. No refund will be provided for Purchased Service Credit due solely to an increase in the Member's benefit based on Unused Sick Leave credit that the Member receives pursuant to

§1.35 of the *ERFC* Plan Document. The determination of whether Purchased Service Credit results in increased retirement benefits will be based on a comparison of the Reserve Value or level lifetime benefit with and without the Purchased Service Credit.

11.07C **Qualifications for Refund under § 11.07(c).** Section 11.07(c) of the *ERFC* Plan Document permits a Member who purchased service credit for the purpose of becoming eligible for the WAR program during the two years between July 1, 2004 and June 30, 2006, to receive a refund of the money paid for that service credit, if the Member was not eligible for WAR prior to the termination of that program on June 30, 2004. All of the following conditions must be satisfied for a Member to qualify for such a refund:

- (1) The purchase of service credit must have been completed between January 1, 2001, and July 25, 2003.
- (2) The Member's birth date must be no later than June 1, 1951; and
- (3) The service credit to be refunded must have been in an amount that, in light of the Member's service credit at the time of the purchase, was anticipated to be

necessary for the Member to reach 25 years of service credit on or before June 1, 2006.

11.07D **Procedure for Refund.** A Member who satisfied the conditions stated in Paragraphs 11.07B or 11.07C must apply for the refund in writing on or before the effective date of the Member's retirement. The application shall specify the number of months of service credit for which the Member seeks a refund of the purchase price. Refunds will be provided only in increments of whole months of service credit, not for partial months.

11.07E **Amount of Refund.** The amount refunded shall be the purchase price corresponding to the number of whole months of service credit that is specified in the Member's application for refund, plus interest on that amount calculated as follows:

- (1) Interest shall be applied to the original cost of the Purchased Service Credit that is being refunded. If the Member made multiple purchases, the order of refund shall be "last in, first out," up to the total amount of Purchased Service Credit being refunded.
- (2) Interest shall be paid for the number of complete months between each date of purchase described in subparagraph (1) and the first day of the month in which the refund will be made. If the Member paid for the purchase in installments, the basis of the cost used in determining the amount of refund will be the cost had the service been purchased in a lump sum, and interest will be paid from the date on which the last installment was due.
- (3) The rate of interest is the rate provided in §1.01 of the *ERFC* Plan Document.

11.07F **Effect of Refund.** A refund shall have the effect of canceling the number of months of service credit that are specified in the Member's application for refund. The Member's retirement benefit shall be calculated without regard to that service credit, and the amount of the refund shall be subtracted from the Member's Accumulated Contributions.

11.07G **Finality.** The cancellation of the service credit described in Paragraph 11.07F shall be final and irrevocable on the earlier of:

- (1) the date on which the amount of the refund is paid, or
- (2) the Member's Effective Retirement Date.

If the Member wants to repurchase the service credit that was cancelled, it must be accomplished as a new purchase.

Adopted: 11/2/2002
Amended: 5/16/2006
Amended: 6/27/2013
Amended: 5/16/2019

ERFC REGULATIONS – SEPARATION FROM SERVICE

(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §15.03 of the *ERFC* Plan Document and §10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulation regarding the meaning of “separation from service.”

15.03A **Purpose of Regulations.** The purpose of these regulations is to provide a uniform and non-discriminatory rule for determining when a Member has had a “separation from service” for the purpose of complying with various reporting requirements of the Internal Revenue Service, including the requirement for reporting early distributions subject to the 10% excise tax under Internal Revenue Code §72(t)(3)(B).

15.03B **Definition of “Separation from Service.”** Until and unless ERFC receives information that the Internal Revenue Service has provided different guidance on the meaning of “separation from service” pursuant to Code §72(t)(3)(B) or another section of the Code with similar import, ERFC will define “separation from service” under Code §72(t)(3)(B) to mean six consecutive months following a Member’s resignation, retirement, or other termination from employment with FCPS. Employment for FCPS within that six-month period will not be disregarded simply because the Member is working in a position that is not “Eligible Employment” under ERFC or because the Member is working part-time or as an independent contractor or consultant.

15.03C **Relationship of this Regulation to FCPS Regulation 4774.5.** To the extent administratively feasible, the term “separation from service” as used in this regulation shall be construed to be consistent with the six-month severance of employment requirement stated in FCPS Regulation 4774.5-V.A.1.

Adopted: 3/21/2006
Amended: 5/28/2009
Amended: 5/17/2012
Amended: 6/27/2013
Amended: 5/29/2014
Amended: 10/19/2017

ERFC REGULATIONS – FUNDING POLICY AND
EMPLOYER CONTRIBUTION RATE
(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §15.03 of the *ERFC* Plan Document and §10.03 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations governing determination of the Employer contribution rate and implementation of the funding policy pursuant to §§3.05 and 16.03 of the *ERFC* Plan Document and §§3.05 and 11.03 of the *ERFC 2001* Plan Document.

16.03A **Purpose of Regulations.** The funding policy of the Plan is stated in §16.03 of the *ERFC* Plan Document and §11.03 of the *ERFC 2001* Plan Document. That policy is “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.” Section 3.05 in each Plan Document provides that the employer “shall contribute a percentage of each Member’s Salary, at a rate to be determined by the actuary in accordance with the funding policy set forth in [this Plan Document].” Within the broader context of the stated funding policy, the objectives of the Trustees are:

- (1) To make consistent progress toward 100% funding of the Plan and to maintain 100% funding once it has been attained;
- (2) to stabilize the Employer contribution rate and avoid sharp increases or decreases due to specific events or short-term conditions; and
- (3) to maintain the Plan’s funding in accordance with actuarial standards of practice that apply to public sector plans and with applicable federal, state, and local laws and regulations.

16.03B **Frequency of Actuarial Valuations.** The actuary shall prepare annual actuarial valuations based upon calendar-year data. Whenever possible, the valuation for a particular year should be presented to the Trustees within the first 120 days of the following calendar year.

16.03C **Schedule for Setting the Employer Contribution Rate.** As a general rule, the Trustees will determine the Employer contribution rate biennially, in consultation with the actuary, based upon the actuarial valuation for the most recently completed calendar year, and the rate as so determined will remain in effect for two consecutive Fiscal Years. The rate shall be set and communicated to the Employer at least 9 months in advance of the effective date so that it will be available for use in the Employer's budgetary process. For example, a rate set in accordance with this biennial schedule based on the actuarial valuation as of December 31, 2015 will become effective July 1, 2017, and will remain in effect through June 30, 2019. Notwithstanding the foregoing, the Trustees may determine the Employer contribution rate annually, in consultation with the actuary, based upon the actuarial valuation for the most recently completed calendar year, if the Trustees determine that the Employer contribution rate should be changed because of changes to the Plan or because of adverse market conditions occurring since the last actuarial valuation. In the event that the rate is determined annually based on this exception, the new rate will be communicated to the Employer at least 9 months in advance of the effective date.

