

MONTGOMERY COUNTY CODE

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note]**

**Article III. Employee's Retirement System. [Note](1)**

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**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 1. Generally.**

**Division 1. Generally.**

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 1. Generally. / Sec. 33-34. Declaration of policy.**

**Sec. 33-34. Declaration of policy.**

It is the policy of the county to maintain a system of retirement pay and benefits for its employees which is adequately funded and insures employees sufficient income to enjoy during their retirement years. Any modifications to such retirement system shall not reduce the overall value of benefits which existed for members immediately prior to such modifications except that benefits may be reduced if necessary to maintain the fiscal integrity of the system after a finding by the county council that such change is necessary.

Before all liabilities with respect to the members and their beneficiaries are satisfied, no person may use or divert any part of the corpus or income of the retirement system to purposes other than the exclusive benefit of the members and beneficiaries. (1978 L.M.C., ch. 44, § 1; 1987 L.M.C., ch. 27, § 3.)

**Editor's note**-The above section 33-34 is cited in Fultz v. Shaffer, 111 Md.App. 278, 681 A.2d 568 (1996); quoted in Montgomery County v. Buckman, 333 Md. 516, 636 A.2d 448 (1994) and cited in Benson v. Board of Education of Montgomery County, 280 Md. 338, 373 A.2d 926 (1977).

See County Attorney Opinion dated 11/14/11 regarding the County's liability for errors in

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the administration of the pension and retirement funds of employees. See County Attorney Opinion dated 10/28/10 comparing the limits on Council authority to make changes to retirement benefits with its ability to modify health benefits. See County Attorney Opinion dated 5/13/08 regarding health insurance premiums and retirement benefits.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 1. Generally. / Sec. 33-35. Definitions.**

### **Sec. 33-35. Definitions.**

In this Article, the following words and phrases have the following meanings:

*Account balances:* The balances credited to the retirement accounts of each elected officials' participant under the elected officials' plan as of the valuation date preceding the date of distribution, plus any elected officials' participant contributions or county elected officials' contributions allocated to those accounts since that date, determined without regard to vesting.

*Accumulated contributions:* The sum of all the amounts deducted from the compensation of the member, including picked-up contributions, and all other contributions paid by the member and credited to the member's retirement account plus credited interest as provided in section 33-39.

*Actuarial equivalent:* As to any amount, an equivalent amount, determined in accordance with actuarial assumptions provided by an independent enrolled actuary to be used in conjunction with the plan in question.

*Board or board of investment trustees:* The board of investment trustees established under this article.

*County elected officials' contributions:* The contributions by the county to the elected officials' plan required under section 33-40.

*County government:* The county government and, when applicable, any agency whose employees are participating in the retirement system.

*County merit system protection board:* The merit system protection board as defined in the Charter of Montgomery County, Maryland.

*County personnel board or personnel board:* The county personnel board as defined in the Charter of Montgomery County, Maryland.

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*County service:* Employment with the county government or any agency whose employees participate as members of this retirement system, and full-time or career part-time service with another agency by the incumbent of a position brought under the county's merit system without a break in service.

*Department, office or agency head:* The administrative head of a department or principal office of the county government and of each fire department, rescue squad and other participating agency or political subdivision.

*Domestic partner:* A person who meets the requirements of Section 33-22 as the domestic partner of a member.

*Elected official:* The sheriff, the state's attorney, and any county official elected for a fixed term as specifically provided in the Charter.

*Elected officials' plan:* The defined contribution plan that the county establishes for elected officials.

*Elected officials' participant:* A member who is participating in the elected officials' plan.

*Elected officials' participant contributions:* The contributions by an elected officials' participant to the elected officials' plan required under subsection 33-39(a)(3) ("required elected officials' participant contributions") and permitted under subsection 33-39(d) ("voluntary elected officials' participant contributions").

*Employee:* Any eligible elected or appointed official and any full-time or career part-time employee of the County, or of a participating agency or political subdivision.

*Employee organization:* An employee organization defined in Section 33-76 that is certified under Section 33-79 or an employee organization defined in Section 33-102(5) that is certified under Section 33-106.

*Fiduciary:* A person who:

- (1) exercises discretionary authority to manage a retirement system;
- (2) exercises authority to invest or manage assets of a retirement system;
- (3) renders investment advice for a fee or other compensation about assets of a retirement system or has authority or responsibility to render that advice; or
- (4) is a trustee on the Board of Investment Trustees.

However, an investment manager of an investment vehicle is only a fiduciary if it holds plan assets as defined under the Employee Retirement Income Security Act (ERISA) and its

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corresponding regulations.

*Final earnings:* Except as otherwise provided, the regular earnings of a member as of the last date of active service. Final earnings for a member who filed an application for disability benefits under Section 33-43 before May 19, 2010 that is approved after June 30, 2010 must be the member's regular earnings on the last pay period in fiscal year 2010.

*Firefighter/Rescuer Bargaining Unit:* The collective bargaining unit described in Section 33-148 that includes certain non-supervisory employees in the Firefighter/Rescuer series employed by the Department of Fire and Rescue Services.

*Guaranteed retirement income plan:* A retirement plan that provides retirement benefits based on retirement credits and a guaranteed rate of interest on those credits.

*Guaranteed retirement income plan account:* A recordkeeping account, consisting of required member contributions under Section 33-39(a)(4), County contribution credits under Section 33-40(e) and the guaranteed credited interest on those contributions.

*Guaranteed retirement income plan account balance:* The balance credited to the retirement accounts of each participant under the guaranteed retirement income plan, determined without regard to vesting.

*Integrated retirement plan:* A retirement plan that provides full retirement benefits until the member is eligible for full social security retirement benefits and supplemental benefits thereafter.

*Investment funds:* The separate investment funds the County establishes to permit elected officials' participants to invest their account balances in the elected officials' plan.

*Investment manager:* A person or entity who exercises discretion to manage all or part of the assets of an institutional investor.

*Maximum covered compensation level:* The maximum dollar amount of earnings upon which social security benefits are based, assuming: (1) an employee's annual compensation was or will be at least equal to the taxable wage base each calendar year for a 35-year period through the year in which the employee attains social security retirement age; (2) the employee worked in employment covered by the federal social security act during each of the above mentioned calendar years; and (3) the taxable wage base remains constant from calendar year of termination or retirement to attainment of social security retirement age in this determination.

*Member:* An employee or official of the County government or of a participating agency or political subdivision who is contributing to this retirement system.

*Member contributions:* The contributions required under Section 33-39 from a member, including amounts deducted from the member's compensation, and picked-up contributions

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made on or after July 1, 1989.

*Membership:* the period of time that a member is enrolled and has contributed to the Employees' Retirement System.

*Normal working time:* The number of hours a member would be expected to work in a yearly period including paid authorized leave as may be provided in the personnel regulations. In the case of part-time career member, such "normal working time" will be whatever scheduled work time may be set forth as a condition of the member's appointment.

*Office, Professional and Technical Bargaining Unit:* The collective bargaining unit described in Section 33-105(a)(1) which includes certain employees in eligible classes associated with office, professional, paraprofessional, and technical functions.

*Optional retirement plan:* A retirement plan that provides retirement benefits independent of social security retirement benefits.

*Participant:* A person who has a benefit under the optional plan, the integrated plan, the elected officials' plan, or the guaranteed retirement income plan.

*Part-time employee:* Any employee working less than the normal scheduled work week for full-time employees, on a continuing basis.

*Picked-up contributions:* The contributions picked up by the County or a participating agency under Sections 33-39(a)(1), 33-39(a)(2), 33-39(a)(3), or 33-39(a)(4).

*Plan Year:* The 12-month period on the basis of which the books and records of the retirement system are maintained. The plan year of the retirement system is the same as the County fiscal year.

*Police Bargaining Unit:* The collective bargaining unit defined in Section 33-76 which includes non-supervisory sworn County police officers.

*Police Telecommunicator:* An employee assigned to a position in a supervisory or nonsupervisory occupational class in the Police Telecommunicator occupational series.

*Prior service:* County service rendered prior to the date of the establishment of the retirement system or qualified County service rendered prior to membership in the retirement system.

*Public safety employee:* An employee who is a:

- (1) sworn officer of the Police Department;
- (2) paid firefighter, paid fire officer, or paid rescue service worker of the

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Montgomery County Fire and Rescue Service;

- (3) sworn deputy sheriff;
- (4) correctional officer; or
- (5) County employee who provides services to a correctional facility and designated as a public safety employee by the Chief Administrative Officer.

*Regular earnings:* Except as otherwise provided, gross pay for actual hours worked, including paid leave, but not including overtime. To calculate regular earnings, for FY10 only, a Group A, E, or H member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.5% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. To calculate regular earnings, for FY10 only, for a Group F member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4.25% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. To calculate regular earnings, for FY10 only, for a Group G member who is employed on July 1, 2009 and participates in the integrated or optional plan must include amounts as if the member had received an increase of 4% in the member's gross pay as of July 1, 2009, except for the purpose of calculating a member's contribution under Section 33-39. If a member is required to take any furlough, as defined in personnel regulations adopted under Section 33-7(b), or a collective bargaining agreement, regular earnings must include any amount the member would have received if the member had not been required to take any furlough. Regular earnings for an elected official is gross pay for services rendered to the County. Regular earnings must not exceed the limit under Internal Revenue Code Section 401(a)(17), as adjusted by the Internal Revenue Service. For a member who first became a member in this retirement system before July 1, 1996, the limits in effect before July 1, 1993, and as adjusted by the Internal Revenue Service, shall continue to apply. Gross pay must be used to determine benefits even if the County implements a pick-up plan under Section 414 of the Internal Revenue Code. Gross pay must be used to determine benefits even if a member has agreed to a reduction in earnings under:

- (a) The County's deferred compensation plan under Section 457 of the Internal Revenue Code; or
- (b) Any statutory fringe benefit program sponsored by the County and permitted by the Internal Revenue Code.

*Retired member:* Any member who is receiving retirement benefits.

*Retirement accounts:* The accounts, consisting of a required elected officials' participant contributions account, a voluntary elected officials' participant contributions account, and a County elected officials' contributions account, the Board establishes for each elected officials'

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participant. Investment of the assets of these retirement accounts may be accounted for by maintaining pro rata accounts of a commingled fund or by maintaining separate and distinct accounts for each elected officials' participant. If the Board establishes pro rata accounts, the Board may make the allocation of realized and unrealized gains and losses using the ratio that the account balance of an elected officials' participant bears to the account balances of all elected officials' participants as of the previous valuation date. If the Board establishes separate and distinct accounts, the Board must determine the value of the individual account solely with respect to the activity within each elected officials' participant's account and the valuation must not be affected by the activity of an account of another elected officials' participant.

*Retirement savings plan:* The defined contribution retirement plan provided in Article VIII for eligible employees of Montgomery County and participating agencies.

*Retirement system:* The employees' retirement system of Montgomery County, as provided in this Article.

*Service, Labor and Trades Bargaining Unit:* The collective bargaining unit described in Section 33-105(a)(2) which includes certain employees in eligible classes that are associated with service/maintenance and skilled crafts.

*Social security retirement age:* The age used as the retirement age for full (unreduced) benefits under the Federal Social Security Act as follows:

- (a) Age 65 with respect to an employee who attains age 62 before January 1, 2000;
- (b) Age 66 with respect to an employee who attains age 62 after December 31, 1999 and before January 1, 2017; and
- (c) Age 67 with respect to an employee who attains age 62 after December 31, 2016.

Social security retirement age for members who retire or qualify for discontinued service under Section 33-45(d) and (e) before July 1, 1989, is age 65. Social security retirement age for members who are elected officials on July 1, 1989, is age 65 until December 2, 1990, and thereafter is the age set forth in this definition, as appropriate.

*Social security wage base:* For any particular year, the maximum amount of earnings creditable for benefit computation purposes under the old age, survivors, and disabilities insurance program established by the Federal Social Security Act.

*Spouse:* Only the husband or wife of a member.

*Valuation date:* The last business day of March, June, September and December of each year, and any other date the Board establishes for determining the fair market value of the assets of the elected officials' plan. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1972 L.M.C., ch. 19, § 15; 1974 L.M.C., ch. 31, § 1; 1978 L.M.C., ch. 44, § 1; 1982 L.M.C., ch. 40, § 5; 1985 L.M.C., ch.

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49, § 1; 1986 L.M.C., ch. 56, § 1; 1987 L.M.C., ch. 27, § 4; 1987 L.M.C., ch. 29, § 3; 1987 L.M.C., ch. 40, § 1; 1989 L.M.C., ch. 45, § 1; 1993 L.M.C., ch. 3, § 1; 1995 L.M.C., ch. 1, § 1; 1995 L.M.C., ch. 3, § 1; 1996 L.M.C., ch. 19, § 1; 1998 L.M.C., ch. 27, § 1; 1998 L.M.C., ch. 30, § 1; 1998 L.M.C., ch. 31, § 1; 1999 L.M.C., ch. 30, § 2; 2001 L.M.C., ch. 21, § 1; 2001 L.M.C., ch. 28, §§ 4, 15 and 16; 2007 L.M.C., ch. 19, § 1; 2008 L.M.C., ch. 22, § 1; 2008 L.M.C., ch. 25, § 1; 2009 L.M.C., ch. 2, § 1; 2009 L.M.C., ch. 15, § 1; 2009 L.M.C., ch. 23, § 1; 2010 L.M.C., ch. 17, § 1; 2010 L.M.C., ch 21, § 1; 2010 L.M.C., ch. 32, § 1; 2010 L.M.C., ch. 45, § 1; 2010 L.M.C., ch. 49, § 1; 2013 L.M.C., ch. 4, § 1.)

**Editor's note**— The above section is interpreted in Main v. Montgomery County, 961 F.Supp. 125 (D.Md. 1997).

See County Attorney Opinion dated 4/10/06-A discussing the appointment and supervision of heads of departments and principal offices.

The effective date of the amendment made to this section by 2001 L.M.C., ch. 28, § 4, is the same effective date as 1998 L.M.C., ch. 27, § 1.

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 1. Generally. / Sec. 33-36. Establishment.**

#### **Sec. 33-36. Establishment.**

(a) *Effective date.* A retirement system is hereby established, effective August 15, 1965.

(b) *Coverage generally.* The primary purpose of this retirement system is to provide a pension and other benefits for full-time and career part-time paid employees of the county, the Montgomery County Employees Federal Credit Union, fire department, rescue squads, office of the state's attorney, office of the sheriff, office of the board of supervisors of elections, housing opportunities commission, agencies supported or financed in whole or in part by taxes levied by the county council, agencies supported by bond issues underwritten by the county, and political subdivisions of the county. Any agency or political subdivision desiring coverage for its employees may make a written request to the county personnel board for approval. No liability shall accrue to the county by the inclusion of other than county employees. Each participating agency or political subdivision shall be fully responsible for the cost of coverage for its employees and any necessary costs for administrative services provided.

(c) *Name of retirement system.* The retirement system shall be known as the "employees' retirement system of Montgomery County," and it shall have the powers and



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privileges of a corporation.

(d) Notwithstanding the provisions of any plan, the County must provide contributions, benefits, and service credit for qualified military service according to Section 414(u) of the Internal Revenue Code. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1972 L.M.C., ch. 19, § 1; 1974 L.M.C., ch. 31, § 2; 1978 L.M.C., ch. 44, § 1; 1987 L.M.C., ch. 29, § 4; 1993 L.M.C., ch. 3, § 1; 2003 L.M.C., ch. 3, § 1.)

**Editor's note**—2003, ch. 3, § 2, states: Rule of Interpretation. The amendments made by Section 1 of this Act must be interpreted to comply with requirements stated in letters issued on December 11, 2002, and January 14, 2003, by the Internal Revenue Service to the County regarding the continued qualification of County employee retirement plans. 2003, ch. 3, § 3, states, in part: Retroactivity. (a) The amendment made by Section 1 of this Act to Code Section 33-36 takes effect December 12, 1994.

The above section is cited in Fultz v. Shaffer, 111 Md.App. 278, 681 A.2d 568 (1996).

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 2. Eligibility and Qualifications.**

**Division 2. Eligibility and Qualifications.**

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 2. Eligibility and Qualifications. / Sec. 33-37. Membership requirements and membership groups.**

**Sec. 33-37. Membership requirements and membership groups.**

(a) *Full-time employees.*

(1) A full-time employee of the County or participating agency must become a member of a County retirement plan as a condition of employment, when the employee meets the applicable eligibility requirements, if the employee waives all rights of membership under any other retirement system supported in whole or in part by the State, a political subdivision of the State, or the County.

(2) A part-time employee who becomes a full-time employee and is not an

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active member of any County retirement plan must become an active member of:

(A) the integrated retirement plan, if the employee is eligible for membership in the integrated plan;

(B) the Retirement Savings Plan, if the employee satisfies the requirements for membership in Group I or II, even if the employee did not begin or return to County service on or after October 1, 1994; or

(C) the guaranteed retirement income plan if the employee is eligible for membership and elects to participate as described in subsection (k).

(3) A temporary employee who becomes a full-time employee must become an active member of:

(A) the integrated plan, if the employee is eligible for membership in the integrated plan;

(B) the Retirement Savings Plan, if the employee satisfies the requirements for membership in Group I or II, even if the employee did not begin or return to County service on or after October 1, 1994; or

(C) the guaranteed retirement income plan if the employee is eligible for membership and elects to participate as described in subsection (k).

(b) *Part-time employees.*

(1) A part-time employee of the County or participating agency may become a member of a County retirement plan if the employee waives all rights of membership under any other retirement system supported in whole or in part by the State, a political subdivision of the State, or the County. Membership is effective on the date the employee's application for membership is approved.

(2) A part-time employee who is not an active member of a retirement plan may become a member of either:

(A) the integrated plan, if the employee is eligible for membership in the integrated plan;

(B) the Retirement Savings Plan if the employee satisfies the requirements for membership in Group I or II, even if the employee did not begin or return to County service on or after October 1, 1994; or

(C) the guaranteed retirement income plan if the employee is eligible for membership and elects to participate as described in subsection (k).

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(3) A part-time employee who withdraws from active membership in a County retirement plan may not become an active member again unless the employee becomes a full-time employee or an elected official.

(4) An employee who becomes a member of the integrated plan may not withdraw from active membership except by transferring to the Retirement Savings Plan under Section 115(c)(2).

(5) A full-time employee who becomes a part-time employee may withdraw from active membership in the optional, integrated, or guaranteed retirement income plan and stop making retirement contributions, but must not become an active member of a County retirement plan again unless the employee becomes a full-time employee or an elected official.

(c) *Appointed officials.* Each person appointed by the Executive or Council to head a principal department or office of the County government must be subject to all regulations and laws governing full-time members of the retirement system.

(d) *Hearing Examiners.* Any person appointed by the Executive or Council to serve as a hearing examiner must be treated as a full-time employee under the laws and regulations governing members of the retirement system if that person serves full time as a hearing examiner, and must be treated as a part-time employee under the laws and regulations governing members of the retirement system if that person serves less than full time as a hearing examiner.

(e) *Retirement plans.*

(1) This retirement system consists of an integrated retirement plan, an optional retirement plan, an elected officials' plan, and a guaranteed retirement income plan.

(2) An employee enrolled or re-enrolled on or after July 1, 1978, and before October 1, 1994, is a member of the integrated retirement plan unless the employee becomes a member of the Retirement Savings Plan through transfer or election. An employee enrolled before July 1, 1978, may be a member of the optional retirement plan, the integrated retirement plan, or the Retirement Savings Plan. A member's decision to transfer from the optional retirement plan or the integrated retirement plan is irrevocable. A former County employee who returns to County service is a member of the plan in which the employee was enrolled when the employee left County service if the employee:

(A) was vested under Section 33-45 when the employee left County service;

(B) left all member contributions plus credited interest in the fund;

(C) returned to County service within 25 months; and

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(D) did not transfer to the Retirement Savings Plan.

(3) (A) If the County or a participating agency withdraws from Social Security, each member of the integrated retirement plan must have an opportunity to re-enter the optional retirement plan after repaying the prior refund and any difference in member contributions required for the period of membership in the integrated retirement plan. Any additional contributions must not be treated as picked-up contributions.

(B) The Chief Administrative Officer may treat a member as if the member had been in the optional retirement plan since the beginning of the member's entry into the retirement system if the member is:

(i) employed by a participating agency; and

(ii) a member of the integrated plan; but not covered by Social Security during the period of employment by the participating agency.

The Chief Administrative Officer may require additional member contributions and participating agency contributions.

(4) (A) Except as provided in subparagraphs (B), (C), and Subsection (k)(5), any individual who becomes an elected official must become a member of the elected officials' plan on the date the individual becomes an elected official.

(B) If an individual was an active member of a County retirement plan, including an employee on leave without pay, before becoming an elected official, the individual may choose to continue or return to participate in the retirement plan in which the individual participated before becoming an elected official, subject to the eligibility and transfer rules set out in this subsection and subsection (f).

(C) An individual who chooses to continue to participate in a County retirement plan in which the individual participated before becoming an elected official must not participate in the elected official's plan.

(5) (A) An elected official who chooses to continue to participate in another County retirement plan under paragraph (4)(B) may become a member of the elected officials' plan at any time while an elected official after terminating participation in the other plan.

(B) An individual who chooses to become a member of the elected officials' plan under subparagraph (A) retains the individual's rights under the plan in which the individual was a member before becoming a member of the elected officials' plan, except for disability, but is not entitled to a refund of contributions from that plan. The disability benefits of an individual who chooses to become a member of the elected officials' plan under subparagraph

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(A) are provided in article VIII. The individual's vested rights under the elected officials' plan must be determined based on the individual's total credited service, which includes service in the prior plan. The amount of the individual's retirement benefit under the prior plan must be determined based only on credited service while participating in the prior plan. However, the individual's regular earnings until retirement or other termination of service with the County or a participating agency must be used in determining final average earnings for purposes of determining the amount of the retirement benefit under the prior plan.

(C) The Executive must adopt regulations under method (3) to allow an eligible individual to make the choice authorized by subparagraph (A).

(6) A former County employee who returns to County service may transfer to the retirement savings plan or to the guaranteed retirement income plan the actuarial present value of the employee's benefit in the optional plan or integrated plan, calculated using the latest published valuation assumptions, as of the date the employee returns to County service, if the employee:

- (A) was vested under Section 33-45 when the employee left County service;
- (B) left all member contributions plus credited interest in the fund;
- (C) left County service before October 1, 1994; and
- (D) did not return to County service within 25 months.

(f) *Membership groups and eligibility.* Any full-time or part-time employee is eligible for membership in the appropriate membership group if the employee meets all of the requirements for the group:

(1) Group A: An employee, elected official, or appointed official not eligible for membership in another group is a group A member. An employee who otherwise would be eligible for membership in group A must participate in the guaranteed retirement income plan or the retirement savings plan if the employee:

- (A) begins, or returns to, County service on or after October 1, 1994 (except as provided in the last sentence of subsection (e)(2));
- (B) is not represented by an employee organization;
- (C) does not occupy a bargaining unit position; and
- (D) is not an elected official (except as provided in subsection (e)(4)(D)(ii)).

(2) Group B: Any correctional officer, fire prevention officer or deputy

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sheriff, appointed or promoted to the position on or before June 30, 1978, who has not elected to transfer to any other membership group. Any correctional officer, fire prevention officer or deputy sheriff who is a group A member as of June 30, 1978, may elect to retain membership therein.

(3) Group D: Any full-time police officer appointed on or before August 15, 1965, who has been continuously employed as a police officer and has not elected to transfer to any other membership group.

(4) Group E: The Chief Administrative Officer, the Council Administrator, the hearing examiners, the County Attorney and each head of a principal department or office of the County government, if appointed to that position before July 30, 1978, or a member having held that position on or before October 1, 1972. Any sworn deputy sheriff and any County correctional staff or officer as designated by the chief administrative officer. Any group E member who has reached elective early retirement date may retain membership in group E if the member transfers from the position which qualified the member for group E. Any group E member who is temporarily transferred from the position which qualified the member for group E may retain membership in group E as long as the temporary transfer from the group E position does not exceed 3 years. Notwithstanding the foregoing provisions in group E, any employee who is eligible for membership in group E must participate in the guaranteed retirement income plan or the retirement savings plan under Article VIII if the employee:

(A) (i) begins, or returns to, County service on or after October 1, 1994 (except as provided in the last sentence of subsection (e)(2));

(ii) is not represented by an employee organization; and

(iii) does not occupy a bargaining unit position; or

(B) (i) begins County service on or after October 1, 1994; and

(ii) is subject to the terms of a collective bargaining agreement between the County and an employee organization which requires the employee to participate in the guaranteed retirement income plan or the retirement savings plan.

(5) Group F: sworn police officers.

(A) A group F member who has reached elective early retirement date may retain membership in group F if the member is transferred from the position that qualified the member for group F membership.

(B) A group F member who is temporarily transferred from the position that qualified the member for group F membership may retain membership in group F as long as the temporary transfer from the group F position does not exceed 3 years.

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(C) Notwithstanding the foregoing provisions in group F, an employee who is eligible for membership in group F must participate in the retirement savings plan under Article VIII or the guaranteed retirement income plan if the employee:

- (i) begins, or returns to, County service on or after October 1, 1994 (except as provided in the last sentence of subsection (e)(2));
- (ii) is not represented by an employee organization; and
- (iii) does not occupy a bargaining unit position.

(D) An employee who is eligible for membership in group F must participate in the retirement savings plan under Article VIII if the employee:

- (i) begins County service on or after October 1, 1994; and
- (ii) is subject to the terms of a collective bargaining agreement between the County and an employee organization that requires the employee to participate in the retirement savings plan.

(E) A group F member who is a member of the Police Bargaining Unit may transfer to the retirement savings plan under Article VIII if the employee has accumulated enough credited service to obtain the maximum retirement benefit under the optional or integrated plan.

(6) Group G: Any paid firefighter, paid fire officer, and paid rescue service personnel. Any group G member who has reached normal retirement may retain membership in group G if the member transfers from the position which qualified the member for group G. Any group G member who is temporarily transferred from the position which qualified the member for Group G may retain membership in group G as long as the temporary transfer from the group G position does not exceed 3 years.

(A) Notwithstanding the foregoing provisions in group G, any employee who is eligible for membership in group G must participate in the retirement savings plan under Article VIII if the employee:

- (i) begins County service on or after October 1, 1994; and
- (ii) is subject to the terms of a collective bargaining agreement between the County and an employee organization which requires the employee to participate in the retirement savings plan.

(B) An employee who is eligible for membership in group G must participate in the retirement savings plan under Article VIII or the guaranteed retirement income plan if:

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- (i) the employee begins, or returns to, County service on or after October 1, 1994 (except as provided in the last sentence of subsection (e)(2));
- (ii) is not represented by an employee organization; and
- (iii) does not occupy a bargaining unit position.

(7) Group H: Any member, including any probationary employee, who holds a bargaining unit position described in section 33-105(a)(1) or section 33-105(a)(2), unless the member is eligible for membership in group B or E. Notwithstanding the foregoing provisions in group H, any employee who is eligible for membership in group H must participate in the guaranteed retirement income plan or the retirement savings plan under Article VIII if the employee:

(A) begins, or returns to, County service on or after October 1, 1994 (except as provided in the last sentence of subsection (e)(2)); and

(B) is subject to the terms of a collective bargaining agreement between the County and an employee organization which requires the employee to participate in the guaranteed retirement income plan or the retirement savings plan.

(g) *Transfer from one group to another.* A member who elects to transfer from one membership group to another as a result of amendments to this Article must transfer by December 31, 1978, or forfeit this option. However, under paragraph 4, a group D member may transfer to group F at any time before the member's retirement date. Additional contributions made as a result of the transfer must not be treated as picked-up contributions.

(1) Transfers From Group A to Group E, F, G, or H. Whenever a group A member transfers to a position which is qualified for membership in group E, F, G, or H, the retirement service credits earned as a group A member must be used for the purpose of qualifying for retirement. Except for the contribution rate increase as of the effective date of transfer, there will be no additional charges levied on any member who is transferred prior to July 1, 1970. Any member who transfers after July 1, 1970, in addition to paying the contribution rate increase as of the effective date of transfer, must pay the additional amount of contributions that would have been paid as a member of group E, F, G, or H from July 1, 1970, or hire date, if later, plus interest at the rate of 6 ½ percent per annum to date of full payment.

(2) Transfers From Group B, D, E, F, or G to Group A or H. Whenever a group B, D, E, F, or G member transfers to a position which is qualified for membership in group A or H, the retirement service credits earned as a group B, D, E, F, or G member must be used for the purpose of qualifying for retirement as a group A or H member. The rate of contribution must be decreased as of the date of transfer, and the difference in member contributions must not be refunded. Notwithstanding any other provision of this Article, any group E or F member who has not met the elective early retirement date and who transfers to group A or H must receive



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credited service at the rate of 1.25 years of service for each full year of service as a member of group E or F. Notwithstanding any other provision of this Article, any group G member who has not met the normal retirement date and who transfers to group A or H must receive credited service at the rate of 1.25 years of service for each full year of service as a member of group G.

(3) Transfers From Group B to Group E, F, or G. Whenever a group B member transfers to a position which is qualified for membership in group E, F, or G, the retirement date must be adjusted accordingly. Except for the contribution rate increase as of the effective date of transfer, there must be no additional charges levied on any member who transferred on or before July 1, 1970. Any member who transfers after July 1, 1970, in addition to paying the contribution rate increase as of the effective date of transfer, must pay the additional amount of contributions that would have been paid as a member of group E, F, or G from July 1, 1970, or hire date, if later, plus interest at the rate of 6 ½ percent per annum to date of full payment.

(4) Transfers From Group D to Group E, F, or G. A group D member may transfer to group E, F, or G and the retirement service credits earned as a group D member must be used for the purpose of qualifying for retirement under group E, F, or G. Except for the contribution rate increase as of the effective date of transfer, there will be no additional charges levied on any member who transferred on or before July 1, 1970. Any member who transfers after July 1, 1970, in addition to paying the contribution rate increase as of the effective date of transfer, must pay the additional amount of contributions that would have been paid as a member of group E, F, or G from July 1, 1970, plus interest at the rate of 6 ½ percent per annum to date of full payment.

(5) Transfers From Group H to Group A, E, F, or G. A group H member may transfer to group A, E, F, or G and the retirement service credits earned as a group H member must be used for the purpose of qualifying for retirement under group A, E, F, or G. Any member who transfers on or after July 1, 1989, in addition to paying the contribution rate increase as of the effective date of transfer, must pay the additional amount of contributions that would have been paid as a member of group A, E, F, or G from July 1, 1970, or hire date, if later, plus interest at the rate of 6 ½ percent per annum to date of full payment.

(h) *Requirements of membership.* Unless specifically exempt from membership by the chief administrative officer, each full-time employee of the county government or a participating agency must become a member or forfeit employment when the employee meets the eligibility requirements. If the administrative head of a participating agency does not enforce this provision, any new employee of the agency must not be enrolled as a member.

(i) *Transfers to the Retirement Savings Plan.* Any member in the optional retirement plan or in the integrated retirement plan may elect to participate in the Retirement Savings Plan under Article VIII if the member otherwise qualifies for participation under Section 33-115, even

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if the member did not begin County service on or after October 1, 1994. If an employee transfers from the optional retirement plan or the integrated plan to the Retirement Savings Plan:

- (1) transfers must not be made before April 1, 1995;
- (2) the election to transfer to the retirement savings plan is irrevocable;
- (3) the member's credited service for purposes of vesting in the optional retirement plan or the integrated plan must include the member's years of credited service earned while participating in the retirement savings plan;
- (4) the amount of the member's benefit under the optional retirement plan or the integrated plan must not be increased by the member's credited service earned while participating in the retirement savings plan; and
- (5) the member's retirement benefit under the optional retirement plan or the integrated plan must be determined using the regular earnings of the member during the applicable years preceding the member's transfer to the retirement savings plan.
- (6) the amount of sick leave used for credited service under Section 33-41(f) must not exceed the amount of sick leave accumulated on the date the employee transferred to the Retirement Savings Plan, or the amount accumulated on the effective date of the employee's retirement or separation from County service, whichever is less.

