

MONTGOMERY COUNTY CODE

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note]**

**Article VIII. Employees' Retirement Savings Plan. [Note](1)**

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**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan.**

**Division 1. Retirement Savings Plan.**

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-113. Definitions.**

**Sec. 33-113. Definitions.**

In this Division the following words and phrases have the following meanings:

(a) *Account balances* means the balance credited to the retirement account of a participant under the retirement savings plan as of the valuation date preceding the date of distribution determined without regard to vesting, including:

- (1) any participant contributions (including contributions picked up by the County);
- (2) County contributions; and
- (3) rollover contributions.

(b) *Board or Board of Investment Trustees* means the Board of Investment Trustees established under Article III.

(c) *County* means the Montgomery County Government and, when applicable, any participating agency.

(d) *County service* means any period of County employment during which a

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participant is:

- (1) in pay status, or
  - (2) on an approved leave of absence without pay on or after January 1, 2002.
- (e) *Employee* means any eligible elected or appointed County official and any full-time or career part-time County employee.
- (f) *Employee organization* means any organization that:
- (1) admits employees to membership;
  - (2) has as a primary purpose the representation of employees in collective bargaining; and
  - (3) is certified as an employee organization under applicable law.
- (g) *Former participant* means any individual with an account balance in the retirement savings plan who has ceased to be a participant.
- (h) *Investment manager* means a person or entity who exercises discretion to manage all or part of the assets of an institutional investor. The investment manager is a fiduciary as defined in Section 33-35.
- (i) *Merit System Protection Board* means the Merit System Protection Board established in the Charter.
- (j) *Non-public safety employee* means any employee who is not a public safety employee.
- (k) *Normal retirement date* means the first day of the month after the month in which the participant reaches age 62.
- (l) *Participant* means an employee who is participating in the retirement savings plan.
- (m) *Participant's contribution account* means the portion of a participant's account balances in the retirement savings plan that is attributable to participant contributions, including contributions picked up by the County, and any gains or losses attributable to those contributions.
- (n) *Plan year* means the 12-month period beginning January 1 and ending on December 31 each year.
- (o) *Public safety employee* means any employee who is a:
- (1) sworn officer of the Police Department;

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(2) paid firefighter, paid fire officer, or paid rescue service worker of the 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.

(p) *Regular earnings* means gross pay for actual hours worked, including paid leave, but not including overtime, without reduction for participant contributions that are picked up under Section 33-116(a), or contributions to any County deferred compensation plan or statutory fringe benefit program. If a participant is required to take any furlough, as defined in personnel regulations under Section 33-7(b) or a collective bargaining agreement, regular earnings must include any amount the participant would have received if the participant had not been required to take any furlough.

(q) *Retirement accounts* means the required participant contributions account, a County contributions account, and any rollover contributions account.

(r) *Rollover contributions* means that portion of a participant's account balances in the retirement savings plan that is attributable to any assets transferred or rolled over to the retirement savings plan from another eligible retirement plan as defined in the Internal Revenue Code Section 402(c). No after-tax contributions may be transferred or rolled over into the retirement savings plan.

(s) *Valuation date* means the last business day of March, June, September, and December of each plan year, and any other date the Board establishes in a uniform and nondiscriminatory manner for determining the fair market value of the assets of the retirement savings plan. (1994 L.M.C., ch. 13, § 2; 2003 L.M.C., ch. 3, § 1; 2006 L.M.C., ch. 20, § 1; 2007 L.M.C., ch. 19, § 1; 2009 L.M.C., ch. 23, § 1; 2010 L.M.C., ch. 21, § 1; 2010 L.M.C., ch. 45, § 1; 2010 L.M.C., ch. 56, § 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: (g) The amendments made by Section 1 of this Act to Code Section 33-113(d) take effect July 1, 2002.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1.**

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**Retirement Savings Plan. / Sec. 33-114. Establishment.**

**Sec. 33-114. Establishment.**

(a) *Purpose.* The retirement savings plan is established to provide a defined contribution retirement plan for County employees.

(b) *Participating agencies.*

(1) Any agency that participates in the retirement system under Article III must also participate in the retirement savings plan.

(2) A participating agency must:

(A) execute an adoption agreement in a form satisfactory to the Chief Administrative Officer;

(B) submit any information and execute any form or document that the Chief Administrative Officer deems prudent for purposes of maintaining the governmental or qualified plan status of the retirement savings plan within the meaning of the Internal Revenue Code; and

(C) notify the Chief Administrative Officer, in writing, of its intent to adopt an employee benefit plan before adopting any benefit plan which has an impact on the computation of any benefit or any benefit limitation in the retirement savings plan.

(3) The Chief Administrative Officer may treat a participating agency as having withdrawn from the retirement savings plan if the participating agency does not:

(A) submit information or execute documents necessary to administer and maintain the plan as requested by the Chief Administrative Officer;

(B) qualify as a participating agency; or

(C) adhere to the terms of the plan.

(4) No liability will accrue to the County Government by the inclusion of participating agency employees. Each participating agency must be fully responsible for the cost of coverage for its employees and any necessary costs for administrative services provided.

(c) *Uniformed Services Employment and Reemployment Rights Act.* Notwithstanding any provision of a plan, the County must provide contributions, benefits and service credit for qualified military service according to Section 414(u) of the Internal Revenue Code. (1994 L.M.C., ch. 13, § 2; 2003 L.M.C., ch. 3, § 1.)

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**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: (h) The amendment made by Section 1 of this Act to Code Section 33-114 takes effect December 12, 1994.

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-115. Participant requirements and participant groups.**

#### **Sec. 33-115. Participant requirements and participant groups.**

(a) *Participant Requirements.*

(1) Full-time employees.

(A) Except as provided in paragraphs (3), (4), and (7) and the last sentence of Section 33-37(e)(2), a full-time employee eligible for membership in Group I or Group II must participate in the Retirement Savings Plan when the full-time employee meets the applicable eligibility requirements or forfeit employment, unless the Chief Administrative Officer exempts the employee from participation.

(B) A part-time employee who becomes a full-time employee and is not an active member of any retirement plan for County employees, must become a member of:

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

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

(iii) the guaranteed retirement income plan if the employee is eligible for membership and makes an election in accordance with subsection (7).

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

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

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(ii) 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

(iii) the guaranteed retirement income plan if the employee is eligible for membership in the guaranteed retirement income plan and makes an election under subsection (7).

(2) Part-time employees.

(A) A part-time employee eligible for membership in Group I or Group II may elect to participate in the plan. An employee who becomes a member of the Retirement Savings Plan must remain an active member until the employee becomes ineligible for membership in Group I or II.

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

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

(ii) 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

(iii) the guaranteed retirement income plan if the employee is eligible for membership and makes an election under subsection (7).

(C) A full-time employee who becomes a part-time employee may withdraw from active membership in the Retirement Savings Plan and stop making employee contributions, but may not become an active member again unless the employee becomes a full-time employee or an elected official.

(3) A person employed by the County Department of Social Services on July 1, 1996, with fewer than 3 years of eligibility service as of October 1, 1996, under the State of Maryland Retirement or Pension Systems must transfer the service to the retirement savings plan and participate in the retirement savings plan, or forfeit employment by the County. If the employee is a part-time employee of the County upon transferring from State to County employment, the employee may, but is not required to, participate in the retirement savings plan.

(4) A person employed by the County Department of Social Services on July 1, 1996, who earned at least 3 years of eligibility service as of October 1, 1996, under the State of Maryland Retirement or Pension Systems may participate in the retirement savings plan only if the person notifies the Chief Administrative Officer in writing by April 1, 1997. An employee

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who elects under this paragraph to participate becomes a member of the plan at the beginning of the first pay period after the Chief Administrative Officer receives the employee's written notice.

(5) If a person transfers under paragraphs (3) or (4) to the retirement savings plan, all funds in the State of Maryland Retirement or Pension Systems attributable to the participation of the person must be transferred directly from the Board of Trustees of the State Retirement or Pension Systems to the Board.

(6) An employee who is not an active member of a County retirement plan but is eligible for membership in the integrated retirement plan may become a member of the Retirement Savings Plan. The employee must remain a member of the Retirement Savings Plan until the employee becomes ineligible for membership in Group I or II.

(7) Election to participate in the guaranteed retirement income plan.

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

(B) A part time or temporary employee hired on or after October 1, 1994 who is not a participant in the retirement savings plan may make a one time irrevocable election to participate in the guaranteed retirement income plan any time after the employee has completed 150 days of employment.