16.03D **The Employer Contribution Rate.** The Employer contribution rate will be set at a level that is expected to:

- (1) pay all normal costs accruing under the Plan during the Fiscal Years for which the rate is effective; and
- (2) amortize any unfunded liabilities over a reasonable period.

16.03E **The Amortization Period for Unfunded Liabilities.** In the biennial determination of the Employer contribution rate, the amortization period for unfunded liabilities will be set within the parameters permitted by actuarial standards of practice that apply to public sector plans and by applicable federal, state, or local laws and regulations, and shall, if permitted, be based upon level percent of pay. If those standards, laws, and regulations and the other principles stated in Paragraphs 16.03A and 16.03D permit, the amortization period for unfunded liabilities shall be set with the objective that the Plan will be 100% funded by June 30, 2040. In conjunction with actuarial valuations dated December 31, 2019 and later, the Trustees may elect to create a new 20-year amortization schedule for unfunded liabilities arising during that valuation and subsequent valuations, and to continue the amortization of preexisting unfunded liabilities to their scheduled end date. In order to stabilize contributions, the Trustees may from time to time elect to combine separate amortization schedules into a single schedule over the average remaining amortization period then being used. Increases in unfunded liabilities associated with benefit

changes or assumption changes occurring on or after December 31, 2019 shall be funded over a period not exceeding 10 years. However, unfunded liabilities arising in conjunction with early retirement incentive programs offered by the Employer after 2013 shall be separately funded over a period not exceeding five future years and shall not be subject to the combining of amortization schedules mentioned elsewhere in this Paragraph 16.03E.

16.03F **The Valuation of Plan Assets.** The actuarial value of Plan assets shall be determined as a 5-year smoothed market value of assets. The smoothing technique shall fully recognize the assumed return each year. It shall further spread the difference between the actual return and the assumed return in equal installments over the current year and a period of four future years. In the event that the method would result in an actuarial value of assets that is less than 75% of market value or more than 125% of market value, the actuarial value of assets shall be reset to 75% of market value or 125% of market value, as the case may be, and the total difference between market and actuarial value shall be spread over four future years. Based upon consultation with the actuary, the Trustees may combine bases in order to reset the actuarial value to be equal to the market value when the difference between market value and actuarial value is 5% or less of market value.

16.03G **The Valuation of Plan Liabilities.** The actuarial liabilities of the Plan shall be determined using the entry age actuarial cost method, and an investment return assumption chosen by the Trustees in conjunction with the Plan actuary and investment consultant. The investment return assumptions shall be based upon the long term expected return on assets, although the Trustees may take other factors into account when determining this assumption. The Trustees shall also adopt other assumptions necessary for the valuation based upon the advice of the actuary and the judgment of the Trustees. The Trustees shall cause a study of actuarial experience under the Plan to be performed at least once in each five-year period and shall adjust all assumptions accordingly as deemed necessary for prudent operation of the Plan.

16.03H **Overfunding.** In the event that the Plan's assets exceed the Plan's liabilities, all amortization schedules other than those related to any post-2013 early retirement incentive programs offered by the Employer shall be considered completed, and the Employer contribution rate will be set based upon the normal cost and the completion of any remaining amortizations due to post-2013 early retirement incentive programs offered by the Employer, without regard to such overfunding. In such event, the Trustees shall review the Plan's asset allocation with a view toward de-risking the portfolio and potentially lowering the investment return assumption. Should such de-risking of the portfolio or future unfavorable experiences cause unfunded liabilities to

arise again, such liabilities shall be funded over a closed period of 20 future years, and shall otherwise be subject to the regulations set forth in Paragraph 16.03E.

Re-Approved: 1/7/2000
Amended: 10/31/01
Amended: 5/16/2006
Amended: 7/17/2007
Amended: 6/19/2008
Amended: 9/25/2008
Amended: 5/27/2010
Amended: 5/17/2012
Amended: 6/27/2013

ERFC REGULATIONS – DOMESTIC RELATIONS ORDERS

(Applicable to ERFC and ERFC 2001)

16.04A **Scope.** Pursuant to the authority conferred upon them by §§15.03 and 16.04 of the ERFC Plan Document and §§10.03 and 11.04 of the ERFC 2001 Plan Document the Trustees hereby adopt the following regulations in connection with the payment or assignment of System benefits pursuant to a court-ordered equitable distribution of marital property.

These regulations apply only to benefits that are claimed under such a court order pursuant to §16.04 of the ERFC Plan Document and §11.04 of the ERFC 2001 Plan Document. These regulations do not apply to amounts that are payable to a beneficiary whom a Member has designated to receive a benefit following the Member’s death, in accordance with ERFC procedures. These regulations apply both to vested and non-vested Members.

16.04B **Definitions.**

- (1) “Former Spouse” includes any individual who is eligible for an award of a portion of a Member’s benefits pursuant to §20-107.3 of the Code of Virginia. In the event of a dispute regarding such an individual’s status as Spouse or eligibility for such an award, ERFC will not make any independent determination of that dispute but will rely on the final determination of the Virginia courts in litigation between the disputing parties.
- (2) In the case of domestic relations orders that are approved by ERFC after June 19, 2008, “benefits payable to the Member” shall include only payments made to or on behalf of the Member during the Member’s lifetime. It shall not include any amounts that are payable to another person by reason of the Member’s death. In the case of domestic relations orders that were approved by ERFC on or before June 19, 2008, the term “benefits payable to the Member” also includes (to the extent necessary to conform to the terms of such orders) amounts payable to any Named Beneficiary or Nominated Beneficiary designated by the Member or to

any other person who may be entitled to receive benefits on the Member's account pursuant to the provisions of the Plan other than §16.04 of the *ERFC Plan Document* and §11.04 of the *ERFC 2001 Plan Document*.

16.04C **Conditions for Payment Pursuant to an Equitable Distribution.** System benefits may not be paid or assigned to a former Spouse of a Member pursuant to an equitable distribution of marital property unless requirements (1) through (5) of this paragraph are satisfied.