(j) *Election to join the Retirement Savings Plan.* An employee who is eligible for membership in the integrated retirement plan but who chooses to become a member of the Retirement Savings Plan must remain a member of the Retirement Savings Plan until the employee becomes ineligible for membership in Group I or II.

(k) Election to join the guaranteed retirement income plan.

(1) A full time or part time employee hired on or after October 1, 1994 and before January 1, 2009 who participates in the retirement savings plan and who is not a public safety employee as defined in Section 33-113(o) may make a one time irrevocable election to terminate participation in the retirement savings plan and participate in the guaranteed retirement income plan, effective the first full paycheck after July 1, 2009. An employee must make this election between December 31, 2008 and June 1, 2009. An employee who makes this election must have his or her retirement savings plan account balance transferred to the guaranteed retirement income plan. The amount transferred into the guaranteed retirement income plan must become the participant's initial guaranteed retirement income plan account balance. An employee who does not make this election must continue to participate in the retirement savings plan.

(2) A full time or part time employee hired between December 31, 2008 and

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July 1, 2009 who participates in the retirement savings plan and who is not a public safety employee as defined in Section 33-113(o) may make a one time irrevocable election to terminate participation in the retirement savings plan. An employee has 150 days after the date the employee was hired to make this election and must begin participation on the first full payroll after completing 180 days of employment. An employee who makes this election must have his or her retirement savings plan account balance transferred to the guaranteed retirement income plan. The amount transferred into the guaranteed retirement income plan must become the participant's initial guaranteed retirement income plan account balance. An employee who does not make this election must continue to participate in the retirement savings plan.

(3) An eligible full-time employee hired on or after July 1, 2009 and a part time or temporary employee who becomes full time on or after July 1, 2009 who does not participate in the retirement savings plan, may elect to participate in the guaranteed retirement income plan. An eligible employee must make an irrevocable election during the first 150 days of full time employment. If an eligible employee elects to participate, participation must begin on the first pay period after an employee has completed 180 days of full time employment. An employee who does not participate in the guaranteed retirement income plan must participate in the retirement savings plan beginning on the first pay period after the employee completes 180 days of full time employment.

(4) An eligible part time or temporary employee hired on or after October 1, 1994 who does not participate in the retirement savings plan may make a one time irrevocable election to participate in the guaranteed retirement income plan after the employee completes at least 150 days of employment. Participation must begin on the first full pay period beginning 30 days after the employee makes the election.

(5) An eligible full-time or part-time public safety employee hired on or after October 1, 1994 and before January 1, 2009 who participates in the retirement savings plan may make a one time irrevocable election to terminate participation in the retirement savings plan and participate in the guaranteed retirement income plan, effective the first full pay period after December 31, 2009. An employee must make this election between October 1, 2009 and December 1, 2009. An employee who makes this election must have his or her retirement savings plan account balance transferred to the guaranteed retirement income plan. The amount transferred into the guaranteed retirement income plan must become the participant's initial guaranteed retirement income plan account balance. An employee who does not make this election must continue to participate in the retirement savings plan.

(6) An individual who is an elected official after December 6, 2010 who participates in the elected officials' plan may make a one-time irrevocable decision to terminate participation in the elected officials' plan and participate in the guaranteed retirement income plan. An elected official must make this decision during the first 150 days after becoming an elected official. If an eligible elected official decides to participate, participation must begin on

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the first pay period after the elected official has been in office for 180 days. An elected official who decides to participate must have his or her elected officials' plan account balance transferred to the guaranteed retirement income plan. The amount transferred into the guaranteed retirement income plan must become the participant's initial guaranteed retirement income plan account balance. An elected official who does not participate in the guaranteed retirement income plan must continue to participate in the elected officials' plan.

(Ord. No. 5-152; Ord. No. 6-195, § 1; 1972 L.M.C., ch. 19, § 2; 1974 L.M.C., ch. 31, § 3; 1974 L.M.C., ch. 59, § 1; 1978 L.M.C., ch. 44, § 1; 1980 L.M.C., ch. 17, § 1; 1987 L.M.C., ch. 27, § 5; 1988 L.M.C., ch. 22, § 1; 1989 L.M.C., ch. 45, § 1; FY 1991 L.M.C., ch. 26, § 1; 1994 L.M.C., ch. 13, § 1; 1994 L.M.C., ch. 33, § 1; 1998 L.M.C., ch. 30, § 1; 1998 L.M.C., ch. 31, § 1; 2000 L.M.C., ch. 20, § 1; 2001 L.M.C., ch. 21, § 1; 2004 L.M.C., ch. 17, § 1; 2007 L.M.C., ch. 3, § 1; 2008 L.M.C., ch. 22, § 1; 2008 L.M.C., ch. 30, § 1; 2009 L.M.C., ch. 2, § 1; 2009 L.M.C., ch. 23, § 1; 2009 L.M.C., ch. 33, § 2.)

**Editor's note**—See County Attorney Opinion dated 11/14/11 regarding the County's liability for errors in the administration of the pension and retirement funds of employees. See County Attorney Opinion dated 9/12/05 discussing the legislative history and prior opinions regarding the effect of hiring a retired employee on a part-time basis.

2009 L.M.C., ch. 33, § 3, states, in part: Section 2 of this Act takes effect on December 6, 2010. An eligible individual who is an elected official on December 5, 2010, and remains in office on and after December 6, 2010, must decide to participate in the guaranteed retirement income plan on or before May 1, 2011. If an elected official decides to participate between December 6, 2010 and May 1, 2011, that elected official's participation must begin on the first pay period after June 1, 2011.

See County Attorney Opinion dated 9/12/05 discussing the legislative history and prior opinions regarding the effect of hiring a retired employee on a part-time basis.

2008 L.M.C., ch. 30, § 2, states: Transition. An individual who was an active member of a County retirement plan immediately before becoming an elected official, and who was required to participate in the elected officials' plan, may make a one time election to continue to participate in the retirement plan the individual participated in immediately before becoming an elected official. The individual's account balance must be transferred to the retirement plan in which the individual is resuming membership. The individual must contribute to the plan any accumulated contributions the individual would have made had the individual continued participation in that plan after deducting the individual's participant contributions made to the elected officials' plan. The individual must have no interest in the County elected official contributions made on the individual's behalf. The individual must continue participation as if the individual had not participated in the elected officials' plan.

2001 L.M.C., ch. 21, § 2(a), states: Section 33-37(e)(8), added by Section 1 of this Act,

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applies to any employee to whom it would otherwise apply who returned to County service before this Act took effect [August 14, 2001]. Any such employee may transfer to the Retirement Savings Plan the actuarial present value of the employee's benefit in the Employees' Retirement System, calculated using the System's latest published valuation assumptions, as of the effective date of this Act [August 14, 2001].

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 2. Eligibility and Qualifications. / Sec. 33-38. Normal retirement date, mandatory retirement date, early retirement date, and trial retirement.**

**Sec. 33-38. Normal retirement date, mandatory retirement date, early retirement date, and trial retirement.**

(a) *Normal retirement date.* The normal retirement date is the first day of the month elected by a member after the member meets the years of service and age requirements for the applicable membership group. For normal retirement:

(1) *Group A:*

(A) The member must have at least:

- (i) 5 years of credited service and be at least age 60; or
- (ii) 30 years of credited service and be at least age 55.

(B) After June 30, 2002, a Group A member who is a Police Telecommunicator must have at least:

- (i) 5 years of credited service and be at least age 60; or
- (ii) 30 years of credited service and be at least age 50.

(2) *Group B:* The member must have at least:

- (A) 15 years of credited service and be at least age 55; or
- (B) 30 years of credited service and be at least age 51.

(3) *Group D:* The member must meet the requirements of the County police relief and retirement fund law.

(4) *Group E:* The member must have at least:

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- (A) 15 years of credited service and be at least age 55; or
  - (B) 25 years of credited service and be at least age 46.
- (5) Group F: The member must have at least:
- (A) 15 years of credited service and be at least age 55; or
  - (B) 25 years of credited service.
- (6) Group G: The member must have at least:
- (A) 15 years of credited service and be at least age 55; or
  - (B) 20 years of credited service regardless of age.
- (7) (A) Group H: The member must have at least:
- (i) 5 years of credited service and be at least age 60; or
  - (ii) 30 years of credited service and be at least age 55.
- (B) After June 30, 2002, a Group H member who is a Police Telecommunicator must have at least:
- (i) 5 years of credited service and be at least age 60; or
  - (ii) 30 years of credited service and be at least age 50.
- (C) After June 30, 2002, a Group H member who is also an SLT bargaining unit member must have at least:
- (i) 5 years of credited service and be at least age 60; or
  - (ii) 30 years of credited service and be at least age 50.
- (8) An elected officials' participant or an elected official who participates in the guaranteed retirement income plan must have at least the lesser of a full term of office or 4 years of credited service and be at least age 62.
- (9) A guaranteed retirement income plan participant, except an elected official, must be at least age 62 with 3 years of credited service.
- (b) *Retirement date election.* A member other than a Group F member must submit written application for retirement at least 30 days before the date elected. A Group F member must submit a written application for retirement at least 14 days before the date elected. In extenuating circumstances, the Chief Administrative Officer may waive this requirement.

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(c) *Early retirement date.*

(1) A member, other than a group G member, who has not met the age and service requirements for a normal retirement may elect to receive pension payments beginning on an early retirement date the first day of a month after the following requirements are met:

(A) the group A member has at least 15 years of credited service and has reached age 50, or has at least 20 years of credited service and has reached age 45;

(B) the group B member has at least 15 years of credited service and has reached age 45;

(C) the group E member has at least 15 years of credited service and has reached age 45, or has at least 20 years of credited service and has reached age 41;

(D) the group F member has at least 15 years of credited service and has reached age 45, or has at least 20 years of credited service and has reached age 41; or

(E) the group H member has at least 15 years of credited service and has reached age 50, or has at least 20 years of credited service and has reached age 45.

(2) A group G member is not eligible for an early retirement.

(3) A participant in the guaranteed retirement income plan is not eligible for early retirement.

(d) *Trial retirement.*

(1) A trial retirement under this subsection is not available to:

(A) an elected official;

(B) a non-merit appointed official;

(C) a member covered under a collective bargaining agreement, except a member of the Police Bargaining Unit;

(D) a non-County Government employee; or

(E) a member who participates in a retirement incentive program.

(2) A member who is eligible for normal retirement may retire on a trial basis for a period not to exceed 9 months.

(3) A member may retire on a trial basis only once.

(4) A member who wishes to retire on a trial basis must notify the Chief Administrative Officer in writing at least 30 days before the retirement date of the member's

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intention to retire on a trial basis.

(5) A member may elect to return to County service before the end of the nine- month trial retirement period by notifying the Chief Administrative Officer in writing at least 30 days before the member returns to service, under procedures adopted by the Chief Administrative Officer.

(6) (A) After the member notifies the Chief Administrative Officer that the member intends to return to County service, the Chief Administrative Officer must return the member to:

(i) the position the member held before retirement, if it is still available;

(ii) a position with an equivalent salary and grade in the same or another office of the County government; or

(iii) if the member was a member of the Police Bargaining Unit, to a position in the Department of Police with an equivalent salary and grade, when such a position becomes available.

(B) The member may accept a position with a lower salary or grade, but is not required to do so.

(C) If the member does not accept an offer of the position that the member held before retirement or a position with an equivalent salary and grade, the member is considered to have permanently retired.

(7) A member returning from trial retirement:

(A) Has the same rights and benefits as the member had before the trial retirement; and

(B) Receives a salary reflecting all cost-of-living adjustments granted to that position while the member was on trial retirement.

(8) When the Chief Administrative Officer receives notice of a member's intention to retire on a trial basis, the member must not be paid for accrued annual leave until:

(A) The member notifies the Chief Administrative Officer in writing that the member no longer intends to retire on a trial basis; or

(B) The member retires permanently. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1971 L.M.C., ch. 39, § 1; 1972 L.M.C., ch. 19, § 3; 1974 L.M.C., ch. 31, § 4; 1974 L.M.C., ch. 59, § 2; 1978 L.M.C., ch. 44, § 1; 1987 L.M.C., ch. 27, § 5; 1988 L.M.C., ch. 26, § 1; 1989 L.M.C., ch. 45, § 1.; 1993 L.M.C., ch. 21, § 1; 1995 L.M.C., ch. 31, § 1; 1999 L.M.C., ch. 26, §



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1; 2001 L.M.C., ch. 21, § 1; 2004 L.M.C., ch. 17, § 1; 2007 L.M.C., ch. 3, § 1; 2008 L.M.C., ch. 22, § 1; 2008 L.M.C., ch. 23, § 1; 2009 L.M.C., ch. 33, § 2; 2010 L.M.C., ch. 49, § 1.)

**Editor's note**—2009 L.M.C., ch. 33, § 3, states, in part: Section 2 of this Act takes effect on December 6, 2010. An eligible individual who is an elected official on December 5, 2010, and remains in office on and after December 6, 2010, must decide to participate in the guaranteed retirement income plan on or before May 1, 2011. If an elected official decides to participate between December 6, 2010 and May 1, 2011, that elected official's participation must begin on the first pay period after June 1, 2011.

See editor's note to Article III, Employee's Retirement System, regarding Retirement Incentive Program.

The above section is cited in Fultz v. Shaffer, 111 Md.App. 278, 681 A.2d 568 (1996) and in Cohen v. Goldstein, 58 Md.App. 699, 474 A.2d 229 (1984).

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 2. Eligibility and Qualifications. / Sec. 33-38A. Deferred Retirement Option Plans.**

#### **Sec. 33-38A. Deferred Retirement Option Plans.**

The Chief Administrative Officer must establish Deferred Retirement Option Plans, or DROP plans, that allow any employee who is a member of a specified membership group or bargaining unit and who meets the eligibility requirements to elect to retire but continue to work. Pension payments must not be paid to the member while the member participates in the DROP Plan. When the member's participation in the DROP Plan ends, the member must stop working for the County, draw a pension benefit based on the member's credited service and earnings as of the date that the member began to participate in the DROP Plan, and receive the value of the DROP Plan payoff.

(a) *DROP Plan for Group F members.* "Discontinued Retirement Service Program" or "DRSP" means the DROP program for Group F members.

(1) *Eligibility.* A Group F member who is at least 46 years old and has at least 25 years of credited service may participate in the DRSP.

(2) *Application requirements.* An eligible employee must apply at least 60 days before the employee becomes a participant. An employee may withdraw a pending application within 2 weeks after submitting the application.

(3) *Employee participation and termination.* The employee's participation in

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the DRSP must begin on the first day of a month that begins at least 60 days, but not more than 90 days, after the employee applied and must end 3 years after the employee begins to participate or at an earlier date chosen by the employee. When the employee's participation in the program ends, the employee must stop working for the County and receive a pension benefit.

(4) *Employment status.* An employee who participates in the program must continue to be a member of the retirement system, earn sick and annual leave, and remain eligible to participate in health and life insurance programs.

(5) *Retirement date, retirement contributions, and credited service.* The retirement date of an employee who participates in the program is the date when the employee begins to participate in the DRSP, and neither the employee nor the County will make retirement contributions after that date. An employee who wishes to purchase prior service must do so before the employee's participation in the program begins. Sick leave in excess of 80 hours will be credited towards retirement at the beginning of the employee's participation.

(6) *Pension benefits.*

(A) Before an employee's participation begins, the employee must select a:

(i) pension payment option under Section 33-44 for the regular retirement pension payments; and

(ii) pension payment distribution option for the distribution of the employee's DRSP account.

(B) A pension benefit must not be paid to the employee while the employee participates in the program, but must be deposited in a DRSP account established for the participant by the County. The participant must receive the account balance and the County must close the account within 60 days after the employee stops participating in the program. Subject to any requirements of the Internal Revenue Code and other applicable law, the employee may roll over the account balance into an eligible retirement plan.

(C) An employee must direct the Board of Investment Trustees to allocate contributions to the employee's DRSP account to be invested in one or more of the investment funds selected by the Board. The investment fund options selected by the Board must conform to all applicable requirements of the Internal Revenue Code. An employee must allocate contributions among the investment funds in percentages of the value of the employee's DRSP account balances. An employee's direction of investment must remain in effect until the employee changes the direction. If an employee does not provide a valid direction of investment, the Board must select an appropriate investment option and invest the DRSP account balances not governed by a valid direction of investment in the investment option.

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(D) After the employee's participation in the program ends, the employee's pension benefit will be based on:

(i) the employee's credited service immediately prior to the beginning of the employee's participation in the program, adjusted to include credit for unused sick leave under Section 33-41;

(ii) the employee's average final earnings, excluding earnings during the period of participation in the program; and

(iii) increases in the consumer price index during the period of the employee's participation that would have resulted in an increase in the employee's pension benefit if the employee had not been participating in the program.

(7) *Disability retirement.* An employee may apply for disability retirement prior to the termination of the employee's participation in the program.

(A) A DRSP participant who is eligible for a service-connected disability retirement must choose either:

(i) the retirement benefit under the DRSP and the DRSP account balance; or

(ii) the service-connected disability retirement benefit that the employee would have received if the employee had continued as an active employee and had not elected to participate in the DRSP, and no DRSP account balance.

(B) A DRSP participant who is eligible for a non-service-connected disability retirement benefit must receive the non-service-connected disability retirement benefit under Section 33-43(h), with the benefit calculated as of the member's DRSP exit date, plus the DRSP account balance.

(8) *Death benefit.* If an employee dies during the employee's participation in the program, the employee's beneficiary will receive:

(A) the death benefit that the beneficiary would have received if the employee had retired on the date on which the employee began to participate in the program, adjusted under subsection (6)(D); and

(B) the balance of the employee's DRSP account.

(9) *DRSP account distribution options.* A member may have the balance of the DRSP account distributed as a lump sum or an annuity, or have some or all paid directly to an eligible retirement plan as a direct rollover distribution. To the extent feasible, as determined by the Chief Administrative Officer, a member alternatively may receive the account balance as

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periodic payments calculated and distributed as an addition to the member's regular retirement benefit. If the member dies before the balance of the DRSP account is distributed, the beneficiary may receive distribution of the balance under any option described in this paragraph.

(b) *DROP Plan for Group G members.*

(1) *Eligibility.* An employee who is a member of Group G and who has met the minimum requirements for a normal retirement may participate in the DROP Plan.

(2) *Application requirements.* An eligible employee must apply at least 45 days before the employee becomes a participant. An employee may withdraw a pending application within 2 weeks after submitting the application.

(3) *Employee participation and termination.*

(A) The employee's participation in the DROP Plan must begin on the first day of a month that begins at least 45 days, but not more than 75 days, after the employee applied.

(B) A Group G member may participate in the DROP Plan for up to 36 months. An employee who elects to stop participating before the end of the 36-month period must notify Fire and Rescue Services and the Office of Human Resources at least 60 days before stopping participation in the program.

(C) When the employee's participation in the DROP Plan ends, the employee must stop working for the County and receive a pension benefit.

(4) *Employment status.* A DROP Plan participant must continue to be a member of the retirement system, earn sick and annual leave, and remain eligible to participate in health and life insurance programs for employees while the member participates in the DROP Plan.

(5) *Retirement date, retirement contributions, and credited service.*

(A) The retirement date of a member who participates in the DROP Plan is the date when the employee begins to participate in the DROP Plan.

(B) The member will continue to make retirement contributions to the Optional Plan or Integrated Plan while participating in the DROP Plan. The County must not make retirement contributions on behalf of the member after the date on which the member's DROP Plan participation begins.

(C) Sick leave credited towards retirement at the beginning of the member's participation will not be available for the member's use after participation in the DROP Plan begins.

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(D) A member who wishes to purchase prior service must do so before the member's participation in the DROP Plan begins.

(6) *Pension benefits.*

(A) Before a member's participation begins, the member irrevocably must choose a pension payment option under Section 33-44 for retirement pension payments.

(B) Pension benefits will not be paid to the member while the member participates in the DROP Plan. Pension payments that are deferred while the member participates in the DROP Plan must not include cost-of-living increases under Section 33-44 that were given to retirees and beneficiaries during the period of the member's participation in the DROP Plan. The participant will receive the deferred pension payments when the member's participation in the DROP Plan ends, or within 60 days after the member gives notice under paragraph (3)(B), whichever is later.

(C) After the member's participation ends, the member's pension benefit will be based on the member's:

(i) credited service, including credit for unused sick leave, before the member's participation in the DROP Plan began, adjusted to include credit for unused sick leave accrued during the period of DROP Plan participation; and

(ii) average final earnings, excluding earnings during the period of participation in the DROP Plan.

(D) The pension benefit that a member receives after the member's participation in the DROP Plan ends must be adjusted to reflect cost-of-living adjustments under Section 33-44(c) that occurred during the period of the member's participation in the DROP Plan, but the pension payments that are deferred during the participation period must not include cost-of-living adjustments.

(7) *Disability retirement.*

(A) A member may apply for disability retirement prior to the termination of the member's participation in the DROP Plan.

(B) If the Chief Administrative Officer determines that a DROP participant is eligible for a service-connected disability retirement, the participant must elect to receive either:

(i) the retirement benefit under subsection (6)(C) and the DROP Plan payoff; or

(ii) the service-connected disability retirement benefit that the

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member would have received if the member had continued as an active employee and not elected to participate in the DROP Plan.

(C) A member who elects to receive a service-connected disability retirement must not receive the DROP Plan payoff.

(D) If the Chief Administrative Officer determines that a DROP participant is eligible for a non-service connected disability retirement, the participant must receive:

(i) the non-service connected disability retirement benefit provided under Section 33-43(h), with the benefit calculated as of the member's DROP entry date; and

(ii) the DROP account balance.

(8) *Death benefit.* If a member dies during the member's participation in the DROP Plan, the member's beneficiary will receive the greater of:

(A) the death benefit that the beneficiary would have received if the member had retired on the date on which the member began to participate in the DROP Plan, calculated to reflect cost-of-living adjustments under Section 33-44(c) that occurred during the period of DROP Plan participation, and the value of the DROP Plan payoff, not including retroactive cost-of-living adjustments to the deferred pension payments; or

(B) the service-connected death benefit that the beneficiary would have received if the member had not elected to participate in the DROP Plan, but not the DROP Plan payoff.

(9) *DROP Plan payoff and distribution.*

(A) *DROP Plan payoff.* The DROP Plan payoff must include the total of the following, accumulated over the period of the member's participation in the DROP Plan:

(i) the member's deferred monthly pension payments, not including any cost-of-living adjustments;

(ii) the member's retirement contributions to the Optional Plan or Integrated Plan treated as picked-up contributions; and

(iii) for a member beginning DROP Plan participation before July 1, 2013, 8.25 percent annual interest rate credited monthly, compounded quarterly on the amount in the DROP Plan payoff during the member's participation in the DROP Plan. For a member beginning DROP Plan participation on or after July 1, 2013, 7.5 percent annual interest credited monthly, compounded quarterly on the amount in the DROP Plan payoff during the

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member's participation in the DROP plan.

(B) *DROP Plan payoff distribution options.* At the time that a member's DROP Plan participation ends, the member must elect to have the DROP Plan payoff:

- (i) distributed as a:
  - (a) lump sum payment;
  - (b) annuity; or
  - (c) direct rollover distribution, in compliance with the Internal Revenue Code, to an eligible retirement plan; or
- (ii) remain in the retirement system in a DROP Plan Payoff Account and receive interest at a 4.0 percent annual rate, credited monthly, for the period of time during which the DROP Plan Payoff Account remains in the retirement system.

(C) *Distribution of DROP Plan Payoff Account.*

(i) A former member may elect to receive a distribution of the DROP Plan Payoff Account in a single lump sum payment or a single direct rollover distribution to an eligible retirement plan at any time, but must receive a distribution by the date required under Internal Revenue Code Section 401(a)(9)k, as amended, and the corresponding regulations.

(ii) The Chief Administrative Officer must pay the balance of the DROP Plan Payoff Account to a designated beneficiary of a former member who dies without receiving the DROP Plan Payoff Account as soon as practicable after the former member's death. (1999 L.M.C., ch. 26, § 1; 2001 L.M.C., ch. 28, §§ 5, 15 and 16; 2006 L.M.C., ch. 20, § 1; 2007 L.M.C., ch. 3, § 1; 2008 L.M.C., ch. 23, § 2; 2009 L.M.C., ch. 11, § 1; 2013 L.M.C., ch. 14, § 1.)

**Editor's note**-The effective date of the amendment made to this section by 2001 L.M.C., ch. 28, § 5, is the same effective date as 1999 L.M.C., ch. 26, § 1.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 2. Eligibility and Qualifications. / Sec. 33-39. Member contributions and credited interest.**

**Sec. 33-39. Member contributions and credited interest.**

(a) *Member contributions.* Each member of the retirement system must contribute a portion of the member's regular earnings through regular payroll deductions.

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(1) Member Contributions to the Optional Retirement Plan. A member of the Optional Retirement Plan must contribute the following percentage of regular earnings:

A. Group A or H member, 7 percent for service beginning on the first pay period after June 30, 2011 and 8 percent for service beginning on the first pay period after June 30, 2012;

B. Group B member, 7 percent;

C. Group D member, 7 ½ percent; and

D. Group E, F, or G member, 9 ½ percent for service beginning on the first pay period after June 30, 2011 and 10 ½ percent for service beginning on the first pay period after June 30, 2012.

(2) Member Contributions to the Integrated Retirement Plan. A member of the Integrated Retirement Plan must contribute the following percentage of regular earnings:

(A) Group A, 5 percent for service beginning on the first pay period after June 30, 2011 and 6 percent for service beginning on the first pay period after June 30, 2012 up to the maximum Social Security wage base, and 7 percent for service beginning on the first pay period after June 30, 2011 and 8 percent for service beginning on the first pay period after June 30, 2012 of regular earnings that exceed the wage base;

(B) Group B, 4 ½ percent up to the maximum Social Security wage base, and 7 percent of regular earnings that exceed the wage base;

(C) Group E, 5 ¾ percent for service beginning on the first pay period after June 30, 2011 and 6 ¾ percent for service beginning on the first pay period after June 30, 2012 up to the maximum Social Security wage base, and 9 ½ percent for service beginning on the first pay period after June 30, 2011 and 10 ½ percent for service beginning on the first pay period after June 30, 2012 of regular earnings that exceed the wage base;

(D) Group F, 5 ¾ percent for service beginning on the first pay period after June 30, 2011 and 6 ¾ percent for service beginning on the first pay period after June 30, 2012 up to the maximum Social Security wage base and 9 ½ percent for service beginning on the first pay period after June 30, 2011 and 10 ½ percent for service beginning on the first pay period after June 30, 2012 of regular earnings that exceed the wage base;

(E) Group G:

(i) 6 ½ percent for service beginning on the first pay period after June 30, 2011 and 7 ½ percent for service beginning on the first pay period after June 30, 2012 up to the maximum Social Security wage base, and 10 ¼ percent for service beginning on the first pay period after June 30, 2011 and 11 ¼ percent for service beginning on the first pay



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period after June 30, 2012 of regular earnings that exceed the wage base;

(ii) starting in the 25<sup>th</sup> year from the member's leave accrual date under the County payroll system, 5 <sup>3</sup>/<sub>4</sub> percent for service beginning on the first pay period after June 30, 2011 and 6 <sup>3</sup>/<sub>4</sub> percent for service beginning on the first pay period after June 30, 2012 up to the maximum Social Security wage base, and 9 <sup>1</sup>/<sub>2</sub> percent for service beginning on the first pay period after June 30, 2011 and 10 <sup>1</sup>/<sub>2</sub> percent for service beginning on the first pay period after June 30, 2012 of regular earnings that exceed the wage base on and after the member's 25<sup>th</sup> year of credited service;

(F) Group H, 5 percent for service beginning on the first pay period after June 30, 2011 and 6 percent for service beginning on the first pay period after June 30, 2012 up to the maximum Social Security wage base and 7 percent for service beginning on the first pay period after June 30, 2011 and 8 percent for service beginning on the first pay period after June 30, 2012 of regular earnings that exceed the wage base.

(3) Member Contributions to the Elected Officials' Plan. A member of the Elected Officials' Plan must contribute 4 percent. To the extent allowed under Section 414(h)(2) of the Internal Revenue Code, the County must "pick up" (as described in the Internal Revenue Code) mandatory member contributions to the Elected Officials' Plan.

(4) Member contributions to the guaranteed retirement income plan.

(A) A non-public safety employee member in the guaranteed retirement income plan must contribute 4% of regular earnings less than or equal to the Social Security wage base and 8% of regular earnings that exceed the Social Security wage base.

(B) A public safety employee member in the guaranteed retirement income plan must contribute 3% of regular earnings less than or equal to the Social Security wage base and 6% of regular earnings that exceed the Social Security wage base.

(C) For service beginning on the first pay period after June 30, 2011 and before the first pay period beginning after July 1, 2012, a member may contribute an additional 2% of regular earnings on an after-tax basis by making an irrevocable election in writing on or before September 1, 2011.

(D) To the extent allowed under Section 414(h)(2) of the Internal Revenue Code, the County must "pick up" (as described in the Internal Revenue Code) member contributions to the guaranteed retirement income plan. A member is always vested in the member's contributions.

(E) When a member rejoins County service after military service that qualifies under Section 33-41(q) as credited service, the County must credit the member with the amount that the member would have contributed if the member had worked for the County

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during military service. Contribution credits for military service must be based on the regular earnings the member would have earned during military service. If the regular earnings are not reasonably ascertainable, the credit must be based on the member's regular earnings during a period immediately preceding the military service. The averaging period is 12 months, or the full length of the member's County service, whichever is shorter. The member must not receive any retroactive credited interest on the contribution credits. The County must not credit a member with a discretionary after-tax contribution under subparagraph C unless the member elects to make up the contribution under Internal Revenue Code Section 414(u), as amended.

(5) To the extent allowed under Section 414(h)(2) of the Internal Revenue Code, the County must "pick up" (as described in the Internal Revenue Code) mandatory member contributions to the Optional and Integrated, Retirement Plans for pay periods beginning after June 30, 1989.

(6) The Chief Administrative Officer may allow an agency that is not an "employing unit" (as described in Section 414(h)(2) of the Internal Revenue Code) to participate in the retirement system. The County must not "pick up" (as described in the Internal Revenue Code) mandatory contributions of members employed by a participating agency that is not an "employing unit."

(b) *Credited interest.*

(1) For the period beginning July 1, 1978, and ending June 30, 1989, interest must be credited annually on each member's accumulated contributions at a rate of 4 percent per annum for the first 5 years of membership only. Members who had more than 5 years of membership on July 1, 1978, must retain all credited interest as of that date.

(2) Members who have terminated employment and vested prior to July 1, 1978, must receive interest at the rate of 4 percent per annum for as long as they remain a vested member.

(3) Effective July 1, 1989, interest must be credited annually on each member's accumulated contributions as of June 30, 1989, and thereafter, as follows:

(A) For group A members, interest will be credited at a rate of 4 percent per annum.

(B) For group B members, interest will be credited at a rate of 4 percent per annum.

(C) For group D members, interest will be credited at a rate of 4 percent per annum.

(D) For group E members, interest will be credited at a rate of 4

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percent per annum.

(E) For group F members, interest will be credited at a rate of 4 percent per annum.

(F) For group G members, interest will be credited at a rate of 4 percent per annum.

(G) For group H members, interest will be credited at a rate of 4 percent per annum.

(4) If a member is an elected official on July 1, 1989, interest on that member's accumulated contributions must be credited under subsection (b)(1) until December 2, 1990. On and after December 3, 1990, interest must be credited on the elected official's accumulated contributions as of December 3, 1990 under subsection (b)(3) of this subsection.