(b) *Participants groups and eligibility.*

(1) *Group I.* Except as provided in the last sentence of Section 33-37(e)(2), any full-time or career part-time employee meeting the criteria in paragraphs (A) or (B) must participate in the retirement savings plan if the employee begins, or returns to, County service on or after October 1, 1994. An employee hired on or after July 1, 2009 must be employed on a full time or part time basis with the County for 180 days before participating in the retirement savings plan. Participation must begin on the first payroll after an employee has completed 180 days of employment if the employee:

- (A) (i) is not represented by an employee organization;
- (ii) does not occupy a bargaining unit position;
- (iii) is not a public safety employee; and

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(iv) does not elect to participate in the guaranteed retirement income plan; or

(B) (i) is not a public safety employee; 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 if the employee does not elect to participate in the guaranteed retirement income plan; and

(iii) does not elect to participate in the guaranteed retirement income plan.

(2) *Group II.*

(A) Except as provided in the last sentence of Section 33-37(e)(2), a full-time or career part-time employee must participate in the retirement savings plan if the employee begins, or returns to, County service on or after October 1, 1994; and

(i) is a public safety employee; 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) A member of the Police Bargaining Unit may transfer to Group II of the retirement savings plan if the employee has accumulated enough credited service to obtain the maximum retirement benefit under the optional or integrated plan.

(C) Except as provided in the last sentence of Section 33-37(e)(2), a full-time or career part-time employee must participate in the retirement savings plan or the guaranteed retirement income plan if the employee begins, or returns to, County service on or after October 1, 1994; and

(i) is not represented by an employee organization;

(ii) does not occupy a bargaining unit position; and

(iii) is a public safety employee.

(c) *Transfers.*

(1) Transfers from the retirement savings plan are only permitted as described in paragraph (4). After an employee enrolls in the retirement savings plan, the employee must continue in the retirement savings plan until the employee is no longer eligible for membership in either Group I or Group II. If an employee is no longer eligible for membership in Group I or

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Group II, the employee may participate in the plan of the retirement system in which the member qualifies for participation under Article III.

(A) A former participant who is no longer eligible to participate in the retirement savings plan retains the right to the vested account balances and any distribution under the retirement savings plan, unless the participant elected to participate in the guaranteed retirement income plan under paragraph (4) and the participant's account balance was transferred to the guaranteed retirement income plan.

(B) The former participant's participation under the optional retirement plan or the integrated retirement plan, or the guaranteed retirement income plan is governed by Article III.

(2) Any employee enrolled in the optional retirement plan or the integrated retirement plan under Article III may transfer to the retirement savings plan.

(A) An employee electing to transfer into the retirement savings plan must transfer into the membership group for which the employee qualifies for participation, excluding the requirement that the employee begin County service on or after October 1, 1994.

(B) The employee's credited service for purposes of determining the employee's vested benefits in the retirement savings plan must be determined based upon the employee's total number of years of credited service earned under the retirement savings plan, the optional retirement plan, and the integrated retirement plan.

(C) The employee's benefit calculations under the plan from which the employee transferred is governed by Article III.

(D) No transfers will be permitted before April 1, 1995. Any transfer takes effect at the beginning of the first pay period following the employee's written election to transfer.

(3) Transfers between Group I and Group II. If a participant no longer satisfies the requirements for the group in which the participant is enrolled, the participant must transfer to the group in which the participant satisfies the membership requirements.

(4) Transfer to the guaranteed retirement income plan.

(A) 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, 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 July 1, 2009. An employee must make this election between December 31, 2008 and June 1, 2009. An employee who elects to terminate participation in the retirement

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savings plan must have his or her account balances transferred to the guaranteed retirement income plan. An employee who does not make this election must continue to participate in the retirement savings plan.

(B) A full time or part time employee hired between December 31, 2008 and July 1, 2009 who participates in the retirement savings plan, and who is not a public safety employee, may make a one time irrevocable election to terminate participation in the retirement savings plan and participate in the guaranteed retirement income plan. An employee has 150 days after the employee was hired to make this election. An employee who makes this election must have his or her account balance transferred to the guaranteed income plan. An employee who does not make this election must continue to participate in the retirement savings plan.

(C) 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 a public safety employee not represented by an employee organization and does not occupy a bargaining unit position, 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 elects to terminate participation in the retirement savings plan must have his or her account balances transferred to the guaranteed retirement income plan. An employee who does not make this election must continue to participate in the retirement savings plan. (1994 L.M.C., ch. 13, § 2; 1996 L.M.C., ch. 27, § 1; 2004 L.M.C., ch. 17, § 1; 2008 L.M.C., ch. 22, § 1; 2009 L.M.C., ch. 23, § 1.)

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-116. Participant contributions.**

#### **Sec. 33-116. Participant contributions.**

(a) *Percent of participant contributions.*

(1) (A) Group I. Each participant in Group I must contribute, through regular payroll deductions, 4 percent of regular earnings less than or equal to the Social Security wage base and 8 percent of regular earnings that exceed the Social Security wage base.

(B) Group II. Each participant in Group II must contribute, through regular payroll deductions, 3 percent of regular earnings less than or equal to the Social Security wage base and 6 percent of regular earnings that exceed the Social Security wage base.

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(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 participant may contribute an additional 2 percent of regular earnings on an after-tax basis by making an irrevocable election in writing on or before September 1, 2011.

(2) To the extent allowed by the Internal Revenue Code, the County must “pick up” (as described in the Internal Revenue Code) mandatory member contributions to the Retirement Savings Plan for pay periods beginning on or after October 1, 1994. A participating agency must execute an adoption agreement before its employees can participate in the pickup plan.

(3) 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 Savings Plan. 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.”

(4) The County must contribute on behalf of a participant who rejoins County service after military service that qualified under Section 33-119(b) as credited service an amount equal to the amount that the participant could have contributed if the participant had worked for the County during the period of military service.

(A) Contributions for the period of military service must be based on the regular earnings the participant would have earned during the period of military service. If this amount of regular earnings is not reasonably ascertainable, the contribution must be based on the participant’s average regular earnings during a period immediately preceding military service. The averaging period is 12 months, or the full length of the participant’s County service, whichever is shorter.

(B) Contributions under this paragraph count toward the maximum annual contribution limits under the Internal Revenue Code for the year for which the contributions relate.

(C) The participant is not entitled to any retroactive allocation of forfeitures or any retroactive crediting of earnings because of contributions under this subparagraph.

(D) The County must not credit a participant with a discretionary after-tax contribution under subsection (a)(1)(C) unless the participant elects to make up the contribution under Internal Revenue Code Section 414(u), as amended.

(b) *Treatment of participant contributions.*

(1) Required participant contributions must be allocated to the participant

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contributions account established for each participant. In addition, amounts allocated to the participant contributions account must be further allocated to sub-accounts to reflect the proportionate amount of each account invested in each of the applicable investment funds by the participant. As of each valuation date, the Board must value the assets of each participant contributions account on a current market value basis.

(2) A participant is always fully vested in the amount of the participant contributions account.

(c) *Participant rollover contributions.* With the Chief Administrative Officer's written consent, a participant may transfer or rollover to the retirement savings plan any interest in any other eligible retirement plan as defined in Internal Revenue Code Section 402(c).

(d) *Treatment of rollover contributions.*

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

(2) A participant is always fully vested in the amount of the rollover contributions account.

(e) *Treatment of certain transfers.*

(1) For each employee who transfers under Sections 33-115(a)(2) or (3) to the retirement savings plan, the Board must establish a separate employee transfer contributions account, or otherwise separately account, for employee contributions and interest transferred from the State of Maryland Retirement or Pension Systems to the Board under Section 33-115(a)(4). The Board must establish a subaccount of the account for each investment fund selected by the participant.

(2) A participant is fully vested in the amount transferred under paragraph (1).

(3) The Chief Administrative Officer may direct the Board to merge the amount transferred under paragraph (1) with the participant's regular account. (1994 L.M.C., ch. 13, § 2; 1996 L.M.C., ch. 27, § 1; 1997 L.M.C., ch. 36, §1; 1998 L.M.C., ch. 30, § 1; 2001 L.M.C., ch 28, §§ 7, 15 and 16; 2008 L.M.C., ch. 25; § 2; 2010 L.M.C., ch. 56, § 1; 2011 L.M.C., ch. 9, § 1.)

**Editor's note**-The effective date of the amendments made to this section by 2001 L.M.C., ch. 28, § 7, is the same effective date as 1998 L.M.C., ch. 30, § 1.

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**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-117. Employer contributions.**

**Sec. 33-117. Employer contributions.**

(a) *Amount of employer contributions.*

(1) *Group I participants.* The County must contribute to the retirement savings plan in quarterly installments, on behalf of each Group I participant, 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 that participant's regular earnings while a Group I participant during a plan year.