- (1) The Retirement Office must be provided with a certified copy of a final order of a Virginia circuit court which effects distribution of marital property rights to a former Spouse and is made pursuant to §20-107.3 of the Code of Virginia;
- (2) The order must specifically state that it is issued pursuant to §20-107.3 of the Code of Virginia;
- (3) The order must have been entered on or after July 1, 1991;
- (4) The order must state either a dollar amount to be paid each month to the former Spouse, or the percentage of the retirement benefits to be paid to the former Spouse, or the percentage of the marital share to be paid to the former Spouse;
- (5) The order must provide for payments to the former Spouse commencing no sooner than the date on which payments to the Member commence and ending no later than the date when benefits cease to be payable to the Member. Payments may continue to the former Spouse after the Member's death in accordance with the applicable provisions of the plan document if the Member has designated the former Spouse in accordance with ERFC's procedures (a) to receive an optional form of benefits following the Member's death, (b) to receive death-in-service benefits, or (c) to receive a refund of contributions or residual contributions. In addition, ERFC will comply with domestic relations orders that ERFC approved on or before June 19, 2008, to the extent that they require continuing payments to the former Spouse while benefits are payable to any person on the account of the Member.

16.04D **Procedures for Payment Pursuant to an Equitable Distribution.**

- (1) When the Retirement Office receives an order and determines that it satisfies the requirements of Paragraph 16.04C, payments to the former Spouse shall begin as soon as administratively practicable, but no sooner than the date on which

payments to the Member begin. No payment shall be paid to a former Spouse for any period prior to the date on which the Retirement Office receives the order.

- (2) If benefits are being paid to the Member when the Retirement Office receives an order that directs the payment of benefits to a former Spouse, the Retirement Office will temporarily withhold from the Member's monthly benefits the amount that the order awards to the former Spouse, while the Retirement Office makes the determination whether the order satisfies the requirements of Paragraph 16.04C. If the Retirement Office subsequently determines that the order satisfies those requirements, the amounts withheld will be paid to the former Spouse. If the Retirement Office determines that the order does not satisfy those requirements, the amounts withheld will be paid to the Member. The withheld amounts will be paid to the Member or to the former Spouse as soon as administratively practicable after the expiration of the 60-day period referenced in Paragraph 16.04D(3), or (if later) after the resolution of any appeal or pending legal action.
- (3) When the Retirement Office has made a determination that an order does, or does not, satisfy the requirements of Paragraph 16.04C, any person affected by the Retirement Office's determination, including the affected Member, former Spouse, or another person entitled to receive benefits on the Member's account, may appeal that determination to the Trustees. Any such appeal must be made in writing, addressed to the ERFC Board of Trustees, within 60 days after the date on which the Retirement Office provided notice of the determination that is under appeal.
- (4) The former Spouse to whom benefits are payable shall be responsible for advising the Retirement Office of his or her current address. The former Spouse must also provide the Retirement Office such information as it may reasonably request for the purpose of identifying the payee, for making required reports to taxing authorities and for other administrative needs of the Retirement Office. If a former Spouse fails to provide such information upon request, benefits may be suspended until the requested information is received by the Retirement Office. Upon subsequent receipt of the requested information, the full amount of the benefits that were suspended shall be paid to the former Spouse, without interest. However, if the former Spouse has not contacted the Retirement Office within three years after the first month for which the former Spouse's benefits were suspended,

the accumulated amount of the suspended benefits, without interest, will be paid to the Member, and the Retirement Office will begin to pay the Member the former Spouse's portion of benefits for subsequent months. If the former Spouse subsequently contacts the Retirement Office and provides the required information, the Retirement Office will pay the former Spouse's portion of subsequent monthly benefits to the former Spouse effective as of the month following the former Spouse's contact with the Retirement Office. The Retirement Office will not attempt to recoup any suspended benefits that were paid to the Member.

16.04E **Guidelines.** The Trustees may promulgate Guidelines to implement these regulations and to assist Members and their Spouses and former Spouses in complying with the requirements of law. The terms of any Guidelines or materials issued to Members in relation to domestic relations orders are to be given all the force and deference otherwise accorded this regulation.

Adopted: 9/10/1997
Re-Approved: 1/7/2000
Re-Approved: 10/17/2002
Amended: 5/17/2005
Amended: 5/16/2006
Amended: 7/17/2007
Amended: 6/19/2008
Amended: 9/25/2008
Amended: 5/27/2010
Amended: 6/27/2013
Amended: 5/28/2015
Amended: 5/19/2016
Amended: 5/16/2019

ERFC REGULATIONS

GUIDELINES FOR THE DEVELOPMENT OF DOMESTIC RELATIONS ORDERS

The Educational Employees' Supplementary Retirement System of Fairfax County (ERFC) is a defined benefit pension plan maintained under applicable sections of the Code of Virginia. Section 51.1-802 of the Code of Virginia prohibits the alienation or assignment of benefits except in specific circumstances. These exceptions allow ERFC to make a direct distribution to the former Spouse of a Member only pursuant to certain domestic relations orders (DROs) issued by a Virginia circuit court. These guidelines provide important information about both the form and substance of a domestic relations order that ERFC will approve. **READ THESE GUIDELINES CAREFULLY.** Please refer to Paragraph 16.04B of ERFC Regulations for definitions of terms used in these Guidelines.

Domestic relations orders are complicated legal documents, and ERFC recommends that all parties to a DRO be represented by an attorney. After carefully reviewing this information, if you still have questions, please call the ERFC Retirement Coordinator at (703) 426-3900.

PART 1: SUMMARY OF DRO REQUIREMENTS

This section summarizes the requirements for an approved DRO. A DRO must contain **all** of the items identified below or it will not be approved. The sections that follow this background section provide model DRO language that can help you and your attorney craft an order that meets both your needs and those of the ERFC. ERFC strongly encourages parties to use the model DRO, when possible. Use of the model DRO will speed review of a draft or final DRO by ERFC. If parties depart from the language in the model DRO, they should review these Guidelines carefully to ensure compliance with ERFC rules regarding DROs. ERFC will reject DROs that do not comply with the requirements described in these Guidelines.

Please note that information about the Member's account, such as contribution account balance, benefit estimates, and beneficiary designations, will not be provided to a non-Member (such as former Spouse or the former Spouse's attorney) unless required by a *subpoena duces tecum* directed to the Retirement Coordinator.

- ***Court Certification***

The order must be a judgment, decree, or order from a Virginia circuit court. If the Member and former Spouse were divorced in a state other than Virginia, they must have a Virginia circuit court

enter their order before ERFC will honor it. The order must relate to the division of marital property, and must state that it is issued pursuant to Sections 20-107.3 and 51.1-802 of the Virginia Code. ERFC will review a draft order, but must receive and approve a certified copy of the final order before it will make any payments that the order provides to a former Spouse.

