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## **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 ERFC at (703) 426-3900.

#### **PART 1: SUMMARY OF DRO REQUIREMENTS**

This section summarizes the requirements for an approved DRO. A DRO must contain ***all*** 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 applicable model DRO, when possible. Use of the applicable model DRO will speed up the review of a draft or final DRO by ERFC. If parties depart from the language in the applicable 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 ERFC or with the Member's written consent.

- ***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 the former Spouse's 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 DROs set forth the simplest form of assignment between a Member and a former Spouse.

If you do not use the applicable 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 the 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 applicable 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 person 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 benefit is in pay status. Pay status occurs when:
  1. The Member retires (for DROP participants, this means when the DROP participation ends, or if earlier, when the Member dies),
  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 Accumulated Contributions 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 benefit 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 the Member moves into pay status, and that ERFC will make any change the Member requests if the change is permitted by the

applicable 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 except with respect to DROP account benefits, if applicable, as described below.
- 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. Any such language will be disregarded and given no effect.

## **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 option (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.

- Option (a) may be used by active, deferred vested, or retired Members.
- Option (b) may be used by active, deferred vested, or retired 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 of benefit payment 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 former Spouse \_\_\_\_% of the retirement benefits that are payable, or become payable, to Member. This order does not require the Educational Employees' Supplementary Retirement System of Fairfax County to pay to Former Spouse an amount that exceeds 50% of the marital share of the payments to Member."

*Option (b) – For use by active, deferred vested Members, or retired Members; 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 Former Spouse a percentage of the retirement benefits that become payable to Member 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:** 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 DRO 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 DRO) and will include in the denominator of the fraction all service credit that the Member purchased at any time. ERFC will **include** any credit for Unused Sick Leave when ERFC calculates the fraction; if the DRO contains an

explicit direction otherwise, such language will be disregarded and given no effect. 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 Former Spouse \$\_\_\_\_\_ per month.”

Please note that unless the DRO contains an explicit direction otherwise, in all cases, the former Spouse’s share of the benefit will be calculated based on 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 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.

*Deferred Retirement Option Program (“DROP”) Under the ERFC Legacy Plan Only*

Effective July 1, 2024, the Deferred Retirement Option Program (“DROP”) was added to the ERFC Legacy Plan. (DROP is not provided under the ERFC 2001 Plan.) During a Member’s DROP participation, an amount equal to the Member’s monthly pension amount will be credited to the Member’s DROP account and accrue interest. The date that the Member enters DROP is their retirement effective date, and their pension benefits will be payable effective that date; however, the Member can only access the funds credited to their DROP account when the Member exits DROP.

Please note that unless the DRO contains explicit directions otherwise, the former Spouse’s share of the benefit will include a portion of the Member’s DROP account final balance, equal to the total amount the former Spouse would have received as if the benefit assigned to the former Spouse had started when the Member’s DROP participation started, or if later, the first day of the month immediately after the domestic relations order was received by ERFC (the “Portion”); if option (c) above is used in the DRO, the Portion would include applicable interest on the flat dollar payments. Payment of this Portion of the DROP account balance to the former Spouse will begin as soon as administratively practicable after the Member exits DROP (or if earlier, when the Member dies), and after the former Spouse submits the form(s) required by ERFC. If the former Spouse predeceases the Member before the Member exits DROP (or if earlier, when the Member dies), the Portion of the DROP account balance at the time of the former Spouse’s death will be paid to the former Spouse’s designated beneficiary(ies); for this purpose, the former Spouse must designate beneficiary(ies) using the form(s) required by ERFC and if the former Spouse does not properly designate beneficiary(ies), the benefits would be paid pursuant to the

terms of the *ERFC Legacy Plan Document*. If the Member predeceases the former Spouse before the Member exits DROP, the former Spouse will receive the Portion of the DROP account balance at the time of the Member's death.

### ***Refund of Member Contributions***

A Member who terminates 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 DROs include 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. If applicable, payments of the DROP account balance to the former Spouse (or the former Spouse's designated beneficiary(ies)) will begin as described in Part 2 above.

You **must** choose Option (a) below if the Member **is not** already receiving retirement benefit payments from ERFC. You **must** choose Option (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 (i.e., a Member not in pay status)*

- (a) “Such payments to Former Spouse will commence on the date on which payments commence to Member.”

*Option (b) – For use when a Member is already receiving retirement benefits (i.e., a Member in pay status)*

- (b) “Such payments to Former Spouse will 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 the Member 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 will continue for as long as payments are made to Member, but not after the death 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 will continue until the total amount of \$\_\_\_\_\_ has been paid to former Spouse, until the death of Former Spouse, or until payments cease to be made to 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 will continue until \_\_\_\_\_ [insert specified date or event] or until payments cease to be made to Member, whichever occurs sooner, but not after the death 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:

"Member and 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 Member and former Spouse, but it cannot be enforced against ERFC.”