(2) *Group II participants.* The County must contribute to the retirement savings plan in quarterly installments, on behalf of each Group II participant, 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 that participant's regular earnings while a Group II participant during a plan year.

(3) *Group I and Group II.* If during a plan year, the participant is a member of Group I for part of the plan year and a member of Group II for the remaining part of the plan year, the participant must receive a prorated employer contribution based on the number of months the participant qualified for each group.

(4) When a participant rejoins County service after military service that qualified under Section 33-119(b) as credited service, the County must contribute on behalf of the participant the amount that the County would have contributed if the participant had worked for the County during the period of military service.

(A) The County contributions must be based on the gross pay the participant would have earned during the period of military service. If this amount of gross pay is not reasonably ascertainable, the County contributions must be based on the participant's average gross pay during a period immediately preceding military service. The averaging period is 12 months, or the full length of the participant's County service, whichever is shorter.

(B) County contributions under this paragraph count toward the maximum annual contribution limits under the Internal Revenue Code for the year for which the contributions are made.

(C) The participant is not entitled to any retroactive allocation of

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forfeitures or any retroactive crediting of earnings because of employer contributions under this subparagraph.

(b) *Treatment of employer contributions.*

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

(2) As of each valuation date, the Board must value the County contributions account of each participant on a current market value basis by the participant.

(3) A participant who ends employment with the County and who is not vested in the County contributions account must forfeit the full account balance in the County contributions account. The Chief Administrative Officer must consider all forfeitures arising during the plan year under the retirement savings plan in determining the County contributions and must use the forfeitures as provided in Section 33-120(d)(3).

(c) *Treatment of transferred employer contributions.*

(1) For each employee who elects under Section 33-115(a)(2) or (3) to participate in the retirement savings plan, the Board must establish a separate employer transfer contributions account, or otherwise separately account, for employer contributions and interest transferred from the State of Maryland Retirement or Pension Systems to the Board under Section 33-115(a)(4). The Board must establish a subaccount of the account for each investment fund selected by the participant.

(2) The Chief Administrative Officer may direct the Board to merge the amount transferred under paragraph (1) with the participant's regular account. (1994 L.M.C., ch. 13, § 2; 1996 L.M.C., ch. 27, § 1; 1998 L.M.C., ch. 30, § 1; 2008 L.M.C., ch. 25; § 2; 2009 L.M.C., ch. 15, § 1; 2011 L.M.C., ch. 9, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-117A. County contributions to State retirement and pension systems on behalf of certain former State employees.**

**Sec. 33-117A. County contributions to State retirement and pension systems on behalf of certain former State employees.**

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(a) This section applies to a person who was eligible to transfer to the County retirement savings plan under Section 33-115(a)(2) or (3) but remained a participant in the State of Maryland Retirement and Pensions Systems.

(b) The County must pay any mandatory employee contributions directly to the State of Maryland Retirement and Pension Systems by deducting the amount from the person's compensation. The County must treat the contributions as if they were paid by the County. A person may not choose to receive the contributions directly.

(c) The direct payments required by subsection (b) are intended to satisfy the requirements of State law and the Internal Revenue Code for the County to adopt the pick-up plan available under the State of Maryland Retirement and Pension Systems.

(d) The Chief Administrative Officer, on behalf of the County, may sign documents necessary to implement the pick-up plan under this section. (1996 L.M.C., ch. 27, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-118. Maximum annual contribution.**

**Sec. 33-118. Maximum annual contribution.**

(a) *Contribution limitations.*

(1) Notwithstanding any other provision in this Division, to the extent required under the Internal Revenue Code, the annual additions described in this Section that are allocated in any limitation year to the retirement accounts of any participant must not exceed the lesser of:

(A) \$30,000, effective January 1, 1995, or \$40,000, effective January 1, 2002 (the "dollar limitation"); as adjusted by the Internal Revenue Service from time to time to reflect cost of living increases; or

(B) 25 percent of the participant's compensation as defined below, or 100 percent of the participant's compensation, effective January 1, 2002, (the "percentage limitation").

(2) For purposes of this Section, the annual addition must be:

(A) County contributions;

(B) required participant contributions;

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(C) forfeitures, but only if the retirement savings plan permits forfeitures to be added to the participant's account; and

(D) after-tax contributions.

(3) In this Section, 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 402(g)(3), 125, 457, and (effective January 1, 2001) 132(f)(4) of the Internal Revenue Code.

(4) For purposes of this Section, the maximum dollar limitation of \$30,000 in subsection (a)(1)(A), or \$40,000 effective January 1, 2002 and the maximum dollar limitation of \$150,000 in subsection (b), or \$200,000, effective January 1, 2002, must be automatically increased as permitted by United States Treasury Regulations to reflect cost-of-living adjustments.

(5) Amounts transferred from the State of Maryland Retirement or Pension Systems to the Board under Section 33-115(a)(4) do not constitute an annual addition under paragraph (2).

(b) *Compensation limitation.* For purposes of this retirement savings plan, for plan years beginning on or after January 1, 2002, only the first \$200,000 of a participant's regular earnings, or any other amount permitted under Internal Revenue Code Section 401(a)(17), must be taken into account.

(c) Effective July 1, 2007, all contributions made to a participant’s account within 2 ½ months after termination of employment or within the limitation year that contains the termination from employment must be considered compensation for purposes of Internal Revenue Code Section 415, as amended. (1994 L.M.C., ch. 13, § 2; 1996 L.M.C., ch. 27, § 1; 1998 L.M.C., ch. 30, § 2; 2003 L.M.C., ch. 3, § 1; 2003 L.M.C., ch. 13, § 1; 2006 L.M.C., ch. 33, § 1; 2009 L.M.C., ch. 2, § 1; 2010 L.M.C., ch. 49, § 1; 2011 L.M.C., ch. 9, § 1; 2012 L.M.C., ch. 11, § 1.)

**Editor's note**—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: (i) The amendments made by Section 1 of this Act to Code Section 33-118(a)(3) take effect January 1, 1998. (j) The amendments made by Section 1 of this Act to Code Section 33-118(b) take effect January 1, 2000.

1996 L.M.C., ch. 27, § 1 incorrectly codified 33-118(a)(6) as 33-120(a)(5).1

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**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-119. Credited service.**

**Sec. 33-119. Credited service.**

(a) A participant's credited service is the total County service the participant rendered under the Retirement Savings Plan, the optional retirement plan, the integrated plan, and the guaranteed retirement income plan. A participant must receive credited service for any period when the participant was a part-time employee contributing to an employer-supported savings program provided by a participating agency. An employee hired before July 1, 2009 must receive 1 year of credited service for each year of County service. Each year of County service ends on the anniversary of the date the participant starting working for the County. An employee hired on or after July 1, 2009 must receive one year of credited service for each year of participation in a County retirement plan. A person who transferred to the Retirement Savings Plan under Section 115(a)(3) or (4) must receive credit for County service for creditable State service earned as a State employee of the County Department of Social Services. A person who does not transfer to the Retirement Savings Plan under Section 115(a)(3) or (4) must not receive credit for County service for this State service.

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

(1) was a member of the Retirement Savings Plan, the optional retirement plan, the guaranteed retirement income plan, or the integrated plan when the military service began;

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

(A) 1 year after discharge from the military service, and the participant does not take other employment;

(B) 2 years after completing military service if the member was hospitalized or convalescing from an illness or injury incurred or aggravated during military service, and the participant does not take other employment; or

(C) more than 2 years if circumstances beyond the control of the participant make it impossible or unreasonable for the participant to apply for reemployment within 2 years, and the participant does not take other employment; and

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(3) the total period of military service did not exceed 5 years, not including any period of military service described under Section 4312(c)(1) - (4) of Title 38, United States Code.

(c) An employee who did not become a member of the retirement savings plan solely because the employee was called to active duty before completing 180 days of County employment must be eligible to receive contributions under Sections 33-115 and 33-116 if the employee becomes a participant in the retirement savings plan upon re-employment. (1994 L.M.C., ch. 13, § 2; 1996 L.M.C., ch. 27, § 1; 1998 L.M.C., ch. 30, § 1; 2008 L.M.C., ch. 22, § 1; 2008 L.M.C., ch. 25, § 1; 2009 L.M.C., ch. 23, § 1.)

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-120. Distribution of Benefit.**

#### **Sec. 33-120. Distribution of Benefit.**

(a) *Normal Retirement Benefits.*

(1) *Normal Retirement Benefit.* A participant who retires on or after the participant's normal retirement date may receive the participant's total account balances in the retirement savings plan. The Chief Administrative Officer must distribute the value of the participant's account balances to the participant under this Section.