- ***Date After July 1, 1991***

The order must have been entered after July 1, 1991. An order entered before July 1, 1991, cannot be accepted. If there is a pre-July 1, 1991, order dividing a Member's retirement benefits and the parties want ERFC to pay the former Spouse's portion directly to the former Spouse, the parties must return to court and have a new order entered. If the new order meets ERFC requirements, it will be approved. ERFC can then make direct payments to the former Spouse.

- ***Full Identification of Member and Former Spouse***

The order must give the name and last known address of both the Member and the former Spouse. The social security numbers must be provided in a separate addendum. A former Spouse has a duty to keep ERFC informed of any changes in his or her address.

- ***Order to Pay Former Spouse Directly***

The order must specifically direct or order ERFC to pay the former Spouse's share of the Member's benefits directly to the former Spouse.

- ***Amount of Former Spouse's Portion***

The order must clearly state the former Spouse's share of the Member's benefits. The model DRO sets forth the simplest form of assignment between a Member and a former Spouse.

If you do not use the model DRO, the amount that ERFC is ordered to pay to the former Spouse should be as specific as possible and easily determinable by ERFC. The parties may use a flat dollar amount, a percentage of the total benefit, or a percentage of the marital share of the benefit, which is the portion of the benefits that was earned during marriage. If the parties choose the marital share option, and do not specify the number of years and months that are to be considered the period of the marriage, they must include all of the information that is necessary for the ERFC to calculate the share, including date of marriage and date of final separation, and a specific instruction whether the period of the marriage should include any period of time after the date of the final separation. If the order contains no such specific instruction, ERFC will use the date of final separation as the end date for determining the portion of benefits earned during the marriage. No formulation can exceed 50% of the marital share.

- ***Limitations on the Order***

All of the following limitations must be included in every order:

- √ The order must specify that it does not require ERFC to provide any type of benefit or any option not otherwise provided under the plan.

- √ The order must state that it does not require ERFC to provide benefits in any amount greater than the amounts required by the ERFC Plan.
- √ The order must state that the ERFC will not be required to pay benefits to a former Spouse that are already assigned to another under another order previously determined to be an approved Domestic Relations Order.
- √ The order must state that it does not require payment of more than 50% of the marital share of the Member's benefits.
- √ The order must state that the court will retain jurisdiction to amend the order so that it will constitute an approved DRO as determined by ERFC, even though all matters incident to the divorce have been fully or finally adjudicated.

An order will not be approved if it contains the following:

- ✗ A requirement that ERFC notify the former Spouse of any change or alteration of the retirement benefits that are due to the Member.
- ✗ A requirement that ERFC pay benefits to the former Spouse before the Member's account is in pay status. Pay status occurs when:
 1. The Member retires;
 2. The Member terminates covered employment and requests a refund of Accumulated Contributions (also called in these Guidelines "a refund of Member contributions"); or
 3. Only in the case of orders approved by ERFC on or before June 19, 2008, and to the extent necessary to comply with such orders, the Member dies and a death benefit or refund of contributions and accumulated interest is payable to a person other than the former Spouse.

Even though an order may award a former Spouse a share of the Member's retirement benefits, the former Spouse cannot receive any money from ERFC until the Member's account is in pay status.

- ✗ A requirement that ERFC enforce election of a particular form of benefit, such as a partial lump sum, joint and survivor option, or standard formula benefit, or enforce a prohibition on electing a refund of Member contributions in lieu of a retirement benefit. A court may order, or the Member and former Spouse may agree as part of their divorce settlement, that the Member will elect (or not elect) a particular form of benefit, or that the Member will not change a form of benefit previously elected, but the ERFC will not enforce such a requirement and will not notify the former Spouse if the Member makes an election that the DRO prohibits. If such a requirement is included in the DRO, the DRO must include language indicating that the Member and former Spouse understand that ERFC will pay benefits in the form elected by the Member when he or she moves into pay status, and that ERFC will make any change the Member requests if the change is permitted by the ERFC plan document, regardless of any other provisions in the DRO. (See Part 4: Additional Terms for required language.)

- X** A designation of a beneficiary for survivor benefits or retirement contribution refunds. A court may order, or the Member and former Spouse may agree as part of their divorce settlement, that the Member will designate (or not designate) a particular beneficiary, or that the Member will not change a beneficiary designation that was previously made, but ERFC will not enforce such a requirement and will not notify the former Spouse if the Member makes or changes a beneficiary designation. If such a requirement is included in the DRO, the DRO must include language indicating that the Member and former Spouse understand that ERFC will pay benefits only to the beneficiary who is actually designated by the Member in accordance with the plan documents to receive a survivor benefit or who is actually designated by the Member on the ERFC's Designation of Beneficiary form on file at the time of the Member's death, regardless of any other provisions in the DRO. (See Part 4: Additional Terms for required language.)
- X** An award of more than 50% of the marital share of the Member's retirement benefits. Section 20-107.3 of the Virginia Code prohibits a former Spouse from receiving more than 50% of the marital share of a pension.
- X** A provision permitting the former Spouse to name a beneficiary who would receive benefits after the death of the former Spouse.
- X** References to rights protected by ERISA. ERFC is not an ERISA plan, and therefore, ERFC will not accept an order that purports to give a Member or former Spouse rights under ERISA.

PART 2: IDENTIFYING THE AMOUNT TO BE PAID

Retirement Benefits

One of the most difficult, yet most important aspects of a DRO is determining how much a former Spouse will be paid. As earlier discussed, the Virginia Code limits the amount that can be paid to a former Spouse, but otherwise the parties and the court must determine what is fair. ERFC requires that certain language be included in the DRO describing the parties' arrangement.

You must choose paragraph (a) or (b) below if the amount to be paid to the former Spouse is to be stated in the form of a percentage of the benefits that become payable to the Member.

- Paragraph (a) may be used by active, deferred vested, or retired Members.
- Paragraph (b) may only be used by active or deferred vested Members.

If you choose either (a) or (b), the former Spouse will get the specified percentage of all benefits payable to the Member no matter what form is chosen at the time of retirement, including a lump sum, partial lump sum, or refund of contributions that is paid to the Member, and the former Spouse will automatically benefit from any future cost-of-living increases (COLA) that the Member receives. If you choose (a), you are certifying to the court and to ERFC that the percentage you chose will not exceed 50% of the marital share, as described above. The ERFC will not be responsible for checking the parties' calculations.

You must choose paragraph (c) below if the amount to be paid to the former Spouse is stated as a flat dollar amount per month. Paragraph (c) may be used by active, deferred vested, or

retired Members. If you choose paragraph (c), unless the DRO specifically states that the Member will receive the entire amount of the COLA, the annual adjustment to the benefit amount will be applied separately to the Member's and former Spouse's share of the benefit.

