



## ARLINGTON COUNTY, VIRGINIA

### County Board Agenda Item Meeting of May 14, 2011

**DATE:** April 22, 2011

**SUBJECT:** Adopt technical amendments to Chapters 21, 35 and 46 (Retirement Ordinances) of the Arlington County Code to incorporate recent federal regulations.

**C. M. RECOMMENDATION:**

Adopt the proposed amendments to Chapters 21, 35 and 46 (Retirement Ordinances) of the Arlington County Code.

**ISSUES:** This is a proposal to amend Chapters 21, 35 and 46 of the County Code (Retirement Systems). County Board approval is required for code changes. There are no known issues.

**SUMMARY:** The proposed amendments are technical amendments incorporating recent Federal regulation into the Code.

**BACKGROUND:** Every ten years, the defined benefit plan must apply for tax qualified status through the Internal Revenue Service. At the time of the filing, the County needs to bring the Code into written compliance although in practice it has been compliant with Federal law. Recent Federal regulations that do not financially impact the System, requires that we amend language in the Code.

**DISCUSSION:** Amendments to Chapters 21, 35, and 46 are needed to incorporate recent changes in Federal regulation. A brief summary of each of the changes follows.

1. The Heroes Earnings and Relief Tax Act of 2008 ("HEART Act") requires that Internal Revenue Code (IRC) § 415 compensation for the plans include any military differential wage payments made by an employer for qualified military service (i.e., payments that the County makes to employees who are called to qualified military service for a period that is expected to last at least 30 days to make up some or all of the difference between military wages and the wages the individual would have received for his or her service to the County).
2. The HEART Act permits employers to include in compensation used to determine benefits under a plan any differential wage payments for military service. Since this is our current practice to comply with the Uniformed Services Employment and

County Manager:

*BMD/mjs*

County Attorney:

*[Signature]*      *[Signature]*

Staff: Marcy Foster

18.

Reemployment Rights Act (USERRA), the proposed amendment incorporates this practice into Code.

3. The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") requires that, with respect to distributions in excess of \$1,000, amounts cannot be automatically distributed without participant consent. This is our current practice for any distribution amount, but needs to be clarified in the Code.

4. EGTRRA expanded the definition of Eligible Retirement Plan used in administering rollovers out of qualified plans to include 403(b) arrangements and 457(b) governmental plans and the Pension Protection Act of 2006 ("PPA") further expanded the definition to include Roth IRAs (IRC § 408A). In addition, the Worker, Retiree, and Employee Recovery Act ("WRERA"), requires that non-spouse beneficiaries be eligible for a rollover to an IRA, effective January 1, 2010. The proposed amendment updates the definition of Eligible Retirement Plan for each of the Chapters.

5. The IRC citations in the County Code regarding distributions are also addressed in the proposed amendments. The two citations that have been amended reflect that distributions will comply with the required minimum distribution rules of IRC § 401(a)(9) and that distributions from the Retirement Allowance Account will comply with the IRC § 415 defined benefit plan distribution limit.

These changes have been shared with the employee groups and with the Retirement Board.

**FISCAL IMPACT:** None of these proposed amendments will increase the cost of the Plan. An actuarial assessment completed by the Retirement Board's contracted actuary is attached.

**AN ORDINANCE TO AMEND, REENACT AND RECODIFY CHAPTER 21 (RETIREMENT ORDINANCES) OF THE ARLINGTON COUNTY CODE.**

**BE IT ORDAINED that the Arlington County Code is amended, reenacted and recodified as follows:**

**§21-1. Definitions**

\*\*\*

*Creditable compensation:* The full compensation, including pickup contributions and any elective employer contributions under the flexible benefits plan, payable to an employee. In cases where the compensation includes maintenance and other perquisites, the Board shall fix the value of that part of the compensation not paid in money. Effective January 1, 2009, creditable compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code. Other provisions notwithstanding, except in the case of an employee who first became a member before July 1, 1996, annual creditable compensation shall not exceed the amount established pursuant to Internal Revenue Code § 401(a)(17) as indexed annually.

\*\*\*

**§ 21-36. Employer contributions.**

\*\*\*

(c) Notwithstanding anything in this Chapter to the contrary, the amount of annual additions of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of such section applicable to governmental plans, as defined for purposes of such section. If the member's annual additions for any limitation year (as defined for purposes of such section) would exceed such maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for such limitation year will equal such maximum permissible amount. For purposes of this Chapter, Internal Revenue Code § 415 compensation shall be creditable compensation.