(2) *Vesting.* If a participant's normal retirement date occurs before the participant's separation from County service, all amounts credited to the participant's County contributions account are 100% vested regardless of the participant's years of credited service.

(3) *Deferred Retirement.* If a participant's employment continues after the participant's normal retirement date, the participant must continue to participate in the retirement savings plan and the distribution of the participant's benefits must begin in accordance with subsection (i).

(b) *Disability Benefits.*

(1) *Public Safety Employees.* If a participant who is a public safety employee 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 retirement savings plan must be terminated and deemed a disability retirement under the following rules:

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(A) All amounts credited to the participant's retirement savings 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 the participant submits a properly completed distribution form, the Chief Administrative Officer must distribute the value of the former participant's account balances to the former participant under this Section.

(2) *Non-public safety employees.* If a participant who is a non-public safety employee incurs a disability before retirement or other separation from service 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 retirement savings plan under the following rules:

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

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

(C) In determining the amount of the County contribution under Section 33-117, the participant's regular earnings means the regular earnings the participant would have received for the year if the participant was 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.

(E) The participant must not make participant contributions under Section 33-116 during the period of disability participation in the retirement savings plan.

(c) *Death benefits.*

(1) *Death Benefit.* If a participant dies before receiving the participant's total account balances in the retirement savings plan, the Chief Administrative Officer must distribute the value of the participant's account balances to the participant's beneficiary under this Section.

(2) *Vesting.* If a participant dies before the participant's separation from County service, all amounts credited to the participant's County contributions account are 100%

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vested regardless of the participant's years of credited service.

(3) 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 alive when the Office receives the request, but without prejudice for any payments made before the Office received the request.

(4) If a participant dies without designating a surviving beneficiary or the designation is not enforceable under subsection (5), 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.

(5) For purposes of this Section, a beneficiary designation is not enforceable if:

(A) the designated beneficiary:

- (i) predeceases the member;
- (ii) disclaims the benefit; or
- (iii) is not an identifiable person; or

(B) the designation is legally void for any reason.

(d) *Separation from service before normal retirement, death or disability retirement.*

(1) *Distribution of account balances.* If a participant separates from County service for any reason other than normal retirement, disability retirement, or death, the Chief Administrative Officer must distribute to the participant the vested portion of the participant's account balances under this Section.

(2) *Vesting Schedule.* A participant is 100% vested in all participant contributions accounts and rollover contributions accounts at all times. The vested interest in a participant's County contributions account must be a percentage of the account, determined on the basis of the participant's years of credited service as follows:

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<i>Vested Percentage</i>	<i>Years of Credited Service</i>
0%	less than 3
100%	3 or more

(3) *Forfeitures.*

(A) If a participant has no vested interest in the County contributions account at the time of the participant's separation from service, the participant must forfeit the entire County contributions account as of the date of separation from service.

(B) The Chief Administrative Officer must allow a one-time reinstatement of the forfeited County contributions to an employee who is reemployed by the County within 12 months of separation and again becomes a member of the Retirement Savings Plan. The amount reinstated by the Chief Administrative Officer must be equal to the value of the County contributions account, including investment gains and losses, as of the date of the employee's separation. This provision applies, regardless of the member's separation or reemployment date, if the member requests the reinstatement in writing while the member is an active County employee.

(C) The Chief Administrative Officer must use the forfeitures to pay the operating expenses of the retirement savings plan or to reduce the amount of county contributions.

(e) *In service withdrawals.* If a participant is employed by the County, no distribution is permitted. Distributions must be made only upon a participant's death, retirement, disability retirement, or separation from County service.

(f) *Distribution methods.* The Chief Administrative Officer must pay, at the request of the participant or the designated beneficiary, a participant's account balances in the retirement savings plan upon retirement, disability retirement, death, or separation from County service.

(1) *Normal method of distribution.* Unless the participant elects an optional method, the normal method of distribution must be a lump sum distribution.

(2) *Optional method of distribution - Annuity.*

(A) A participant may elect, subject to the conditions of this paragraph, to have the entire account balances used to buy an annuity payable in one of the following actuarially equivalent methods:

(i) A joint and survivor annuity payable for the life of the

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participant, with a survivor's annuity payable for the life of the participant's spouse or domestic partner in an amount at least equal to one-half of the amount of the annuity payable during the joint lives of the participant and the participant's spouse or domestic partner.

(ii) A single life annuity payable for the lifetime of the participant.

(iii) A period certain annuity in which a certain number of payments are guaranteed regardless of when the participant dies.

(B) If benefits under the retirement savings plan are payable as an annuity, the Board must use the account balances of the participant to buy an annuity contract from an insurance company authorized to do business in the State. The contract must provide for payment in the method chosen by the participant.

(3) *Optional method of distribution - Installments.* A participant may elect to have the entire account balances paid in installments on a monthly or annual basis over a period selected by the participant, subject to applicable restrictions in the Internal Revenue Code and its corresponding regulations.

(g) *Direct rollover distributions.* Notwithstanding any provision of this Division that would otherwise limit a participant's election under this Section, a participant or beneficiary may elect in any manner prescribed by the Chief Administrative Officer at any time to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover. As used in this subsection:

(1) *direct rollover* means a payment from the retirement savings plan to the eligible retirement plan specified by the participant.

(2) *eligible retirement plan* means:

(A) an individual retirement account described in Internal Revenue Code Section 408(a), as amended;

(B) an individual retirement annuity described in Internal Revenue Code Section 408(b), as amended, (other than an endowment contract);

(C) a qualified trust;

(D) an annuity plan described in Internal Revenue Code Section 403(a), as amended;

(E) an eligible deferred compensation plan described in Internal Revenue Code Section 457(b), as amended, which is maintained by an eligible employer described in Internal Revenue Code Section 457(e)(1)(A), as amended; and

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(F) an annuity contract described in Internal Revenue Code Section 403(b), as amended.

(3) *eligible rollover distribution* means any distribution to a participant of all or any portion of the participant's account balance; except:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made:

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary; or

(ii) for a specified period of 10 years or more; or

(B) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9), as amended.

(h) *Benefit distribution date.*

(1) The Chief Administrative Officer must pay a participant who retires by reason of normal, deferred, or disability retirement the participant's account balances in the retirement savings plan. The distribution must begin as soon as administratively feasible after the participant's retirement and after the date elected by the participant, but no later than April 1 following the later of the calendar year in which the participant attains age 70 ½, or the calendar year in which the participant's County employment ends.

(2) A participant who has a 100% vested interest in the County contributions account, and whose County employment ends before the participant's death, disability retirement, or normal retirement date, may receive the account balances in the County contribution accounts and the participant contribution accounts before reaching the normal retirement date only upon filing written consent for the distribution with the Chief Administrative Officer. The distribution must be made as soon as administratively feasible after the Chief Administrative Officer receives the written consent for the distribution.

(3) (A) If a participant's County employment ends before the participant has a vested interest in the County contributions and the participant properly completes and submits an application for distribution of the participant's contribution account, the County must distribute the participant's contribution account as soon as administratively feasible.

(B) If a participant does not properly complete and submit an application for a distribution, the County must distribute the participant's contribution account under the time limits described in this Section.

(4) Notwithstanding any other provision of this subsection, a participant's account balance of \$1000 or less must be automatically distributed in a lump sum as soon as

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administratively feasible after termination of employment without a request from the participant.

(i) *Required commencement of benefit payments.*

(1) The distribution of a participant's or former participant's retirement benefits must begin no later than April 1 following the later of:

(A) the calendar year in which the participant attains age 70 ½; or

(B) the calendar year in which the participant separates from County service.

(2) The distribution may be made as provided in subsection (f).

(j) *Period for distribution of death benefits of a retired participant who was receiving benefits.* If distribution to a retired participant has begun under subsection (i) and the participant dies before the participant's entire benefit has been distributed to the participant, the remaining benefit, if any, must be distributed at least as rapidly as under the method of distribution in effect on the date of the retired participant's death.

(k) *Period for distribution of death benefits of a participant who was not receiving benefits.*

(1) If a participant dies before payment of benefits under this Section has begun, the benefits must be distributed before the end of the calendar year containing the fifth anniversary of the participant's death unless:

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

(ii) 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

(iii) the distributions begin before the end of the calendar year following the calendar year in which the participant's death occurred; or

(B) (i) the portion of the participant'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

(ii) the distributions begin 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 participant would have reached age 70 ½.

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(2) For purposes of this Section:

(A) the life expectancy of a participant and the participant's spouse may be recalculated each year; and

(B) any amount paid to a child is treated as if it had been paid to the participant's surviving spouse if the amount is payable to the surviving spouse before the child reaches the age of majority or other designated event permitted under federal regulation.