Options:

Option (a) – For use by active, deferred vested, or retired Members; assigns a percentage of retirement benefits

(a) “Pursuant to sections 20-107.3 and 51.1-802 of the Code of Virginia, the Educational Employees’ Supplementary Retirement System of Fairfax County is hereby ordered to pay directly to _____ [insert name of former Spouse] ___% of the retirement benefits that are payable, or become payable, to _____ [insert name of ERFC Member]. This order does not require the Educational Employees’ Supplementary Retirement System of Fairfax County to pay to _____ [insert name of former Spouse] an amount which exceeds 50% of the marital share of the payments to _____ [insert name of ERFC Member].”

Option (b) – For use by active or deferred vested Members only; assigns a percentage of retirement benefits

(b) “Pursuant to sections 20-107.3 and 51.1-802 of the Code of Virginia, the Educational Employees’ Supplementary Retirement System of Fairfax County is hereby ordered to pay directly to _____ [insert name of former Spouse] a percentage of the retirement benefits that become payable to _____ [insert name of ERFC Member] according to the following formula:

Years of ERFC Credited Service <u>earned during marriage</u> _____	X	_____ % [insert percentage not greater than 50%]”
Years of ERFC Credited Service at termination of ERFC-covered employment		

Please Note: There are two sources of service credit in ERFC other than time actually worked by the Member for Fairfax County Public Schools. One is Purchased Service Credit; the other is sick leave that has accumulated and is unused at the time of retirement. Unless your domestic relations order contains an explicit direction about Purchased Service Credit, ERFC will **include** in the numerator of the fraction all service credit that was purchased during the period of the marriage (as that period is defined in the domestic relations order) and will include in the denominator of the fraction all service credit that the Member purchased at any time. ERFC will **not include** any credit for Unused Sick Leave in

either the numerator or the denominator of the fraction. If the order uses a phrase such as “during the marriage” or “while the parties were married,” it must specify whether that phrase includes any period of time after the parties’ final separation. If the order is silent as to whether any period after the final separation should be included, ERFC **will not** include any time after the final separation when it calculates the former Spouse’s share of the benefit.

Option (c) – For use by active, deferred vested, or retired Members; assigns a flat dollar amount per month of retirement benefits

(c) “Pursuant to sections 20-107.3 and 51.1-802 of the Code of Virginia, the Educational Employees’ Supplementary Retirement System of Fairfax County is hereby ordered to pay directly to _____ [insert name of former Spouse] \$_____ per month.”

Please note that in all cases, the former Spouse’s share of the benefit will be calculated on the basis of the Member’s gross ERFC benefit payable in the benefit payment form elected by the Member prior to retirement. If the Member elects an optional form of benefit payment that provides a reduced benefit for the Member’s lifetime, the former Spouse’s share will be calculated based on the Member’s reduced benefit. As noted above, ERFC cannot require a Member to elect any particular form of benefit. Consequently, any agreement between a Member and a former Spouse regarding the form of benefit that the Member will elect (or not elect) may be enforced only between the parties to the agreement, not by or against ERFC.

Refund of Member Contributions

A Member who has terminated employment with Fairfax County Public Schools may elect a refund of Member contributions. When a Member elects a refund of the Member’s contributions to ERFC, the Member forfeits any retirement benefit payable from ERFC. ERFC will not pay a former Spouse a portion of any refund of Member contributions elected by a Member unless the DRO specifically provides for such a payment. If the DRO is silent on whether ERFC must pay the former Spouse a portion of a refund of Member contributions, ERFC will not pay any portion of the refund of Member contributions to the former Spouse.

The model DRO includes language requiring payment of a portion of a refund of Member contributions to the former Spouse.

As with all elections, ERFC will not enforce any provision that prohibits the Member from electing a refund of Member contributions. (See Part 4: Additional Terms for required language.)

PART 3: STARTING AND STOPPING PAYMENTS

A DRO must identify when the payments to the former Spouse will begin and end. By law, a DRO relating to ERFC cannot require payments to be made before the Member is in pay status, as described above.

You **must** choose paragraph (a) below if the Member **is not** already receiving retirement benefit payments from ERFC. You **must** choose paragraph (b) below if the Member **is** already receiving retirement benefit payments from ERFC.

Option (a) – For use when a Member is not already receiving retirement benefits

- (a) “Such payments to _____ [insert name of former Spouse] shall commence on the date on which payments commence to _____ [insert name of ERFC Member].”

Option (b) – For use when a Member is already receiving retirement benefits

- (b) “Such payments to _____ [insert name of former Spouse] shall commence as soon as administratively practicable after this order is furnished to and approved by ERFC.”

The parties also must determine when payments to the former Spouse will stop. Parties must choose from among the options below the one that most closely reflects their intended agreement. Option (a) continues benefit payments to the former Spouse for as long as payments are made to the Member, but not after the death of the former Spouse. Option (b) stops benefit payments to the former Spouse at an earlier date, after a specified total amount has been paid out. Option (c) permits payments to end while the Member is receiving payments, upon the occurrence of a specified date or event such as the former Spouse’s remarriage. If payments to the former Spouse end before the Member has received all payments to which he or she is entitled, all payments following that termination will be made to the Member.

Options:

Option (a) – Continues benefit payments to the former Spouse for as long as payments are made to the Member, but not after the death of the former Spouse

- (a) “Such payments shall continue for as long as payments are made to _____ [insert name of ERFC Member], but not after the death of _____ [insert name of former Spouse].”

Option (b) – Stops benefit payments to the former Spouse at an earlier date, after a specified total amount has been paid

- (b) “Such payments shall continue until the total amount of \$_____ has been paid to _____ [insert name of former Spouse], until the death of [insert name of former Spouse], or until payments cease to be made to _____ [insert name of ERFC Member], whichever occurs sooner.”

Option (c) – Permits payments to end while the Member is still receiving payments, upon the occurrence of a specified date or event such as the former Spouse’s remarriage

(c) “Such payments shall continue until _____ [insert specified date or event] or until payments cease to be made to _____ [insert name of ERFC Member], whichever occurs sooner, but not after the death of _____ [insert name of former Spouse].”