(5) A member of the guaranteed retirement income plan must receive credited interest at an annual rate of 7.25% on the member's contributions in the member's guaranteed retirement income plan account. If the annual 7.25% interest rate does not comply with applicable law, the third segment rate described in Internal Revenue Code Section 430(h)(2)(G) or any successor provision must apply. Interest must be credited to a member's guaranteed retirement income plan account balance on a monthly basis as of the last day of the month.

(c) *Return of member contributions.*

(1) *Refund after employee's separation under the optional and integrated plans.*

(A) If a member who is separated from County service properly completes and submits an application for a refund of the member's contributions, the County must refund the contributions with credited interest, unless the member dies or retires.

(B) Upon receipt of a properly completed application, the County must pay a member who is separated from County service and has not elected to vest the full amount of accumulated contributions with credited interest, less any indebtedness to the County government or the Montgomery County Employees Federal Credit Union.

(C) If a member who is separated from County service does not properly complete and submit an application for a refund, the County must refund the contributions with credited interest under the minimum distribution requirements of the Internal Revenue Code and corresponding regulations.

(D) Notwithstanding any other provision, if the member's contributions and interest are \$1,000 or less, the amount must be distributed in a lump sum as soon as administratively feasible after termination of employment even if the member does not submit an

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application. If the distribution cannot be made because the member cannot be located, the member will forfeit the amount. If the member later contacts the County, the member will receive the forfeited amount.

(2) Refund after separation of an elected officials' participant. An elected officials' participant who ends employment with the County before that participant's normal retirement date, and who does not receive a mandatory refund of the participant's account balances under Section 33-40(d)(2)(D), may, at the participant's request, receive the account balances, including picked-up contributions, in the required and the voluntary elected officials' participant contributions accounts established for that participant, less any indebtedness to the County or the Montgomery County Employees Federal Credit Union, in a single lump-sum payment.

(3) Refund after a member's death. If a member dies, the Chief Administrative Officer must pay to the designated beneficiary accumulated member contributions plus credited interest, less any indebtedness to the County government, unless the beneficiary is eligible for an annuity under Section 33-46. If an elected officials' participant dies before the county has implemented the method of distribution under section 33-44, the chief administrative officer must pay to the beneficiary, in accordance with Section 33-46(g), the account balances, including picked-up contributions, in the required and the voluntary elected officials' participant contributions accounts, less any indebtedness to the County or the Montgomery County Employees Federal Credit Union.

(4) Refund after an employee elects to participate in the integrated plan instead of the optional plan. When a member elects to participate in the integrated retirement plan instead of the optional retirement plan, the member must receive a refund of member contributions that exceeded the amount that would have been paid if the contribution rate of the integrated retirement plan had been in effect from date of enrollment to date of election, plus credited interest earned on those contributions. Despite this requirement, a member who elects to participate in the integrated retirement plan instead of the optional retirement plan while still employed by the County government must not receive a refund of picked-up contributions made on or after July 1, 1989 or credited interest earned on those contributions. Picked-up contributions made on or after July 1, 1989 and credited interest may be refunded only if one of the events described in Section 33-45(b) occurs.

(5) Refund after a statutory change that reduces the maximum years of credited service for a retirement group.

(A) (i) If a member purchases prior service and this Chapter is later amended to reduce the maximum years of service for which a member may receive credit, the County must refund to the member that portion of the retirement contributions made to purchase the unneeded prior service, with interest, if the member requests a refund before the

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member retires.

(ii) Notwithstanding clause (i), the County must refund to a Group G member whose retirement is effective during the period March 1, 2000, through November 1, 2001, that portion of the member's retirement contributions made to purchase the unneeded prior service, with interest, if the member requests a refund before or after the member retires.

(B) The County must refund the retirement contributions used to purchase excess service credits only if the member's total credited service, excluding sick leave, exceeds the new maximum for the member's retirement group on the date that the amendment reducing the maximum years of credited service became effective.

(C) The County must refund to the member, with interest, that portion of the payment made to purchase any prior service that exceeds the maximum credited service for the employee's retirement group. The County must determine the amount of the refund based on the member's total credited service, excluding sick leave, on the effective date of the amendment to the County Code that reduced the maximum years of service. In this subsection "payment" means the lump sum amount, determined at the time of purchase on an actuarial or flat payment basis, less any interest paid by the member or any contributions that were previously refunded.

(D) Under this subsection, the County must pay interest in the same manner and amount as for a member's accumulated contributions under subsection (b). To calculate interest on a refunded payment, the County must assume that the member paid the amount in full when the service was purchased.

(E) The County must pay the proper refund to the member after the member's retirement begins.

(6) Refund of member contributions in the guaranteed retirement income plan. A member who ends employment with the County who is not vested must receive a distribution of the member's guaranteed retirement income plan account balance attributable to member contributions under Section 33-39 and interest on those contributions as soon as reasonably feasible after the member submits a properly completed distribution form. Any death benefits must be paid under Section 33-46. Any indebtedness to the County government must be subtracted from the member's refund.

(d) *Voluntary elected officials' participant contributions.*

(1) An elected officials' participant may voluntarily contribute up to an additional 7% of regular earnings to the elected officials' plan. Voluntary elected officials' participant contributions must be deducted from the regular earnings of the elected officials' participant.

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(2) An elected officials' participant may:

(A) Change the amount of the voluntary elected officials' participant contributions;

(B) Cease making voluntary elected officials' participant contributions;  
or

(C) Withdraw all or part of the voluntary elected officials' participant contributions and the earnings thereon under procedures established in executive regulation under method (1).

(e) *Treatment of elected officials' participant contributions.*

(1) Required elected officials' participant contributions must be allocated to the required elected officials' participant contributions account established for that elected officials' participant. Voluntary elected officials' participant contributions must be allocated to the voluntary elected officials' participant contributions account established for that elected officials' participant. In addition, amounts allocated to the required elected officials' participant contributions account and voluntary elected officials' participant contributions account of an elected officials' participant must be further allocated to sub-accounts to reflect the proportionate amount of such accounts invested in each of the applicable investment funds by that elected officials' participant. As of each valuation date, the chief administrative officer must value the assets of the required elected officials' participant contributions account and the voluntary elected officials' participant contributions account on a current market value basis.

(2) An elected officials' participant is always fully vested in the amount of the required elected officials' participant contributions account and the voluntary elected officials' participant contributions account for that elected officials' participant. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1972 L.M.C., ch. 19, § 4; 1974 L.M.C., ch. 31, § 5; 1978 L.M.C., ch. 44, § 1; 1987 L.M.C., ch. 27, § 5; 1989 L.M.C., ch. 45, § 1; 1994 L.M.C., ch. 33, § 1; 1997 L.M.C., ch. 36, § 1; 1998 L.M.C., ch. 31, § 1; 1999 L.M.C., ch. 26, § 1; 2001 L.M.C., ch. 21, § 1; 2003 L.M.C., ch. 31, § 1; 2006 L.M.C., ch. 20, § 1; 2007 L.M.C., ch. 3, § 1; 2008 L.M.C., ch. 22, § 1; 2009 L.M.C., ch. 2, § 2; 2009 L.M.C., ch. 23, § 1; 2009 L.M.C., ch. 33, § 2; 2011 L.M.C., ch. 9, § 1; 2012 L.M.C., ch. 10, § 1.)

**Editor's note**—2011 L.M.C., ch. 9, § 2, states in part: Effective Date. This Act takes effect on July 1, 2011 except as otherwise provided. For a member of the Optional Plan, Integrated Plan, or Guaranteed Retirement Income Plan holding the office of County Executive, Councilmember, or Sheriff, the amendments to Sections 33-39(a)(1), 33-39(a)(2), 33-44(c), and 33-40(e)(1) take effect on December 1, 2014. For a member of the Optional Plan, Integrated Plan, or Guaranteed Retirement Income Plan holding the office of State's Attorney, the amendments to Sections 33-39(a)(1), 33-39(a)(2), 33-44(c), and 33-40(e)(1) take effect on

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January 5, 2015.

2009 L.M.C., ch. 33, § 3, states, in part: Section 2 of this Act takes effect on December 6, 2010. An eligible individual who is an elected official on December 5, 2010, and remains in office on and after December 6, 2010, must decide to participate in the guaranteed retirement income plan on or before May 1, 2011. If an elected official decides to participate between December 6, 2010 and May 1, 2011, that elected official's participation must begin on the first pay period after June 1, 2011.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 2. Eligibility and Qualifications. / Sec. 33-39A. Investment of contributions to the elected officials' plan.**

**Sec. 33-39A. Investment of contributions to the elected officials' plan.**

(a) *Investment funds.*

(1) An elected officials' participant must direct that contributions allocated to that participant's retirement accounts be invested in one or more of the investment funds selected by the Board for the retirement savings plan under Article VIII.

(2) An elected officials' participant may allocate investments in the investment funds in any amounts or multiples permitted by the Board in the retirement savings plan.

(3) An elected officials' participant's direction of investment must remain in effect until the elected officials' participant changes the direction under subsection 33-39A(b). If an elected officials' participant does not provide a valid direction of investment, the account balances of that elected officials' participant, to the extent they are not governed by a valid direction of investment, must be invested in an appropriate investment option selected by the Board.

(b) *Change of allocation.*

(1) An elected officials' participant may change the allocation of that elected officials' participant's account balances among the investment funds, in amounts and at times set by the Board for investments in the retirement savings plan. The change will be effective at times set by the Board for the retirement savings plan.

(2) An elected officials' participant may designate that the change of the allocation among investment funds is effective as to:

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(A) Only the elected officials' participant's account balances as of the effective date of the change; or

(B) Only the elected officials' participant's contributions and county contributions made after the effective date of the change; or

(C) Both a. and b. (1987 L.M.C., ch. 27, § 6; 1987 L.M.C., ch. 29, § 4; 1994 L.M.C., ch. 33, § 1; 2001 L.M.C., ch. 21, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 2. Eligibility and Qualifications. / Sec. 33-40. Employer contributions.**

**Sec. 33-40. Employer contributions.**

The county and each participating agency must pay to the board each fiscal year a normal contribution and, if necessary, an additional contribution to be known as unfunded accrued liability contribution. The actuary for the retirement system must prepare an actuarial valuation and report each year.

(a) *Normal contribution.* The amount of normal contribution must at least match the contribution made by members each fiscal year but must not be less than the amount which could be provided by multiplying the latest published actuarial normal cost accrual rate, expressed as a percentage of covered payroll, times the payroll of covered members. The actuary for the retirement system must determine a single normal contribution, and, if necessary, an unfunded accrued liability contribution for each group which must be applicable to and payable by each participating agency. The normal contribution must be determined by the actuary for the retirement system after each actuarial valuation as the percentage of the compensation of all members which is sufficient to cover the cost of benefits determined under an actuarial cost method acceptable under the United States Treasury Regulations with respect to qualified retirement plans after taking into account members' contributions.

(b) *Unfunded accrued liability contribution.* The unfunded accrued liability contribution shall be the amount necessary to liquidate the base amount of the unfunded accrued liability and additions thereto, over not more than forty (40) years. The amount to liquidate annually shall be determined from the unfunded accrued liability published in the latest actuarial report. The base amount of unfunded accrued liability contributions payable by each participating agency shall be determined by the actuary on the basis of June 30, 1975, membership. Thereafter, the actuary shall determine additional unfunded accrued liabilities in excess of the June 30, 1975 base amount that emerge as the result of benefit improvements, salary increases or other applicable factors, which shall be applicable to and payable by each participating agency. The



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additional unfunded accrued liabilities shall be liquidated over not more than forty (40) years from date incurred.

(c) *Additional contributions.* The County shall make such contributions as are required annually to provide benefits under subsections (d) and (e) of section 33-45. Any contributions made on behalf of an employee who ceases to be a member as the result of separation from the County service shall be used each fiscal year to accelerate the payment of any unfunded accrued liability or to fund retirement plan improvements.

(d) *Elected officials' plan.* Subsections 33-40(a), (b), and (c) do not apply to the elected officials' plan. Instead, the following provisions apply:

(1) The County must contribute to the elected officials' plan in monthly installments, on behalf of each elected officials' participant, an amount equal to 8 percent of the elected officials' participants' regular earnings. The county's elected officials' contributions are to be adjusted to take into account any forfeiture under subsection 33-40(d)(2)d. In determining the amount of the County elected officials' contributions, only an elected officials' participant's regular earnings earned while that elected officials' participant made required elected officials' participant contributions are counted.

(2) The Board must allocate the County elected officials' contributions made on behalf of each elected officials' participant to a County elected officials' contributions account the Board establishes for that elected officials' participant. In addition, amounts allocated to the County elected officials' contributions account must be further allocated to sub-accounts to reflect the proportionate amount of each account in each of the applicable investment funds.

(A) As of each valuation date, the Board must value the County elected officials' contributions account of each participant on a current market value basis.

(B) An elected officials' participant has a one hundred (100) percent vested interest in that elected officials' participant's County elected officials' contributions account after the elected officials' participant attains the lesser of a full term of office or four (4) years of credited service. An elected officials' participant whose account balance in the County elected officials' contributions account is not one hundred (100) percent vested in accordance with the preceding sentence will nonetheless be one hundred (100) percent vested in that account balance from and after the effective date of a termination of the elected officials' plan.

(C) An elected officials' participant who has a one hundred (100) percent vested interest in the County elected officials' contributions account of that elected officials' participant and ends employment with the County before the participant's normal retirement date may, at the elected officials' participant's request, receive the account balance in the County elected officials' contributions account in a single lump-sum payment. An elected official who chooses to withdraw the account balance in the County elected officials'

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contributions account must at the same time withdraw the account balances in the required and voluntary elected officials' participant contributions accounts, and if that elected officials' participant again participates in the elected officials' plan after the withdrawal, that elected officials' participant must complete the lesser of an additional four (4) years of credited service or a full term of office in order to vest in any County elected officials' contributions made after the withdrawal.

(D) An elected officials' participant who ends employment with the County and who is not vested in any County contributions must forfeit the full account balance in the County elected officials' contributions account. If that occurs, the Chief Administrative Officer, upon the participant's completion of a properly completed distribution form, must pay the participant, in a single lump-sum payment, the full account balances in the required elected officials' participant contributions account and the voluntary elected officials' participant contributions account, less any indebtedness to the county government or the Montgomery County Employees Federal Credit Union. The Chief Administrative Officer must consider all forfeitures arising under the elected officials' plan in determining the County elected officials' contributions and must use the forfeitures to reduce the amount of the county elected officials' contributions.

(e) Guaranteed Retirement Income Plan.

(1) Each pay period, the County must credit to each non-public safety member's guaranteed retirement income plan account an amount equal to 6 percent for service beginning on the first pay period after June 30, 2011 and 8 percent for service beginning on the first pay period after June 30, 2012 of the member's regular earnings. Interest must be credited at an annual rate of 7.25 percent on the County contribution credits. If the annual 7.25 percent interest rate does not comply with applicable law, the third segment rate described in Internal Revenue Code Section 430(h)(2)(G) or any successor provision must apply. Interest must be credited to a member's guaranteed retirement income plan account balance on a monthly basis as of the last day of the month.

(2) Each pay period, the County must credit to each public safety member's guaranteed retirement income plan account an amount equal to 8 percent for service beginning on the first pay period after June 30, 2011 and 10 percent for service beginning on the first pay period after June 30, 2012 of the member's regular earnings. Interest must be credited at an annual rate of 7.25 percent on the County contribution credits. If the annual 7.25 percent interest rate does not comply with applicable law, the third segment rate described in Internal Revenue Code Section 430(h)(2)(G) or any successor provision must apply. Interest must be credited to a member's guaranteed retirement income plan account balance on a monthly basis as of the last day of the month.

(3) When a member rejoins County service after military service that qualifies

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under Section 33-41(q) as credited service, the County must credit the member the amount that the County would have credited the member if the member worked for the County during military service. The credits must be based on the regular earnings the member would have earned during military service. If the regular earnings are not reasonably ascertainable, the County contribution credit must be based on the member's regular earnings during a period immediately preceding military service. The averaging period is 12 months, or the full length of the member's County service, whichever is shorter. The member must not receive any retroactive credited interest on the County contribution credits.

(4) For any member who received a contribution to the member's guaranteed retirement income plan account under Section 33-42A, interest must be credited at an annual rate of 7.25 percent. If the annual 7.25 percent interest rate does not comply with applicable law, the third segment rate described in Internal Revenue Code Section 430(h)(2)(G) or any successor provision must apply. Interest must be credited to a member's guaranteed retirement income plan account balance on a monthly basis as of the last day of the month. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1972 L.M.C., ch. 19, § 5; 1974 L.M.C., ch. 31, § 6; 1978 L.M.C., ch. 44, § 1; 1987 L.M.C., ch. 27, § 7; 1987 L.M.C., ch. 29, § 5; 1994 L.M.C., ch. 33, § 1; 2001 L.M.C., ch. 21, § 1; 2008 L.M.C., ch.22, § 1; 2009 L.M.C., ch. 2, §§ 1, 2; 2009 L.M.C., ch. 15, § 1; 2009 L.M.C., ch. 23, § 1; 2009 L.M.C., ch. 33, § 2; 2010 L.M.C., ch. 13, § 1; 2011 L.M.C., ch. 9, § 1.)

**Editor's note**—2011 L.M.C., ch. 9, § 2, states in part: Effective Date. This Act takes effect on July 1, 2011 except as otherwise provided. For a member of the Optional Plan, Integrated Plan, or Guaranteed Retirement Income Plan holding the office of County Executive, Councilmember, or Sheriff, the amendments to Sections 33-39(a)(1), 33-39(a)(2), 33-44(c), and 33-40(e)(1) take effect on December 1, 2014. For a member of the Optional Plan, Integrated Plan, or Guaranteed Retirement Income Plan holding the office of State's Attorney, the amendments to Sections 33-39(a)(1), 33-39(a)(2), 33-44(c), and 33-40(e)(1) take effect on January 5, 2015.

2009 L.M.C., ch. 33, § 3, states, in part: Section 2 of this Act takes effect on December 6, 2010. An eligible individual who is an elected official on December 5, 2010, and remains in office on and after December 6, 2010, must decide to participate in the guaranteed retirement income plan on or before May 1, 2011. If an elected official decides to participate between December 6, 2010 and May 1, 2011, that elected official's participation must begin on the first pay period after June 1, 2011.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 2. Eligibility and Qualifications. / Sec. 33-41. Credited service.**

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### **Sec. 33-41. Credited service.**

(a) *Member's credited service.*

(1) A member's credited service is the total service rendered under the employees' retirement system of Montgomery County, plus any credited service earned under the employees' retirement system of the State of Maryland and/or the Montgomery County police relief and retirement fund law plus any other credited service purchased or granted pursuant to this section.

(2) However, credited service earned while an individual is a participant in the elected officials' plan must be used only for the purposes described in Section 33-37(e) and Section 33-55A. Credited service earned while an individual is a participant in the retirement savings plan under Article VIII must be used only as provided in Section 33-37(i).

(3) The Chief Administrative Officer must notify each eligible employee who attains 5 years of County service of the opportunity provided under this Section to purchase credited service. The Chief Administrative Officer must also notify each new employee that any person who transfers from State service or from a dual merit system position may be eligible to transfer credited service to the County retirement system.

(4) Notwithstanding other provisions of this Section, a member must not be granted or permitted to purchase credited service for any period of actual or credited service under another retirement system if the member is receiving retirement benefits or has retained a vested right to retirement benefits from that system, unless federal law provides that the member must be permitted to purchase the credited service.

(5) Member contributions paid under this Section to purchase credited service must not be treated as picked-up contributions.

(b) *Procedures for determining credited service.*

(1) Full-Time Members. Service rendered during the full normal working time in a 12-month period, including paid authorized leave or other leave specifically provided here, will equal one year of credited service. The 12-month period referred to in the preceding sentence is the 12-month period that starts on the date (or the anniversary of the date) the employee first completed one hour of County service as a member.

(2) Part-Time Members. Any member working less than the normal scheduled work week for full-time employees on a continuing basis shall receive one year of credited service for each 12-month period. The 12-month period referred to in the preceding sentence is the 12-month period that starts on the date (or the anniversary of the date) the employee first

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completed one hour of County service as a member.

(3) Combined Full-Time and Part-Time Service.

(A) Except to determine the date that benefits begin under subsection (b)(3)(B), service credits for any member who has a combination of part-time and full-time service must be determined as follows: Each 176 hours equals one month of credited service. Accumulated hours of 88 to 176 equals one month of credited service. An accumulation of less than 88 hours must not be credited, and excess hours must not be carried over from one fiscal year to the next. For both full-time and part-time members, one month's credit must be granted for service of 15 days or more in any one calendar month.

(B) For purposes of determining years of credited service to establish the date of commencement of benefits, credited service means service completed in accordance with paragraphs (b)(1) and (b)(2), plus any service granted or purchased under the retirement system. Years of credited service of less than one full year must be prorated. This subsection does not apply to members who retire before July 1, 1989 or to members who are elected officials on July 1, 1989, and who retire before December 3, 1990.

(c) *Credit for service in the armed forces of the United States, state militia, national guard, or other service covered under the Uniformed Services Employment and Reemployment Rights Act.*

(1) A member who enters the armed forces of the United States, a state militia, national guard, or other service covered under the Uniformed Services Employment and Reemployment Rights Act and does not withdraw member contributions and interest must receive service credit for periods of active military service if the member:

(A) does not remain in the military service for more than 5 years, not including any military service described in Section 4312(c) of Title 38 of the United States Code; and

(B) reports for County service or applies for reemployment and submits proof of military service:

(i) within one year after completing the military service and without any other employment after discharge from the military service; or

(ii) within 2 years after completing the military service, if the member was hospitalized or convalescing from an illness or injury incurred in, or aggravated during, military service.

(2) A member who withdraws member contributions and redeposits the withdrawn contributions with interest at a rate of 6.5% must receive the credited service under

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this Section. The member must make the repayment while employed by the County, and not later than the earlier of the period of military service or 5 years, beginning on the date of reemployment.

(3) The participating agency from which a member enters the military service must contribute on a current basis the funds necessary to purchase retirement service credit while the member is in the military service.

(d) *Credited service as a fire alarm dispatcher, firefighter, or fire officer in Montgomery County.* Any member shall have the opportunity to obtain credit for any period of full-time paid service as a fire alarm dispatcher, firefighter or fire officer in a county fire department (including the Takoma Park fire department) or as rescue service personnel in a county rescue squad if such service has not otherwise been credited. In order to receive credit for such service, the member shall pay, in a lump-sum or by extended payments, the full cost which shall be determined on an actuarial basis.

(e) *Credited service for prior military service.*

(1) In this subsection, “uniformed services” means the United States Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration and the Public Health Service of the United States, and active duty service in the National Guard of any state of the United States.

(2) A member with 5 years of membership in the Employees Retirement System enrolled or re-enrolled on or after July 1, 1978, may obtain credited service for all or part of any military service in the uniformed services of the United States up to a maximum of 48 months. A member exercising this option must pay, in a lump sum or on an extended payment basis, the full actuarial cost for these service credits.

(f) *Use of sick leave for credited service.* An employee must receive credit toward retirement for any accumulated sick leave, up to a maximum of 4,224 hours. Each 176 hours of accumulated sick leave is equal to 1 month of credited service. Accumulated sick leave totaling less than 11 days must not be credited for retirement purposes. Accumulated sick leave totaling 11 to 22 days must be credited as 1 month of service for retirement purposes. An employee who transfers to the Retirement Savings Plan must receive credit toward retirement under the optional plan or integrated plan under Section 33-37(i) for the employee’s accumulated sick leave.

(g) *Credited service for period of sick leave without pay.* Any member who is granted authorized sick leave without pay shall have the opportunity to obtain credited service for up to one (1) year of such absence. Before receiving credited service, the member shall pay both the member contributions and the county contributions on a current basis during the period of time on sick leave without pay.

(h) *Transfers between the county retirement system and any public retirement system*

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*in the State of Maryland.* Under State law, a member entering or leaving County employment may transfer to or from any public retirement system in the State and receive credited service. A member may transfer to the County service credits accumulated under the previous system if the transfer complies with State law. If the member retires within 5 years after transferring to the County, the benefits payable for the transferred service are limited to the benefits that would have been payable under the other plan. The Chief Administrative Officer may provide by regulation adopted under method (3) procedures to assure favorable income tax treatment for members who transfer picked-up contributions between any of the eligible retirement systems. The two systems must have a reciprocity agreement to share contributions under State law.

(i) *Purchase of service credits for prior service with the federal government, a municipality, or another state.* A vested member may purchase prior service credits for any period of membership in the retirement system of the federal government, a municipality, or a state in the United States. Before receiving any of that credited service, the member must pay, in a lump sum or on an extended basis, both the employee and employer share of the actuarial value of the purchased prior service.

(j) *Limitation on credited service.* Credited service purchased may not be used to qualify for vesting or retirement before at least 5 years of membership. Under Section 33-45(a), service credits transferred from a public retirement system in Maryland may be used to qualify for vesting.

(k) *Purchase of part-time service credits.* A member may purchase service credit for any period of career part-time Montgomery County service or career part-time service in a participating agency. A member exercising this option must pay, in a lump sum or on an extended payment basis, the full actuarial cost for prior service credits.

(l) *Purchase of prior State of Maryland and Montgomery County service credits.* A member may purchase service credits for any period of prior temporary or regular State of Maryland or Montgomery County service. A member exercising this option must pay, in a lump sum or on an extended payment basis, the full actuarial cost for prior service credits.

(m) *Purchase of service credits for periods of leave without pay.* A Group F member who is on leave without pay may buy service credits at their full actuarial cost, in a lump sum or on an extended basis, for up to one year of that leave. A member must not buy service credits for a period of leave without pay in connection with an act for which the member was charged with a felony unless the charge is resolved by other than a finding of guilty.

(n) *Payment for purchase of service credits.*

(1) The Chief Administrative Officer may approve a member's request to pay for a purchase of service credits over an extended period, if:

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(A) the payment period does not exceed 5 years; and

(B) the member agrees to pay an additional payment of at least 6 ½ % per year until the purchase is complete.

(2) In extenuating circumstances, the Chief Administrative Officer may approve an extension of the payment period.

(3) A member may pay for the purchase of service credits by having some or all of the member's account balance in an eligible governmental 457(b) plan transferred to the retirement system through a trustee to trustee transfer.

(o) [*Limitation on purchase of credited service.*] Except as required by state or federal law, an elected officials' participant may not be granted or permitted to purchase credited service for any purpose under the elected officials' plan.

(p) Despite any other provision in this Section, a member must not transfer or purchase credited service for membership in a defined contribution or capital accumulation plan or in a plan with both defined contribution and defined benefit elements.

(q) For the guaranteed retirement income plan, subsections (a)-(o) do not apply and credited service must be determined only under this subsection.

(1) Credited service includes the total County service the participant rendered under the guaranteed retirement income plan, the retirement savings plan, the optional retirement plan, the integrated plan, and the elected officials' plan. Each participant must receive one year of credited service for each year of County service while participating in one of the County's retirement plans. Each year of County service ends on the anniversary of the participant's date of participation.

(2) County service includes any period of service in the armed forces of the United States or a state militia or other military service covered under the Uniformed Services Employment and Reemployment Rights Act if the member:

(A) was a member of the retirement savings plan, the optional retirement plan, the integrated plan, or the guaranteed retirement income plan when the military service began;

(B) applied for reemployment or returned to County service within:

(i) one year after discharge from the military service and without any other employment after discharge from the military service; or

(ii) within 2 years after completion of military service if the member was hospitalized or convalescing from an illness or injury incurred or aggravated during



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military service; or

(iii) more than 2 years if circumstances beyond the control of the participant made it impossible or unreasonable for the participant to apply for reemployment within 2 years; and

(C) the total period of military service did not exceed 5 years, excluding periods of military service described under Section 4312(c) of Title 38 of the United States Code.

(3) An employee who did not become a member of the guaranteed retirement income plan solely because the employee was called to active duty before completing 180 days of County employment, must be eligible to receive contribution credit under Sections 33-39 and 33-40 if the employee elects to participate in the guaranteed retirement income plan upon reemployment. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1971 L.M.C., ch. 39, § 2; 1972 L.M.C., ch. 19, § 6; 1974 L.M.C., ch. 31, § 7; 1974 L.M.C., ch. 59, § 3; 1978 L.M.C., ch. 44, § 1; 1986 L.M.C., ch. 56, § 1; 1987 L.M.C., ch. 27, § 7; 1989 L.M.C., ch. 45, § 1.; 1993 L.M.C., ch. 3, § 1; 1993 L.M.C., ch. 8, § 1; 1994 L.M.C., ch. 6, § 1; 1994 L.M.C., ch. 13, § 1; 1998 L.M.C., ch. 30, § 1; 1998 L.M.C., ch. 31, § 1; 2001 L.M.C., ch. 21, § 1; 2006 L.M.C., ch. 20, § 1; 2008 L.M.C., ch. 22, § 1; 2008 L.M.C., ch. 23, § 3; 2008 L.M.C., ch. 25, § 1; 2008 L.M.C., ch. 30, § 1; 2009 L.M.C., ch. 2, § 2; 2009 L.M.C., ch. 33, § 2; 2010 L.M.C., ch. 13, § 1; 2010 L.M.C., ch. 49, § 1.)

**Editor's note**—2009 L.M.C., ch. 33, § 3, states, in part: Section 2 of this Act takes effect on December 6, 2010. An eligible individual who is an elected official on December 5, 2010, and remains in office on and after December 6, 2010, must decide to participate in the guaranteed retirement income plan on or before May 1, 2011. If an elected official decides to participate between December 6, 2010 and May 1, 2011, that elected official's participation must begin on the first pay period after June 1, 2011.

2001 L.M.C., ch. 21, § 2(b), states: Any active employee who was eligible at any time to transfer service credits from any public retirement system in the state under Section 33-41(h), but did not do so within the applicable time period under state law, may transfer all applicable credits to the County retirement system, subject to all applicable requirements of state law, by December 31, 2001. Any transfer under this subsection must be retroactive to the date the employee was originally eligible to apply for the transfer.

1993 L.M.C., ch. 8, § 2, reads as follows:

*"Sec. 2. Limited opportunity to purchase military service credit.*

(a) A member with 5 years of credited service who was enrolled or re-enrolled before July 1, 1978, may obtain credited service for all or part of any service in the uniformed services of the United States, up to a maximum of 48 months, if the member:

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(1) exercises the option to purchase this credited service by December 31, 1993; and

(2) pays, in a lump sum or on an extended payment basis, the sum of:

(A) an amount determined by multiplying the member's salary on the day before the fifth anniversary of service by the member's group contribution rate, multiplied by the number of full years of military service the member wishes to purchase. The member must pay a pro-rata amount for any period less than one year; and

(B) interest on the amount determined under subparagraph (2)(A) at the rate of 4 percent per year from the member's fifth anniversary of service to July 1, 1970, and at the rate of 6 percent per year from July 1, 1970 to the day the member exercises the option to purchase credited service under this Section.

However, if under federal law a person must be permitted to purchase a period of actual or credited service under another retirement system when that person is receiving retirement benefits or has retained a vested right to retirement benefits from that system, the person must pay the full actuarial cost of the service to be credited.

(b) In this Section, 'uniformed services' means the Army, Navy, Air Force, Marine Corps, and Coast Guard."