(1) *Limitations of Internal Revenue Code Section 401(a)(9)*. 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 in 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. (1994 L.M.C., ch. 13, § 2; 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; 2006 L.M.C., ch. 20, § 1; 2006 L.M.C., ch. 19, § 1; 2009 L.M.C., ch. 2, § 1; 2009 L.M.C., ch. 23, § 1; 2010 L.M.C., ch. 56, § 1; 2012 L.M.C., ch. 11, § 1.)

**Editor's note**—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: (k) The amendment made by Section 1 of this Act to Code Section 33-120 takes effect January 1, 2001.

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-121. Investment of contributions to the retirement savings plan.**

**Sec. 33-121. Investment of contributions to the retirement savings plan.**

(a) *Investment options.*

(1) A participant must direct that contributions allocated to the participant's retirement accounts be invested in one or more of the investment options selected by the Board. The investment options selected by the Board must conform to all applicable requirements of the Internal Revenue Code.

(2) A participant must allocate contributions among the investment options only in percentages of the value of the account balances of the participant, as determined by the

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Board.

(3) A participant's direction of investment must remain in effect until the participant changes the direction. If a participant does not provide a valid direction of investment, the account balances of the 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) A participant or former participant may change the allocation of the participant's account balances among the investment options in accordance with procedures set by the Board. The changes must take effect on the date or dates set by the Board.

(2) A participant or former participant may designate that the change of the allocation among investment options is effective as to one or both of:

(A) the participant's or former participant's account balances on the effective date of the change; and

(B) the participant's contributions and County contributions made after the effective date of the change.

(c) *Gains and losses.* The Board must maintain separate and distinct accounts for each participant. The Board must determine the value of an individual account solely with respect to the activity within each participant's account and unrealized gains to a participant's account. (1994 L.M.C., ch. 13, § 2; 2010 L.M.C., ch. 56, § 1.)

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-122. Administration.**

#### **Sec. 33-122. Administration.**

(a) *Regulations for administration.* The County Executive must issue regulations under method (2) to administer the retirement savings plan.

(b) *Responsibility for administration.* The Chief Administrative Officer must administer the retirement savings plan. Except for the powers of the Board, the Chief Administrative Officer must take all actions and make all decisions to administer the retirement savings plan, including, but not limited, to:

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- (1) interpret the provisions of the retirement savings plan;
- (2) decide the eligibility of any employee and the rights of any participant or beneficiary to receive benefits;
- (3) compute the amount of benefits payable to any participant or beneficiary;
- (4) authorize disbursements of benefits;
- (5) keep records;
- (6) consult with the Board regarding the selection of a record keeper for the retirement savings plan;
- (7) incur expenses as necessary to administer the retirement savings plan, subject to appropriation;
- (8) disclose the reports prepared under this Section;
- (9) prepare and file reports that are required by law; and
- (10) delegate any power or duty under this Section.

The Chief Administrative Officer's determination on any matter within the Chief Administrative Officer's authority under this plan is final and binding on all interested parties.

(c) *Payment of expenses and contributions.* The County Government must make contributions to the retirement savings plan, subject to appropriation. The County Government may make additional contributions to the trust to cover operating expenses of the retirement savings plan. The Board must pay operating expenses of the savings plan from savings plan assets or from County Government assets, at the direction of the Chief Administrative Officer. A participating agency must pay any amounts necessary to cover the agency's respective contributions and operating expenses of the retirement savings plan.

(d) *Procurement.* Chapter 11B does not apply to procurement of goods and services for the retirement savings plan by the Chief Administrative Officer.

(e) *Records.* The Chief Administrative Officer must prescribe the form, scope, maintenance, and disclosure of records for the retirement savings plan under State law.

(f) *Interpretations.* The Chief Administrative Officer must decide questions arising under this Division. Any participant, former participant, or designated beneficiary eligible to receive benefits from the retirement savings plan may request, in writing, a decision on questions arising under this Division. The Chief Administrative Officer must respond in writing to the request within 60 days. The response must include a statement of appeal rights. A decision by the Chief Administrative Officer may be appealed within 15 days to the Merit System Protection

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Board. The decision of the Merit System Protection Board is final.

(g) *Independent audit.* The retirement savings plan must be included in the annual audit performed by a certified public accountant under contract to the County Council as required by Section 315 of the Charter.

(h) *Annual reports.* By March 1 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 savings plan for the preceding plan year, including the extent and content of counseling made available to participants. The Chief Administrative Officer must make the report available to all County officials, each participant of the retirement savings plan, and the public. The County Council may ask 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 promptly.

(i) *Participant statements.* The Chief Administrative Officer must supply to each participant for each plan year a report stating the amount of the participant's account balances and the participant's vested interest. The report must be distributed as soon as administratively feasible after the close of each plan year. The Chief Administrative Officer is not required to provide more than one report during any plan year.

(j) *Investment information.* The Board must supply the Chief Administrative Officer with sufficient participant investment information so that the Chief Administrative Officer may prepare the required participant statements. (1994 L.M.C., ch. 13, § 2.)

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-123. Qualification contingency.**

#### **Sec. 33-123. Qualification contingency.**

(a) *Qualified plan.* If it is determined that the retirement savings plan is not a qualified plan under the Internal Revenue Code, this Article is ineffective as of the date of the determination.

(b) *Return of County contributions.* Any account balance with respect to County contributions must be returned to the County as soon as administratively possible after this Division becomes ineffective.

(c) *Return of participant contributions.* Any account balances with respect to required participant contributions, including any amount picked up by the County, must be returned to the

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participant who made them as soon as administratively possible after this Division becomes ineffective.

(d) *Participation.*

(1) After a determination under this Section, a participant must become a member of the retirement system under Article III in which that employee would have been eligible to participate if the retirement savings plan had never existed.

(2) An employee's credited service earned while a participant in the retirement savings plan must be counted in determining benefits and vesting under a plan in which the employee becomes a member after the retirement savings plan becomes ineffective.

(3) An employee must contribute to the new 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 the employee was a participant in the retirement savings plan as if the employee had participated in the plan instead of the retirement savings plan.

(4) The County must make, on behalf of the employee, contributions to the new plan in the amount the County would have made on behalf of that employee for the period during which the employee was a participant in the retirement savings plan as if the employee had participated in the plan instead of the retirement savings plan, except as restricted by the Internal Revenue Code. (1994 L.M.C., ch. 13, § 2.)

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-124. Trust fund.**

#### **Sec. 33-124. Trust fund.**

A trust is established as part of the retirement savings plan for the benefit of the participants in the retirement savings plan. The trust consists of the money and property of the retirement savings plan and any earnings, profits, increments, appreciation, and other additions that accrue. 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 the retirement savings plan trust fund. (1994 L.M.C., ch. 13, § 2.)

**Editor's note**—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.

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**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-125. Powers and duties of the Board.**

**Sec. 33-125. Powers and duties of the Board.**

(a) *General.*

(1) Except as otherwise provided in this Division, the powers and duties with respect to investments of the retirement savings plan are vested in the Board of Investment Trustees. The Board has legal title to all cash and other property of the retirement savings plan, but may delegate some or all of the incidents of ownership as provided in this Division. Sections 33-61A, 33-61C, and 33-61D apply to the Board with respect to its powers and duties under the retirement savings plan.

(2) The Board must invest and reinvest, or cause to be invested or reinvested, the principal and income of the retirement savings plan and keep the same invested without distinction between principal and income. The Board has the exclusive authority to manage the assets of the retirement savings plan, but must, to the extent directed by participants, invest each participant's accounts in the manner directed by the participant. The Board may select mutual funds, commingled funds, or any combination of other investments as investment options for the retirement savings plan.

(3) Chapter 11B does not apply to procurement of goods and services for the retirement savings plan by the Board.

(4) After consulting the Chief Administrative Officer, the Board must:

(A) develop record keeping functions for the purpose of maintaining and reporting on participant account balances;

(B) designate appropriate investment options to be offered to plan participants;

(C) designate methods of accounting for investments; and

(D) designate methods of selecting annuity contracts for distribution of participant account balances.

(5) The Board must make counseling available to each participant during each plan year to advise the participant regarding investment selections for participant and County

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contributions.

(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 State law to hold or transfer 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 or 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) The Board must maintain the indicia of ownership of the assets of the retirement savings plan within the jurisdiction of the district courts of the United States.

(c) *Authorized investments.*

(1) The Board may select or remove any investment option for the retirement savings plan that the Board finds prudent under the policies set by the Board.

(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 savings plan trust.