(d) The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient when combined with the amount then held in the account together with the present value of future employee contributions and pickup contributions to provide the estimated prospective benefits payable.

~~(e) Notwithstanding anything in this Chapter to the contrary, the amount of annual additions of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of such section applicable to governmental plans, as defined for purposes of such section. If the member's annual additions for any limitation year (as defined for purposes of such section) would exceed such maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for such limitation year will equal such maximum permissible amount.~~

\*\*\*

**§ 21-48. Benefits upon withdrawal from employment or death.**

\*\*\*

(a) If a member has ceased to be an employee, otherwise than by death or by retirement under the provisions of this Chapter prior to the completion of five (5) years of service, or if he has completed five (5) or more years of service and has not made the election provided in Subsection (b), he shall be paid, after demand, as soon as practicable, the total amount of his contribution account, notwithstanding amounts in excess of \$1,000.00 shall not be distributed without the employee's written consent.

\*\*\*

(g) This section applies to distributions other than the line of duty death benefit in § 21-47 herein made on or after January 1, 1993.

(1) Notwithstanding any provision of this Chapter to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars (\$500.00) paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions

*Eligible rollover distribution:* Any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Internal Revenue Code § 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than two hundred dollars (\$200.00) during a year.

*Eligible retirement plan:* Any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Internal Revenue Code § 408(a), an individual retirement annuity described in Internal Revenue Code § 408(b), an annuity plan described in Internal Revenue Code § 403(a), ~~or~~ a qualified plan described in Internal Revenue Code § 401(a), an annuity contract described in Internal Revenue § 403(b); an eligible deferred compensation plan described in Internal Revenue Code § 457(b) that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Internal Revenue Code § 408A, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Internal Revenue Code § 408A(e) that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

*Distributee:* An employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code § 414(p), are distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee includes a non-spouse beneficiary of a deceased employee or former employee who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.

*Direct rollover:* A direct rollover or payment by this Chapter to the eligible retirement plan specified by the distributee.

(h) Notwithstanding any provision of this Chapter to the contrary, distributions to members and their beneficiaries shall be made in compliance with Internal Revenue Code § 401(a)(9) and regulations issued thereunder, including the incidental death benefit requirement of Internal Revenue Code § 401(a)(9)(G).

(i) Notwithstanding anything in this Chapter to the contrary, the amount paid from the Retirement Allowance Account of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of Internal Revenue Code § 415(b) applicable to governmental plans, as defined for purposes of such section. If the member's benefit for any limitation year would exceed such maximum permissible amounts, the benefit shall be reduced for such limitation year so that it will equal such maximum permissible amount.

**AN ORDINANCE TO AMEND, REENACT AND RECODIFY CHAPTER 35 (RETIREMENT ORDINANCES) OF THE ARLINGTON COUNTY CODE.**

**BE IT ORDAINED that the Arlington County Code is amended, reenacted and recodified as follows:**

**§35-1. Definitions**

\*\*\*

*Creditable compensation:* The full compensation, including pickup contributions and any elective employer contributions under the flexible benefits plan, payable to an employee. In cases where the compensation includes maintenance and other perquisites, the Board shall fix the value of that part of the compensation not paid in money. Effective January 1, 2009, creditable compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code. Other provisions notwithstanding, except in the case of an employee who first became a member before July 1, 1996, annual creditable compensation shall not exceed the amount established pursuant to Internal Revenue Code § 401(a)(17) as indexed annually.

\*\*\*

**§ 35-31. Employer contributions.**

\*\*\*

(c) Notwithstanding anything in this Chapter to the contrary, the amount of annual additions of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of such section applicable to governmental plans, as defined for purposes of such section. If the member's annual additions for any limitation year (as defined for purposes of such section) would exceed such maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for such limitation year will equal such maximum permissible amount. For purposes of this Chapter, Internal Revenue Code § 415 compensation shall be creditable compensation.

(d) Any forfeiture arising from severance of employment or deaths shall be used to reduce the employer contribution under the plan.

~~(e) Notwithstanding anything in this Chapter to the contrary, the amount of annual additions of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of such section applicable to governmental plans, as defined for purposes of such section. If the member's annual additions for any limitation year (as defined for purposes of such section) would exceed such maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for such limitation year will equal such maximum permissible amount.~~

\*\*\*

**§ 35-40. Benefits upon withdrawal from employment or death.**

\*\*\*

(a) If a member has ceased to be an employee, other than by death or by retirement under the provisions of this Chapter, he shall be paid, on demand, as soon as practicable, the total amount of his contribution account unless he is eligible for a deferred vested retirement allowance as provided in Subsection (e), notwithstanding amounts in excess of \$1,000.00 shall not be distributed without the employee's written consent.