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 3. Benefits.**

**Division 3. Benefits.**

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 3. Benefits. / Sec. 33-42. Amount of pension at normal retirement date or early retirement date.**

**Sec. 33-42. Amount of pension at normal retirement date or early retirement date.**

(a) *Average final earnings.* For a full-time or part-time career member enrolled on or before June 30, 1978, and continuously enrolled to date of retirement, average final earnings shall be the regular earnings for the twelve-month period immediately preceding retirement, or any consecutive twelve-month period, whichever is greater. Whenever such member is on leave without pay status during part of the final twelve-month period of membership, average final

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earnings will be based on regular earnings for the last twelve (12) months during which the member was in full pay status or any consecutive twelve-month period, whichever is greater. Average final earnings for each employee who became a member on or before June 30, 1978, and remained a member continuously to the date of retirement, who has full-time service credits and is a part-time career member at time of retirement are the average hourly rate of earnings during the last twelve (12) months of membership or any consecutive twelve-month membership period, whichever is greater, multiplied by two thousand eighty (2,080). The average hourly rate for any twelve-month period is equal to the total regular earnings of the member, divided by the total number of hours worked during the period. Average final earnings for each employee who became a member on or after July 1, 1978, shall be the average of regular annual earnings of the member for the thirty-six-month period immediately preceding retirement, or any consecutive thirty-six-month period, whichever is greater. Whenever such employee is on leave without pay status during part of the final thirty-six-month period of membership, average final earnings will be based on regular earnings for the last thirty-six (36) months during which the member was in full pay status, or any consecutive thirty-six-month period, whichever is greater. Average final earnings for an employee who became a member on or after July 1, 1978, who has full-time service credits and is a part-time career member at the time of retirement will be the average hourly rate of earnings during the thirty-six-month period immediately preceding retirement or any consecutive thirty-six-month period, whichever is greater, multiplied by two thousand eighty (2,080). The average hourly rate for any thirty-six-month period is equal to the total regular earnings of the member divided by the total number of hours worked during the period.

(b) *Amount of pension at normal retirement date.*

(1) Pension amount for an Optional Retirement Plan member.

(A) Except for a Group E, F, or G member, the annual pension for a member of the optional retirement plan who retires on a normal retirement must equal 2 percent of average final earnings multiplied by years of credited service, up to a maximum of 36 years, plus sick leave credits. Years of credited service of less than one full year must be prorated.

(B) For a Group E member who is a member of the optional plan and retires on a normal retirement, the annual pension must equal 2.4 percent of average final earnings for each of the first 25 years of credited service completed, and 2 percent of average final earnings for each year of credited service of more than 25 years, to a maximum of 31 years plus sick leave credits. Years of credited service of less than one full year must be prorated. Sick leave credits used for years in excess of 25 years must be credited at 2 percent of average final earnings. The maximum benefit with the application of sick leave credits must not exceed 76 percent of average final earnings.

(C) For a Group F member who is a member of the optional plan and retires on a normal retirement, the annual pension must equal 2.4% of average final earnings

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multiplied by years of credited service, up to a maximum of 36 years, including sick leave credits. Years of credited service of less than one full year must be prorated. The maximum benefit with the application of sick leave credits must not exceed 86.4% of average final earnings.

(D) For a Group G member who is a member of the optional plan and retires on a normal retirement, the annual pension must equal 2 ½ percent of average final earnings for each of the first 20 years of credited service completed and 2 percent of average final earnings for each year or prorated portion of a year of credited service of more than 20 years, to a maximum of 31 years plus sick leave credits.

(2) Pension amount for an Integrated Retirement Plan member.

(A) For a Group A, B, or H member in the integrated retirement plan who retires on a normal retirement, the annual pension must be computed as follows:

(i) From date of retirement to the month of attainment of Social Security retirement age: 2 percent of average final earnings multiplied by years of credited service up to a maximum of 36 years, plus sick leave credits. Credited service of less than one full year must be prorated.

(ii) From the month of attainment of Social Security retirement age: 1 ¼ percent of average final earnings up to the Social Security maximum covered compensation level at time of retirement, plus 2 percent of average final earnings above the Social Security maximum covered compensation level at time of retirement, multiplied by years of credited service up to a maximum of 36 years, plus sick leave credits. Credited service of less than one full year must be prorated. This amount is subject initially to the cost-of-living adjustment provided in Section 33-44(c) from date of retirement to Social Security retirement age.

(B) For a Group D member, the annual pension for a member of the integrated retirement plan who retires on a normal retirement must be computed as follows:

(i) From date of retirement to the month of attainment of social security retirement age: 2 percent of average final earnings multiplied by years of credited service up to a maximum of 36 years, plus sick leave credits. Years of credited service of less than one full year must be prorated.

(ii) From the month of attainment of social security retirement age: one percent of average final earnings up to the social security maximum covered compensation level at time of retirement, plus 2 percent of average final earnings in excess of the social security maximum covered compensation level at time of retirement, multiplied by years of credited service, up to a maximum of 36 years, plus sick leave credits. Years of credited service of less than one full year must be prorated. This amount is subject initially to the

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cost-of-living adjustment provided in Section 33-44(c) from date of retirement to Social Security retirement age, if any.

(C) For a Group E member in the integrated retirement plan who retires on a normal retirement, the annual pension must be computed as follows:

(i) From the date of retirement to the month that the member reaches Social Security normal retirement age: 2.4 percent of average final earnings for each of the first 25 years of credited service completed, and 2 percent of average final earnings for each year of credited service of more than 25 years, to a maximum of 31 years plus sick leave credits. Years of credited service of less than one full year must be prorated. Sick leave credits used for years in excess of 25 years must be credited at 2 percent of average final earnings. The maximum benefit with the application of sick leave credits must not exceed 76 percent of average final earnings.

(ii) From the month the member reaches Social Security normal retirement age: 1.65% of average final earnings up to the Social Security maximum covered compensation in effect on the date of retirement for each year of credited service to a maximum of 31 years plus sick leave credits, plus 2.4% of average final earnings above the Social Security maximum covered compensation in effect on the date of retirement for each of the first 25 years of credited service completed, and 2% of average final earnings above the Social Security maximum covered compensation in effect on the date of retirement for each year of credited service of more than 25 years, to a maximum of 31 years plus sick leave credits. Years of credited service of less than one full year must be prorated. Sick leave credits used for years in excess of 25 years must be credited at 2 percent of average final earnings above the Social Security maximum covered compensation in effect on the date of retirement. The County must increase this initial amount by the cost-of-living adjustments provided under Section 33-44(c) for the period from the member's date of retirement to the month in which the member reaches Social Security retirement age.

(D) For a Group F member in the integrated retirement plan who retires on a normal retirement, the annual pension must be computed as follows:

(i) From date of retirement to the month of attainment of Social Security retirement age: 2.4% of average final earnings multiplied by years of credited service up to a maximum of 36 years, including sick leave credits. Credited service of less than one full year must be prorated. The maximum benefit with the application of sick leave credits must not exceed 86.4% of average final earnings.

(ii) From the month the member reaches Social Security normal retirement age: 1.65% of average final earnings up to the maximum of 36 years, including sick leave credits, up to the Social Security maximum covered compensation in effect on the date of retirement, plus 2.4% of average final earnings above the Social Security

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maximum covered compensation in effect on the date of retirement, multiplied by years of credited service up to a maximum of 36 years, including sick leave credits. Years of credited service of less than one full year must be prorated. The County must increase this initial amount by the cost-of-living adjustments provided under Section 33-44(c) for the period from the member's date of retirement to the month in which the member reaches Social Security retirement age.

(E) The County must compute the annual pension of a Group G member in the integrated retirement plan who retires on a normal retirement as follows:

(i) from the date of retirement to the month that the member reaches Social Security retirement age, the following percentages of average final earnings apply:

(a) 2 ½ percent, for each of the first 20 years of credited service;

(b) 2 percent, for each year of credited service of more than 20 years to a maximum of 31 years, plus sick leave credits; and

(c) 0 percent for years after year 31 (except sick leave credits referred to in subclause (b)); and

(ii) from the month the member reaches Social Security retirement age, the percentages specified in clause (i) must be reduced, respectively, by the following percentages of average final earnings for the portion of any amount equal to or less than the Social Security maximum covered compensation in effect on the date of retirement:

(a) 0.78125 percent, for each of the first 20 years of credited service; and

(b) 0.625 percent for each year of credited service of more than 20 years, to a maximum of 31 years, plus sick leave credits.

(iii) The County must increase the initial amount of a pension computed under (ii) above by the cost-of-living adjustments provided under Section 33-44(c) for the period from the member's date of retirement to the month in which the member reaches Social Security retirement age.

(iv) The County must prorate any portion of a year described in this subparagraph.

(3) Elected Officials' Plan. An elected officials' participant who retires on or after the normal retirement date of that elected officials' participant may receive that elected officials' participant's account balances in the elected officials' plan.

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(4) Guaranteed retirement income plan. A member who retires on or after the member's normal retirement date, except a member who receives a contribution under Section 33-42A, may receive that member's vested guaranteed retirement income plan account balance under Section 33-44. A member who receives a contribution under Section 33-42A must not receive a distribution of the member's guaranteed retirement income plan account balance until the member attains the Social Security retirement age.

(c) *Amount of pension at early retirement date and early retirement reduction factors.*

(1) The yearly amount of pension for a member who retires on an early retirement date will be a percentage of the amount of normal retirement benefit which would have been paid on the basis of years of credited service including sick leave credits. The schedule of early retirement reduction factors is as follows:

<i>Years Early</i>	<i>Reduction Factor</i>	<i>Percentage of Normal Retirement Benefit</i>
1	2%	98%
2	5%	95%
3	9%	91%
4	14%	86%
5	20%	80%
6	28%	72%
7	36%	64%
8	44%	56%
9	52%	48%
10	60%	40%

(2) An elected officials' participant who retires before the normal retirement date of that elected officials' participant may receive the elected officials' participant's vested account balances in the elected officials' plan.

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(3) Guaranteed retirement income plan. A participant who terminates employment before the member's normal retirement date may receive the participant's vested guaranteed retirement income plan account balance upon termination of employment under Section 33-44.

(d) *Adjustment for pension payments previously paid.*

(1) If a member who retires has previously retired and received pension payments, the number of years of prior service plus the number of years of service accrued after re-entering the retirement system will be used in computing the amount of pension at subsequent retirement.

(2) If a member receives service connected disability pension payments, and subsequently returns to work and re-enters the retirement system within 5 years of the date that disability retirement commenced and prior to attaining age 55, if a group A or H member, or age 45 if a group B, E, F, or G member, the number of years of prior service, plus the number of years the member was on retirement, plus the number of years accrued after re-entering the system must be used in computing the amount of pension at subsequent retirement.

(e) *Early retirement on full benefits.* Notwithstanding other provisions of this article, whenever a member's credited service plus age equals eighty-five (85), the member may elect early retirement and the early retirement reduction factors shall not apply, provided the member has at least thirty-five (35) years of credited service.

(f) *Pension limitation.* Notwithstanding any other provision of this section, the initial retirement benefit as provided under this section for those employees enrolled or re-enrolled on or after July 1, 1978, when combined with the primary benefit from social security for which the member is eligible or will be eligible at social security retirement age, must not exceed 90 percent of member's average final earnings. This limitation does not apply to the cost-of-living adjustments received under subsection (c) of section 33-44.

(g) *Maximum annual contribution to elected officials' plan.*

(1) Regardless of any other provision in this article, the annual addition described in this subsection that is allocated in any limitation year to the retirement accounts of any elected officials' participant must not exceed the lesser of:

(A) \$40,000.00 (the "dollar limitation"), as adjusted by the Internal Revenue Service from time to time to reflect cost of living increases; or

(B) 100 percent of the participant's compensation (as defined below) (the "percent limitation").

(2) For purposes of this subsection (g), the annual addition must be comprised



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of:

(A) County elected officials' contributions; and

(B) The lesser of:

(i) One-half of the total of required and voluntary elected officials' participant contributions allocated to the elected officials' participant's required and voluntary elected officials' participant contributions accounts; or

(ii) All of the required and voluntary elected officials' participant contributions allocated to the required and voluntary elected officials' participant contributions accounts in excess of six (6) percent of the elected officials' participant's compensation.

(3) In this subsection (g), only:

(A) for purposes of applying Section 415 of the Internal Revenue Code, "compensation" has the same meaning as provided in Treasury Regulation Section 1.415-2(d)(1), including amounts contributed at the election of the participant that are not includible in the gross income of the participant under Sections 125, 132(f)(4), 402(g)(3), or 457 of the Internal Revenue Code; and

(B) The limitation year means the twelve (12) consecutive calendar months comprising the fiscal year of the county.

(4) County elected officials' contributions that would be allocated to county elected officials' contributions accounts of elected officials' participants but for the limitations of this subsection (g), must be carried over to subsequent years and allocated in order of time to the county elected officials' contributions accounts which would have received such contributions but for the limitations set forth in this subsection (g). Amounts carried over must be allocated by the chief administrative officer to a suspense account that must be invested in a fixed income fund. Any earnings of the suspense account must be allocated ratably among the county elected officials' contributions accounts of all the elected officials' participants except as otherwise provided in this subsection (g).

(5) For purposes of this subsection, the maximum dollar limitation of \$40,000.00 must be automatically increased as permitted by United States treasury regulations to reflect cost-of-living adjustments.

(6) Multiple plan participation. This paragraph applies only for limitation years ending before January 1, 2000. Regardless of paragraph (1), the otherwise permissible annual benefits for any participant in the elected officials' plan who also participates in another qualified plan sponsored by the County or a participating agency that is a defined benefit plan

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must be further adjusted to the extent necessary to prevent disqualification of the plans under Section 415 of the Internal Revenue Code. Section 415 imposes the following additional limitations on the benefits payable to a participant in the elected officials' plan who also may be participating in another qualified plan of the county or any participating agency that is a defined benefit plan:

(A) If an individual is a participant at any time of both a defined benefit plan and a defined contribution plan maintained by the county or any participating agency, the sum of the “defined benefit plan fraction” and the “defined contribution plan fraction” for any limitation year must not exceed 1.0. In making this adjustment, the maximum benefit payable under the elected officials' plan must be reduced to the extent necessary to meet the multiple plan limitation.

(i) **Defined Benefit Plan Fraction.** The defined benefit plan fraction for any limitation year is a fraction, the numerator of which is the elected officials' participant's projected aggregate annual benefit under all defined benefit plans of the county or any participating agency determined at the close of the limitation year, and the denominator of which is the lesser of:

(a) 1.25 multiplied by the defined benefit dollar limitation set forth in section 415(b)(1)(A) of the Internal Revenue Code as applicable from time to time, or

(b) 1.4 multiplied by the defined benefit compensation limitation set forth in section 415(b)(1)(B) of the Internal Revenue Code.

(ii) **Defined Contribution Plan Fraction.** The defined contribution plan fraction for any limitation year is a fraction, the numerator of which is the sum of the annual additions to the elected officials' participant's accounts under all defined contribution plans of the county or any participating agency in such limitation year and for all prior limitation years, and the denominator of which is the sum of the applicable maximum amounts of annual additions which could have been made under section 415(c) of the Internal Revenue Code for the limitation year and for all prior limitation years of the participant's employment, assuming, for this purpose, that section 415(c) had been in effect during such prior year. The applicable maximum amount for any limitation year must be equal to the lesser of 1.25 multiplied by the dollar limitation in effect for each such limitation year under subsection 415(c)(1)(A) of the Internal Revenue Code, or 1.4 multiplied by twenty-five (25) percent of the elected officials' participant's total annual compensation for each such year.

(iii) For purposes of the above limitations, all defined benefit plans of the county or any participating agency, whether or not terminated, are to be treated as one defined benefit plan and all defined contribution plans of the county or any participating agency, whether or not terminated, are to be treated as one defined contribution plan. defined

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contribution plan.

(h) *Maximum annual benefit.* Despite any other provision governing the retirement system, the annual benefit of a member must not exceed the limits of Internal Revenue Code Section 415 that apply to the plan. The Chief Administrative Officer must freeze or reduce a member's annual benefit to comply with this subsection.

(i) *Retirement incentive Program*

(1) *Eligibility.*

(A) A Group A or H member may participate in the Retirement Incentive Program if the member is eligible for normal retirement as of July 1, 2008 or if the member is eligible for early retirement and within two years of meeting the criteria for normal retirement as of July 1, 2008

(B) An elected or appointed official is not eligible to participate.

(C) A member who wishes to participate must notify the Office of Human Resources in writing by May 21, 2008. Any member chosen to participate must complete all required forms and retire as of July 1, 2008.

(D) Any member employed by a participating agency is not eligible to participate.

(E) A member who retires on a disability retirement under Section 33-43 or a discontinued service retirement under Section 33-45(d) is not eligible to participate.

(2) *Early Retirement Reduction.*

(A) A member who is eligible for early retirement and within one year of meeting the criteria for normal retirement must not have any early retirement reduction applied to the member's pension benefit.

(B) A member who is eligible for early retirement and within two years of meeting the criteria for normal retirement must have an early retirement reduction factor of 2% applied to the member's pension benefit.

(3) *Additional Retirement Benefit.*

In addition to a member's pension benefit calculated under this Section, the member must receive an additional \$25,000 retirement benefit. The member may elect to receive the additional \$25,000 retirement benefit as follows:

(A) When the member retires, the additional \$25,000 retirement benefit

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must be paid:

- (i) to the member in one lump sum;
- (ii) as a direct rollover to an eligible retirement plan (as defined in the Internal Revenue Code); or
- (iii) a combination of (i) and (ii);

(B) Beginning on the member's retirement date, 12 monthly installment payments must be paid:

- (i) to the member;
- (ii) as a direct rollover to an eligible retirement plan (as defined in the Internal Revenue Code); or
- (iii) a combination of (i) and (ii); or

(C) as an additional retirement benefit paid over the member's lifetime in the pension option elected by the member under Section 33-44.

(4) *Cost of Living.*

Cost of living adjustments do not apply to this benefit. A cost of living adjustment under section 33-44(c) must not include the \$25,000 additional retirement benefit.

(5) *Approval.*

The Chief Administrative Officer must approve a request to participate in the program from a member employed in the Executive Branch. The Council Administrator must approve a request to participate in the program from a member employed in the Legislative Branch. If more than 20% of members eligible to participate in the Executive Branch, either Countywide or by department, apply to participate in the program, the Chief Administrative Officer may limit the number of participants, either on a Countywide or department basis. If more than 20% of members eligible to participate in the Legislative Branch apply to participate in the program, the Council Administrator may limit the number of participants. The Chief Administrative Officer and the Council Administrator must base any limits on the number of participants on years of service with the County. Years of service with the County must not include service with a participating agency, purchased service, or sick leave.

(6) *Survivor Benefit.*

If a member elects to receive the additional retirement benefit over a 12 month period and the member dies before receiving all 12 payments, the remaining payments must not be paid. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1971 L.M.C., ch. 39, § 3; 1972 L.M.C.,

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ch. 19, § 7; 1974, L.M.C., ch. 31, §§ 8, 9; 1978 L.M.C., ch. 44, § 1; 1985 L.M.C., ch. 49, § 3; 1986 L.M.C., ch. 56, § 2; 1987 L.M.C., ch. 27, § 7; 1987 L.M.C., ch. 44, § 1; 1989 L.M.C., ch. 45, § 1; 1998 L.M.C., ch. 31, § 1; 1999 L.M.C., ch. 26, § 1; 2001 L.M.C., ch. 21, § 1; 2001 L.M.C., ch. 28, §§ 6, 15 and 16; 2003 L.M.C., ch 3, § 1; 2003 L.M.C., ch. 13, § 1; 2003 L.M.C., ch. 31, § 1; 2004 L.M.C., ch. 14, § 1; 2007 L.M.C., ch. 3, § 1; 2008 L.M.C., ch. 13, § 1; 2008 L.M.C., ch. 22, § 1; 2008 L.M.C., ch. 23, § 4; 2010 L.M.C., ch. 13, § 1; 2010 L.M.C., ch. 49, § 1; 2013 L.M.C., ch. 4, § 1.)

**Editor's note**—See County Attorney Opinion dated 5/5/09 regarding the County Executive's ability to impound appropriated funds.

2004 L.M.C., ch. 14, § 2, states: Transition. Sections 33-42(b)(2) and 33-46(b) of the Code, as amended by this Act, apply to eligible Group G members who file applications to retire on or after July 1, 2004.

2003 L.M.C., ch. 3, § 2, states: Rule of Interpretation. The amendments made by Section 1 of this Act must be interpreted to comply with requirements stated in letters issued on December 11, 2002, and January 14, 2003, by the Internal Revenue Service to the County regarding the continued qualification of County employee retirement plans. 2003, ch. 3, § 3 states, in part: Retroactivity. (b) The amendments made by Section 1 of this Act to Code Section 33-42(h)(1)(A) and (B) take effect January 1, 2002. (c) The amendments made by Section 1 of this Act to Section 33-42(h)(3)(A) take effect January 1, 2002. (d) The amendments made by Section 1 of this Act to Section 33-42(h)(5) take effect January 1, 2002. (e) The amendments made by Section 1 of this Act to Section 33-42(h)(6) take effect January 1, 2000.

The effective date of the amendments made to this section by 2001 L.M.C., ch. 28, § 6, is the same effective date as 1998 L.M.C., ch. 31, § 1.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 3. Benefits. / Sec. 33-42A. 2010 Retirement Incentive Program.**

### **Sec. 33-42A. 2010 Retirement Incentive Program.**

(a) Definitions.

*Affected class* means an occupational class or a group of occupational classes in a department, including all classes in an occupational series at and below the budget level class, if:

(1) the class includes a position that the department director intends to eliminate; and

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(2) eliminating the position may cause an employee in the class to be demoted or terminated.

*Affected employee* means an employee assigned to a position in an affected class who has received a notice of intent or notification of a Reduction in Force (RIF).

*Enhanced retiree life insurance benefit* means no reduction in any provided basic life insurance benefit for the first 10 years after the employee's retirement date.

*Enhanced retiree health plan cost sharing benefit* means a County contribution of 90% of the premium for individual coverage for any health insurance plan provided by the County for the first 5 years after the employee's retirement date.

(b) Eligibility.

(1) A Group A, E or H member who is employed in a part time or full time position may apply to participate in the 2010 Retirement Incentive Program if the member:

(A) is eligible for:

(i) normal retirement on or before June 1, 2010; or

(ii) early retirement, and is within 2 years of meeting the criteria for normal retirement on June 1, 2010; and

(B) is an affected employee.

(2) A member is not eligible to participate in the 2010 Retirement Incentive Program if the member:

(A) receives a disability retirement under Section 33-43;

(B) receives a discontinued service retirement under Section 33-45(d);

(C) is an elected or appointed official; or

(D) is employed by a participating agency.

(3) A member must apply to participate in the 2010 Retirement Incentive Program, must complete all required forms by May 14, 2010, and must retire on June 1, 2010.

(4) A member who applies for a disability retirement under section 33-43 must not receive any benefit under this Section unless the member's application for disability retirement is denied and all appeals from that denial are exhausted.

(c) Early retirement reduction. A member's pension benefit must not be reduced for early retirement if the member is eligible for early retirement and within 2 years of eligibility for

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normal retirement.

(d) Additional Retirement Benefit. In addition to the pension benefit calculated under this Section, a participant must elect one of the following additional retirement benefits. A part time participant must receive a pro-rata portion of the applicable retirement benefit, based on that participant's percent of budgeted full time employment.

- (1) \$35,000 pension benefit;
- (2) \$30,000 pension benefit and an enhanced retiree life insurance benefit; or
- (3) \$28,000 pension benefit and an enhanced retiree health plan cost sharing benefit.

(e) The participant must elect to receive the cash portion of the additional pension benefit paid under Subsection (d) as:

- (1) a single lump sum on July 1, 2010:
  - (A) to the member or the member's designated beneficiary if the member dies before receiving the lump sum payment;
  - (B) as a direct rollover to an eligible retirement plan (as defined in the Internal Revenue Code); or
  - (C) a combination of (A) and (B);
- (2) 12 equal monthly payments beginning on July 1, 2010:
  - (A) to the member or the member's designated beneficiary if the member dies before receiving all 12 payments;
  - (B) as a direct rollover to an eligible retirement plan (as defined in the Internal Revenue Code); or
  - (C) a combination of (A) and (B);
- (3) a contribution to an account established for the member under the guaranteed retirement income plan. A member must receive the member's guaranteed retirement income plan account balance when the member attains the Social Security retirement age; or
- (4) an additional pension benefit paid over the member's lifetime in the pension option elected by the member under Section 33-44, beginning on July 1, 2010.

(f) Cost of Living. Any cost of living adjustment does not apply to this benefit. A cost of living adjustment under Section 33-44(c) must not include the additional pension benefit

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paid under this Section.

(g) Approval. The Chief Administrative Officer must approve a request to participate in the program from a member employed in the Executive Branch. The Council Administrator must approve a request to participate from a member employed in the Legislative Branch. The Chief Administrative Officer and the Council Administrator must not approve more applications from an affected class than the number of positions that are abolished in the affected class. The Chief Administrative Officer and the Council Administrator may disapprove an application if a vacancy created by a member participating in the program cannot be filled by a member of an affected class. If more members apply to participate in the program than the number of positions abolished, the participants must be approved in order of County seniority calculated under the RIF personnel regulation in the following order:

- (1) participants who applied for the proposed 2009 Retirement Incentive Program; and
- (2) all other participants.

(h) Repayment. A participant must repay the lump sum benefit received to the Employees' Retirement System Trust Fund before returning to County service as an employee or under a contract. (2010 L.M.C., ch. 13, § 2; 2013 L.M.C., ch. 4, § 1.)

**Editor's note**—2010 L.M.C., ch 13, § 3, states: Reports. By July 1, 2010, the Executive must submit a report to the Council that lists the number of employees in each affected class within each department or office who, due to the abolishment of positions in the approved FY11 operating budget, either:

- (a) retired with a discontinued service pension; or
- (b) participated in the retirement incentive program.

The Executive's Recommended Budgets for FY12, FY13, and FY14 must compare the number of positions in each class of positions eligible for the retirement incentive program approved for funding in FY11 with the number of positions in the same class recommended for funding in the recommended budget.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 3. Benefits. / Sec. 33-43. Disability retirement. [Note]**

**Sec. 33-43. Disability retirement. [Note](2)**



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(a) *Applicability.* This Section applies to an application for disability benefits filed by any member or a medical reevaluation of a disability retiree under subsection (g).

(b) *Definitions.* In this Section, the following words and phrases have the following meanings:

*Applicant* means any member who has filed an application for disability retirement under subsection (d)(1).

*Certified representative* means an employee organization certified under Section 33-79, 33-106, or 33-151 to represent a bargaining unit.

*Disability Arbitration Board* or *Board* means one of the 3 panels designated under subsection (m)(1) to review an appeal of the Chief Administrative Officer's final decision regarding an application for disability benefits filed by any member except a member of the Police Bargaining Unit.

*Disability Review Panel* or *Panel* means the 4 medical doctors appointed as Panel members by the Chief Administrative Officer under subsection (c).

*Medical doctor* means a doctor of medicine or osteopathy who graduated from a medical school accredited by the American Medical Association and is licensed to practice medicine in Maryland.

*Medical specialty* means a field of medicine, such as orthopedic surgery or neurology, which requires specialized training and certification.

*Occupational medicine* means a medical speciality which focuses on the health of workers, including the ability to perform work; the physical, chemical, biological, and social environments of the workplace; and the health outcomes of environmental exposures. Practitioners of occupational medicine address the promotion of health in the work place and the prevention and management of occupational and environmental injury, illness, and disability.

*Police Disability Arbitration Board* or *Police Board* means the 3 persons designated under subsection (m)(1) to review an appeal of a decision by the Chief Administrative Officer affecting a member of the Police Bargaining Unit's right to disability benefits.

*Residual functional capacity* means what the individual can still do, despite the individual's impairment. The County must give the term *residual functional capacity* the same meaning as the term is given by the U.S. Social Security Administration.

*Substantial gainful activity* means a level of productive work that requires significant physical or mental duties, or a combination of both, performed for pay or profit on a full- time or part-time basis. An individual is able to perform a substantial level of work if the individual is able to earn more than the U.S. Social Security Administration's current monthly

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earnings limit for a disabled person. The County must give the term substantial gainful activity the same meaning as the term is given by the U.S. Social Security Administration.

(c) *Selection of the Disability Review Panel.*

(1) The Chief Administrative Officer must appoint 4 members of the Disability Review Panel from a list of at least 5 impartial, unbiased medical doctors willing and able to serve provided by one or more impartial medical organizations retained by the Chief Administrative Officer. If the list of doctors provided by the impartial medical organization is not agreed to by the certified representatives and the County, the certified representatives must strike 1 name from the list and the County must strike 1 name from the list by alternating strikes. The Chief Administrative Officer must appoint a member from the remaining 3 names on the list.

(2) The Chief Administrative Officer must appoint members who are licensed to practice medicine and certified in a medical specialty under standards established by the American Board of Medical Specialties (or a successor organization). At least 1 member must be either:

(A) certified by the American Board of Preventive Medicine (or a successor organization) as a specialist in occupational medicine; or

(B) certified in a different medical specialty and have at least 10 years of experience practicing occupational medicine.

(3) (A) The Chief Administrative Officer must appoint members under subsection (c)(1) for staggered 3-year terms. To implement the staggered terms, the Chief Administrative Officer must appoint the first member to a 3-year term, the second member to a one-year term, and the third and fourth members to a 2-year term. After these initial appointments, the Chief Administrative Officer must appoint all members to 3-year terms, except for any member appointed under subsection (c)(6) to fill a vacancy.

(B) After the Chief Administrative Officer appoints or reappoints a Panel member, the Chief Administrative Officer must promptly send each certified representative a copy of the document confirming the appointment.

(4) When a Panel member's term expires, the Panel member may be reappointed to a new 3-year term unless, at any time within 30 days to 60 days prior to the expiration of the term, a certified representative notifies the County and the other certified representatives or the County notifies the certified representatives that it objects to the reappointment of the Panel member. If there is no objection, the Panel member is eligible to serve an additional term or terms.

(5) If a Panel member declines to be reappointed to the Panel, the Chief Administrative Officer must appoint a new Panel member from a list of at least 5 medical doctors

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as provided for in subsection (c)(1).

(6) If a vacancy on the Panel is created by a Panel member's death, disability, resignation, non-performance of duty, or other cause, the Chief Administrative Officer must appoint a medical doctor to complete the Panel member's term from a list of at least 5 medical doctors as provided for in subsection (c)(1).

(7) The County must pay the impartial medical organization retained by the County and each Panel member reasonable compensation, as determined by the Chief Administrative Officer, for services rendered.

(d) *Disability retirement procedures.*

(1) An application for disability retirement may be filed with the Chief Administrative Officer by:

- (A) a member;
- (B) a certified representative on behalf of a represented member or
- (C) the department, office, or agency head under subsection (k).

(2) The Disability Review Panel must consider an application for disability retirement benefits filed by a member or a certified representative. The Panel must determine if an applicant is eligible for non-service-connected disability or service-connected disability in accordance with subsections (e)(2) through (4) and subsection (f).

(3) Subject to the limitations in subsection (f)(4)(E), the Panel may consider any information or material submitted by the applicant, the certified representative or the County.

(4) Before the Panel meets to review an application for a member other than a member of the Firefighter/Rescuer Bargaining Unit, the Panel must advise each party of the deadline date for submitting information to the Panel. The Panel must allow a reasonable amount of time for the parties to submit additional information, and may extend the deadline at the request of either party for good cause shown.

(5) Except for information from a member of the Firefighter/Rescuer Bargaining Unit, the Panel must not accept or consider information from a member if the information is received after the established deadline date unless the information is related to:

- (A) the applicant's reinjury that occurred or was diagnosed after the deadline date; or
- (B) a change in the applicant's medical condition that occurred or was diagnosed after the deadline date.

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(6) The Panel must meet in person, by telephone conference, or by video conference, and review and consider all evidence submitted to it no later than 60 days after the application is filed. A Panel must include either 2 or 3 members. At least 2 members must vote in favor of a decision to take any action under this Section.

(7) Within 30 calendar days after the Panel's last meeting at which the application was considered, the Panel must issue a written recommendation to the Chief Administrative Officer regarding whether the applicant meets the criteria for disability retirement benefits for non-service-connected disability in accordance with subsections (e)(2), (3) and (4) or service-connected disability in accordance with subsection (f).