(d) *Trustee powers.* Except as otherwise provided in this Division, the Board may:

(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 savings plan;

(3) subject to Section 33-61A(h)(2), sue, defend, compromise, arbitrate,

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compound and settle any debt, obligation, claim, suit, or legal proceeding involving the retirement savings plan, 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 a part of the retirement savings plan fund in preparation for the payment of distributions;

(5) exercise any option on any investment for conversion into another 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 savings plan 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 savings plan are invested, and exercise, personally or by any power of attorney, any right appurtenant to any investment held in the retirement savings plan; 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 discharge 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 savings plan 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 mortgages or guarantee;

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(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 in property, including equipment pertaining to property, leaseholds, and mortgages;

(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 this retirement savings plan;

(13) borrow, raise or lend moneys, for the purpose of the retirement savings plan, 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 savings plan;

(14) hold, buy, transfer, surrender, and exercise all other incidents of ownership of any annuity contract;

(15) if payments to a participant or beneficiary are to be made in the form of an annuity based on one 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) pool all or any of the assets of the trust, from time to time, with assets belonging to any other qualified pension or profit sharing trust created by the County, and commingle such assets and make joint or common investments and carry joint accounts on behalf of this trust and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or in any pooled assets to the two or more trusts in accordance with their respective interests. The Board may also buy or sell any assets or undivided interests in this trust or in any other trust with which the assets of this trust may be pooled, to or from this trust or such other trusts at such prices or valuations as the Board may determine; and

(17) do all acts which the Board considers necessary and exercise any and all powers of this Division with respect to the management of the retirement savings plan, 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

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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 service 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) The Board must monitor the performance of investment options. Monitoring may include any tests or analyses that the Board finds prudent.

(g) Except for expenses incurred under paragraph (d)(12), the Board must pay all benefits and expenses of the retirement savings plan as directed by the Chief Administrative Officer.

(h) The Board may 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. (1994 L.M.C., ch. 13, § 2; 2007 L.M.C., ch. 19, § 1; 2010 L.M.C., ch. 56, § 1; 2012 L.M.C., ch. 21, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-126. Amendment and termination.**

**Sec. 33-126. Amendment and termination.**

(a) *Right to Amend.* The County Government expects to continue the retirement savings plan, but it assumes no contractual obligation to continue the plan and reserves the right at any time for any reason to amend the retirement savings plan.

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(b) *Qualification amendments.* The retirement savings plan and any related trust agreement, investment advisory agreement, custodial agreement, annuity contract, or similar agreement may be amended by the County Government at any time, either prospectively or retroactively, to conform to the Internal Revenue Code.

(c) *Termination of the retirement savings plan.* The County Government has established the retirement savings plan with the expectation that the County Government will be able to make contributions indefinitely, but the County Government is not under any obligation to continue contributions, or maintain the retirement savings plan for any length of time, and may terminate the retirement savings plan. In the event of a termination of the retirement savings plan, a participant will become 100% vested in the County contributions account on the effective date of a termination of the retirement savings plan.

(d) *Termination of participation by a participating agency.* If a participating agency decides to withdraw or otherwise terminate its participation in the retirement savings plan, the agency must notify the Chief Administrative Officer in writing. The Chief Administrative Officer and the appropriate officer of the withdrawing agency must agree on a date for withdrawal. Any transfer of assets pursuant to the withdrawal must satisfy the requirements of the Internal Revenue Code. (1994 L.M.C., ch. 13, § 2.)

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 1. Retirement Savings Plan. / Sec. 33-127. Miscellaneous.**

#### **Sec. 33-127. Miscellaneous.**

(a) *Exemption from Execution, Garnishment, or Attachment.*

(1) The right of a participant in that participant's account balances or any other right or benefit under this Division are not subject to execution, garnishment, attachment, or any other process, and are not assignable.

(2) Notwithstanding the foregoing, a portion or all of a participant's account balances may be paid to an alternate payee pursuant to a qualified domestic relations order under the Internal Revenue Code. The Chief Administrative Officer must establish forms and procedures to determine the qualified status of domestic relations orders and must determine the form and timing of distributions permissible under such qualified orders.

(b) *Protection Against Fraud.* Any person who knowingly makes any false statement or falsifies or permits to be falsified any record of the retirement savings plan in any attempt to

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defraud the retirement savings plan is subject to punishment for a class A violation.

(c) *Error in records.* If any change or error in the records results in any participant or beneficiary receiving from the retirement savings plan more or less than the participant or beneficiary is entitled to receive had the records been correct, the error must be corrected, and as far as practicable, the payment must be adjusted in such manner that the amount of the benefit to which that participant or beneficiary was correctly entitled will be paid. If any participant or beneficiary has received any payment from the retirement savings plan to which the participant or beneficiary is not entitled, the participant or beneficiary must refund that amount to the retirement savings plan.

(d) *Lost Participants.* If the Chief Administrative Officer is unable to locate a former participant or a beneficiary following a former participant's death or attainment of normal retirement age, the Chief Administrative Officer must take reasonable steps to locate the former participant or beneficiary, including using the resources available through the Federal Social Security Administration and the Internal Revenue Service. If the Chief Administrative Officer is unable to locate the former participant or beneficiary after making reasonable efforts, the Chief Administrative Officer must, after 5 plan years have passed, distribute the former participant's or beneficiary's account balances to the State. If the former participant or beneficiary returns, satisfactorily proves the participant's or beneficiary's identity, and requests the account balances after the money has escheated to the State, the County Government must make a contribution to the retirement savings plan and pay the participant or beneficiary the account balances to which the participant or beneficiary is entitled.

(e) *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.

(f) *Exclusive Benefit.* The Retirement Savings Plan Trust Fund must be held for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan, and except as otherwise provided under the Internal Revenue Code, no part of the trust fund shall ever enure to the benefit of the County. (1994 L.M.C., ch. 13, § 2; 2003 L.M.C., ch. 31, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan.**

**Division 2. Disability Benefits Plan.**

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan. / Sec. 33-128. Definitions.**

**Sec. 33-128. Definitions.**

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

*Administrator* means either the Chief Administrative Officer or the entity that contracts with the County to administer this disability plan.

*Applicant* means an employee who has filed an application for benefits under Division 2 of Article VIII, or for whom the Chief Administrative Officer has filed an application.

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

*Continued non-service-connected disability* means a condition of the employee that:

- (1) continues after the period of initial non-service-connected disability closes;
- (2) makes the employee unable to engage in any available employment commensurate with the employee's training or retraining, education, and experience; and
- (3) is likely to be permanent.

*Continued service-connected disability for a non-public safety employee* means a condition of a non-public safety employee that:

- (1) continues after the period of initial service-connected disability closes;
- (2) makes the employee unable to engage in available employment commensurate with the employee's training or retraining, education, and experience; and
- (3) is likely to be permanent.

*Continued service-connected disability for a public safety employee* means a condition of a public safety employee that:

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- (1) continues after the period of initial service-connected disability closes;
- (2) makes the employee unable to:
  - (A) engage in available employment commensurate with the employee's training or retraining, education, and experience; and
  - (B) earn substantially similar final earnings; and
- (3) is likely to be permanent.

*County* means Montgomery County Government and, when applicable, any agency that adopts this plan under an adoption agreement approved by the Chief Administrative Officer.

*Disability Arbitration Board or Board* means the 3 persons designated under Section 33-43(m) to review an appeal of the final decision of the Administrator regarding an application for disability benefits.

*Disability Review Panel or Panel* means the 4 medical doctors appointed as Panel members by the Chief Administrative Officer under Section 33-43(c).

*Employee* means a County employee who:

- (1) participates in the retirement savings plan under this Article or in the elected officials' plan under Article III or the guaranteed retirement income plan under Article III; and
- (2) is regularly scheduled to work 20 hours or more per week.

*Final earnings* means the annual average of the regular salary of an employee less any shift pay differential for the 18-month period immediately before the disability or any period of 18 consecutive months, whichever is greater. If a participant is required to take any furlough, as defined in personnel regulations adopted under Section 33-7(b) or a collective bargaining agreement, final earnings must include any amount the participant would have received if the participant had not been required to take any furlough.

*Initial non-service-connected disability* means a condition of an employee that:

- (1) is the natural and proximate result of an accident, illness, or injury;
- (2) is not due to the employee's willful misconduct or willful negligence;
- (3) makes the employee incapable of performing the job that the employee performed immediately before the accident, illness, or injury; and
- (4) is not an initial service-connected disability.

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*Initial service-connected disability* means a condition of an employee that:

- (1) is the natural and proximate result of an accident, illness, or injury occurring, an occupational disease incurred, or a condition aggravated while in the performance of duty as an employee;
- (2) is not due to the employee's willful misconduct or willful negligence; and
- (3) makes the employee incapable of performing the job that the employee performed immediately before the accident, illness, or injury.