PART 4: ADDITIONAL TERMS

In the event that the DRO includes a term directing the Member to choose or not choose a particular form of election, such as a joint and survivor annuity, a standard form of benefit or a partial lump sum, a refund of Member contributions, or to designate or not designate a particular beneficiary, the DRO **must** also include the following disclaimer:

“_____ [insert name of ERFC Member] and _____ [insert name of former Spouse] understand that a Member can elect a retirement option only at retirement, that ERFC permits the Member to make certain changes after retirement, and that ERFC will not enforce a domestic relations order that specifies a retirement option that is inconsistent with the election that the Member makes under the Plan, including any changes made after retirement. To the extent that this order specifies that the Member will or will not select a particular retirement option, or that the Member will or will not select a refund of Member contributions, or specifies the beneficiary to be named or nominated by the Member, it may be enforceable between _____ [insert name of ERFC Member] and _____ [insert name of former Spouse], but it cannot be enforced against ERFC.”

Benefits Following the Member's Death

IMPORTANT NOTE: In order for the former Spouse to receive any payments from ERFC after the Member's death, the Member must designate the former Spouse as his or her Named Beneficiary or Nominated Beneficiary, as applicable, in accordance with ERFC's procedures for the particular form of benefit that the former Spouse is to receive, and the beneficiary designation must remain in effect at the Member's death. (There is an exception to this rule for certain orders that were approved by ERFC on or before June 19, 2008, but not for any orders approved after that date.)

PART 5: OTHER CONSIDERATIONS

Although a DRO and related divorce proceedings are complicated and can be difficult to understand, the pension assets that are divided are an important part of your future financial planning. Be sure that you and your attorney have considered the following issues when crafting a DRO:

Are the Member's beneficiary designations and DRO consistent? If they are inconsistent, the Member's beneficiary designations made on official ERFC forms will govern, and the interest of the former Spouse may be reduced.

What will happen to the former Spouse's interest if the Member dies before retirement? If the Member dies before retirement, no payments will be made to the former Spouse unless (a) death-in-service benefits are payable AND the Member has actually designated the former Spouse as the Named Beneficiary to receive those benefits in accordance with ERFC's procedures; or (b) a refund of contributions is payable AND the Member has actually named the former Spouse as the Named Beneficiary to receive that refund following the Member's death. ERFC will honor the terms of a DRO that it approved on or before June 19, 2008, if that DRO requires other payments to the former Spouse following the death of the Member.

What will happen to the former Spouse's interest if the Member dies after retirement, but before the former Spouse?

Payments to the former Spouse will terminate on the Member's death, unless either (a) the Member has selected an optional form of benefit that includes payments to a beneficiary following the Member's death AND the Member has actually designated the former Spouse to receive those payments in accordance with ERFC's procedures; or (b) a refund of residual contributions is payable AND the Member has actually named the former Spouse as the beneficiary to receive that refund following the Member's death. ERFC will honor the terms of a DRO that it approved on or before June 19, 2008, if that DRO requires other payments to the former Spouse following the death of the Member.

What will happen to the former Spouse's share if the former Spouse predeceases the Member?

The former Spouse's right to the Member's retirement benefits will terminate when the former Spouse dies, and any portion of future benefit payments designated for the former Spouse's benefit will revert to the Member. A former Spouse is not permitted to designate a beneficiary to continue receiving his or her portion of the Member's benefits after the former Spouse's death.

Does the former Spouse have the right to choose an optional form of benefit?

Although the law permits a former Spouse to receive a portion of a Member's ERFC benefits, the former Spouse does not become an ERFC Member in his or her own right. Therefore, the former Spouse will be treated as a creditor, whose payments are dependent on continued payments to the Member, and the former Spouse will not have the right to choose an optional form of benefit.

What if my former Spouse, who is an ERFC Member, decides not to retire this year when he or she becomes eligible? Will ERFC or the school system enforce our agreement so that I can begin to receive my share of the benefits?

The ERFC cannot require a Member to retire, or to elect any particular form of pension, so that a former Spouse can begin receiving benefits. No benefits will be paid to a former Spouse unless the Member is actually receiving benefits. At that time, payments to a former Spouse may begin. Consequently, any agreement between a Member and a former Spouse regarding the time of retirement may be enforced between the parties to the agreement, but not by or against ERFC. ERFC will make payments to a former Spouse only when benefit payments to the Member begin.

Will ERFC compute the former Spouse's share before or after deducting expenses such as the Member's health insurance, taxes, and other authorized payments?

Before. The former Spouse's share is calculated on the basis of the Member's gross ERFC benefit. The Member's health insurance and other deductions will be made from the Member's share.

Will ERFC compute the former Spouse's share before or after ERFC calculates the Member's benefit based on the benefit payment option elected by the Member?

After. The former Spouse's share is calculated on the basis of the Member's gross ERFC benefit payable in the benefit payment form elected by the Member prior to retirement. If the Member elects an optional form of benefit payment that provides a reduced benefit for the Member's lifetime, the former Spouse's share will be computed based on the Member's reduced benefit. As noted above, ERFC cannot require a Member to elect any particular form of benefit. Consequently, any agreement between a Member and a former Spouse regarding the form of benefit that the Member will elect (or not elect) may be enforced only between the parties to the agreement, not by or against ERFC.

What if the Member receives a cost-of-living adjustment (COLA) to his or her monthly benefit? Will the former Spouse get an increase, too?

If the former Spouse is assigned either a percentage or a percentage of the marital share of the Member's benefit, he or she will automatically receive a pro rata share of the COLA. If the DRO specifies a flat dollar amount that the former Spouse will receive monthly, the annual adjustment to the benefit amount will be applied separately to the Member's and former Spouse's share of the benefit unless the DRO specifically provides that the ERFC Member will receive the entire amount of the COLA.

What is a refund of Member contributions and why is it important?

A Member who terminates employment with Fairfax County Public Schools may elect a refund of Member contributions (also called a "refund of Accumulated Contributions"). ERFC does not consider a refund of Member contributions to be a "retirement benefit." When a Member elects a refund of the Member's contributions to ERFC, the Member forfeits any retirement benefit payable from ERFC. This means that no retirement benefit is payable to the Member or the former Spouse following a refund of Member contributions. A former Spouse will not receive a portion of any refund of Member contributions elected by a Member unless the DRO specifically provides for such a payment. If the DRO is silent on whether ERFC must pay the former Spouse a portion of a refund of Member contributions, ERFC will not pay any portion of the refund of contributions to the former Spouse.

Does the Member owe taxes on the entire benefit, or just on his or her share?

ERFC will report to the IRS on the Member's Form 1099-R only the amounts paid to the Member. On a separate Form 1099-R, it will report in the former Spouse's name the amounts paid to the former Spouse. The IRS will expect both the Member and the former Spouse, separately, to pay tax on his or her own share of the benefits. Both parties will be entitled separately to elect to have taxes withheld on their share of benefits, or not, as each wishes.

What if the parties want to change the terms of their DRO?