The model DROs include the disclaimer language.

### ***Benefits Following the Member's Death***

**IMPORTANT NOTE:** Except for any DROP account balance under the ERFC Legacy Plan, 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 the Member's Named Beneficiary or Nominated Survivor 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 drafting 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 (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; (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; or (c) if applicable, the Member dies during DROP participation and the former Spouse is entitled to a portion of the DROP account balance pursuant to the terms of the DRO. 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 the former Spouse's portion of the Member's benefits after the former Spouse's death. As described above, with respect to a DROP account, if a former Spouse predeceases the Member before the Member exits DROP (or if earlier, when the Member dies), the former Spouse's portion of the DROP account balance at the time of the former Spouse's death will be paid to the former Spouse's designated beneficiary(ies) when the Member exits DROP.

***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 the former Spouse's 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 my former Spouse 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 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 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 based on 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 based on 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 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 the Member's 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, the former Spouse 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 Member contributions to the former Spouse.

***Does the Member owe taxes on the entire benefit, or just on the Member's 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 their 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 and as consistent with applicable law.

***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 the same requirements that the original DRO had to meet, and will not be effective until it has been approved by ERFC.

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

### **MODEL DOMESTIC RELATIONS ORDERS**

Below are two model Domestic Relations Orders that embody the simplest form of assignment between an ERFC Member and a former Spouse. Both models 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. The models 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.

The first model DRO is for use by a Member not yet receiving a retirement benefit (i.e., not yet in pay status). The second model DRO is for use by a Member receiving retirement benefits, including being in DROP (i.e., is in pay status).

ERFC strongly encourages parties to use the applicable model DRO, when possible. Use of the applicable model DRO will speed up the review of a draft or final DRO by ERFC. If parties deviate from the language in the applicable 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.

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

MEMBER [insert name],	:	
	:	
Complainant	:	
	:	
v.	:	IN CHANCERY NO. X12345
	:	
FORMER SPOUSE [insert name],	:	
	:	
Defendant	:	

**DOMESTIC RELATIONS ORDER**  
**[FOR AN ERFC MEMBER NOT YET IN PAY STATUS]**

THIS CAUSE came to be heard upon Motion of the Complainant, Member [insert name], and agreement of the Defendant, Former Spouse [insert name], in accordance with Paragraph [insert number] 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, 3110 Fairview Park Drive, Suite 300, Falls Church, VA 22042-4525.

4. The Plan Member is [insert name] ("Member"), whose last known mailing address is [insert address], 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 [insert name] ("Former Spouse"), whose last known mailing address is [insert address], 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 will 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 Former Spouse a percentage of the retirement benefits that become payable to Former Spouse 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 **include** any credit for Unused Sick Leave when ERFC calculates the fraction; if the DRO contains an explicit direction otherwise, such language will be

disregarded and given no effect. 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 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 based on 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. **[Only use this paragraph if the Member is an ERFC Legacy Member]** If Member elects to participate in Deferred Retirement Option Program (DROP), Former Spouse [will] **[OR]** [will **not**] receive a percentage of Member’s DROP account balance according to the same formula set forth in paragraph 8. If Former Spouse predeceases Member before Member exits DROP (or if earlier, when Member dies), the Former Spouse’s portion of the DROP account balance at the time of Former Spouse’s death will be paid Former Spouse’s designated beneficiary(ies); if Former Spouse does have any designated beneficiary(ies), the portion of the DROP account balance will be paid pursuant to the terms of the ERFC Legacy Plan Document.

10. A proportional share of any cost-of-living increases will be applied to Former Spouse’s share of the retirement benefit.

11. If Member elects to receive a refund of Accumulated Contributions in lieu of a retirement benefit, Former Spouse [will] **[OR]** [will **not**] receive a percentage of the refund of the Accumulated Contributions according to the formula set forth in paragraph 8.

12. This Order does not require payment of more than 50% of the marital share of the Member’s benefits to Former Spouse.

13. Such payments to Former Spouse will commence on the date on which payments commence to Member. If Member participates in DROP, such payments to Former Spouse will commence as soon as administratively practicable after Member exits DROP (or if earlier, the death of Member).

14. Such payments will continue for as long as payments are made to Member, but not after the death of Former Spouse.

15. If Former Spouse predeceases Member, all amounts that would have been payable to Former Spouse for periods after Former Spouse's death will revert to Member. If Member participates in DROP and Former Spouse is assigned all or a portion of Member's DROP account balance and Former Spouse predeceases Member, payment of the Former Spouse's portion of the DROP account balance as of the Former Spouse's date of death will be paid to the Former Spouse's designated beneficiary(ies) as soon as administratively practicable after Member exits DROP (or if earlier, the death of Member).