*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.

*Non-public safety employee* means any employee who is not a public safety employee.

*Partial incapacity* means a member's inability to perform one or more essential functions of the position the member holds because of impairment that:

- (1) is unlikely to resolve in the next 12 months;
- (2) may be permanent; and
- (3) does not prevent the member from performing any other substantial gainful activity.

*Plan* means the disability benefits plan established under this Division.

*Public safety employee* means any employee who is a:

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

*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 Social Security Administration.

*Substantial gainful activity* means a level of productive work that requires significant

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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 Social Security Administration's current monthly 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 Social Security Administration.

*Total Incapacity* means the member's inability to perform substantial gainful activity because of an impairment that:

- (1) is unlikely to resolve in the next 12 months; and
- (2) may be permanent. (1994 L.M.C., ch. 13, § 2; 1998 L.M.C., ch. 30, § 1; 2008 L.M.C., ch. 22, § 1; 2008 L.M.C., ch. 30, § 1; 2009 L.M.C., ch. 11, § 1; 2009 L.M.C., ch. 23, § 1; 2010 L.M.C., ch. 21, § 1; 2010 L.M.C., ch 45, § 1; 2010 L.M.C., ch. 49, § 1; 2011 L.M.C., ch. 13, § 1; 2013 L.M.C., ch. 4, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan. / Sec. 33-129. Disability benefits.**

**Sec. 33-129. Disability benefits.**

(a) *Initial non-service-connected disability benefits.*

- (1) An employee is entitled to receive disability benefits if the administrator determines that the employee has:
  - (A) incurred an initial non-service-connected disability; and
  - (B) worked for the County for the 6 months immediately preceding the disability.
- (2) The employee is entitled to receive disability benefits subject to this plan for a period of:
  - (A) 12 consecutive months for a public safety employee; and
  - (B) 36 consecutive months for a non-public safety employee.

(b) *Continued non-service-connected disability benefits.* Before the end of the distribution period for initial non-service-connected disability benefits, the administrator must re-evaluate the employee to determine if the employee satisfies the requirements for a continued non-service-connected disability. If the employee does not meet the requirements for a continued

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non-service connected disability, the payment of disability benefits must stop. If a participant meets the requirements for a continued non-service connected disability, the payment of disability benefits must continue, subject to this plan.

(c) *Temporary disability.* In extenuating circumstances, the administrator may:

(1) waive the requirement that an employee's disability is likely to be permanent for continued service-connected or non-service-connected disability benefits; and

(2) approve temporary disability benefits for one or more one-year periods until the administrator determines that the disability:

(A) has ended; or

(B) qualifies as a continued disability.

(d) *Initial service-connected disability benefits.* An employee may receive disability benefits for a period of 36 consecutive months, subject to this plan, if the administrator finds that:

(A) the employee has incurred an initial service-connected disability; and

(B) for an accidental injury that does not cause mental impairment, the employee:

(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.

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

(D) For an accidental injury that occurs after July 1, 2009, the applicant must apply for disability benefits within one year after separation from County service or before July 1, 2010, whichever is later.

(E) An employee who has committed an offense that would justify termination for misconduct must not receive service-connected disability benefits.

(e) *Continued service-connected disability benefits.*

(1) Before the end of the distribution period for initial service-connected disability benefits, the administrator must re-evaluate the employee to determine if the employee

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satisfies the requirements for a continued service-connected disability. If the employee does not meet the requirement for a continued service-connected disability, the payment of disability benefits must stop. If the employee meets the requirements for a continued service-connected disability, the payment of disability benefits must continue subject to this plan.

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

(A) is eligible to receive continued service-connected disability benefits; and

(B) accepts an alternative position within the County government for which the employee is qualified.

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

(4) 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 receive continued service connected disability benefits based on the disability for which the alternative placement was made.

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

(A) be included in the information considered by the Disability Review Panel, Chief Administrative Officer, or Disability Arbitration Board;

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

(C) affect the member's eligibility for continued service-connected disability benefits or the amount of the continued service-connected disability benefits.

(f) The Disability Review Panel must recommend a finding of total incapacity if 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 disability benefits to be eligible for benefits under this subsection.

(1) The Panel must base its determination of whether an individual is able to engage in any substantial gainful activity on an assessment from an independent vocational

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expert that considers the member's age, education, work experience, transferable skills, and residual functional capacity.

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

(3) 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.

(4) 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 give the member a total incapacity benefit 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.

(g) The Disability Review Panel must recommend a finding of partial incapacity if:

(1) the member meets the standards to receive a service-connected disability benefit; and

(2) the member is not eligible to receive a benefit for total incapacity under subsection (f).

(h) The County must increase the partial incapacity service-connected disability pension benefit of a member to a total incapacity benefit if:

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

(2) 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;

(3) 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

(4) 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.

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

(i) *Role of the Disability Review Panel.*

(1) The Disability Review Panel must consider an application for disability benefits to determine if the applicant is eligible for disability benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h). The Panel may consider any information or material submitted by the applicant, the certified representative, or the County. Within 60 days after the application is filed, the Panel must meet in person, by telephone conference, or by video conference, to review all evidence submitted to the Panel. 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.

(2) Before the Panel meets to review the application, 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 the applicant for good cause shown.

(3) The Panel must not accept or consider information from a certified representative representing an applicant 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.

(4) Within 30 days after the Panel's last meeting to consider the application, the Panel must issue a written recommendation to the Administrator on whether the applicant qualifies for disability benefits.

(5) Before making its recommendation, the Panel must require the applicant to complete a medical examination, including 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. The County must pay the cost of the examination. The results of the examination must be given to the applicant or the applicant's representative immediately after the County or the Panel receives it. The panel must issue its written recommendation within 30 days after the medical doctor reports to the Panel.

(6) Within 20 days after the Administrator receives the Panel's recommendation, the Administrator must issue a final decision on whether the applicant is eligible for disability benefits under this Section. (1994 L.M.C., ch. 13, § 2; 1998 L.M.C., ch.

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30, § 1; 1999 L.M.C., ch. 26, § 1; 2009 L.M.C., ch. 11, § 1; 2011 L.M.C., ch. 13, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan. / Sec. 33-130. Application for benefits.**

**Sec. 33-130. Application for benefits.**

(a) *Notice to employee.* The Chief Administrative Officer must notify an employee that an application for disability benefits should be made if the employee:

- (1) becomes ill or injured; and
- (2) is unable to perform at an acceptable level of competence the duties and responsibilities of the position to which the employee is assigned.

(b) *Application by Chief Administrative Officer.* If the employee does not apply for disability benefits, the Chief Administrative Officer may apply on behalf of the employee.

(c) *Protection Against Fraud.* Any person who knowingly makes any false statement or falsifies or permits to be falsified any record of the disability benefits plan in an attempt to defraud the disability benefits plan is subject to punishment for a class A violation. (1994 L.M.C., ch. 13, § 2.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan. / Sec. 33-131. Amount of benefits.**

**Sec. 33-131. Amount of benefits.**

(a) *Service-connected disability.* The annual amount of service-connected disability payments payable for total incapacity equals 70% of the employee's final earnings, less any reductions provided in section 33-134. The annual amount of service-connected disability payments payable for partial incapacity equals 52½% of the employee's final earnings.

(b) *Non-service-connected disability.* The annual amount of the non-service-connected disability benefit payment equals 2 percent of the employee's final earnings, multiplied by the number of years of credited service earned under Section 33-41 or Section 33-119. However the benefit must be at least 30 percent of the employee's final earnings,

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but no more than 60 percent of the employee's final earnings, less any reductions provided in Section 33-134.

(c) *Cost-of-living adjustments.* The administrator must make a cost-of-living adjustment annually to the disability benefits paid to any public safety employee under this plan. The cost of living adjustment must be equal to 60% of the annual increase in the Baltimore-Washington Area Consumer Price Index. However, the disability cost-of-living increase must not increase the disability benefits by more than 3% each 12-month period. A non-public safety employee must not receive a cost-of-living adjustment for any benefit paid under this plan. The cost-of-living adjustment for a disability benefit based upon a disability occurring after June 30, 2011 must not exceed 2.5 percent. (1994 L.M.C., ch. 13, § 2; 2009 L.M.C., ch. 23, § 1; 2011 L.M.C., ch. 9, § 1; 2011 L.M.C., ch. 13, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan. / Sec. 33-132. Time and form of payment.**

**Sec. 33-132. Time and form of payment.**

(a) *Commencement of benefits.* The administrator must begin paying initial disability benefits no earlier than the date that the employee exhausts all accrued sick and compensatory leave in excess of 80 hours. The County Executive must develop a procedure to determine the distribution date for payment of disability benefits by Executive Regulation under method (2).