If, after ERFC has reviewed and approved a final order, the parties agree to change the terms of the order, they must submit a new DRO for ERFC's consideration. The new DRO must state that it supersedes the previous DRO, must meet all of the same requirements that the original DRO had to meet, and will not be effective until it has been approved by ERFC.

Amended: 5/16/2006
Amended: 6/19/2008
Amended: 5/27/2010
Amended: 6/27/2013
Amended: 5/28/2015
Amended: 5/19/2016
Amended: 5/16/2019

**THE EDUCATIONAL EMPLOYEES' SUPPLEMENTARY
RETIREMENT SYSTEM OF FAIRFAX COUNTY (ERFC)**

MODEL DRO

Below is a model Domestic Relations Order that embodies the simplest form of assignment between an ERFC Member and a former Spouse. This model can be modified to incorporate one of the alternate formulations of the amount to be paid from Part 2 of the Guidelines for the Development of Domestic Relations Orders, or to stop payments in accordance with any of the other options identified in Part 3 of the Guidelines. This model should not be modified to require election of a particular form of benefit or to specify the Member's beneficiary, unless it also includes the disclaimer described in Part 4 of the Guidelines.

ERFC strongly encourages parties to use the model DRO, when possible. Use of the model DRO will speed review of a draft or final DRO by ERFC. If parties depart from the language in the model DRO, they should review the Guidelines carefully to ensure compliance with ERFC rules regarding DROs. ERFC will reject DROs that do not comply with the requirements described in the Guidelines.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN DOE,
Complainant

v.

JANE DOE,
Defendant

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IN CHANCERY NO. X12345

DOMESTIC RELATIONS ORDER

THIS CAUSE came to be heard upon Motion of the Complainant, John Doe, and agreement of the Defendant, Jane Doe, in accordance with Paragraph X of the Separation and Property Settlement Agreement entered into by the parties on [insert date], for entry of a qualifying court order setting forth the right and entitlement of the Former Spouse to the Member's interests in certain benefits under the Educational Employees' Supplementary Retirement System of Fairfax County.

IT APPEARING TO THE COURT that said Motion is proper and should be granted, it is

ADJUDGED, ORDERED, AND DECREED as follows:

1. This Court has personal jurisdiction over both parties to this cause and jurisdiction over the subject matter in this divorce action.
2. This Order is issued pursuant to Section 20-107.3 of the Virginia Code, which relates to the division of marital property rights between spouses and former spouses in actions for divorce, and Section 51.1-802, which relates to assignment of retirement assets.
3. The Order applies to the Educational Employees' Supplementary Retirement System of Fairfax County ("Plan" or "ERFC"), administered by the ERFC Retirement Office, 8001 Forbes Place, Suite 300, Springfield, VA 22151.
4. The Plan Member is Jane Doe, whose last known mailing address is 123 Anywhere St., Arlington, Virginia 22205, and whose date of birth is [insert date]. **[Please Note:** the date of birth may be provided to ERFC in the separate addendum with the parties' Social Security Numbers.]
5. The Former Spouse is John Doe, whose last known mailing address is 123 Somewhere St., Springfield, Virginia 22151, and whose date of birth is [insert date].

[Please Note: the date of birth may be provided to ERFC in the separate addendum with the parties' Social Security Numbers.]

6. The parties' Social Security Numbers are stated in a separate addendum, which shall not be placed in the public record of the court.

7. The parties were married on [insert date], and were finally separated on [insert date].

8. Pursuant to sections 20-107.3 and 51.1-802 of the Code of Virginia, the Plan is hereby ordered to pay directly to John Doe a percentage of the retirement benefits that become payable to Jane Doe according to the following formula:

$$\frac{\text{Years of ERFC Credited Service earned during marriage}}{\text{Years of ERFC Credited Service at termination of ERFC-covered employment}} \times \frac{\text{_____ \% [insert percentage not greater than 50\%]}}{100}$$

[Please Note: unless your domestic relations order contains an explicit direction about Purchased Service Credit, ERFC will **include** in the numerator of the fraction all service credit that was purchased during the period of the marriage (as that period is defined in the domestic relations order) and will include in the denominator of the fraction all service credit that the Member purchased at any time. ERFC will **not include** any credit for Unused Sick Leave in either the numerator or the denominator of the fraction.

If the order uses a phrase such as "during the marriage" or "while the parties were married," it must specify whether that phrase includes any period of time after the parties' final separation. If the order is silent as to whether any period after the final separation should be included, ERFC **will not** include any time after the final separation when it calculates the former Spouse's share of the benefit.

Note also: the former Spouse's share of the benefit will be calculated on the basis of the Member's gross ERFC benefit payable in the benefit payment form elected by the Member prior to retirement. If the Member elects an optional form of benefit payment that provides a reduced benefit for the Member's lifetime, the former Spouse's share will be computed based on the Member's reduced benefit.]

9. A proportional share of any cost-of-living increases will be applied to John Doe's share of the retirement benefit.

10. If Jane Doe elects to receive a refund of Accumulated Contributions in lieu of a retirement benefit, John Doe [shall] [OR] [shall not] receive a percentage of the refund of the Accumulated Contributions according to the formula set forth in paragraph 8.

11. This Order does not require payment of more than 50% of the marital share of the Member's benefits.

12. Such payments to John Doe shall commence on the date on which payments commence to Jane Doe.

13. Such payments shall continue for as long as payments are made to Jane Doe, but not after the death of John Doe.

14. In the event that John Doe predeceases Jane Doe, all amounts that would have been payable to John Doe for periods after John Doe's death shall revert to Jane Doe.

15. The entitlement of John Doe to John Doe's share of the monthly benefit shall not be affected by John Doe's remarriage.

16. John Doe shall be responsible for all Federal, State, and local income tax on all retirement benefits and distributions that John Doe receives due to the benefits assigned herein.

17. This Order shall not be interpreted in any way to require ERFC to provide any type of benefit or any option not otherwise provided under the Plan.

18. This Order shall not be interpreted in any way to require ERFC to provide benefits in any amount greater than the amounts provided by the Plan.

19. This Order shall not be interpreted in any way to require ERFC to pay benefits to a former Spouse that are already assigned to another under another order previously determined to be an approved Domestic Relations Order.

20. This Order shall not be interpreted in any way to require ERFC to notify John Doe of any change or alteration of the retirement benefits due to Jane Doe other than the amount of payment specified in this Order.

21. Jane Doe and John Doe are ordered to complete and sign all ERFC forms and provide all information necessary to effectuate the provisions of this Order.