(8) (A) Before making its recommendation, the Panel must:

(i) direct the applicant to undergo an independent medical examination (including all relevant medical tests) by a medical doctor who is not a member of the Disability Review Panel, unless the Panel finds that a medical examination is unnecessary because of the nature and severity of the injury or illness; and

(ii) if required for the Panel to make a recommendation as to residual functional capacity or substantial gainful capacity, request an independent vocational assessment.

(B) The County must pay the cost of the examination and assessment. The results of the examination, including findings, conclusions, medical opinions and diagnoses, must be given to the applicant or the applicant's representative immediately after the County or the Panel receives it.

(C) The Panel must issue its written recommendation within 30 days after the Panel receives the later of:

(i) the full report from the medical doctor who conducted the examination; or

(ii) the full report of the results of the independent vocational assessment.

(9) Within 20 calendar days following receipt of the Panel's written recommendation, the Chief Administrative Officer or designee must issue a final decision regarding whether the applicant meets the criteria for disability retirement benefits for non-service-connected disability in accordance with subsection (e) or service-connected disability in accordance with subsection (f).

(10) A disability retirement is effective on the date a member exhausts all accrued sick leave and accrued compensatory leave in excess of 80 hours, if any, or on the date

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the application is approved by the Chief Administrative Officer, whichever comes first.

(11) For a Group F or Group G member, the amount of any lump sum retroactive disability retirement benefit must be reduced by the total amount of any temporary total disability, temporary partial disability, or permanent partial disability payments that the County paid to the employee under the Workers' Compensation laws after the disability retirement took effect.

(e) *Non-service-connected disability retirement.* A member may be retired on a non-service-connected disability retirement if the member:

- (1) has 5 years of credited service;
- (2) is mentally or physically incapacitated for the further performance of duty as the result of an illness or injury incurred after enrollment as a member, the incapacity is not due to the member's willful negligence, and the incapacity is likely to be permanent. In extenuating circumstances, the Chief Administrative Officer may waive the requirement that a member's incapacity is likely to be permanent and may approve a temporary disability retirement for one or more one-year periods until the incapacity is either removed or it becomes apparent that it is likely to be permanent;
- (3) is not eligible for service-connected disability retirement; and
- (4) is unable to productively perform the duties of another available position for which qualified.

(f) *Service-connected disability retirement.*

- (1) A member may be retired on a service-connected disability retirement if:
  - (A) the member is totally incapacitated for duty or partially and permanently incapacitated for duty as the natural and proximate result of an accident occurring, or an occupational disease incurred or condition aggravated while in the actual performance of duty;
  - (B) the incapacity is not due to the member's willful negligence;
  - (C) the incapacity is likely to be permanent; and
  - (D) the member is unable to perform the duties of either:
    - (i) the occupational classification to which assigned at the time disability occurred; or
    - (ii) a position of comparable status within the same department

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for which the member is qualified.

(E) For an accidental injury that does not cause mental impairment, the member:

(i) reports the claimed accidental injury as soon as practicable, but no later than one year after the applicant knew or should have known that the injury is likely to be disabling; or

(ii) submits a claim for Workers' Compensation benefits for the accidental injury that is not dismissed as untimely.

(F) The time periods for reporting in subparagraphs (i) and (ii) do not begin while the member is unable to report because of incapacitating injuries.

(G) For an accidental injury that occurs after July 1, 2009, the member must apply for disability benefits:

(i) within one year after separation from County service or before July 1, 2010, whichever is later; and

(ii) if the applicant is a member of Group F, within 5 years after the date of the accident causing the impairment or before July 1, 2014, whichever is later, unless the member is in a chronic incapacity duty assignment.

(2) A Group F member who otherwise satisfies the requirements of subsection (f)(1) must not be denied a disability retirement because the member is able to perform a chronic incapacity duty assignment.

(3) In extenuating circumstances, the Chief Administrative Officer may waive the requirement that a member's incapacity is likely to be permanent and may approve a temporary disability retirement for one or more one-year periods until the incapacity is either removed or it becomes apparent that it is likely to be permanent.

(4) A Group G member who has an occupational disease that is compensable under Section 9-503 of the Maryland Workers' Compensation Act or who incurs esophageal, lymphatic, testicular, brain, lung, bladder, or kidney cancer, multiple myeloma, melanoma, or any blood borne pathogen, is entitled to receive service- connected disability benefits if:

(A) the employee became a member of Group G on or after July 1, 1999, and did not use, or get terminated for using tobacco products for any purpose either on-duty or off-duty while employed by the County as a Group G member; or

(B) the employee became a member of Group G before July 1, 1999  
and:

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- (i) did not use tobacco products more than 3 times for any purpose while on-duty after June 30, 2000;
- (ii) if a tobacco user, completed a tobacco-cessation program approved by the County; and
- (iii) completed a cardiovascular fitness assessment and evaluation program established by the County (or by the County and the certified representative, for members of the Firefighter/Rescuer Bargaining Unit) and made a good faith effort to follow the health and fitness recommendations that resulted from the cardiovascular assessment.

(5) *Alternative placement incentive.*

(A) The Chief Administrative Officer may offer a 5-percent salary increase to an employee who:

- (i) is not a member of the Police Bargaining Unit;
- (ii) is eligible to receive a service-connected disability retirement; and
- (iii) accepts an alternative position in the County government for which the employee is qualified.

(B) The employee's salary in the alternative position must not exceed the maximum salary of the pay grade assigned to the position.

(C) A member of the Office, Professional and Technical Bargaining Unit or the Service, Labor and Trades Bargaining Unit who accepts an alternative placement incentive is not eligible to apply for a service connected disability retirement based on the disability for which the alternative placement was made.

(D) A Group G member who accepts an alternative placement incentive:

- (i) must remain a Group G member for the remainder of the member's County employment; and
- (ii) is not eligible for a service-connected disability retirement based on the medical condition that existed at the time the alternative placement was made.

(E) If a member applies for service-connected disability retirement instead of accepting an alternative placement incentive, the member's failure to accept the incentive must not:

- (i) be included in the information considered by the Disability

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Review Panel, Chief Administrative Officer, or Disability Arbitration Board;

(ii) be considered at any time by the Disability Review Panel, Chief Administrative Officer, or Disability Arbitration Board; or

(iii) effect the member's eligibility for service-connected disability retirement or the amount of the service-connected disability pension benefit.

(g) *Medical reexamination of disability retiree.* The Chief Administrative Officer must require a member receiving disability pension payments to undergo either a yearly physical examination or to submit a medical doctor's certificate verifying continuation of the disability during the 5 years after retirement, and once in every 3 years thereafter, until age 55 for a member of group B, E, F, or G, or age 60 for a member of group A or H, unless the Chief Administrative Officer finds that a physical examination is unnecessary because of the nature and severity of the injury or illness. The Chief Administrative Officer must review the findings of the physical examination and take appropriate action, which may include submitting the results of the evaluation to the Disability Review Panel for a redetermination whether the individual qualifies for disability benefits in accordance with subsection (d). If a member does not submit to the examination, the Chief Administrative Officer may reduce or discontinue any disability pension payments which the member receives. The Disability Review Panel may require the member to submit to an additional independent medical examination. A member may appeal a decision to reduce or discontinue disability pension payments to the appropriate Disability Arbitration Board.

(h) *Amount of pension at non-service-connected disability retirement.* A member who retires on non-service-connected disability retirement must receive an annual pension equal to the greater of:

- (1) the amount calculated under Section 33-42(b)(1); or
- (2) 33 percent of final earnings.

(i) *Amount of pension at service-connected disability retirement.*

(1) The County must pay a member, other than a Group G member, who retires on service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), subject to the following exceptions:

- (A) the County must substitute final earnings for average final earnings; and
- (B) the pension must be at least 66 2/3 percent of the member's final earnings.

(2) The County must pay a Group G member who retires on a



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service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), except that the County must substitute final earnings for average final earnings. However, if this benefit calculation is greater than any other benefit under this subsection, the County must pay a Group G member who retires on a service-connected disability retirement between June 26, 2002, and June 30, 2007, a pension based on the member's average final earnings if that member's average final earnings result in a greater benefit than final earnings.

(3) The County must pay a Group G member who retires on a service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), but the benefit must be at least 70 percent of final earnings if the Chief Administrative Officer finds, based on a recommendation from the Disability Review Panel, that the member's service-connected disability is severe enough to meet the Social Security Administration's requirements for disability, meaning that the member is unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that can be expected to end in death or has lasted, or can be expected to last, for a continuous period of at least 12 months. The member does not have to qualify for Social Security benefits to be eligible for benefits under this subsection.

(A) The Panel must base its determination of whether or not an individual is able to engage in any substantial gainful activity on an assessment from an independent vocational expert that considers the member's age, education, work experience, transferable skills, and residual functional capacity.

(B) The Panel must determine the member's residual functional capacity and provide this information to the independent vocational expert.

(C) A Panel determination that the member's service-connected disability is severe enough to be considered a disability by the Social Security Administration is not a recommendation that the member is entitled to, or should be granted, a disability benefit by the Social Security Administration.

(D) If a member has already been granted disability benefits by the Social Security Administration when the member applies for a service-connected disability pension, the County must pay the member a pension of at least 70% if the Disability Review Panel finds that the award of disability benefits from the Social Security Administration was based primarily on the same medically determinable physical or mental impairment on which the Disability Review Panel awards the member a service-connected disability benefit.

(4) The County must pay a member who retires with partial incapacity on a service-connected disability retirement an annual pension calculated under Section 33-42(b)(1), but the benefit must be at least 52½% of final earnings if the Chief Administrative Officer finds, based on a recommendation from the Disability Review Panel, that:

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(A) the member meets the standards to receive a service-connected disability benefit under subsection (f); and

(B) the member is not eligible to receive a benefit for total incapacity under subsection (i)(3).

(5) (A) The County must increase the partial incapacity service-connected disability pension benefit of a member calculated under Section 33-42(b)(1), from a benefit of at least 52½% to a benefit of at least 70%, if:

(i) the Social Security Administration awards disability benefits to the member;

(ii) the member submits all relevant information about the award of disability benefits from the Social Security Administration to the Disability Review Panel within 60 days after the member receives the award;

(iii) the Disability Review Panel finds that the award of disability benefits from the Social Security Administration was based primarily on the same medically determinable physical or mental impairment on which the Disability Review Panel originally awarded the member a service-connected disability benefit; and

(iv) the member applies for disability benefits with the Social Security Administration within 90 days after the Chief Administrative Officer notified the member that the service-connected disability pension benefit would be calculated as a partial incapacity.

(B) If a member qualifies for an increased pension benefit under subparagraph (A), the County must increase the member's service-connected pension retroactively to the date when the pension began.

(6) Under this subsection, "final earnings" for a Group F or G member who is participating in a job-sharing program under a collective bargaining agreement between the County and a certified representative means the regular earnings that the member would have received if the member had been employed on a full-time basis on the last date of active service.

(7) The County must pay a Group F member who retires on a service-connected disability retirement on or after June 26, 2002, an annual pension calculated under subsection (i)(1) or subsection (i)(4). However, if a greater benefit results from the calculation under Section 33-42(b)(1), the County must pay a Group F member a pension based on the member's average final earnings if that member's average final earnings result in a greater benefit than final earnings.

(j) *Adjustment or cessation of disability pension payments.*

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(1) If a member receiving service-connected disability pension payments reaches the first day of the month after the member's normal retirement date, the amount of pension then payable must not be less than the amount that would have been payable under Section 33-45(c) if the member had terminated service when the disability pension began and had not elected a return of member contributions with credited interest.

(2) (A) The Chief Administrative Officer may reduce the amount of the disability pension payments of a member retired with total incapacity who:

- (i) has not reached the normal retirement date; and
- (ii) is engaged in, or is able to engage in, an occupation that pays more than the difference between the disability pension payments and the current maximum earnings of the occupational classification from which the member was disabled.

(B) If a member other than a Group F member meets the criteria in subparagraph (A), the Chief Administrative Officer may reduce the member's disability pension payments until the disability pension payments plus the amount that the employee earned or is able to earn equals the maximum earnings of the occupational class from which the member was disabled.

(C) If a Group F member receives a non-service connected disability pension and meets the criteria in subparagraph (A), the Chief Administrative Officer may reduce the member's disability pension payments until the disability pension payments plus the amount the employee earned or is able to earn equals 120 percent of the maximum earnings of the occupational class from which the employee was disabled.

(D) If a member receives a disability retirement pension, except for a Social Security disability benefit, from another employer for the same impairment, the Chief Administrative Officer must reduce the member's disability pension payment by the amount of the other disability retirement pension.

(3) If the earnings capacity of a disability retiree with a total incapacity changes, the Chief Administrative Officer may change the amount of the disability retirement pension. In this subsection, "disability pension" is the amount of pension payable without election of a pension payment option.

(A) For a disability retiree other than a group F member, the Chief Administrative Officer must ensure that the amount of the revised pension does not exceed:

- (i) the original disability retirement pension plus cost-of-living increases; or
- (ii) an amount that, when added to the amount the member

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earns or is able to earn, equals the maximum earnings of the occupational classification from which the member was disabled.

(B) For a Group F member who receives a non-service connected disability pension, the Chief Administrative Officer must ensure that the amount of the revised pension must not exceed:

(i) the original disability retirement pension plus cost-of-living increases; or

(ii) an amount that, when added to the amount that the member earns or is able to earn, equals 120 percent of the maximum earnings of the occupational classification from which the member was disabled.

(4) A member who receives a disability retirement pension for a total incapacity must submit to the Chief Administrative Officer by May 30 of each year a copy of that portion of the member's federal income tax return which shows the member's income. If a member who receives disability pension payments does not supply the Chief Administrative Officer any information the Chief Administrative Officer needs to decide the amount of retirement pay legally due, the Chief Administrative Officer must suspend the member's pension payments until the member submits the needed information.

(5) If a member receiving disability pension payments returns to the service of the County or is appointed or elected to any office, the salary or compensation of which is paid wholly or in part by the County, pension payments will cease, and the individual will again become a member of the retirement system and resume member contributions.

(6) For any employee, except as provided below, who enrolled or re-enrolled in the retirement system on or after July 1, 1978, the member's disability retirement benefit for any month must be integrated with the primary disability benefits received from Social Security, and the total benefits from both sources must not exceed 100% of the member's average final earnings. This limit does not apply to cost-of-living adjustments made under Section 33-44(c). The benefit for a member who received a disability retirement benefit on or after January 1, 2000, must not be integrated with the primary disability benefits received from Social Security, and the total benefits from both sources may exceed 100% of the member's average final earning.

(7) The Chief Administrative Officer must not reduce the service-connected disability pension payments of a Group F or G member by earned income received from any source except:

(A) County Government employment; or

(B) for a Group F member, employment as a sworn law enforcement

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officer with full powers of arrest and authority to carry a firearm in connection with that employment.

(k) *Administrative disability retirement.* Whenever any member becomes disabled or incapacitated and is demonstrably not capable of performing the duties and responsibilities of the position to which assigned at an acceptable level of competence for medical reasons, the member must be notified by the head of the department, office or agency that in consideration of the medical condition, a disability retirement application should be initiated. If the member fails or refuses to make an application for disability retirement, the department, office or agency head may initiate a disability retirement application on behalf of the member. All pertinent information, including the member's attendance record, job performance record and medical record, must be transmitted to the Disability Review Panel.

(l) *Appeal procedures.*

(1) An applicant who is a member of the Police Bargaining Unit or the certified representative of the Police Bargaining Unit may appeal a decision of the Chief Administrative Officer that affects the member's right to disability benefits to the Police Disability Arbitration Board. An applicant who is not a member of the Police Bargaining Unit, or the certified representative on behalf of the applicant, may appeal the written decision of the Chief Administrative Officer to one of 3 Disability Arbitration Boards. An applicant must file an appeal within 20 calendar days of the date on which the applicant receives the Chief Administrative Officer's decision.

(2) The Police Disability Arbitration Board must consider appeals filed by members of the Police Bargaining Unit. The 3 Disability Arbitration Boards must consider all other appeals on a rotating basis in the order in which the County receives the appeals.

(3) After an applicant files an appeal, the appropriate Disability Arbitration Board or Police Disability Arbitration Board with whom the appeal is filed must convene within a reasonable time and consider the appeal.

(4) The appeal and judicial review proceedings are governed by the Maryland Uniform Arbitration Act, except that a Board decision must not be vacated on the ground that the applicant who filed the appeal is not a bargaining unit member and did not agree to arbitrate the appeal.

(5) The Chairpersons of the Disability Arbitration Boards and Police Disability Arbitration Board must, for the appeals before them:

(A) decide all issues on prehearing procedures, including any issue related to discovery; and

(B) rule on all issues of law that arise before the hearing, unless ruling

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on the issue would decide the appeal.

(6) The Disability Arbitration Boards and Police Disability Arbitration Board must render decisions quickly. The Disability Arbitration Boards and Police Disability Arbitration Board should issue written decisions on appeals within 30 calendar days after the hearing or after receiving any post-hearing briefs.

(m) *Disability Arbitration Boards and Police Disability Arbitration Board.*

(1) (A) The County Executive must appoint a different neutral arbitrator to be the Chairperson of each Disability Arbitration Board. The County Executive must select the neutral arbitrators from a list of 6 arbitrators agreed upon by the County and the certified representatives that represent all bargaining units except for the Police Bargaining Unit. To the extent possible, the 6 neutral arbitrators on the list should be experienced in law and occupational medicine. The appointment of the Chairperson of each Disability Arbitration Board must be confirmed by the County Council. The County must give each certified representative a copy of the Council resolution confirming the appointment or reappointment of each Chairperson promptly after the Council's action.

(B) The County Executive must appoint a neutral arbitrator to be Chairperson of the Police Disability Arbitration Board. The neutral arbitrator must be selected by the County and the certified representative of the Police Bargaining Unit either by agreement or through the processes of the American Arbitration Association. To the extent possible, the neutral arbitrator should be experienced in law and occupational medicine. The appointment of the Chairperson of the Police Disability Arbitration Board must be confirmed by the County Council

(2) Each neutral arbitrator appointed by the County Executive under paragraph (1) must serve for a term of 3 years. At the expiration of the arbitrator's term, the arbitrator is eligible for reappointment to a new 3-year term unless, at any time within 30 to 60 days prior to the expiration of the 3-year term, either a certified representative gives written notice to the County or the County gives written notice to the certified representatives that it objects to the neutral arbitrator serving another term. If no objection is filed, the arbitrator is eligible for appointment to an additional term.

(3) If the neutral arbitrator declines to be reappointed, dies, resigns, or for other cause is unable or ineligible to serve on one of the Disability Arbitration Boards or the Police Disability Arbitration Board, a new arbitrator must be appointed by the County Executive under paragraph (1).

(4) The County must pay all reasonable fees and expenses of the arbitrators, as determined by the Chief Administrative Officer, except that a certified representative representing an applicant who is a member of the Office, Professional or Technical or Service,

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Labor and Trades Bargaining Unit must pay any fee resulting from the cancellation of a scheduled hearing if the certified representative:

(A) causes a hearing to be canceled and the application remanded to the Disability Review Panel; or

(B) causes a hearing to be canceled and rescheduled on a later date.

(5) The applicant, or the certified representative on behalf of the applicant, must designate an individual to serve as a member of the Disability Arbitration Board that will consider and decide the applicant's appeal. The applicant must designate an individual to serve as a member of the Police Disability Arbitration Board. The Chief Administrative Officer must designate an individual to serve on the Disability Arbitration Board or Police Disability Arbitration Board that will consider and decide the applicant's appeal. The applicant, or the certified representative on behalf of the applicant, and the County, respectively, may designate Board members on a case-by-case basis according to each party's chosen procedure. There must be no restriction on who may serve as the designee of the applicant or the County, except that no member of the Board that will consider and decide an appeal may be involved in, or be a witness to, any matter that is before that Board.

(6) Each party, including participating agencies, must be responsible for the fees and expenses of its respective members. Each party, including participating agencies, must also be responsible for its own witness fees and expenses.

(n) Guaranteed retirement income plan. Subsections (a)-(m) do not apply to a participant in the guaranteed retirement income plan.

(1) Non-public safety employees. If a non-public safety employee participant incurs a disability before termination from County employment which makes the participant unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, the disabled participant must remain a participant in the guaranteed retirement income plan under the following rules:

(A) All amounts credited to the participant's guaranteed retirement income plan account, including County contributions, are 100% vested regardless of the participant's credited service.

(B) The participant must participate in the guaranteed retirement income plan under this Section until the participant dies, reaches his or her normal retirement date, or recovers from the disability.

(C) In determining the credit amount of County contributions under

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Section 33-40, the participant's regular earnings means the regular earnings the participant would have received for the year if the participant were paid for the full year at the rate of compensation paid in the pay period immediately before the participant became disabled.

(D) The participant must not receive a distribution during any period in which the participant receives a County contribution credit.

(E) The participant must not make member contributions under Section 33-39 during the disability participation.

(2) **Public Safety Employees.** If a public safety employee participant incurs a disability before retirement or other separation from service which, in the opinion of a physician selected or approved by the Chief Administrative Officer, renders the participant unable to perform duties satisfactorily for the employment the participant held with the County before the disability, the participant's employment and participation in the guaranteed retirement income plan must be terminated and deemed a disability retirement under the following rules:

(A) All amounts credited to the participant's guaranteed retirement income plan account, including County contributions, are 100% vested regardless of the participant's years of credited service.

(B) The Chief Administrative Officer must determine the date on which a disability retirement is effective. After a participant submits a properly completed distribution form, the Chief Administrative Officer must distribute the value of the former participant's account balance to the former participant under this Section. (1995 L.M.C., ch. 3, § 1; 1995 L.M.C., ch. 31, § 1; 1999 L.M.C., ch. 26, § 1; 2001 L.M.C., ch. 21, § 1; 2003 L.M.C., ch. 30, § 1; 2003 L.M.C., ch. 31, § 1; 2006 L.M.C., ch. 33, § 1; 2007 L.M.C., ch. 3, § 1; 2008 L.M.C., ch. 1, § 1; 2008 L.M.C., ch. 22, § 1; 2008 L.M.C., ch. 24, § 1; 2009 L.M.C., ch. 11, § 1; 2009 L.M.C., ch. 23, § 1; 2010 L.M.C., ch. 32, § 1; 2011 L.M.C., ch. 13, § 1.)

**Editor's note**—2009 L.M.C., ch. 11, § 2, states: Sec. 2. Transition. A member of the Disability Review panel when this Act takes effect [August 19, 2009] may continue to serve until the expiration of the Panel member's term. All appointments to the Panel made after this Act takes effect [August 19, 2009], including the reappointment of a qualified existing Panel member, must be made pursuant to this Act.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 3. Benefits. / Sec. 33-44. Pension payment options and cost-of-living adjustments.**



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**Sec. 33-44. Pension payment options and cost-of-living adjustments.**

(a) *Pension payment options for optional and integrated plans.*

(1) A member may elect an optional form of pension actuarially equivalent to the normal form of retirement pension otherwise payable, unless the member qualifies for a non-service-connected disability retirement before reaching the early retirement date. The Chief Administrative Officer must not consider the health condition of the member when deciding what is “actuarially equivalent”.

(2) A member who qualifies for non-service connected disability retirement on or after reaching the early retirement date may elect a pension payment option.

(3) A member who qualifies for a service-connected disability retirement may elect a pension payment option, regardless of age and credited service.

(4) To elect a pension payment option, the member must file the appropriate form at least one month before the normal, early, or disability retirement date.

(5) The pension payment option must take effect on the member's retirement date and is void if the member or the named beneficiary dies before that date.

(6) The following forms of pension options are available:

(A) Ten-Year Certain and Continuous. The member will be paid a monthly income until death, with payments continued to the designated beneficiary until a total of one hundred twenty (120) monthly payments have been made. If the designated beneficiary dies before the end of the ten-year certain period, payments will be made to the contingent beneficiary. If the designated beneficiary and contingent beneficiary predecease the retiree, the retiree's estate shall be paid the amount of money representing the value of the annuity as of the date of death of the retiree. This option shall be the normal form of retirement pension for members enrolled before July 1, 1978, and continuously enrolled to date of retirement.

(B) Cash Refund Pension Option (available to members who were members of the employees' retirement system of the state on August 15, 1965). If a member dies before the total pension payments made or due equal the present value of the pension determined on the member's retirement date, the difference will be paid to the member's beneficiary.

(C) Joint and Survivor Pension Option.

(i) Under this option, the County must make pension payments in an adjusted amount to the member during the member's lifetime and, at the member's death,

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make pension payments to the designated beneficiary (spouse, domestic partner, or children only) who survives. The County must make the pension payments to the surviving beneficiary for the rest of the beneficiary's lifetime [pension payments] in the amount payable to the member or other amount elected by the member, but not less than 10 percent of the amount payable to the member.

(ii) Upon the death of both the member and the beneficiary, a death benefit must be paid in the same manner as is provided under the normal form of retirement pension for which the member had been eligible.

(iii) Pop-up Option. At retirement, the member may elect the pop-up variation of a joint and survivor option with an appropriate actuarial reduction. Under this option, if the member and designated beneficiary divorce or the designated beneficiary dies before the member dies, the member's monthly payments for the rest of the member's life must "pop up" to the amount that they would have been if the member had elected the modified cash refund annuity at retirement.

(D) Modified Cash Refund Annuity. Lifetime pension payments will be payable to the member. If a member dies before receiving benefits in an amount equal to member contributions plus credited interest the difference will be payable to the designated beneficiary. This option shall be the normal form of retirement pension for members enrolled on or after July 1, 1978.

(b) *Voluntary adjustment of pension payment by a member who retires before qualifying to receive social security benefits.*

(1) A member may elect to receive an actuarial equivalent benefit of a certain level of pension payments until normal social security payments begin and an adjusted level of payments after normal social security payments begin. A member may elect these adjustments to receive a more uniform total income from both sources.

(2) A member who elects to receive adjusted levels of pension payments under subsection (1) above must also choose one of the forms of pension payment options described in subsection (a)(6).

(3) If a member dies, the County must pay the pension benefit to the member's designated beneficiary in the form elected by the member under subsection (a)(6).

(c) *Cost-of-living adjustment.* A retired member or beneficiary, including the surviving spouse or domestic partner of a group D member or other beneficiary who survives the member under a pension option or who is otherwise eligible to receive benefits, must receive an annual cost-of-living adjustment in pension benefits.

(1) Each retired member or beneficiary must have a cost-of-living base which

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must be the Consumer Price Index most recently preceding the date of the member's retirement or death.

(2) The Consumer Price Index to be used for the fiscal year in which the cost-of-living adjustment is payable must be the index calculated for the month last preceding the end of the fiscal year immediately preceding the fiscal year in which the adjustment is to be effective.

(3) The percentage cost-of-living adjustment of pension benefits must be obtained by dividing the most recent index determined under paragraph (2) by the next preceding index multiplied by 100 less 100.

(A) A member enrolled before July 1, 1978, must receive the full cost-of- living adjustment.

(B) A member enrolled on or after July 1, 1978, must receive 100 percent of the change in the consumer price index up to 3 percent, and 60 percent of any change in the consumer price index greater than 3 percent, up to a total adjustment of 7 ½ percent in any year. The 7 ½ percent annual limit does not apply to:

- (i) a retired member who is disabled; or
- (ii) a pensioner aged 65 or older for a fiscal year beginning after the date the pensioner reaches age 65.

(4) For the purpose of this section, "Consumer Price Index" means, beginning January 1, 1978, the Consumer Price Index for All Urban Consumers issued for the Washington, D.C. Metropolitan Area (all items) as published by the United States Department of Labor, Bureau of Labor Statistics (for months before 1978, the Consumer Price Index published previously for urban wage earners and clerical workers for such months must be applicable.)

(5) Pension benefits are subject to decreases in the Consumer Price Index. In no instance, however, must a retired member or beneficiary receive less than the amount of pension benefits for which eligible at the time of the member's retirement.

(6) Notwithstanding the provisions of this Section, the cost-of-living adjustment must not exceed 2.5 percent for:

(A) credited service beginning on the first pay period after June 30, 2011; or

(B) a disability retirement pension based on a disability occurring after June 30, 2011.

(d) *Applicability of cost-of-living adjustments to surviving spouses or domestic*

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*partners of group D members.* Effective July 1, 1973, the provisions of subsection (c) apply to an eligible surviving spouse or domestic partner of a group D member. The cost-of-living adjustment for the surviving spouse or domestic partner of a group D member who retired or died before July 1, 1970, must be based on the Consumer Price Index published as of August 15, 1955. The cost-of-living adjustment for the surviving spouse or domestic partner of a group D member who was an active member on June 30, 1970, and who retired or died on or after July 1, 1970, must be based on the Consumer Price Index published as of the date of the member's retirement or death, whichever is earlier.

(e) *Applicability of cost-of-living adjustments to elected officials' plan and the guaranteed retirement income plan.* Cost-of-living adjustments do not apply to the elected officials' plan and the guaranteed retirement income plan.

(f) *Distributions from the elected officials' plan.* The chief administrative officer must pay an elected officials' participant's account balances in the elected officials' plan upon normal retirement or withdrawal of vested county contributions under the provisions of this subsection.

(1) Normal Method of Distribution. Unless the elected officials' participant elects an option under paragraph (2), the normal method of distribution must be a variable annuity that reflects investment gains and must be paid for the elected officials' participant's life.

(2) Optional Methods of Distribution. An elected officials' participant may choose to have the account balances paid to that elected officials' participant in one of the following optional methods:

(A) A single, lump-sum cash payment.

(B) A joint and survivor annuity. A joint and survivor annuity as used in this subsection means an annuity payable for the life of the elected officials' participant, with a survivor's annuity payable for the life of the spouse or domestic partner of the elected officials' participant in an amount at least equal to one-half of the amount of the annuity payable during the joint lives of the elected officials' participant and the spouse or domestic partner of the elected officials' participant, and which is the actuarial equivalent of a single annuity for the life of a participant.

(C) A single-life annuity that will be payable to the elected officials' participant during the life of that participant. If the elected officials' participant dies before receiving an amount equal to the required and voluntary elected officials' participant contributions account balances, including picked-up contributions, the difference must be paid to the beneficiary of the elected officials' participant.

(D) A life annuity with a ten-year certain option. This option provides an adjusted pension payable as long as the elected officials' participant lives, but guaranteed for a

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period of ten (10) years beginning on the date the payment of the account balances is to begin. If an elected officials' participant dies before expiration of the guaranteed period, payment is continued to the beneficiary at the same rate. If the beneficiary dies after having received at least one (1) payment while further payments are due, the further payments are made to a person designated by the elected officials' participant as a contingent beneficiary, or, in the absence of a contingent surviving beneficiary, the commuted value of the payments is paid to the estate of the last surviving beneficiary in a single lump-sum.

(E) An annuity that provides gradually increasing pension payments, based on the elected officials' participant's life expectancy at the time of retirement. The payments are made for the life of the elected officials' participant.

(F) Payment of the account balances of the elected official participant in the form of as nearly equal periodic payments as the market will allow, over a period not exceeding the lesser of the joint life expectancy of the elected officials' participant and the elected officials' participant's beneficiary or twenty (20) years.

(3) If benefits under the elected officials' plan are payable under any method other than the lump sum method, the chief administrative officer may utilize the account balances of the elected officials' participant to buy an annuity contract from an insurance company authorized to do business in the State of Maryland. The contract must provide for payment in the method the elected officials' participant chose.

(4) The county executive may adopt regulations under method (3) to provide a procedure for an elected officials' participant to choose an alternate method of distribution.