(b) *Form of Payment.* The administrator must pay all disability benefits on a monthly basis. The disability benefits must be paid to the employee directly. All applicable federal and state income taxes must be withheld from the disability benefits paid. To the extent that federal or state employment taxes apply, they must be withheld. (1994 L.M.C., ch. 13, § 2.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan. / Sec. 33-133. Termination of benefits.**

**Sec. 33-133. Termination of benefits.**

(a) *Non-public safety employee.* The administrator must terminate initial or continued disability benefits to a non-public safety employee if the employee:

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- (1) recovers from the disability, as determined by the administrator;
- (2) does not provide the administrator with information that the administrator requires; or
- (3) attains age 65, or a later age if required under federal law.

(b) *Public safety employee.* The administrator must terminate initial or continued disability benefits to a public safety employee if the employee:

- (1) recovers from the disability, as determined by the administrator;
- (2) does not provide the administrator with information that the administrator requires; or
- (3) attains age 65, or a later age if required under federal law, if the benefit is for a non-service connected disability. (1994 L.M.C., ch. 13, § 2.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan. / Sec. 33-134. Reduction of benefits.**

**Sec. 33-134. Reduction of benefits.**

(a) *Reduction by payments received.* Disability benefits must be reduced by any amount the employee receives from:

- (1) any other government group income maintenance insurance coverage for the disability;
- (2) Social Security disability benefits, including benefits payable to dependents on account of the disability;
- (3) any government disability plan;
- (4) the optional or integrated plan of the employees' retirement system under Article III;
- (5) the retirement savings plan under this Division, or amounts the employee is entitled to receive under the retirement savings plan for a public safety employee; and
- (6) employment, including net earnings from self-employment, received directly or indirectly.

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- (b) *Amount of reduction.* The disability benefits must be reduced by:
- (1) one dollar for every three dollars of earnings under paragraph (a)(6); and
  - (2) one dollar for every one dollar of other payments under subsection (a).

If the employee receives any payment in subsection (a) as a lump sum or in periodic payments, or elects not to take a benefit available under the retirement savings plan, the amount will be converted to a life annuity for reduction of disability benefits under this Section.

(c) *Workers' compensation benefits.* If an employee receives payments under this plan for a disability that also entitles or has entitled the employee to receive workers' compensation benefits under State law, the benefits provided under this plan satisfy the County's obligations under State law to provide workers' compensation benefits. If the benefits paid to an employee under this plan exceed the County's workers' compensation benefits required under State law, the County's obligation to pay benefits under the workers' compensation law is satisfied and any other County workers' compensation payments to the employee must stop. If the benefits paid to an employee under this plan are less than the County's workers' compensation benefits required under State law, the County's workers' compensation payments to the employee must be offset by the benefits paid to the employee under this plan. (1994 L.M.C., ch. 13, § 2; 2008 L.M.C., ch. 22, § 1.)

### **Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan. / Sec. 33-135. Medical examination.**

#### **Sec. 33-135. Medical examination.**

(a) The Administrator must require any employee receiving continued disability payments to undergo annual or less frequent medical examinations, or to submit a medical doctor's certificate verifying the continuation of the disability, unless the Administrator finds that a physical examination in a specific case is unnecessary because of the nature and severity of the injury or illness. The Administrator must submit the findings of any medical examination to the Disability Review Panel. The Disability Review Panel may require the employee to submit to an additional independent medical examination. The Panel must consider the findings of the physical examination and any other information submitted by the employee or the County and recommend in writing to the Administrator whether the employee still qualifies for disability benefits. The Administrator must issue a final decision within 20 days after receiving the Panel's recommendation. An employee may appeal the Administrator's decision to reduce or discontinue disability pension payments to the appropriate Disability Arbitration Board under

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Section 33-138. (1994 L.M.C., ch. 13, § 2; 1998 L.M.C., ch. 30, § 1; 2009 L.M.C., ch. 11, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan. / Sec. 33-136. Re-employment program.**

**Sec. 33-136. Re-employment program.**

(a) *Program established.* The County Executive may establish a program for re-employment of employees who are receiving disability benefits under this plan by Executive Regulation under method (2).

(b) *Administration.* The Chief Administrative Officer must administer any re-employment program.

(c) *Employment level.* Any employment offered to an employee under a re-employment program must be commensurate with the training, education, experience, and physical and mental capabilities of the employee.

(d) *Participation required.* Unless the Chief Administrative Officer exempts an employee based on medical evidence that the employee could not successfully complete the reemployment program, an employee receiving benefits under this plan must participate in any re-employment program established under this Section. (1994 L.M.C., ch. 13, § 2.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan. / Sec. 33-137. Funding.**

**Sec. 33-137. Funding.**

The Chief Administrative Officer may fund the benefits under this plan with:

(a) a self-funding vehicle using County general funds, subject to appropriation and employee contributions;

(b) disability insurance purchased with County funds, subject to appropriation and employee contributions; or

(c) a combination of both. (1994 L.M.C., ch. 13, § 2.)

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**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 2. Disability Benefits Plan. / Sec. 33-138. Appeals of decisions.**

**Sec. 33-138. Appeals of decisions.**

(a) The applicant, or the certified representative on behalf of the applicant, may appeal the written decision of the Administrator on eligibility for disability benefits within 20 days after the applicant receives the Administrator's decision.

(b) The Disability Arbitration Board must convene to consider an appeal within a reasonable time after the appeal is filed. The appeal and judicial review proceedings are governed by Sections 3-201 through 3-234 of the Maryland Arbitration Act.

(c) The Disability Arbitration Board must issue the decision quickly. The Board should issue the decision within 30 days after the hearing or receiving any post-hearing brief, whichever is later.

(d) The County must pay all reasonable fees and expenses of the arbitrator, as determined by the Chief Administrative Officer, except that a certified representative must pay any fee resulting from the cancellation of a scheduled hearing if the certified representative:

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

(2) causes a hearing to be canceled and rescheduled on a later date. (1994 L.M.C., ch. 13, § 2; 1998 L.M.C., ch. 30, § 1; 1999 L.M.C., ch. 26, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 3. Severance Pay Plan.**

**Division 3. Severance Pay Plan.**

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 3. Severance Pay Plan. / Sec. 33-139. Severance pay.**

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**Sec. 33-139. Severance pay.**

The County or the applicable agency must pay any participant in the retirement savings plan or the guaranteed retirement income plan severance pay when the participant is separated from service by an affirmative administrative action other than dismissal for cause. An agency may adopt this severance pay plan under an adoption agreement approved by the Chief Administrative Officer. (1994 L.M.C., ch. 13, § 2; 2008 LMC, ch. 22, § 1.)

**Part II. Local Laws, Ordinances, Resolutions, Etc. / Chapter 33. Personnel and Human Resources. [Note] / Article VIII. Employees' Retirement Savings Plan. [Note] / Division 3. Severance Pay Plan. / Sec. 33-140. Plan administration.**

**Sec. 33-140. Plan administration.**

(a) The County Executive must establish a severance pay plan in Executive Regulations under method (2). The plan must qualify as a severance pay plan under Section 457 of the Internal Revenue Code.

(b) The Chief Administrative Officer must administer the severance pay plan. Any employee denied severance pay due under this Section may appeal to the Merit System Protection Board. The Merit System Protection Board may overturn a denial of severance pay only if the denial was arbitrary and capricious. (1994 L.M.C., ch. 13, § 2.)

**Editor's note**-Section 3 of 1994 L.M.C., ch. 13 reads as follows:

"Sec. 3. Transition.

(a) The initial plan year for the retirement savings plan is from October 1, 1994 to December 31, 1994.

(b) The Chief Administrative Officer's first annual report on the status of the retirement savings plan under Section 33-122(h) must be submitted by March 1, 1995."

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**Endnotes**

**1 (Popup - Popup)**

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**\*Editor's note**—2011 L.M.C., ch. 14, §§ 2 and 3, effective July 2, 2012, state in part:

Sec. 2. Implementation. Notwithstanding any other provision of law, including § 33-80(a)(7) and § 33- 107(a)(7), the implementation of any amendment to County Code Chapter 33 in Section 1 of this Act concerning disability retirement is not subject to collective bargaining with a certified representative of employees in any bargaining unit.

Sec. 3. The amendments to County Code Chapter 33 made in Section 1 of this Act apply to any disability occurring on or after the date this Act takes effect [July 1, 2012].

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

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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 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.