22. John Doe is ordered to provide ERFC prompt written notification of any changes in John Doe's mailing address. ERFC shall not be liable for failure to make payments to John Doe if ERFC does not have a current mailing address for John Doe at the time of payments.

23. This Order applies to ERFC, as well as to any successor plan or plans. Any changes in plan administrator, plan sponsor, or name of Plan shall not affect John Doe's rights pursuant to this Order.

24. If either party receive any retirement benefit payment from ERFC that is rightfully owed to the other party, the recipient shall pay such retirement benefit payment to the other party within ten (10) days after learning of the incorrect payment.

25. The Court retains jurisdiction to amend this Order so that it will constitute an approved Domestic Relations Order as determined by ERFC, even though all matters incident to this action or proceeding have been fully and finally adjudicated.

AND IT IS ORDERED.

JUDGE

ENTERED this _____ day of _____, 20____.

Approved: 10/06/2000
Amended: 10/31/2001
Amended: 5/16/2006
Amended: 7/17/2007
Amended: 6/27/2013
Amended: 5/29/2014
Amended: 6/15/2017

ERFC REGULATIONS – APPLICATION FOR BENEFITS

(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §§15.03 and 16.12 of the *ERFC Plan Document* and §§10.03 and 11.12 of the *ERFC 2001 Plan Document*, the Trustees have adopted the following regulations regarding applications for retirement benefits.

16.12A **Purpose of Regulations.** The purpose of these regulations is to provide an orderly process for applying for retirement benefits.

16.12B **Application for Benefits.** An active Member applying for retirement should submit a termination notice (form HR-2) to the Retirement Office between 9 months and 90 days before the proposed retirement date. The Retirement Office will not accept form HR-2 more than 9 months in advance. Deferred vested Members are not required to submit form HR-2.

16.12C **Definition of Application.** Subsequent to submitting form HR-2, if applicable, a Member must return to the Retirement Office an “Application” for retirement benefits. An “Application” is defined as the completed Application for Retirement Benefits (form ERFC-22A and ERFC2001-22B) as well as all supporting documents required for retirement. Required supporting documents include:

1. Member birth certificate;
2. Beneficiary birth certificate, if applicable;
3. Marriage certificate, if applicable;
4. Beneficiary social security card, if applicable;
5. Direct Deposit Authorization;
6. Health Plan Benefit Election at Retirement, if applicable;
7. Divorce Decree, if applicable; and
8. Domestic Relations Order, if applicable.

A Member who submits an Application at least 90 days in advance of the proposed retirement date will receive the first retirement check within 30 days of the Effective Retirement Date, absent unusual circumstances. The Member’s Effective Retirement Date shall be the first day of the month.

16.12D **Priority for Processing Benefit Applications.** The Retirement Office will process Member requests for estimates and purchases in the following order: first priority to Members who submit their Application within the time described in Paragraph 16.12C; second priority to requests for purchase of service credit; third priority to all other retirement requests; and lowest priority to all other requests that are not addressed above.

16.12E **Relationship to Retroactive Benefit Rules.** The definition of “Application” stated in Paragraph 16.12C will be used to determine the period of retroactivity stated in §16.12 of the *ERFC* Plan Document for payment of retroactive benefits.

16.12F **Payment of Death Benefits.** If benefits are being paid under Article VIII (Death Benefit) or Article IX (Service-Connected Death Benefits) of the *ERFC* Plan Document or Article V (Death Benefit) of the *ERFC 2001* Plan Document, a certified death certificate for the Member must be submitted to the Retirement Office.

Adopted: 11/3/2000
Amended: 1/4/2002
Amended: 5/17/2005
Amended: 11/22/2005
Amended: 5/16/2006
Amended: 7/17/2007
Amended: 6/19/2008
Amended: 5/17/2012
Amended: 6/27/2013
Amended 5/29/2014

ERFC REGULATIONS FOR PAYMENT OF PENSIONS

(Applicable to *ERFC* and *ERFC 2001*)

Pursuant to their authority under §§15.03 and 16.05 of the *ERFC* Plan Document and §§10.03 and 11.05 of the *ERFC 2001* Plan Document, the Trustees have adopted the following regulations regarding the payment of pensions.

16.15A **Purpose of Regulations.** The purpose of these regulations is to facilitate the payout of pensions and reduce the administrative cost to ERFC of processing pensions.

16.15B **Definition of Small Pension.** “Small pensions,” as that term is used in this regulation, are those paying a benefit of \$100 or less a month to the Member in the form of a basic benefit without taking into account any optional method of payment under §4.06 of the *ERFC* Plan Document, except Option D, and §4.03 of the *ERFC 2001* Plan Document. Effective January 1, 2015, “small pensions,” as that term is used in this regulation, are those paying a benefit of \$100 or less a month to the Member in the form of the standard benefit under §4.02(a) of the *ERFC* Plan Document or the benefit under §4.02 of the *ERFC 2001* Plan Document, as applicable, without taking into account any alternative or optional benefits under Articles IV or V of the *ERFC* Plan Document, and without taking into account any optional methods of payment under Article IV of the *ERFC* and *ERFC 2001* Plan Documents, except Option D under §4.06(a)(4) of the *ERFC* Plan Document. The term “small pensions” does not include disability pensions.

16.15C **Payment of Small Pensions.** A Member entitled to a small pension shall be notified of that fact, and shall be provided a one-time payment that is the Actuarial Equivalent of the total benefit to which the Member is entitled, subject to federal rollover distribution requirements. The Executive Director may exempt any Member from the requirement that benefits be paid in a lump sum if the Member demonstrates that such a payment would create a hardship.

16.15D **Actuarial Equivalence.** Effective January 1, 2006, in determining Actuarial Equivalence under Paragraph 16.15C:

- (1) The mortality assumption shall be that described in Paragraph 1.29A (2) of the Trustees' regulations; and
- (2) The interest rate shall be the lesser of:
 - (a) The rate described in Paragraph 1.29A (1) of the Trustees' regulations; or
 - (b) The rate for twenty-year Treasury Notes, raised to the next higher integer, as of the December 1 preceding the calendar year in which the Member's Effective Retirement Date occurs.

16.15E **Periodic Pension Payments.** All pensions that are payable as a periodic benefit to Members or beneficiaries with an Effective Retirement Date on or after July 1, 2008, will be remitted by direct deposit to a financial institution account. Each Member or beneficiary shall be required as part of the benefit application process to designate the financial institution account to which the direct deposit remittance will be made. A Member or beneficiary receiving direct deposit payments may subsequently change this designation to a different financial institution account. The Executive Director may exempt any Member from the requirement that benefits be paid by direct deposit if the Member demonstrates that this requirement would create a hardship.