(g) *Distributions from the Guaranteed Retirement Income Plan.* A participant who receives a contribution under Section 33-42A must not receive a distribution until the participant attains the Social Security retirement age. Any other participant may receive a distribution when the participant terminates County employment. A participant may elect a distribution from the guaranteed retirement income plan of a participant's vested guaranteed retirement income plan account balance as follows:

(1) **Lump Sum Method of Distribution.** Unless a participant elects an annuity under paragraph (2), a participant must receive the participant's vested guaranteed retirement income plan account balance in a single lump sum. The participant may have the lump sum paid as a direct rollover to an eligible retirement plan as defined in the Internal Revenue Code.

(2) **Annuity Method of Distribution.** A participant may elect to receive the participant's guaranteed retirement income plan account balance paid in:

(A) a single life annuity payable to the participant during the life of that participant; or

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(B) a joint and survivor annuity payable to the participant over the participant's lifetime and, at the participant's death, payable to the designated beneficiary (spouse, domestic partner, or children only) who survives. Payments must be made for the designated beneficiary's lifetime in the amount payable to the participant or another amount elected by the participant, but not less than 10 percent of the amount payable to the participant.

(3) No other form of payment options listed in this Section is available to guaranteed retirement income plan participants.

(h) (1) *Required commencement of benefit payments.* The distribution of an elected officials' participant's retirement benefits must be made no later than April 1 of the calendar year following the later of the calendar year in which the elected officials' participant attains age seventy and one-half (70 ½) or the calendar year in which the elected officials' participant retires. In the alternative, the payment of benefits to an elected officials' participant must begin not later than such April 1 under a method of payment that, in accordance with the applicable United States Treasury Regulations, provides for distribution of the elected officials' participant's benefits over:

(A) The life of the elected official's participant;

(B) The lives of the elected officials' participant and the elected officials' participant's designated beneficiary;

(C) A period not extending beyond the life expectancy of the elected officials' participant; or

(D) A period not extending beyond the life expectancy of the elected officials' participant and the elected officials' participant's designated beneficiary.

(2) Notwithstanding any other provision, an elected official's account balance of \$1,000 or less must be automatically distributed in a lump sum as soon as administratively feasible after termination of employment without a request from the elected official. If the distribution cannot be made because the elected official cannot be located, the elected official will forfeit the amount. If the elected official later contacts the County, the elected official will receive the forfeited amount.

(i) *Period for distribution of death benefits of a retired elected officials' participant who was receiving benefits.* If the distribution to a retired elected officials' participant has commenced in accordance with the second sentence of subsection 33-44(h) and the elected officials' participant dies before the elected officials' participant's entire benefit has been distributed to that elected official's participant, the remaining part of such benefit must be distributed at least as rapidly as under the method of distribution in effect as of the date of the retired elected officials' participant's death.

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(j) *Period for distribution of death benefits of an elected officials' participant who was not receiving benefits.*

(1) If an elected officials' participant dies before the payment of the benefits under the elected officials' plan has commenced, the benefits must be distributed before the end of the calendar year containing the fifth anniversary of the elected official participant's death; however, the five-year rule does not apply if:

(A) Any portion of the elected officials' participant's benefit is payable to, or for the benefit of, a designated beneficiary;

(B) The portion of the benefit to which the designated beneficiary is entitled will be distributed over the life of the beneficiary, or over a period not extending beyond the life expectancy of the beneficiary; and

(C) The distributions commence before the end of the calendar year following the calendar year in which the elected official's participant's death occurred. Also, the five-year rule does not apply if:

(i) The portion of the elected officials' participant's benefit to which the surviving spouse is entitled must be distributed over the life of the surviving spouse, or over a period not extending beyond the life expectancy of the surviving spouse; and

(ii) The distributions commence before the later of the end of the calendar year following the calendar year in which the participant died or the end of the calendar year in which the elected officials' participant would have attained age 70 ½ .

(2) For purposes of subsections (f), (h), (i), and (j), the life expectancy of an elected officials' participant and the elected officials' participant's spouse may be recalculated each year. Also, for purposes of subsections (f), (h), (i), and (j), any amount paid to a child must be treated as if it had been paid to the surviving spouse of an elected officials' participant if the amount becomes payable to the surviving spouse of an elected officials' participant when the child reaches the age of majority (or other designated event permitted under applicable Treasury Regulations).

(k) *Required commencement of benefit payments.* The distribution of a member's retirement benefit must be made, or must begin, no later than April 1 of the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70 1/2) or the calendar year in which the member retires. In the alternative, the payment of benefits to a member must begin not later than such April 1 in accordance with applicable United States Treasury Regulations over:

(1) The life of the member;

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- (2) The lives of the member and the member's designated beneficiary;
- (3) A period not extending beyond the life expectancy of the member; or
- (4) A period not extending beyond the life expectancy of the member and the member's designated beneficiary.

(l) *Period for distribution of death benefits of a retired member who was receiving benefits.* If the distribution to a retired member has commenced in accordance with the second sentence of subsection 33-44 (k) and the member dies before the member's entire benefit has been distributed to the member, the remaining part of such benefit must be distributed at least as rapidly as under the method of distribution in effect as of the date of the retired member's death.

(m) *Period for distribution of death benefits of a member who was not receiving benefits.*

(1) If a member dies before the payment of the benefit has commenced, the benefit must be distributed before the end of the calendar year containing the fifth anniversary of the member's death; however, the five-year rule does not apply if:

(A) Any portion of the member's benefit is payable to, or for the benefit of, a designated beneficiary;

(B) The portion of the benefit to which the designated beneficiary is entitled will be distributed over the life of the beneficiary, or over a period not extending beyond the life expectancy of the beneficiary; and

(C) The distributions commence before the end of the calendar year following the calendar year in which the elected official's participant's death occurred.

(2) Also, the five-year rule does not apply if:

(A) The portion of the member's benefit to which the surviving spouse is entitled will be distributed over the life of the surviving spouse, or over a period not extending beyond the life expectancy of the surviving spouse; and

(B) The distributions commence before the later of the end of the calendar year following the calendar year in which the participant died or the end of the calendar year in which the member would have attained age 70 ½.

(3) For purposes of this subsection, the life expectancy of a member and the member's spouse may be recalculated each year. Also, for purposes of this subsection, any amount paid to a child must be treated as if it had been paid to the surviving spouse of a member if the amount becomes payable to the surviving spouse of a member when the child reaches the age of majority (or other designated event permitted under applicable treasury regulations).



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(n) *Required distribution for guaranteed retirement income plan participants.*

(1) The distribution of a participant's guaranteed retirement income plan account balance must be made no later than April 1 of the calendar year after the later of the calendar year in which the participant attains age 70 ½ or the calendar year in which the participant terminates employment. Distributions must be made in accordance with subsection (g). If the participant does not elect a form of distribution, the distribution must be made in a lump sum. If the participant dies before beginning to receive benefits, the participant's designated beneficiary under 33-46(h) must receive a lump sum distribution as soon as practicable after the participant's death, but not later than the December 31<sup>st</sup> of the year containing the fifth anniversary of the participant's death.

(2) A participant's account balance of \$1,000 or less must be automatically distributed in a lump sum as soon as administratively feasible after termination of employment without a request from the participant.

(o) *Actuarial assumptions.* The actuarial assumptions that will be used to determine the equivalence of various optional benefits are:

(1) Net interest rates (the difference between a gross interest rate and a cost-of-living allowance assumption): for actuarial equivalence under the optional nonintegrated and optional integrated provisions, the gross interest rate is six (6) percent per year, the cost-of-living allowance assumption is three (3) percent per year, and the net interest rate is three (3) percent per year; for actuarial equivalence under the mandatory integrated plan, the gross interest rate is six (6) percent per year, the cost-of-living allowance assumption is one and eight-tenths (1.8) percent per year and the net interest rate is four and two-tenths (4.2) percent per year.

(2) Mortality rate: UP 84 Mortality Table.

(p) *Limitation on benefits.* Notwithstanding any provision governing the retirement system to the contrary, the benefits provided by the retirement system for members whose anticipated annual benefit provided by such contributions will exceed fifteen hundred dollars (\$1,500.00), and who are within the twenty-five (25) highest paid employees as of the time of the establishment of the retirement system (including any such highest paid employees who are not members at the time but who may later become members) must be subject to the conditions which are stated from time to time in applicable United States Treasury Regulations. The restrictions also apply to any increases in benefits following the establishment of the retirement system, as may be provided for in applicable United States Treasury Regulations.

(q) *Direct rollover distributions.* A member or beneficiary may elect, in any manner prescribed by the Chief Administrative Officer at any time, to have any portion of eligible rollover distribution (as defined in the Internal Revenue Code) paid directly to an eligible

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retirement plan (as defined in the Internal Revenue Code) specified by the member in a direct rollover. For purposes of this subsection, a direct rollover is a payment from the retirement system to the eligible retirement plan specified by the member. A member may not elect a direct rollover if the eligible rollover distribution is less than \$200.00

(r) *Limitations Under Internal Revenue Code.* Distributions under a plan must be subject to the limitations of Section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit rules under Section 401(a)(9)(G) of the Internal Revenue Code, in accordance with any proposed or final regulations under Section 401(a)(9) of the Internal Revenue Code. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1971 L.M.C., ch. 39, § 5; 1972 L.M.C., ch. 19, § 9; 1973 L.M.C., ch. 12, § 1; 1974 L.M.C., ch. 31, § 12; 1974 L.M.C., ch. 59, § 5; 1978 L.M.C., ch. 44, § 1; 1987 L.M.C., ch. 27, § 8; 1987 L.M.C., ch. 44, § 2; 1996 L.M.C., ch. 19, § 1; 1998 L.M.C., ch. 31, § 1; 1999 L.M.C., ch. 26, § 1; 1999 L.M.C., ch. 30, § 2; 2001 L.M.C., ch. 21, § 1; 2003 L.M.C., ch. 3, § 1; 2003 L.M.C., ch. 13, § 1; 2003 L.M.C., ch. 31, § 1; 2008 L.M.C., ch. 22, § 1; 2009 L.M.C., ch. 2, §§ 1, 2; 2010 L.M.C., ch. 13, § 1; 2010 L.M.C., ch. 56, § 1; 2011 L.M.C., ch. 9, § 1; 2012 L.M.C., ch. 10, § 1.)

**Editor's note**—2011 L.M.C., ch. 9, § 2, states in part: Effective Date. This Act takes effect on July 1, 2011 except as otherwise provided. For a member of the Optional Plan, Integrated Plan, or Guaranteed Retirement Income Plan holding the office of County Executive, Councilmember, or Sheriff, the amendments to Sections 33-39(a)(1), 33-39(a)(2), 33-44(c), and 33-40(e)(1) take effect on December 1, 2014. For a member of the Optional Plan, Integrated Plan, or Guaranteed Retirement Income Plan holding the office of State's Attorney, the amendments to Sections 33-39(a)(1), 33-39(a)(2), 33-44(c), and 33-40(e)(1) take effect on January 5, 2015.

2003, ch. 3, § 1, states: Rule of Interpretation. The amendments made by Section 1 of this Act must be interpreted to comply with requirements stated in letters issued on December 11, 2002, and January 14, 2003, by the Internal Revenue Service to the County regarding the continued qualification of County employee retirement plans. 2003, ch. 3, § 2, states, in part: Retroactivity. (f) The amendment made by Section 1 of this Act to Code Section 33-44 takes effect January 1, 2001.

The above section is cited in Fultz v. Shaffer, 111 Md.App. 278, 681 A.2d 568 (1996) and in Montgomery County v. Buckman, 636 A.2d 448, 333 Md. 516 (1994).

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 3. Benefits. / Sec. 33-45. Vested benefits and withdrawal of contributions.**

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**Sec. 33-45. Vested benefits and withdrawal of contributions.**

(a) *Eligibility for vesting for optional and integrated plans.* A member must complete 5 years of membership before the member is qualified to vest, except that a member who has transferred service credit from a public retirement system in Maryland may use that service credit to qualify for vesting. A vested member must leave all member contributions, plus credited interest, in the fund to be eligible to receive retirement benefits.

(b) *Withdrawal of contributions for optional and integrated plans.*

(1) In accordance with paragraph (2), the County must refund a member's contributions with credited interest to:

(A) a member whose County service ends before the member is eligible to vest; and

(B) a member eligible to vest whose County service ends and who voluntarily elects to withdraw, thus ceasing to be a member.

(2) (A) If a member's contributions and interest are more than \$1,000, to obtain a refund of contributions, a member must properly complete and submit an application for a refund.

(B) If a member's contribution and interest are more than \$1,000, and the member does not properly complete and submit an application for a refund, the County must refund the contributions with credited interest under the minimum distribution requirements of the Internal Revenue Code and corresponding regulations.

(C) Notwithstanding any other provision, if the member's contributions and interest is \$1,000 or less, the amount must be distributed in a lump sum as soon as administratively feasible after termination of employment even if the member does not submit an application. If the distribution cannot be made because the member cannot be located, the member will forfeit the amount. If the member later contacts the County, the member will receive the forfeited amount.

(3) If a vested member dies before the normal retirement date, the County must pay the designated beneficiary a lump sum death benefit equal to the member's contributions plus credited interest.

(c) *Vested benefits.*

(1) Before July 1, 1989, a vested member is eligible to receive a percentage of

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the normal retirement pension that has accrued to date of termination, with payments beginning on the first day of the month following the member's normal retirement date. Percentage of vested rights will be based on years and months of credited service under the following schedule:

<i>Completed Years of Credited Service</i>	<i>Percentage of Vested Rights</i>
5	50%
6	60%
7	70%
8	80%
9	90%
10 or more	100%

If a vested member who has reached normal retirement date dies after qualifying to receive retirement benefits, the designated beneficiary is entitled to receive whatever benefits may be provided under the pension payment option elected. However, an elected or appointed member who has completed 5 years in office, vests 100 percent if the member's service terminates before normal retirement date with a minimum monthly benefit of \$150.00.

(2) On or after July 1, 1989, a member who has completed 5 years of credited service is fully vested in a normal retirement pension that has accrued to date of termination, with payments beginning on the first day of the month following the member's normal retirement date.

(3) A former member who has completed 5 years of credited service but has not completed 10 years of credited service, who did not elect to receive a return of accumulated member contributions upon termination of employment, and who returns to county service on or after July 1, 1989, must complete one additional year of credited service before becoming fully vested.

(4) A former member who has completed 10 years of credited service, who did receive a return of accumulated member contributions upon termination of employment and who returns to county service on or after July 1, 1989, must complete 5 additional years of credited service, before becoming fully vested. However, if the member purchases prior county service under section 33-41(1), the member must complete the number of years of credited service which in addition to those years purchased under section 33-41(1) equals 5 years of credited service, but in no event may the member fully vest without completing at least one

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additional year of credited service.

(5) If a vested member who has reached normal retirement date dies after qualifying to receive retirement benefits, the designated beneficiary is entitled to receive whatever benefits are provided under the pension payment option elected. If a vested member who has reached normal retirement date dies after qualifying to receive retirement benefits, but has not designated a beneficiary, no benefit will be paid unless required by another provision governing the retirement system.

(6) An elected or appointed member who has completed 5 years in office, and is not otherwise fully vested under paragraphs (c)(2) through (c)(5) of this section will vest 100 percent if the member's service terminates before normal retirement date with a minimum monthly benefit of \$150.00. However, an elected or appointed member who has any combination of years of credited service or years in office, will vest 100 percent if the member's service terminates before normal retirement date.

(7) Vested benefits for a member who is an elected official on July 1, 1989, will be determined under paragraph (c)(1) of this section before December 3, 1990. On and after December 3, 1990, the elected official's vested benefits will be determined under paragraphs (c)(2) through (c)(6) of this section.

(8) *Vesting for the guaranteed retirement income plan.* A member, except a member who is an elected official, has a 100% vested interest in the member's County contribution credits and the credited interest on the member's County contribution credits after the member attains 3 years of credited service. A member who is an elected official has a 100% vested interest in the member's County contribution credits and the credited interest on the member's County contribution credits after the member attains the lesser of a full term of office or 4 years of credited services. A member who is not 100% vested in accordance with the preceding two sentences must become 100% vested in the member's County contribution credits and the credited interest on the County contribution credits from the effective date of a termination of the guaranteed retirement income plan or upon death or disability. A member is disabled if the member is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A member who terminates employment with the County and is not vested in any County contribution credits or the credited interest on the County contribution credits must forfeit the County contribution credits plus the credited interest on the County contributions credits.

(d) *Discontinued service retirement for optional and integrated plans.*

(1) Any member whose employment has been terminated by an administrative action may elect a discontinued service pension if the member has at least 10 years of continuous service. Except for a Group G member, pension payments must begin on the member's early

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retirement date, or immediately if the member is eligible for early retirement. For a Group G member, pension payments must begin on the member's normal retirement date, or immediately if the member is eligible for normal retirement.

(2) A member who has been dismissed for cause or who has resigned is not eligible for a discontinued service pension.

(3) A member enrolled on or before June 30, 1978, and continuously enrolled thereafter, may substitute 10 or more years of credited service for the 10 or more years of continuous service requirement.

(4) The discontinued service retirement pension of a member who has been continuously enrolled in the retirement system since before July 1, 1978, is the amount of pension the member would have received under Section 33-42(b) for regular retirement, as modified as follows:

(A) substitute "final earnings" wherever the term "average final earnings" appears in the applicable formula under Section 33-42(b);

(B) add 5 percent of final earnings; and

(C) treat a member who submitted an application to transfer from the optional plan to the integrated plan before September 26, 1983, as if the member had remained in the optional plan.

(5) The discontinued service retirement pension of any other member is the amount of pension the member would have received under Section 33-42(b)(2) for regular retirement.

(e) *Discontinued service benefits of elected and appointed members.*

(1) If an elected or appointed member with 10 or more years of credited service, is not reappointed or reelected, the member may opt to:

(A) receive a pension immediately, if the member enrolled or reenrolled before January 22, 1974; or

(B) receive a pension at age 60, if the member enrolled or reenrolled on or after January 22, 1974.

(2) The pension for a member enrolled or reenrolled on or before September 26, 1983, or who submitted an application to transfer from the optional plan to the integrated plan before September 26, 1983, is the pension the member would have received under Section 33-42(b) for regular retirement, except that:

(A) "final earnings" replaces "average final earnings" in the applicable

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formula in Section 33-42(b);

(B) a member who submitted an application to transfer from the optional plan to the integrated plan before September 26, 1983, must be treated as if the member had remained in the optional plan; and

(C) the monthly benefit must be at least \$300.00.

(3) The pension for a member enrolled or reenrolled after September 26, 1983, or a member who submits an application to transfer from the optional plan to the integrated plan after September 26, 1983, is the amount of pension the member would have received under Section 33-42(b)(2) for regular retirement, except that:

(A) "final earnings" replaces "average final earnings" in the applicable formula in Section 33-42(b); and

(B) the monthly benefit must be at least \$300.

(f) *[Exception.]* Section 33-45 does not apply to the elected officials' plan.

(g) *Limitation on the use of forfeitures.* Except as provided in section 33-40(c), any forfeitures arising through the termination of members who have not attained full vesting must not be used to increase the benefits of any other member in the retirement system. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1971 L.M.C., ch. 39, § 6; 1972 L.M.C., ch. 19, § 10; 1974 L.M.C., ch. 31, § 13; 1974 L.M.C., ch. 59, § 6; 1978 L.M.C., ch. 44, § 1; 1980 L.M.C., ch. 11, § 1; 1984 L.M.C., ch. 11, § 1; 1987 L.M.C., ch. 27, § 8; 1987 L.M.C., ch. 44, § 3; 1989 L.M.C., ch. 45, § 1.; 1993 L.M.C., ch. 21, § 1; 1998 L.M.C., ch. 31, § 1; 1999 L.M.C., ch. 26, § 1; 2001 L.M.C., ch. 21, § 1; 2006 L.M.C., ch. 20, § 1; 2006 L.M.C., ch. 33, § 1; 2007 L.M.C., ch. 3, § 1; 2008 L.M.C., ch. 22, § 1; 2009 LMC ch. 33, § 2; 2012 L.M.C., ch. 10, § 1.)

**Editor's note**—See County Attorney Opinion dated 4/10/06-A discussing the appointment and supervision of heads of departments and principal offices. See County Attorney Opinion dated 4/10/06, concerning the Chief Administrative Officer's authority to terminate an appointed official, which quoted Section 33-45. See County Attorney Opinion dated 5/9/91 explaining that discontinued service pension for administrative services coordinator based upon proposed abolishment of the position meets the intent of the retirement system law.

2009 L.M.C., ch. 33, § 3, states, in part: Section 2 of this Act takes effect on December 6, 2010. An eligible individual who is an elected official on December 5, 2010, and remains in office on and after December 6, 2010, must decide to participate in the guaranteed retirement income plan on or before May 1, 2011. If an elected official decides to participate between December 6, 2010 and May 1, 2011, that elected official's participation must begin on the first pay period after June 1, 2011.

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**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 3. Benefits. / Sec. 33-46. Death benefits and designation of beneficiaries.**

**Sec. 33-46. Death benefits and designation of beneficiaries.**

(a) *Beneficiary death benefits of an active member whose death is not service connected.* Upon the death of a member under circumstances not covered by subsection (b), the designated beneficiary must receive a death benefit payment equal to:

(1) member contributions, including picked-up contributions, with credited interest, or a spouse's, or domestic partner's, and children's benefit as provided in subsection (e); plus

(2) 50 percent of average final earnings if the member was a member of the employees' retirement system of the state of Maryland as of August 15, 1965, and became a member of the employees' retirement system of the County on or before December 31, 1966, or such later agency entrance date without a break in service, and who is not on leave without pay except for authorized leave without pay for illness.

(b) *Spouse's, or domestic partner's, and children's benefits of a member whose death is service connected.*

(1) (A) If a member other than a Group F or G member dies while employed by the County or a participating agency and the employing department or agency, a beneficiary, or another person submits satisfactory proof to the Chief Administrative Officer that the employee's death resulted from injuries sustained in the line of duty or was directly attributable to the inherent hazards of the duties the employee performed and the death was not due to willful negligence, the County must pay benefits as follows:

(i) a spouse's or domestic partner's benefit equal to 25 percent of the member's final earnings, paid as a monthly benefit for the spouse's or partner's life, but not less than \$250 per month; plus

(ii) a child's benefit equal to 5 percent of the member's final earnings, paid as a monthly benefit, but not less than \$50 per month until the child reaches age 21 or for life if the child is disabled and incapable of self-support.

(B) The Chief Administrative Officer must ensure that the maximum total benefit for a spouse or domestic partner and child must not exceed 40 percent of the member's final earnings.



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(C) The Chief Administrative Officer must not pay the benefit to the spouse or domestic partner and child if the spouse or domestic partner elects to receive benefits under subsection (e). However, the Chief Administrator must pay a child's benefit if the eligible spouse or domestic partner dies before the child is 21 years old.

(2) The Chief Administrative Officer must pay death benefits to the spouse or domestic partner and child of a Group F or G member as if the member had been receiving a service-connected disability pension on the date of the member's death and had selected a joint and survivor pension option of 100 percent of the amount payable to the member, if:

(A) the Group F or G member died while employed by the County; and

(B) the employing department, a beneficiary, or another person submits satisfactory proof to the Chief Administrative Officer that the member's death:

(i) resulted from injuries the employee received in the line of duty or was directly attributable to the inherent hazards of the duties the employee performed; and

(ii) was not due to the employee's willful negligence.

(3) The Chief Administrative Officer must pay a benefit to the spouse or domestic partner and children of a Group G member who dies on or after July 1, 2004 under the conditions stated in subsection (2) as if the member had died while receiving a service connected disability retirement benefit of at least 70 percent of the member's final earnings.

(c) *Spouse's, or domestic partner's, and children's benefits when a member who has retired on a disability dies.* When a member who has retired on a disability dies, the spouse or domestic partner is entitled to receive the death benefits provided under the pension payment option elected. If the spouse or domestic partner died before the member, any child of the retiree less than 21 years old is entitled to receive these death benefits, shared equally among the member's children who are less than 21 years old.

(d) *Actuarial value of spouse's, or domestic partner's, and children's benefits.* If the actuarial value of a spouse's, or domestic partner's, and children's benefit is less than the death benefit payment otherwise payable under subsection (a), the County must pay the death benefit or the benefit's actuarial equivalent instead of the spouse's, or domestic partner's, and children's benefit.

(e) *Spouse's, or domestic partner's, and children's benefits when an active member eligible for vesting or retirement dies.*

(1) A surviving spouse, domestic partner, or child who is the designated beneficiary of a member who died after becoming eligible to vest or retire, may elect within 60

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days after the member's death a benefit equal to the yearly amount of benefits that would have been payable if the member had vested or retired immediately before death and had elected a 100-percent joint and survivor pension option. The payments must begin on the member's normal retirement date if the member was eligible for vesting, or immediately if the member was eligible for retirement.

(2) If the designated beneficiary who would receive a death benefit under paragraph (1) dies before the death benefit payments begin and the member designated a contingent beneficiary, the death benefit under subsection (a) must be paid to the contingent beneficiary designated by the member (or to a person designated by the beneficiary if the member left no enforceable contingent beneficiary designation.)

(3) If the member meets the requirements for the benefit in subsection (a)(2), the beneficiary also is entitled to receive a death benefit equal to 50 percent of the member's average final earnings.

(f) *Designation of beneficiaries.*

(1) A member may name a primary beneficiary or beneficiaries and contingent beneficiary or beneficiaries on a designation of beneficiaries form to be filed with the Office of Human Resources. If a member names 2 or more persons as beneficiaries, the persons must be considered co-beneficiaries unless the member specifies otherwise. A member may change any named beneficiary by written request. The consent of the beneficiary or beneficiaries is not required to name or change a beneficiary. The designation is effective when the member signs the request even if the member is not living when the Office receives the request, but without prejudice for any payments made before the Office received the request.

(2) If a member dies without designating a surviving beneficiary or the designation is not enforceable, the surviving spouse or domestic partner (or if there is no surviving spouse or domestic partner, each surviving child, sharing equally with any other surviving child) is the designated beneficiary for purposes of this Section and any other death benefit provided to a "designated beneficiary" under the Employees' Retirement System. If no spouse, domestic partner, or child survives a member who left no enforceable beneficiary designation, the member's estate is the designated beneficiary.

(g) *Elected officials plan.* If an elected officials' participant dies before the County has implemented the method of distribution of benefits to the elected officials participant under a method of distribution designated in Section 33-44, the elected officials' participant's vested County elected officials' contributions account balance, including picked-up contributions, and the amounts distributable under Section 33-39(c)(2) from the elected officials' plan, must be distributed to the elected officials' participant's designated beneficiary. A beneficiary may choose to have benefits distributed in any method listed in Section 33-44(f)(2). If the beneficiary does not choose a method of distribution, the method of distribution must be a variable annuity that

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reflects investment gains and is payable for the beneficiary's life. The County Executive may provide by regulation adopted under method (3) a procedure for a beneficiary to choose a method of distribution.

(h) *Guaranteed retirement income plan.* Subsections (a)-(g) do not apply to the guaranteed retirement income plan. If a participant dies before receiving the participant's guaranteed retirement income plan account, the guaranteed retirement income plan account balance must be distributed to the participant's designated beneficiary in a lump sum as soon as practicable after the participant's death, but not later than the December 31<sup>st</sup> of the year containing the fifth anniversary of the participant's death.

(1) A participant may name a primary beneficiary or beneficiaries and contingent beneficiary or beneficiaries on a designation of beneficiaries form filed with the Office of human Resources. If a participant names 2 or more persons as beneficiaries, the persons are considered co-beneficiaries and share the benefit equally unless the participant specifies otherwise on the designation of beneficiaries form. A participant may change any named beneficiary by completing a new designation of beneficiaries form. The consent of the beneficiary or beneficiaries is not required to name or change a beneficiary. The designation is effective when the participant signs the form even if the participant is not living when the Office receives the request, but without prejudice for any payments made before the Office received the request.

(2) If a participant dies without designating a surviving beneficiary or the designation is not enforceable under subsection (i), the surviving spouse or domestic partner (or if there is no surviving spouse or domestic partner, each surviving child, sharing equally with any other surviving child) is the designated beneficiary. If no spouse, domestic partner, or child survives a participant who left no enforceable beneficiary designation, the participant's estate is the designated beneficiary.

(i) For purposes of this Section, a beneficiary designation is "not enforceable" if:

(1) the designated beneficiary:

(A) predeceases the member;

(B) disclaims the benefit; or

(C) is not an identifiable person; or

(2) the designation is legally void for any reason. (Ord. No. 5-152; Ord. No. 6-195; 1971 L.M.C., ch. 40, § 1; 1972 L.M.C., ch. 19, § 1; 1974 L.M.C., ch. 31, § 14; 1974 L.M.C., ch. 59, § 7; 1978 L.M.C., ch. 44, § 1; 1987 L.M.C., ch. 27, § 9; 1997 L.M.C., ch. 28; §1; 1998 L.M.C., ch. 31, § 1; 1999 L.M.C., ch. 30, § 2; 2001 L.M.C., ch. 21, § 1; 2001 L.M.C., ch. 28, §§ 6, 15 and 16; 2003 L.M.C., ch. 30, § 1 § 1; 2004 L.M.C., ch. 14, § 1; 2008 L.M.C., ch. 22,

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§ 1; 2010 L.M.C., ch. 49, § 1.)

**Editor's note**—2004 L.M.C., ch. 14, § 2, states: Transition. Sections 33-42(b)(2) and 33-46(b) of the Code, as amended by this Act, apply to eligible Group G members who file applications to retire on or after July 1, 2004.

2003 L.M.C., ch. 30, § 2, states: Section 33-46(b)(2) of the Code, as amended by this Act, applies to service-connected death benefits payable to the spouse or domestic partner and child of any Group F member who dies on or after July 1, 2003.

The effective date of the amendments made to this section by 2001 L.M.C., ch. 28, § 6, is the same effective date as 1998 L.M.C., ch. 31, § 1.

1997 L.M.C., ch. 28, § 2, states:

(a) This Act applies to Employees' Retirement System benefits that are based on the death of a member on or after January 1, 1995.

(b) The Department of Human Resources must notify:

(1) active employees;

(2) retirees; and

(3) any surviving spouse or child of a member who died on or after January 1, 1995,

about the changes in law contained in this Act. The Department may notify active employees and retirees in any form designed to reach substantially all active employees and retirees. The Department must provide actual notice to any known surviving spouse, surviving child, and other person affected by this Act in connection with the death of a member between January 1, 1995 and the date this Act takes effect [Nov. 17, 1997].

(c) Any person affected by this Act in connection with the death of a member between January 1, 1995, and the date this Act takes effect [Nov. 17, 1997], within 60 days after the person receives the notice required by this Section, file any election of benefits or any other document that the person could have filed if this Act were in effect when the member died.

(d) The notification requirement in subsection (b) and the authority under subsection (c) to file an election of benefits or other document expire after December 31, 1999.

(e) If the System paid a death benefit on behalf of a member who died on or after January 1, 1995, to the member's estate before May 15, 1997, any benefit that becomes payable to a surviving spouse or child of the member because of this Act must be reduced by the amount of the System's payment to the member's estate."

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**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration.**

**Division 4. Administration.**

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-47. Administration.**

**Sec. 33-47. Administration.**

(a) *Responsibility for administration.* The chief administrative officer shall be responsible for the administration of the retirement system.

(b) *Regulations for administration.* The county executive must establish regulations, adopted under method (1) of section 2A-15 of this Code, for the administration of the retirement system, within the limitations of this article. However, the county executive must establish regulations, adopted under method (3) of section 2A-15, for the administration of the elected officials' plan.

(c) *Chief administrative officer.* Except for the powers of the board, the chief administrative officer has the power and the duty to take all actions and to make all decisions to administer the retirement system.

