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ERFC REGULATIONS – DOMESTIC RELATIONS ORDERS

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

16.04A **Scope.** Pursuant to the authority conferred upon them by §§15.03 and 16.04 of the *ERFC Legacy* 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 Legacy* 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” will include only payments made to or on behalf of the Member during the Member’s lifetime; however, “benefits payable to the Member” may include the balance of the Member’s DROP account, as described in §16.15(k) of the *ERFC Legacy* Plan Document, if a Member dies. It will 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 Legacy 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) ERFC must be provided with a certified copy of a final order of a Virginia circuit court that 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; the former Spouse may also receive a portion or all of the balance of the Member’s DROP account, as described in §16.15(k) of the *ERFC Legacy Plan Document*, after a Member dies. 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 ERFC receives an order and determines that it satisfies the requirements of Paragraph 16.04C, payments to the former Spouse will begin as soon as administratively practicable, but no sooner than the date on which payments to the Member begin. No payment will be paid to a former Spouse for any period prior to the date on which ERFC receives the order.
- (2) If benefits are being paid to the Member when ERFC receives an order that directs the payment of benefits to a former Spouse, ERFC will temporarily withhold from the Member's monthly benefits the amount that the order awards to the former Spouse, while ERFC makes the determination whether the order satisfies the requirements of Paragraph 16.04C. If ERFC subsequently determines that the order satisfies those requirements, a portion of or all amounts withheld will be paid to the former Spouse pursuant to the order. If ERFC determines that the order does not satisfy those requirements, all 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 ERFC has made a determination that an order does, or does not, satisfy the requirements of Paragraph 16.04C, any person affected by ERFC'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 ERFC provided notice of the determination that is under appeal.
- (4) The former Spouse to whom benefits are payable will be responsible for advising ERFC of the former Spouse's current address. The former Spouse must also provide ERFC 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 ERFC. If a former Spouse fails to provide such information upon request, benefits may be suspended until the requested information is received by ERFC. Upon subsequent receipt of the requested information, the full amount of the benefits that were suspended will be paid to the former Spouse,

without interest. However, if the former Spouse has not contacted ERFC 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 ERFC will begin to pay the Member the former Spouse's portion of benefits for subsequent months. If the former Spouse subsequently contacts ERFC and provides the required information, ERFC 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 ERFC. ERFC 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.