16. The entitlement of Former Spouse to Former Spouse's share of the monthly benefit will not be affected by Former Spouse's remarriage.

17. Former Spouse will be responsible for all Federal, State, and local income tax on all retirement benefits and distributions that Former Spouse receives due to the benefits assigned herein.

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

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

20. This Order will 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.

21. This Order will not be interpreted in any way to require ERFC to notify Former Spouse of any change or alteration of the retirement benefits due to Member other than the amount of payment specified in this Order.

22. Former Spouse and Member are ordered to complete and sign all ERFC forms and provide all information necessary to effectuate the provisions of this Order.

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

24. 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 will not affect Former Spouse's rights pursuant to this Order.

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

26. Former Spouse and Member 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 Former Spouse and Member, but it cannot be enforced against ERFC.

27. 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\_\_\_\_.

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

MEMBER,	:	
	:	
Complainant	:	
	:	
v.	:	IN CHANCERY NO. X12345
	:	
FORMER SPOUSE,	:	
	:	
Defendant	:	

**DOMESTIC RELATIONS ORDER**  
**[FOR AN ERFC MEMBER IN PAY STATUS (INCLUDING DURING DROP)]**

THIS CAUSE came to be heard upon Motion of the Complainant, Member, and agreement of the Defendant, Former Spouse, in accordance with Paragraph [insert number] 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, 3110 Fairview Park Drive, Suite 300, Falls Church, VA 22042-4525.

4. The Plan Member is [insert name] ("Member"), whose last known mailing address is [insert address], 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 [insert name] ("Former Spouse"), whose last known mailing address is [insert address], 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 will 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 Former Spouse a percentage of the retirement benefits is payable to Former Spouse according to the following formula:

$$\frac{\text{Years of ERFC Credited Service earned during marriage}}{\text{Years of ERFC Credited Service at termination of ERFC-covered employment}} \times \frac{\text{_____ \% [insert percentage not greater than 50\%]}}{1}$$

**[Please Note:** 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 also **include** any credit for Unused Sick Leave when ERFC calculates the fraction; if the DRO contains an explicit direction otherwise, such language will be disregarded and given no effect. 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 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 based on the Member’s gross ERFC benefit payable in the benefit payment form elected by the Member prior to retirement. If the Member elected 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. **[Only use this paragraph if the Member is participating in DROP under the ERFC Legacy Plan]** Member elected to participate in Deferred Retirement Option Program (DROP). Former Spouse [will] **[OR]** [will **not**] receive a percentage of Member’s DROP account balance according to the same formula set forth in paragraph 8. If Former Spouse predeceases Member before Member exits DROP (or if earlier, when Member dies), the Former Spouse’s portion of the DROP account balance at the time of Former Spouse’s death will be paid to Former Spouse’s designated beneficiary(ies); if Former Spouse does have any designated beneficiary(ies), the portion of the DROP account balance will be paid pursuant to the terms of the ERFC Legacy Plan Document.

10. A proportional share of any cost-of-living increases will be applied to Former Spouse’s share of the retirement benefit.

11. This Order does not require payment of more than 50% of the marital share of the Member’s benefits to Former Spouse.

12. Such payments to Former Spouse will commence as soon as administratively practicable after ERFC determines that this Order complies with all requirements of an approved Domestic Relations Order. If Member participates in DROP, such payments to

Former Spouse will commence as soon as administratively practicable after Member exits DROP (or if earlier, the death of Member).

13. Such payments will continue for as long as payments are made to Member, but not after the death of Former Spouse.

14. If Former Spouse predeceases Member, all amounts that would have been payable to Former Spouse for periods after Former Spouse's death will revert to Member. If Member participates in DROP and Former Spouse is assigned all or a portion of Member's DROP account balance and Former Spouse predeceases Member, payment of the Former Spouse's portion of the DROP account balance as of the Former Spouse's date of death will be paid to the Former Spouse's designated beneficiary(ies) as soon as administratively practicable after Member exits DROP (or if earlier, the death of Member).

15. The entitlement of Former Spouse to Former Spouse's share of the monthly benefit will not be affected by Former Spouse's remarriage.

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

17. This Order will 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 will 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 will 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 will not be interpreted in any way to require ERFC to notify Former Spouse of any change or alteration of the retirement benefits due to Member other than the amount of payment specified in this Order.

21. Former Spouse and Member are ordered to complete and sign all ERFC forms and provide all information necessary to effectuate the provisions of this Order.

22. Former Spouse is ordered to provide ERFC prompt written notification of any changes in Former Spouse's mailing address. ERFC will not be liable for failure to make payments to Former Spouse if ERFC does not have a current mailing address for Member 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 will not affect Member's rights pursuant to this Order.

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

25. Former Spouse and Member 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 Former Spouse and Member, but it cannot be enforced against ERFC.

26. 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\_\_.