(d) *Powers and duties of the Chief Administrative Officer.* The chief Administrative Officer has, but is not limited to, the following powers and duties:

- (1) Interpret the provisions of the retirement system;
- (2) Decide the eligibility of any employee and the rights of any member or beneficiary to receive benefits;
- (3) Compute the amount of benefits payable to any member or beneficiary;
- (4) Authorize disbursements of benefits;
- (5) Keep records;
- (6) Select and retain the actuary for the retirement system;

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(7) After consultation with the board and the actuary for the retirement system, determine the actuarial cost method, and the mortality, turnover, interest rates, and other assumptions to be used in actuarial and other computations for the retirement system;

(8) Consider the recommendation of the actuary for the retirement system on contributions the county makes under this article;

(9) Incur expenses as necessary for the chief administrative officer to administer the retirement system;

(10) Disclose the reports prepared under section 33-51;

(11) Prepare and file reports that are required by law; and

(12) In connection with the participation or withdrawal of an agency as a participating agency in the retirement system:

(A) obtain any data and require any documentation that the Chief Administrative Officer finds necessary;

(B) retain an independent actuary not otherwise under contract to the system to compute the valuation of the accrued benefit of any member or group of members upon withdrawal from the retirement system by a formula set out in regulations adopted under subsection (b); and

(C) authorize the transfer of accrued benefits to another retirement system qualified under the Internal Revenue Code;

(13) Authorize the refund of member contributions, and earnings thereon, to correct any contribution or withholding error; and

(14) Delegate any power or duty under this Section.

(e) *Payment of expenses and contributions.*

(1) The county must pay contributions of the county to the retirement system from appropriations approved by the County Council.

(2) The board must pay:

(A) operating expenses of the integrated retirement plan, the optional retirement plan, and the guaranteed retirement income plan from the assets of these plans; and

(B) operating expenses of the elected officials' plan from plan assets or from County government assets, at the direction of the Chief Administrative Officer.

(f) *Exemption.* Chapter 11B does not apply to procurement of goods and services for

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the retirement system by the chief administrative officer. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1974 L.M.C., ch. 59, § 8; 1978 L.M.C., ch. 44, § 1; 1984 L.M.C., ch. 24, § 39; 1987 L.M.C., ch. 29, § 6.; 1993 L.M.C., ch. 3, § 1; 1994 L.M.C., ch. 33, § 1; 2001 L.M.C., ch. 28, §§ 6, 15 and 16; 2008 L.M.C., ch. 22, § 1.)

**Editor's note**-The above section is cited in Fultz v. Shaffer, 111 Md.App. 278, 681 A.2d 568 (1996).

See County Attorney Opinion dated 11/14/11 regarding the County's liability for errors in the administration of the pension and retirement funds of employees.

The effective date of the amendments made to this section by 2001 L.M.C., ch. 28, § 6, is the same as the effective date of 1998 L.M.C., ch. 31, § 1.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-48. Reserved.**

### **Sec. 33-48. Reserved.**

**Editor's note**—Former Section 33-48, relating to the disability retirement board, derived from Ord. No. 5- 152; Ord. No. 6-195, § 1; 1972 L.M.C., ch. 19, § 13; 1974 L.M.C., ch. 31, § 15; 1974 L.M.C., ch. 59, § 9; 1978 L.M.C., ch. 44, § 1; and 1982 L.M.C., ch. 40, § 5, was first repealed by 1985 L.M.C., ch. 49, § 2. Subsequently, 1986 L.M.C., ch. 27, § 1, added § 33-48, disability retirement board, for the reasons set forth in 1986 L.M.C., ch. 27, § 2: “*Sec. 2. Ratification of acts.*”

In adopting chapter 49 of the Laws of Montgomery County (Bill 54-84), it was not the legislative intent that the disability retirement hearing board and any medical review committee cease to function immediately. It was the legislative intent that the board and committees continue to function until a final decision is made on all disability retirement applications filed before the date on which the disability benefits program under article VI of chapter 33 takes effect.

Any action taken by the disability hearing board and any medical review committee since August 11, 1985, are to be given the same force and effect as if this act had been in effect when the actions were taken.”

2010 L.M.C., ch. 49, § 1, again repealed Section 33-48.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human**

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**Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-49. Reserved.**

**Sec. 33-49. Reserved.**

**Editor's note**—Section 33-49, relating to the medical review committee, derived from Ord. No. 5-152; Ord. No. 6-195, § 1; 1974 L.M.C., ch. 59, § 11; and 1978 L.M.C., ch. 44, § 1, was repealed by 1985 L.M.C., ch. 49, § 2. Subsequently, 1986 L.M.C., ch. 27, § 1, added a new § 33-49, medical review committees, which was repealed by 2010 L.M.C., ch. 49, § 1.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-50. Reserved.**

**Sec. 33-50. Reserved.**

**Editor's note**—Section 33-50, relating to an investment policy, derived from Ord. No. 5-152; Ord. No. 6-195, § 1; 1978 L.M.C., ch. 44, § 1; and 1986 L.M.C., ch. 27, § 10, was repealed by 1987 L.M.C., ch. 29, § 7.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-51. Reports and audits.**

**Sec. 33-51. Reports and audits.**

(a) *Annual and quarterly reports.*

(1) By February 15 of each year, the chief administrative officer must submit to the county council and county executive an annual report on the status of the retirement system for the preceding fiscal year. The chief administrative officer must make the report available to all interested county officials, each member of the retirement system, and the public.

(2) The chief administrative officer must submit to the council a proposed format of the first annual report that includes the investment performance report of the board. The council must approve or disapprove the format and may request the chief administrator officer to provide additional information in the report. If the council does not act on the format



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within forty-five (45) days after the chief administrative officer submits the format, the format is automatically approved. The council may extend the time to consider the format for an additional forty-five (45) days.

(3) The council may request the chief administrative officer or the board to provide additional information in the annual report or in additional reports. The chief administrative officer and the board must provide the additional information.

(4) The chief administrative officer must submit to the council quarterly reports on the status of the retirement system. In a quarterly report the chief administrative officer may summarize information provided in an annual report.

(5) By March 31 of each year, the Chief Administrative Officer must submit to the Council and the Executive an annual report on the disability retirement system for the preceding calendar year that includes the number of disability retirement applications, awards, appeals, and re-examinations of retirees for each retirement group. The Council may request the Chief Administrative Officer to provide additional information in the annual report or in additional reports. The Chief Administrative Officer must provide the additional information.

(b) *Annual report of member contributions and credited interest.* Except for the elected officials' participant contributions to the elected officials' plan, the Board must give each member by December 1 of each year a report on the member's contributions with credited interest as of June 30 of the preceding fiscal year. The Board must give each elected officials' participant a report on the elected officials' participant contributions on a quarterly basis.

(c) *Independent audit of the retirement system.* A complete independent audit of the retirement system shall be made at least annually by the firm of certified public accountants under contract by the county council for the purpose of implementing the provisions of article III, section 315, of the charter of the county. The complete audit shall be filed with the county council and copies thereof shall be made available to the public and open to public inspection. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1974 L.M.C., ch. 59, § 11; 1978 L.M.C., ch. 44, § 1; 1982 L.M.C., ch. 40, § 5; 1987 L.M.C., ch. 29, § 8; 1994 L.M.C., ch. 33, § 1; 2009 L.M.C., ch. 11, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-52. Payment of benefits.**

### **Sec. 33-52. Payment of benefits.**

(a) *Pension payment.* A member's pension will be paid in advance each month during

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retirement, beginning on the retirement date elected. In the event of the member's death before the end of the month, advanced retirement pension for such month is not returnable. The full monthly amount of each payment will equal one-twelfth of the yearly amount of pension for the member. Payments for less than one (1) full month must be prorated on a daily basis. When pension payments begin, the chief administrative officer must send the member a notice showing the amount and terms of payment. If the payee for any payment is a minor or an incompetent person, the chief administrative officer may authorize payments be made to the person legally responsible for the payee.

(b) *Discontinuance of pension payments.* A member must not receive pension payments while serving in an appointed or elected County office that receives any compensation paid by the County. A member appointed to a full-time County position must become a member of the retirement system or the Retirement Savings Plan under Sections 33-37 and 33-115 and make member contributions until later separation under Article III or Article VIII. The retirement benefit of an employee who resumes membership in the optional or integrated plan must be recalculated when the employee later separates from service. The retirement benefit under the integrated or optional plans of Article III of an employee who becomes a member of the Retirement Savings Plan or the guaranteed retirement income plan must resume when the employee later separates from service.

(c) *Exemption from claims.* All pension payments under the system are non-assignable and are exempt from the claims of creditors to the maximum extent permitted by law.

(d) *Advanced quarterly payments.* Quarterly payments may be made in advance, or with the consent of the payee, a single sum payment in an actuarially equivalent amount may be made, if the amount of any monthly payment payable to any payee would be less than twenty-five dollars (\$25.00).

(e) *Seven-year limitation.* There will be no obligation to make any payment to a payee hereunder unless the payor has received proof that the payee was living on the due date of the payment. If such proof is not received within seven (7) years after the due date of the payment, and if no proof of death of the payee is received during such seven-year period, the obligations of the payor as to the payment will be the same as if the payee had died immediately before the due date of the payment. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1978 L.M.C., ch. 44, § 1; 1987 L.M.C., ch. 29, § 9; 1998 L.M.C., ch. 30, § 1; 2008 L.M.C., ch. 22, § 1; 2009 L.M.C., ch. 23, § 1; 2010 L.M.C., ch. 49, § 1.)

**Editor's note**—See County Attorney Opinion dated 9/12/05 discussing the legislative history and prior opinions regarding the effect of hiring a retired employee on a part-time basis. See County Attorney Opinion dated 10/1/91 explaining that the retirement law does not require discontinuation of retirement benefits of employees who return to County employment in

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temporary positions.

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-53. Protection against fraud.**

#### **Sec. 33-53. Protection against fraud.**

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act, shall be charged with a misdemeanor, and may be punishable under the laws of the county and the state. Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than entitled to receive had the records been correct, the error shall be corrected and as far as practicable the payment shall be adjusted in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled will be paid. Any member or beneficiary who has received payment from the retirement system of any monies to which not entitled under the provisions of this act, shall be required to refund such monies to the system. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1978 L.M.C., ch. 44, § 1.)

**Editor's note**—See County Attorney Opinion dated 11/14/11 regarding the County's liability for errors in the administration of the pension and retirement funds of employees.

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-54. Exemption from execution, garnishment, or attachment.**

#### **Sec. 33-54. Exemption from execution, garnishment, or attachment.**

The right of a person to pension, the return of member contributions with credited interest, any pension payment option, death benefit, or any other right accrued or accruing to any person under this Article, and the money used to fund the retirement system created by this Article are not subject to execution, garnishment, attachment or any other process, and are not assignable, except as provided in this Article, or when an employee is indebted to the County or the Montgomery County Employees' Federal Credit Union.

Despite any other provision in this Section, a benefit is payable to an alternate payee under a domestic relations order, as defined in Section 414(p)(1)(B) of the Internal Revenue

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Code, if the order is considered a qualified domestic relations order under Section 414(p)(11) of the Internal Revenue Code. The Chief Administrative Officer must authorize forms and procedures to determine whether a domestic relations order is qualified, and must determine the form and timing of distributions under a qualified order. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1978 L.M.C., ch. 44, § 1; 1998 L.M.C., ch. 31, § 1.)

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-55. Filing of retirement system plan and contract.**

#### **Sec. 33-55. Filing of retirement system plan and contract.**

(a) *Filing of plan.* The plan of the employees' retirement system of the county shall be filed with the Insurance Department of the State of Maryland and the Internal Revenue Service, United States Treasury Department.

(b) *Filing of contract.* The contract entered into between the county and the funding agent shall be filed with the Insurance Department of the State of Maryland and the Internal Revenue Service, United States Treasury Department. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1978 L.M.C., ch. 44, § 1.)

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-55A. Qualification contingency for elected officials' plan.**

#### **Sec. 33-55A. Qualification contingency for elected officials' plan.**

(a) In the event it is determined that the elected officials' plan is not a qualified plan within the meaning of section 401(a) of the Internal Revenue Code, then the provisions of this chapter regarding the elected officials' plan are repealed as of the date of the determination. The repeal dates back to the original effective date of this act.

(b) Any account balance with respect to county elected officials' contributions must be returned to the county as soon as administratively possible after the repeal.

(c) Any account balance with respect to required elected officials' participant contributions or account balance with respect to voluntary elected officials' participant contributions, including any amount picked up by the county pursuant to section 33-39(a)(3), must, as soon as administratively possible following a repeal under this section 33-55A, be

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returned to the elected officials' participant who made them.

(d) (1) Following a repeal under this section 33-55A, an elected officials' participant who does not make the election provided for in subsection 33-55A(e) may choose to become a participant in a retirement plan of the retirement system in which that individual would have been eligible to participate if the elected officials' plan had never existed.

(2) Benefits and vesting under a plan in which the individual becomes a participant under paragraph (d)(1) must be determined based only on credited service earned or purchased after the individual becomes a participant in the plans, plus any credited service earned or purchased prior to the individual's becoming an elected officials' participant, except as otherwise provided in paragraph (d)(3).

(3) Credited service earned while an elected officials' participant must be counted in determining benefits and vesting under a plan in which the individual becomes a participant under paragraph (d)(1) if the individual so chooses. An individual making that choice must contribute to the plan, in a single lump-sum cash payment, the total nonvoluntary employee contributions that the employee would have been required to make under the plan for the period during which that individual was an elected officials' participant if the individual had participated in the plan instead of the elected officials' plan. The county must also make, on behalf of any individual making the choice and contribution, contributions to the plan in the amount the county would have made on behalf of that individual for the period during which that individual was an elected officials' participant if the individual had participated in the plan instead of the elected officials' plan.

(e) Following a repeal under this section 33-55A, an individual who was an elected officials' participant may choose to have the county establish on that individual's behalf a nonqualified deferred compensation arrangement within the meaning of section 457 of the Internal Revenue Code. The arrangement must provide for deferral of compensation, beginning as of the first day of the month following the month in which the arrangement is entered into, until the individual's normal retirement date, in amounts that are sufficient to provide for a benefit comparable to the benefit the individual would have received under the elected officials' plan from the county elected officials' contributions account of the individual, assuming for purposes of the arrangement that the elected officials' plan would have continued to the individual's date of distribution and that all county elected officials' contributions would have been made to the elected officials' plan on the individual's behalf up to that date and that the account balance in the county elected officials' contributions account as of the date of repeal under this section 33-55A, and all subsequent contributions, would have earned interest, from and after the date of repeal under this section 33-55A, at the rate of six (6) percent per year. The regular earnings of such elected official must be increased as of the first day of the month following the month in which such arrangement is entered into by an amount equal to the amount

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to be deferred each month under such arrangement. (1987 L.M.C., ch. 27, § 11.)

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-56. Interpretations.**

#### **Sec. 33-56. Interpretations.**

(a) The Chief Administrative Officer is responsible for deciding questions arising under this Article. Any member of the County's retirement system and any retiree or designated beneficiary eligible to receive benefits from the retirement system, may request, in writing, a decision on questions arising under this Article from the Chief Administrative Officer, who must respond in writing to such request within 60 days. The response must include a statement of appeal rights.

(b) The Chief Administrative Officer's decision on a disability application under Section 33- 43 may be appealed under subsection 33-43.

(c) Any other decision by the Chief Administrative Officer may be appealed within 15 days to the Merit System Protection Board under procedures established by the Board. The decision of the Board is final. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1974 L.M.C., ch. 31, § 16; 1978 L.M.C., ch. 44, § 1; 1982 L.M.C., ch. 40, § 5; 1995 L.M.C., ch. 3, § 1; 2003 L.M.C., ch. 31, § 1.)

**Editor's note**-The above section is cited in Fultz v. Shaffer, 111 Md.App. 278, 681 A.2d 568 (1996).

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-57. Records.**

#### **Sec. 33-57. Records.**

(a) *Records generally.* The chief administrative officer must prescribe the form, the scope, and the maintenance of records. The records of the retirement system must be maintained on the basis of the plan year.

(b) *Decision of chief administrative officer on records.* The decision of the chief administrative officer relating to the confidentiality, use, maintenance and disposition of all

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records and materials relating to the employees' retirement system of the county, and as to whether any information contained therein may be disclosed, shall be final.

(c) *Time limit records are to be kept.* The chief administrative officer, when not in conflict with state or county law, shall determine the time limit that retirement system records shall be kept on file and the final disposition of such records. (Ord. No. 5-152; Ord. No. 6-195, § 1; 1978 L.M.C., ch. 44, § 1; 1987 L.M.C., ch. 29, § 10.; 1993 L.M.C., ch. 3, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-58. Trust established-Trust fund.**

**Sec. 33-58. Trust established-Trust fund.**

(a) The county establishes a trust, which is part of the retirement system, for the benefit of the members of the retirement system. The trust consists of the money and property of the retirement system on the day before the day all the trustees have accepted the trust in writing, and any earnings, profits, increments, appreciation, and other additions that accrue.

(b) All of the money and property, all investments made with that money and property, and all earnings, profits, increments, and other additions, less the payments previously made by the board, are to be referred to as the trust fund.

(c) The board has legal title to all cash and other property of the retirement system, but may delegate some or all incidents of ownership as provided in this article. (1987 L.M.C., ch. 29, § 11.)

**Editor's note**—See County Attorney opinion dated 11/14/11 regarding the County's liability for errors in the administration of the pension and retirement funds of employees.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-59. Board of investment trustees.**

**Sec. 33-59. Board of investment trustees.**

(a) *Established.*

(1) The Board of Investment Trustees is established to manage the trust under

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this Article.

(2) The Board continues until abolished by law.

(b) *Membership.*

(1) The Board has 13 trustees.

(2) The County Executive must appoint 4 voting, *ex officio* members of the Board, subject to County Council confirmation as members, who serve indefinitely while each holds the respective office. These *ex officio* trustees should be:

(A) the Director of Management and Budget;

(B) the Director of Finance;

(C) the Director of Human Resources; and

(D) the Council Administrator.

(3) The County Executive must appoint 3 voting certified employee organization representatives, subject to County Council confirmation, as members of the Board, who serve indefinitely while each remains the designee of the certified employee representative. These trustees must not vote on any matter involving the County deferred compensation plan. These trustees should be:

(A) one representative nominated by the employee organizations certified as the representative of the Office, Professional, and Technical (OPT) and Service, Labor and Trades (SLT) bargaining units; and

(B) one representative nominated by the employee organization certified as the representative for the fire and rescue employee unit; and

(C) one representative nominated by the employee organization certified as the representative for the police employee bargaining unit under Article V.

(4) The following 6 trustees must be appointed by the Executive and confirmed by the Council:

(A) An active County employee who is a vested member of the retirement system and the Merit System, and not a member of a collective bargaining unit. A 3-year term for this trustee ends on March 1 of every third year after the trustee is confirmed by the Council.

(B) A retired County employee who is a member of the retirement system. Before appointing this trustee, the Executive must consider, and should select from, a



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list of 3 to 5 individuals recommended by the Montgomery County Retired Employees' Association. The Executive must notify the Council when nominating an individual not recommended by the Association. A 3-year term for this trustee ends on March 1 of every third year after the trustee is confirmed by the Council.

(C) Two persons recommended by the Council who are knowledgeable in pensions, investments, or financial matters. A 3-year term for these trustees ends on March 1 of every third year after each trustee is confirmed by the Council.

(D) Two individuals knowledgeable in pensions, investments, or financial matters. Before nominating these trustees, the Executive must consider, and should select from, individuals recommended by citizens or countywide citizens' groups. An individual recommended by a citizens' group need not be a member of the group. The Executive must notify the Council when nominating an individual not recommended by a citizens' group. A 3-year term for these trustees ends on March 1 of every third year after each trustee is confirmed by the Council.

(5) A trustee appointed under paragraph (3) continues to serve after the trustee's term ends until the Council confirms a successor, but the term for each position is not affected by any holdover. A trustee who, after appointment and before the end of a term, is no longer qualified for the trustee's position is removed from the Board by operation of law.

(6) The Executive must not appoint as a trustee any person who furnishes, or is employed by a firm that furnishes, to pension funds and other institutional investors the kind of investment services purchased by the Board.

(c) *Vacancies.*

(1) A trustee may be automatically removed for missing meetings as described in Section 2-148(b).

(2) A vacancy on the Board must be filled for the unexpired term in the same manner as the previous trustee was appointed.

(d) *Compensation.* The trustees must serve without compensation from any source for service rendered to the Board, except that an active employee trustee may receive administrative leave to serve on the Board. The Board must reimburse trustees for any expense approved by the Board. A trustee must not receive reimbursement for expenses from any other source.

(e) *Acceptance of trust.* Within 10 days after the Council confirms a trustee, the trustee must certify in writing to the Chief Administrative Officer that the trustee accepts the trust and will administer the affairs of the trust with care, skill, prudence, and diligence.

(f) *Written policies.*

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(1) The Board must establish written policies to administer and invest the funds created by this Article and to transact the business of the trust and the retirement system.

(2) The Board must apply the policies to all members and beneficiaries of the retirement system and must not discriminate in favor of or against any member or beneficiary of the retirement system.

(3) Any delegation of duties by the Board under Section 33-60, 33-125, or 33-145 must be specified in written policies and procedures.

(g) *Officers.* The Board must select a chair, vice chair, and secretary from the Board's members.

(1) The chair must preside at meetings of the Board and may take administrative action on behalf of the Board.

(2) The vice chair must perform the duties and exercise the powers of the chair when the chair is unavailable, or the Board determines is otherwise unable to perform the duties of the chair.

(3) The secretary must record the proceedings and actions of the Board and may certify a document or action of the Board. A person may rely in good faith on the secretary's certification as proof of the document or action.

(h) *Meetings and actions.*

(1) The Board must meet at least once during each calendar quarter. The chair, or 7 members of the Board, may call a meeting of the Board, in the manner and at times and places provided under the policies of the Board. The Board is a public body under the State Open Meetings Act.

(2) A. Seven trustees constitute a quorum.

B. Each trustee has one vote.

C. Seven trustees must agree for the Board to act.

(3) The Board may act without a meeting. All of the trustees must concur in writing for the Board to approve any action the Board takes without a meeting.

(4) The Board may adopt procedures consistent with this Section.

(i) *Records.*

(1) The Board must keep investment accounts and records necessary to calculate the value of each retirement system fund and evaluate the experience and performance

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of the retirement system.

- (2) The Board may designate a person to maintain the records.
- (3) Accounts and records are subject to State law on public records.

(j) *Removal of trustee.* With the Council’s approval, the County Executive may remove a trustee for violating this Article or other good cause.

(k) *Legal adviser.* The County Attorney is the legal adviser to the Board.

(l) In this Section, “retirement system” means the Employees’ Retirement System or the Retirement Savings Plan. (1987 L.M.C., ch. 29, § 11; 1987 L.M.C., ch. 40, § 2; 1994 L.M.C., ch. 16, § 1; 1998 L.M.C., ch. 27, § 1; 2004 L.M.C., ch. 30, § 1; 2005 L.M.C., ch. 24, § 1; 2009 L.M.C., ch. 16, § 1; 2010 L.M.C., ch. 31, § 1; 2012 L.M.C., ch. 21, § 1.)

**Editor’s note**—1998 L.M.C., ch. 27, § 2, reads as follows: “Sec. 2. Transition. A trustee serving on the Board of Investment Trustees when this Act becomes law [December 2, 1998] continues to serve in the equivalent trustee position. The term of an incumbent trustee whose term would have ended before the applicable date specified in Code Section 33-59(b)(3) as amended by this Act, is extended to the specified date.”

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-60. The board of investment trustees-Powers and duties.**

**Sec. 33-60. The board of investment trustees-Powers and duties.**

(a) *General.*

(1) Except as provided in section 33-47, subsection (a)(2) of this section, and other sections of this chapter, the powers and duties with respect to the administration and the investments of the retirement system are hereby vested in the board of investment trustees. However, the powers and duties of the board must not become effective until all of the trustees have accepted the trust in writing.

(2) (A) The board must invest and reinvest, or cause to be invested or reinvested, as authorized in subsection (c)(1), the principal and income of the retirement system and keep the same invested without distinction between principal and income. The board has the exclusive authority to manage the assets of the retirement system. However, any investment of the retirement system in existence on the day before all members have accepted the trust may

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remain as an investment until the earlier of:

- (i) Its maturity date, if any; or
- (ii) The date it is liquidated under the investment policy of the

board.

The board must hold the annuities purchased under the Amendment, Settlement and Transfer agreement under Group Annuity Contract #1920 until Aetna Life Insurance Company has completed its performance under that agreement.

(B) At any time the board is selecting a new investment manager, the board may have fewer than 3 investment managers.

(3) Chapter 11B does not apply to procurement of goods and services for the retirement system by the board.

(b) *Agents for transfer of property.*

(1) The board may register any securities or other property in its own name or in the name of a nominee. The board may hold any security in bearer form. However, the board or its agent must keep records that show that the investments are part of the trust fund.

(2) The board may form a partnership under the laws of Maryland for the purpose of holding or transferring securities as the nominee of the board.

(3) The board may designate in writing a trustee to hold or transfer securities as nominee of the board.

(4) The board must provide that trustees or a partnership that the board designates must act only as agents of the board. The board may set other conditions that the board considers prudent.

(5) The trustees of a partnership the board designates may agree with a bank or other financial institution to:

- a. Guarantee the signatures made as nominee of the board; and
- b. Conduct settlements and transfers through participation in central security depositories.

(6) Except as authorized by executive regulation adopted under method (3) that is substantially equivalent to federal ERISA regulations on maintenance of indicia of ownership of plan assets, the board must maintain the indicia of ownership of the assets of the retirement system within the jurisdiction of the district courts of the United States.

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(c) *Authorized investments.*

(1) The board may invest or permit an investment manager to invest the assets of the retirement system fund in any investment it considers prudent within the policies set by the board. The board must use an investment manager except when investing in any pooled investment vehicle, including any combined, common or commingled trust fund, retirement or annuity contract, mutual fund, investment company, association, or business trust. The board also may authorize the Executive Director to make investments in pooled investment vehicles and transition assets from one investment manager to another investment manager as the board specifies.

(2) If an investment through any combined, common or commingled trust fund exists, the declaration of trust of that fund is a part of the retirement system trust under this Article.

(3) The board or an investment manager must not invest any retirement system asset in any bond, note, or debt instrument issued by:

- (A) The County;
- (B) Any political subdivision within the County;
- (C) Any agency supported or financed wholly or partly by taxes levied by the County Council; or
- (D) Any agency supported by bond issues underwritten by the County.

(d) *Trustee powers.* Subject to the limitations under subsection (a)(2) of this section, the board has the power to:

(1) With any cash, purchase or subscribe for any investment, at a premium or discount, and retain the investment.

(2) Sell, exchange, convey, transfer, lease for any period, pledge, mortgage, grant options, contract with respect to, or otherwise encumber or dispose, at public or private sale, for cash or credit or both, any part of the retirement system.

(3) Except as provided in section 33-61A(h)(2), sue, defend, compromise, arbitrate, compound and settle any debt, obligation, claim, suit, or legal proceeding involving the retirement system, and reduce the rate of interest on, extent or otherwise modify, foreclose upon default or otherwise enforce any debt, obligation, or claim.

(4) Retain uninvested that part of the retirement system fund described in subsection (f) without being liable for the payment of interest.

(5) Exercise any option on any investment for conversion into another

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investment, exercise any rights to subscribe for additional investments, and make all necessary payments.

(6) Join in, consent to, dissent from, oppose, or deposit in connection with the reorganization, recapitalization, consolidation, sale, merger, foreclosure, or readjustment of the finances of any corporation or property in which the assets of the retirement system are invested, or the sale, mortgage, pledge or lease of that property or the property of any such corporation upon such terms and conditions that the board considers prudent; exercise any options, make any agreements or subscriptions, pay any expenses, assessments, or subscriptions, and take any other action in connection with these transactions that the board considers prudent; and accept and hold any investment that may be issued in or as a result of any such proceeding.

(7) Vote, in person or by any proxy, at any election of any corporation in whose stock the assets of the retirement system are invested, and exercise, personally or by any power of attorney, any right appurtenant to any investment held in the retirement system; and give general or specific proxies or powers of attorney with or without power of substitution.

(8) Sell, either at public or private sale, option to sell, mortgage, lease for a term of years less than or continuing beyond the possible date of the termination of the trust, partition or exchange any real property for such prices and upon such terms as the board considers prudent, and execute and deliver deeds of conveyance and all assignments, transfers, and other legal instruments for passing the ownership to the purchaser, free and discharged of all liens.

(9) Renew or extend any mortgage, upon such terms that the board considers prudent, and increase or reduce the rate of interest on any mortgage or modify the terms of any mortgage or of any guarantee as the board considers prudent to protect the retirement system or preserve the value of the investment; waive any default or enforce any default in a manner that the board considers prudent; exercise and enforce any right of foreclosure, bid on property in foreclosure, take a deed in lieu of foreclosure with or without paying a consideration, and release the obligation on the bond secured by the mortgage; and exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any mortgage or guarantee.

(10) Form a corporation or corporations under the laws of any jurisdiction or acquire an interest in or otherwise make use of any corporation already formed to invest in and hold title to any property.

(11) For the purpose of investing in and holding title to real or personal property or part interests therein, as described in subsection (c)(1) h., including equipment pertaining thereto, leaseholds, and mortgages, to take any action it considers prudent.

(12) Incur and pay expenses for agents, financial advisors, actuaries, accountants and counsel, if those expenses are incurred solely to perform the board's duties under

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this article.

(13) Borrow, raise or lend moneys, for the purposes of the retirement system, in such amounts and upon such terms and conditions as the board in its discretion considers prudent; for any money borrowed, issue a promissory note and secure the repayment of this note by pledging or mortgaging all or any part of the retirement system.

(14) Hold, buy, transfer, surrender, and exercise all other incidents of ownership of any annuity contract.

(15) If payments to a member or beneficiary are to be made in the form of an annuity based upon one (1) or more lives or life expectancies, buy from any legal reserve life insurance company a single premium, nontransferable annuity contract providing for the payment of the benefits.

(16) Do all acts which it considers necessary and exercise any and all powers of this article with respect to the management of the retirement system, and in general, exercise all powers in the management of the assets which an individual could exercise in the management of property owned in the individual's own right except for making an individual investment selection.

(e) *Prohibited transactions.* The board must not engage in any transaction between the trust and the county or any entity controlled by the county in which the board:

(1) Lends any part of its income or corpus, without receiving adequate security and a reasonable rate of interest;

(2) Pays any compensation, more than a reasonable allowance for salaries or other compensation or personal services actually rendered;

(3) Makes any part of its services available on a preferential basis;

(4) Makes any substantial purchase of securities or other property, for more than adequate consideration;

(5) Sells any substantial part of its securities or other property, for less than adequate consideration; or

(6) Engages in any transaction which results in a substantial diversion of its income or corpus.

(f) *Available cash.* The board may keep cash available in an amount it considers prudent to pay benefits, expenses and other payments. The board may keep cash on deposit in one (1) or more banks or trust companies organized under the laws of any state, or of the United States, but the sum on deposit in any one (1) bank or trust company must not exceed twenty-five

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(25) percent of the paid-in capital and surplus of that bank or trust company.

(g) *Investment management agreements.*

(1) *Appointment of investment manager.* Except as permitted under subsection (c)(1), the board must appoint investment managers to manage, acquire, or dispose of all or some of the assets of the retirement system. The board may dismiss any manager the board appoints. The fees charged by any manager are expenses of the retirement system.

(2) *Investment contract.* Any contract must provide that when the investment manager is making individual investment selections, the investment manager must make the individual investment selections subject to the written policies of the board. In any contract, the board must identify the assets that are the subject to the contract. In any contract, the board may give an investment manager the right to invest the assets of the retirement system specified in the contract without prior notice to or approval by the board. In any contract, the board may limit the investment of a specified portion of the retirement system to a certain type of property, such as but not limited to common stocks, bonds, or real estate. If a contract only applies to a portion of the assets of the retirement system and specifies the type of property to be invested in, the manager must achieve diversification within the specified category of property, but is not responsible for diversification of investments of the entire retirement system. In any contract, the board may delegate to the investment manager any power or discretion conferred on the board under this Article and may provide that the investment manager must have custody and control of certain assets of the retirement system.

(3) *Monitoring of investment manager.* The board must monitor the performance of the managers and may terminate any appointment. Monitoring may include any tests or analyses that the board considers prudent in the circumstances to ensure the stability and growth of the retirement system.

(h) (1) Except as provided in subsection (d)(12), the board must pay all benefits and expenses of the retirement system as directed by the chief administrative officer.

(2) If the board approves a contract for delegation of the custodial functions as provided in section 33-61, the board must coordinate the payment of benefits and must monitor the timeliness and accuracy of such benefit payments.

(3) The board is entitled to rely on the decision of the chief administrative officer as to the proper recipient of benefit payments.

(i) *Delegation of duties.* The Board may delegate its duties to the Executive Director or a similarly situated County employee as it deems appropriate and consistent with its fiduciary duties in a written policy and procedure. If the Board has prudently delegated its duties and monitored the delegation, the trustees must not be liable for an act or omission made by its delegate. (1987 L.M.C., ch. 29, § 11; CY 1991 L.M.C., ch. 17, § 1; 1992 L.M.C., ch. 11, § 1;



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1993 L.M.C., ch. 45, § 1; 1998 L.M.C., ch. 27, § 1; 2007 L.M.C., ch. 19, § 1; 2012 L.M.C., ch. 21, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-60A. Sudan Investments—Restrictions**

**Sec. 33-60A. Sudan Investments—Restrictions**

(a) *Definitions.* In this Section, the following words have the meanings indicated:

*Actively managed separate account* means assets held in a separate account by an investment manager hired by the Board. *Actively managed separate account* does not include an indexed fund, private equity fund, real estate fund, mutual fund, or other commingled or passively managed fund.

*Board* means the Board of Investment Trustees established by Section 33-59.

*Company* means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including any wholly-owned subsidiary, majority-owned subsidiary, and parent company of any of them, or business association, that exists for profit-making purposes.

*Divestment action* means selling, redeeming, transferring, exchanging, or otherwise disposing of, and refraining from further buying of, certain investments.

*Doing or does business in Sudan* means maintaining equipment, facilities, personnel, or other apparatus of business or commerce in Sudan, including ownership of real or personal property in Sudan:

(1) for the purpose of:

(A) engaging in any business activity with the Government of Sudan;

or

(B) conducting business with any company in which the Government of Sudan has a direct or indirect equity share; or

(C) participating in a Government of Sudan-commissioned consortium or project; and

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- (2) if the business operation includes:
  - (A) supplying military equipment in Sudan; or
  - (B) oil-related activities constituting more than 10% of the entity's operations in Sudan; or
  - (C) mineral extraction activities constituting more than 10% of the entity's operation in Sudan; or
  - (D) power production activities constituting more than 10% of the entity's operations in Sudan.

*Government of Sudan* means the government in Khartoum, Sudan, led by the National Congress Party (formerly known as the National Islamic Front), or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan). *Government of Sudan* does not include the regional government of southern Sudan.

*Marginalized populations of Sudan* means adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Public Law 109-344) or areas in Northern Sudan described in section 4(9) of that Act.

*Military equipment* means:

- (1) weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems or military-grade transport vehicles; or
- (2) supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

*Mineral extraction activity* means exploring, extracting, processing, transporting, or wholesale selling or trading any elemental mineral or associated metal alloy or oxide (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

*Oil-related activity* means exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading oil; or constructing, maintaining, or operating a pipeline, refinery, or other oilfield infrastructure. *Oil-related activity* does not include the retail sale of gasoline or related consumer products in Sudan or leasing or owning rights to an oil block in Sudan.

*Power production activity* means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or any similar Government of Sudan entity whose purpose is to facilitate power generation and delivery, including establishing

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any power-generating plant or hydroelectric dam, selling or installing components of any such plant or dam, or providing service contracts related to installing or maintaining any such plant or dam.

*Substantial action* means:

- (1) adopting, publicizing, and implementing a formal plan to cease business operations in Sudan within one year and to refrain from any such new business operations;
- (2) undertaking significant humanitarian efforts in conjunction with an international organization, the Government of Sudan, the regional government of southern Sudan, or a non-profit entity that is evaluated and certified by an independent third party to be substantial in relationship to the company's business operations in Sudan and of benefit to one or more marginalized populations of Sudan; or
- (3) engaging the Government of Sudan for the purpose of materially improving conditions for the victimized populations in Darfur.

*Trust funds* means the assets held for the Employees' Retirement System and the assets held for the Retiree Health Benefits Trust.

(b) *Review of investments.* The Board must review the investment holdings in each actively managed separate account of the trust funds and identify each investment in any company that does business in Sudan. The Board must review its investment holdings in these accounts periodically and update the list of companies doing business in Sudan at least every 6 months.

(c) *Divestment.* The Board:

- (1) must take divestment action with regard to investments in any company doing business in Sudan within 12 months after the Board finds that the company is doing business in Sudan; and
- (2) must not make any new investments in an actively managed separate account in any company that does business in Sudan.

(d) *Research.* In determining if any company does business in Sudan, the Board may:

- (1) retain a professional consultant; and
- (2) review publicly available information regarding companies doing business in Sudan, including information provided by a non-profit organization, research firm, international organization, or government.

(e) *Exemption.* The divestment or investment prohibition under this Section must not

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apply to a company that can demonstrate that its business operations in Sudan:

- (1) are conducted under contract directly and exclusively with the regional government of southern Sudan;
  - (2) are conducted under a license from the federal Office of Foreign Assets Control, or are expressly exempted under Federal law from the requirement to be conducted under such a license;
  - (3) consist of providing goods or services to marginalized populations of Sudan for at least 75% of its business operations in Sudan;
  - (4) consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
  - (5) consist of providing goods or services that are used only to promote health or education; or
  - (6) have been voluntarily suspended.
- (f) *Notice.* The Board:
- (1) before taking any divestment action under this Section, must provide written notice and an opportunity to comment in writing to each company subject to the action;
  - (2) must not take the divestment action until 90 days after written notice is provided to the company; and
  - (3) must not take the divestment action if the company shows that it:
    - (A) is not doing business in Sudan;
    - (B) has taken substantial action, as defined in subsection (a); or
    - (C) is exempt from divestment under subsection (e).
- (g) *Report.* The Board must report annually to the Council and Executive on the operation of and compliance with this Section. The report must:
- (1) identify each investment in a company doing business in Sudan held in an actively managed separate account of the trust funds;
  - (2) list each divestment action taken under this Section; and
  - (3) calculate the administrative cost of compliance.
- (h) *Sunset.* This Section expires 30 days after the President of the United States

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certifies to Congress that the government of Sudan has honored its commitments to:

- (1) abide by United Nations Security Council Resolution 1769 (2007);
- (2) cease attacks on civilians;
- (3) demobilize and demilitarize the Janjaweed and associated militias;
- (4) grant free and unfettered access for delivery of humanitarian assistance;

and

(5) allow for the safe and voluntary return of refugees and internally displaced persons. (2008 L.M.C., ch. 2, § 1.)

**Editor's notes**—2008 L.M.C., ch. 2, § 3, states: Initial review. The Board of Investment Trustees must complete its initial review of the investment holdings in all actively managed separate accounts of the trust funds and identify all investments in companies doing business in Sudan within 90 days after the effective date of this Act.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-60B. Emerging Investment Managers.**

### **Sec. 33-60B. Emerging Investment Managers.**

(a) *Legislative findings.*

(1) Emerging investment managers, including businesses owned by women, minorities and disabled individuals, should receive an equal opportunity to provide investment management services to the Board of Investment Trustees.

(2) The Board of Investment Trustees has adopted a policy requiring its staff to identify qualified emerging investment managers to participate in an investment manager search, including regular monitoring of investment managers.

(3) Expanding opportunities for emerging investment managers will increase competition.

(b) *Definitions.*

As used in this Section:

*Assets* means total client assets managed by an investment manager.

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*Emerging investment manager* means:

- (1) an investment manager with assets or product assets below the 75<sup>th</sup> percentile of their respective peer group; or
- (2) a new or developing investment manager.

*New or developing investment manager* means an investment manager:

- (1) raising its first or second private institutional investment fund; or
- (2) creating its first institutional product.

*Product Assets* means client assets managed by an investment manager in a single strategy.

(c) Consistent with the fiduciary duties established in Section 33-61C, the Board must make a good faith effort to remove any barriers that limit participation by qualified emerging investment managers to manage funds for the Employees' Retirement System.

(d) The Board must adopt guidelines to identify and evaluate qualified emerging investment managers. The guidelines must include procedures for:

- (1) identifying possible firms;
- (2) reviewing, evaluating and interviewing emerging investment managers on an ongoing basis; and
- (3) maintaining research files on emerging investment managers.

(e) The Board must report annually to the Council and the Executive on compliance with this Section on or before September 1 for the prior fiscal year. The report must:

- (1) identify each emerging investment manager used during the fiscal year;
- (2) list the percentage and dollar value of the assets of the trust fund, by investment sector, managed by each emerging investment manager; and
- (3) describe the good faith effort made to include qualified emerging investment managers in the procurement process during the fiscal year. (2012 L.M.C., ch.; 3, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-61. Custodian.**

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**Sec. 33-61. Custodian.**

(a) The director of finance is the custodian of the retirement system assets. The director must give bond with such surety and for such periods and in such amount as the board determines. All payments from the retirement system assets must be made by (i) the director of finance, (ii) a designee of the director of finance, or (iii) two (2) persons designated by the board, acting jointly. The board must file a duly attested copy of the resolution of the board designating the two (2) persons, with specimen signatures of those persons, with the director of finance to indicate their authority for making payments.

(b) If the board approves, the director of finance may make written contracts with banks, trust companies, insurance companies or investment companies authorized to do business in any state for the safe custody of investments, banking services, the payment of benefits and expenses and any other function necessary for the management and safeguarding of the assets of the retirement system. The contract may provide that a bank, trust company, insurance company, or investment company may invest assets of the retirement system in:

(1) Money market funds;

(2) A short-term investment fund of a bank, trust company, or insurance company; or

(3) Their substantial equivalent. As soon as possible after all members of the board have accepted the trust, the board must approve a written contract for the investment purposes described in this subsection.

(c) If the board approves, the director of finance may direct the payment of benefits and expenses from a trust account of the board.

(d) Chapter 11B does not apply to the procurement of goods and services for the retirement system by the director of finance. (1987 L.M.C., ch. 29, § 11.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-61A. Indemnification of trustees.**

**Sec. 33-61A. Indemnification of trustees.**

(a) *Authorized.* The County must indemnify every member of the Board who is or

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may become a party to any action, suit, or proceeding, including administrative and investigative proceedings, because of service as a member of the Board, including any action taken to comply with Section 33-60A, subject to the conditions stated in this section.

(b) *Standards for indemnification.*

(1) The county must indemnify a member of the board:

a. With respect to civil matters, if the member acted in good faith and in a manner that the member reasonably believed to be in the best interest of the retirement system; and

b. With respect to criminal matters, if the member had no reasonable cause to believe that the member's conduct was unlawful.

(2) If the county must indemnify a member of the board under this article, the county must indemnify the member for expenses when the member incurs the expense, including but not limited to:

a. Reasonably attorney fees;

b. Judgments;

c. Damages;

d. Fines; and

e. Settlements.

(c) *Effect of termination of any suit or proceeding.* The termination of any suit or proceeding does not, by itself, create a presumption that a trustee did not act in good faith and in a manner reasonably believed to be in the best interest of the retirement system. The termination of a criminal action or proceeding does not, by itself, create a presumption that a trustee had reasonable cause to believe that the conduct was unlawful.

(d) *Exceptions to indemnification.* The county must not indemnify any member of the board if:

(1) The member of the board is found by a court or other tribunal to be liable for gross negligence or willful and wanton misconduct in the performance of a duty to the retirement system; or

(2) Liability arises from action that occurred before the date on which all the trustees have accepted the trust in writing.

(e) *Recovery of payments.* If the county attorney determines that indemnification



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payments have been made that are outside the scope of indemnification, the county attorney must take appropriate action, on behalf of the county, to recover the payments.

(f) *Insurance provided.* The county must provide insurance for each member of the board against any liability asserted against or incurred by the member of the board with respect to service on the board. Premiums for any insurance must not be paid with assets of the retirement system. The county may self-insure for this purpose, wholly or partly. If the county does not provide adequate insurance coverage or indemnification under this section, a member of the board need not pay any amount attributable to liability incurred by serving on the board, and the county must pay any amount due.

(g) *Defenses.* The county may assert the defense of governmental immunity, or any other defense available to the county, in suits or other actions brought against the county.

(h) *County attorney.*

(1) The county attorney must make the final determination of eligibility of a member of the board for indemnification with respect to a matter, and of the reasonableness of all fees, expenses, and settlements.

(2) Unless the county attorney approves the settlement, a trustee must not use:

- a. County funds;
- b. Funds provided by a self-insurance program of the county; or
- c. Funds provided under a policy the county has with an insurance company; to settle a claim against the trustee. (1987 L.M.C., ch. 29, § 11; 2008 L.M.C., ch. 2, § 2.)

**Editor's note**—See County Attorney opinion dated 11/14/11 regarding the County's liability for errors in the administration of the pension and retirement funds of employees.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-61B. Accounts and records of the board of investment trustees.**

### **Sec. 33-61B. Accounts and records of the board of investment trustees.**

(a) *Maintenance of records and accounts.* The board must keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions, including any specific records that are required by law and any additional records it considers necessary. All

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accounts, books and records are subject to state law on public records.

(b) *Annual accounting by board.* The fiscal year of the retirement system is the same as the fiscal year of the county. On or before January 1 of each year, the board must file with the chief administrative officer a written account, listing all investments, receipts, disbursements, and other transactions during the preceding fiscal year or during the period from the close of the last preceding fiscal year to any interim date that the board selects. This account must describe all securities and investments bought and sold, with the cost or net proceeds of each purchase or sale, and must list all cash, securities, and other property held at the end of that period. The account must include a list of the retirement system assets and the current fair market value of each asset at the end of that period. If a current fair market value is not available for a particular investment or is not applicable to a particular investment, the board must assign a value to that investment. The board must apply the investment valuation method on a consistent basis. If the board changes the investment valuation method, the board must notify the council of the change.

(c) *Reporting and disclosure.* The board must prepare for the chief administrative officer any documents required by law. (1987 L.M.C., ch. 29, § 11.)

**Editor's note**—See County Attorney Opinion dated 1/7/98 discussing the parameters within which the Board of Investment Trustees may disclose certain employee data to companies providing deferred compensation plans.

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-61C. Standard of care.**

#### **Sec. 33-61C. Standard of care.**

A fiduciary must discharge the fiduciary's duties regarding the retirement systems:

- (a) only in the best interest of the participants and their beneficiaries;
- (b) only to provide benefits to the participants and their beneficiaries, and defray reasonable expenses of administering the retirement systems;
- (c) with the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a similar capacity and familiar with the same matters would use to conduct a similar enterprise with similar purposes;
- (d) by diversifying the investments of the retirement systems to minimize the risk of large losses, unless it is clearly not prudent to diversify under the circumstances;

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(e) according to a good faith interpretation of the law governing the retirement systems;

(f) according to a good faith interpretation of the documents and instruments governing the retirement systems, if they comply with this Article. (1987 L.M.C., ch. 29, § 11; 1998 L.M.C., ch. 27, § 1.)

**Editor's note**—See County Attorney opinion dated 11/14/11 regarding the County's liability for errors in the administration of the pension and retirement funds of employees.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-61D. Ethics; conflict of interest.**

**Sec. 33-61D. Ethics; conflict of interest.**

(a) Members of the board are subject to the provisions of chapter 19A, "Ethics," of the Montgomery County Code.

(b) Except as otherwise provided in this section, members and employees of the board must not:

(1) Be a party to any transaction engaged in by the board or an investment manager involving the assets of the retirement system;

(2) Use the gains or profits of the system for any purpose except to make investments or payments that are authorized by the board;

(3) Deal with the assets of the retirement system for their own interest or account;

(4) Act in any transaction involving the retirement system on behalf of a party whose interests are adverse to the interests of the retirement system or the interests of the members or beneficiaries of the retirement system; or

(5) Become an endorser or surety, or in any manner an obligor, for moneys loaned to or borrowed from the board.

(c) In this section, nothing prohibits a member or employee of the board from:

(1) Being a member of the retirement system;

(2) Receiving a benefit the member or employee of the board is entitled to as a

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member or beneficiary in the retirement system so long as the benefit is computed and paid on a basis that is consistent with the terms of the retirement system as applied to all other members or beneficiaries; or

(3) Serving as a trustee or employee of the board in addition to being an officer, employee, agent, or other representative of a party in interest. (1987 L.M.C., ch. 29, § 11.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-61E. Qualification amendments to elected officials' plan.**

### **Sec. 33-61E. Qualification amendments to elected officials' plan.**

The elected officials' plan and any related trust agreement, investment advisory agreement, custodial agreement, annuity contract, or similar agreement, may be amended by the county at any time, either prospectively or retroactively, to conform to the provisions of the Internal Revenue Code. However, if the Internal Revenue Service requires an amendment and the amendment reduces a benefit provided by the elected officials' plan, the required reduction must be paid as a separate benefit from a nonqualified supplemental plan to be established by the county. The benefit payable to a member from the elected officials' plan and the related benefit payable from the supplemental plan, when taken together, must equal the benefit promised under the elected officials' plan immediately before the benefit amendment required by the Internal Revenue Service. (1987 L.M.C., ch. 27, § 13; 1987 L.M.C., ch. 44, § 4; 1988 L.M.C., ch. 25, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-61F. Qualification amendments.**

### **Sec. 33-61F. Qualification amendments.**

The retirement system and any related trust agreement, investment advisory agreement, custodial agreement, or similar agreement, may be amended by the county at any time, either prospectively or retroactively, to conform to the provisions of the Internal Revenue Code or similar act or amendment thereto or regulations promulgated thereunder. However, if the Internal Revenue Service requires an amendment and the amendment reduces a benefit provided by the retirement system, the required reduction must be paid as a separate benefit from a nonqualified

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supplemental plan to be established by the county. The benefit payable to a member from the retirement system and the related benefit payable from the supplemental plan, when taken together, must equal the benefit promised under the retirement system immediately before the amendment required by the Internal Revenue Service. (1987 L.M.C., ch. 44, § 5; 1988 L.M.C., ch. 25, § 1.)

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-61G. Termination and discontinuance of contributions.**

#### **Sec. 33-61G. Termination and discontinuance of contributions.**

(a) *Rights upon termination or discontinuance of contributions.* Full vesting of all accrued benefits must occur upon termination of the retirement system, or upon complete discontinuance of contributions thereto, to the extent that such accrued benefits are funded.

(b) *Provision for allocation of unallocated funds.* Upon termination of the retirement system, or complete discontinuance of contributions thereto, any unallocated funds which are not necessary for the satisfaction of liabilities under the retirement system must be returned to the county.

(c) *Limitation on the use of certain dividends and credits.* Credits or returns under any annuity contract, other than those arising from corrections of errors in records or computations (such as misstated ages or similar corrections), must not be paid to the county prior to permanent discontinuance of contributions or discontinuance of the retirement system. All dividends, experience rating credits, or employer surrender or cancellation credits ascertained prior to permanent discontinuance of contributions or termination of the retirement system must be applied regularly toward the premiums (or required contributions) next due for the purchase of any annuities. Any surrender or cancellation credits made available after discontinuance of contributions or termination of the retirement system, but before all retirement annuities with respect to service prior to such discontinuance or termination have been purchased, must be applied regularly as they are determined to purchase such retirement benefits so as not to discriminate in favor of officers and highly compensated persons. Any dividends, experience credits, surrender credits or cancellation credits made after permanent discontinuance of contributions or termination of the retirement system and after the satisfaction of all liabilities of the retirement system must be paid to the county.

(d) *Reversion of surplus assets upon termination of the retirement system or discontinuance of contributions thereto.* Upon termination of the retirement system or complete discontinuance of contributions thereto, any assets which are not necessary for the satisfaction of

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liabilities under the retirement system, must be returned to the county. (1987 L.M.C., ch. 44, § 6; 1988 L.M.C., ch. 25, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-61H. Nonqualified supplemental retirement plan.**

**Sec. 33-61H. Nonqualified supplemental retirement plan.**

(a) The county executive must establish a nonqualified supplemental retirement plan if it is necessary to pay benefits to members of the employees' retirement system whose benefits were reduced so that the employees' retirement system would receive a favorable letter of determination from the Internal Revenue Service as to qualification under the Internal Revenue Code. The plan must be a nonqualified and unfunded retirement plan within the meaning of the Internal Revenue Code and the related United States Treasury Regulations and Revenue Rulings. However, the nonqualified supplemental retirement plan will not be an eligible or ineligible state deferred compensation plan within the meaning of section 457 of the Internal Revenue Code. The plan must not permit an employee to defer payment of an amount of the employee's basic or regular compensation, increases in compensation or supplements of compensation such as bonuses or overtime.

(b) The benefits provided pursuant to the nonqualified supplemental retirement plan must be paid from the general assets of the county or through such funding vehicle as may be permitted by the Internal Revenue Service with respect to nonqualified supplement retirement plans.

(c) If the nonqualified supplemental retirement plan is established, the county executive must obtain a private letter ruling from the Internal Revenue Service with respect to the plan.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-61I. Termination of participation by a participating agency.**

**Sec. 33-61I. Termination of participation by a participating agency.**

If a participating agency decides to stop participating in any retirement system plan, it must give written notice to the Chief Administrative Officer. The Chief Administrative Officer

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and the withdrawing agency must agree on a date for the withdrawal, and, to the extent applicable to the plan at issue, comply with Section 33-47(d)(12). Any transfer of assets resulting from the withdrawal must comply with Section 414(l) of the Internal Revenue Code. No assets may revert to a withdrawing agency unless the Internal Revenue Service approves the reversion. (1987 L.M.C., ch. 45, § 1; 1988 L.M.C., ch. 25, § 1; 1998 L.M.C., ch. 31, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article III. Employee's Retirement System. [Note] / Division 4. Administration. / Sec. 33-61J. Transfer of assets between trust funds of the retirement system.**

### **Sec. 33-61J. Transfer of assets between trust funds of the retirement system.**

To the extent permitted by the Internal Revenue Code and applicable guidance under the Internal Revenue Code, the County may transfer assets of the retirement system relating to an account or accrued benefit of a participant in trust-to-trust transfers between the trusts of the Employees' Retirement System and the Retirement Savings Plan to correct operational failures relating to such accounts or accrued benefits. (2003 L.M.C., ch. 31, § 1.)

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**Endnotes**

**1 (Popup - Popup)**

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**\*Editor's note**—[2011 L.M.C., ch. 13](#), § 4, which is effective October 10, 2011, states:

Collective bargaining.

(a) It is the policy of Montgomery County that all County employees should have a multi-tier service- connected disability retirement system which includes a:

(1) partial incapacity service-connected disability retirement benefit for any injury or illness that prevents an employee from continuing in the employee's current position but does not prevent the employee from engaging in other substantial gainful employment; and

(2) total incapacity service-connected disability retirement benefit for any injury or illness that prevents an employee from engaging in any other substantial gainful employment.

(b) It is also the policy of the County that disability benefits are a mandatory subject of collective bargaining with each appropriate certified employee representative.

(c) Notwithstanding any County law to the contrary, the County Executive may separately negotiate the terms of an appropriate multi-tier service-connected disability retirement system with the certified employee representative for the police bargaining unit and the certified representative for the OPT and SLT bargaining units, in each case not later than March 1, 2012. If in either case the parties are unable to reach agreement on an appropriate multi-tier system, the parties may submit this issue for resolution through the applicable impasse procedures under the County's police labor relations law and the County collective bargaining law as a separate matter, not part of or linked to any other collective bargaining procedure. The impasse neutral for the police bargaining unit and the mediator/arbitrator for the OPT and SLT bargaining units must choose the final offer of either party after considering equally the following factors:

(1) service-connected disability retirement systems for similar employees of other public employers in the Washington Metropolitan Area and in Maryland;

(2) best practices for service-connected disability retirement systems for similar employees in the United States;

(3) the interest and welfare of the public; and

(4) the long-term ability of the employer to finance a disability retirement system, and the effect of the cost of the system on the normal standard of public services



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provided by the employer.

(d) The Executive must submit the results of any collective bargaining process regarding this issue to the Council for legislative action not later than April 1, 2012.

1993 L.M.C., ch. 21, § 2, as amended by 1994 L.M.C., ch. 17, § 1, states: Retirement Incentive Program.

(a) Policy. A Retirement Incentive Program is established in the Retirement System of Montgomery County to facilitate the restructuring and downsizing of County Government, and to achieve net budget savings.

(b) Definitions. The definitions in Section 33-35 apply to this Section.

(c) Eligibility.

(1) A member of the Employee's Retirement System may participate in the Retirement Incentive Program if the member:

(A) has at least 10 years of actual County service;

(B) is eligible for normal or early retirement on July 1, 1993;

(C) is not an elected or appointed County official;

(D) files a completed application and participates in an individual counseling session for the Retirement Incentive Program between August 1, 1993 and October 31, 1993, except that this period is extended to January 1, 1995 for any member who is a sworn police officer;

(E) receives the Chief Administrative Officer's approval of the application; and

(F) retires on a date set by the Chief Administrative Officer between November 1, 1993 and November 30, 1994, except that this period is extended to June 30, 1995 for any member who is a sworn police officer.

(2) An employee of a participating agency or political subdivision may participate in the Retirement Incentive Program if the agency or political subdivision executes a participation agreement in a form prepared by the Chief Administrative Officer under terms comparable to subsection (c)(1).

(d) Benefit. A member who participates in the Retirement Incentive Program is entitled to receive, in addition to the normal or early retirement benefit, an amount equal to 100% of the member's final annual earnings. The incentive must be paid from the assets of the

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Retirement System. The member must elect to receive the incentive payment:

- (1) in a lump sum paid to the member on retirement;
- (2) in a lump sum paid on the member's retirement directly to the trustee of:
  - (A) another tax-qualified retirement plan;
  - (B) an Individual Retirement Account or Individual Retirement
- (3) as an annuity in the form provided under Section [33-44\(a\)\(3\)](#).

Annuity; or

(C) a tax-qualified annuity plan; or

Cost-of-living adjustments and the limits in Section [33-42\(f\)](#) do not apply to this benefit.

(e) Administration.

(1) The Chief Administrative Officer must administer the Retirement Incentive Program.

(2) The Chief Administrative Officer must limit the number of members permitted to participate in the Retirement Incentive Program as follows:

- (A) Sworn police officers 78;
- (B) Sworn fire/rescue personnel 40;
- (C) MCGEO/Local 400 150; and
- (D) Other employees 75.

(3) The Chief Administrative Officer, in his sole discretion may approve or disapprove a member's application for the Retirement Incentive Program, except that the County Council Staff Director may approve or disapprove an application from a member employed by the Legislative Branch. The Chief Administrative Officer should consider the following when approving or disapproving a member's application for the Program:

- (A) the policy goals in subsection (a);
- (B) minimizing disruption of County Government service delivery; and
- (C) the member's years of credited service in the County retirement

system.

(4) A member who participates in the Retirement Incentive Program must not

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be reemployed by the County, either on a permanent, temporary, or contractual basis, unless:

(A) the Chief Administrative Officer (or the County Council Staff Director for a member reemployed by the Legislative Branch) determines that the member's reemployment is necessary to complete a specific project on which the member worked before retirement; and

(B) the member's reemployment is limited to a maximum of 6 months immediately following the member's retirement.

If the County reemploys a member who participates in the Retirement Incentive Program, the member's salary from the reemployment is limited to an amount equal to 120% of the maximum salary for the position less the member's County pension. The member must not receive any other compensation or benefits from the reemployment.

(5) The County Executive must report to the County Council on implementation of the Retirement Incentive Program, including:

(A) how the Program is achieving its states policy goals;

(B) actual costs/savings of the Program;

(C) any members who participate in the Program and are reemployed (on a permanent, temporary or contractual basis) by the County after retirement;

(D) any effect on delivery of County services; and

(E) the relationship of the Program to the County Government's long-range strategic fiscal plan.

The reports must be made quarterly between October 1, 1993 and October 1, 1994, and annually thereafter through October 1, 1998.

**Cross reference**—Pension of judges and spouses of deceased judges, § [12-10](#); police relief and retirement fund, § [35-14](#) et seq.

### **2 (Popup - Popup)**

**\*Editor's note**—1999 L.M.C., ch. 26, § 1, deleted § 33-43, Disability Retirement, and renumbered § 33- 43A, Disability Retirement, to § 33-43. The previous § 33-43, Disability Retirement, was derived from Ord. No. 5-152; Ord. No. 6-195, § 1; 1971 L.M.C., ch. 39, § 4; 1972 L.M.C., ch. 19, § 8; 1974 L.M.C., ch. 31, §§ 10, 11; 1974 L.M.C., ch. 59, § 4; 1978 L.M.C., ch. 44, § 1; 1985 L.M.C., ch. 49, § 1; 1986 L.M.C., ch. 29, § 1; 1986 L.M.C., ch. 56, § 1; 1987 L.M.C., ch. 27, § 7; 1989 L.M.C., ch. 45, § 1; 1994 L.M.C., ch. 13, § 1; 1995 L.M.C., ch. 1, § 1; 1995 L.M.C., ch. 3, § 1; 1998 L.M.C., ch. 31 § 1; 2001 L.M.C., ch. 28, §§ 6, 15 and 16, the amendments to which have the same effective date as 1998 L.M.C., ch. 31, § 1. The following

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annotations refer to § 33-43 prior to 1999 L.M.C., ch. 26: The Court found in Frederick W. Ahalt v. Montgomery County, Maryland, 113 Md.App. 14, 686 A.2d 683 (1996), that in order for a claimant to collect disability benefits for a “condition aggravated” under subsection (e)(1), the claimant must prove that the aggravation of the condition in the course of duty was the sole, proximate cause of the disability. The Court of Special Appeals found in Sweeney v. Montgomery County, 107 Md.App. 187, 667 A.2d 922 (1995), that the test to determine whether an employee is totally incapacitated for duty under §33-43(e) is whether the employee could perform any of the important functions of the job held at the time the disability occurred. An employee is partially incapacitated for duty if he or she can perform some but not all of the important functions of the job held at the time the disability occurred. The Court of Appeals held in Montgomery County v. Buckman, 333 Md. 516, 636 A.2d 448 (1994), that the Montgomery County Council, by use of the words “partial” in §33-43(h)(2) and “partially” in §33-43(e)(1), intended a lesser amount of retirement benefits to a partially disabled employee. The Council has unambiguously created a type of disability retirement for an employee, who because of a workplace accident, suffers from a permanent partial disability which prevents that employee from performing enough of the duties of the job held at the time the disabling accident occurred but who is not totally incapacitated from employment. The Court refused to rule that where an employee, due to a job-related injury, is “unable to perform enough of the duties of that job to remain in that position,” he or she is entitled to the service-connected retirement benefits provided for an employee who is totally incapacitated for duty. Section 33-43 is cited in Fultz v. Shaffer, 111 Md.App. 278, 681 A.2d 568 (1996) and Polomski v. Mayor & City Council of Baltimore, 344 Md. 70, 684 A.2d 1338 (1996); Section 33-43 is cited and quoted in part in Fikar v. Montgomery County, 333 Md. 430, 635 A.2d 977 (1994); Section 33-43(e) is interpreted and Sections 33-43(f) and (i) are quoted in part in Main v. Montgomery County, 961 F.Supp. 125 (D.Md. 1997).