\*\*\*

(g) This section applies to distributions other than the line of duty death benefit in § 35-45 herein made on or after January 1, 1993.

(1) Notwithstanding any provision of this Chapter to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars (\$500.00) paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions

*Eligible rollover distribution:* Any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Internal Revenue Code § 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than two hundred dollars (\$200.00) during a year.

*Eligible retirement plan:* Any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Internal Revenue Code § 408(a), an individual retirement annuity described in Internal Revenue Code § 408(b), an annuity plan described in Internal Revenue Code § 403(a), ~~or~~ a qualified plan described in Internal Revenue Code § 401(a), an annuity contract described in Internal Revenue Code § 403(b); an eligible deferred compensation plan described in Internal Revenue Code § 457(b) that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Internal Revenue Code § 408A, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Internal Revenue Code § 408A(e) that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

*Distributee:* An employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code § 414(p), are distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee includes a non-spouse beneficiary of a deceased employee or former employee who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.

*Direct rollover:* A direct rollover or payment by this Chapter to the eligible retirement plan specified by the distributee.

(h) Notwithstanding any provision of this Chapter to the contrary, distributions to members and their beneficiaries shall be made in compliance with Internal Revenue Code § 401(a)(9) and regulations issued thereunder, including the incidental death benefit requirement of Internal Revenue Code § 401(a)(9)(G).

(i) Notwithstanding anything in this Chapter to the contrary, the amount paid from the Retirement Allowance Account of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of Internal Revenue Code § 415(b) applicable to governmental plans, as defined for purposes of such section. If the member's benefit for any limitation year would exceed such maximum permissible amounts, the benefit shall be reduced for such limitation year so that it will equal such maximum permissible amount.

\*\*\*

**AN ORDINANCE TO AMEND, REENACT AND RECODIFY CHAPTER 46 (RETIREMENT ORDINANCES) OF THE ARLINGTON COUNTY CODE.**

**BE IT ORDAINED that the Arlington County Code is amended, reenacted and recodified as follows:**

**§46-1. Definitions**

\*\*\*

*Creditable compensation:* The full compensation, including pickup contributions and any elective employer contributions under the flexible benefits plan, payable annually to an employee in his capacity as such, excluding accumulated sick leave paid to the member at his termination from County service. Effective January 4, 2009 creditable compensation means full compensation excluding all premium pays (except holiday premium) as defined in Administrative Regulation 2.12, all overtime pays (except the portion of overtime paid at the employee's base hourly rate as defined in Administrative Regulation 2.12 for hours worked to complete their regular annual work schedule.), imputed earnings, benefit subsidies and/or stipends, severance and settlement pay, and clothing allowances. Effective January 1, 2009, creditable compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code. Other provisions not withstanding, except in the case of an employee who first became a member before July 1, 1996, annual creditable compensation shall not exceed the amount established pursuant to Internal Revenue Code § 401(a)(17) as indexed annually.

\*\*\*

**§ 46-33. Employer contributions.**

\*\*\*

(j) Notwithstanding anything in this chapter to the contrary, the amount of annual additions of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of such section applicable to governmental plans, as defined for purposes of such section. If the member's annual additions for any limitation year (as defined for purposes of such section) would exceed such maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for such limitation year will equal such maximum permissible amount. For purposes of this Chapter, Internal Revenue Code § 415 compensation shall be creditable compensation.

\*\*\*

**§ 46-44. Benefits upon withdrawal from employment or death.**

\*\*\*

(a) If a member has ceased to be an employee, otherwise than by death or by retirement under the provisions of this Chapter prior to the completion of five (5) years of service, or if he has completed five (5) or more years of service and has not made the election provided in Subsection (b), he shall be paid, after demand, as soon as practicable, the total amount of his contribution account, notwithstanding amounts in excess of \$1,000.00 shall not be distributed without the employee's written consent.

\*\*\*

(i) This section applies to distributions other than the line of duty death benefit in § 46-43 herein made on or after January 1, 1993.

(1) Notwithstanding any provision of this Chapter to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars (\$500.00) paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions

*Eligible rollover distribution:* Any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Internal Revenue Code § 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than two hundred dollars (\$200.00) during a year.

*Eligible retirement plan:* Any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Internal Revenue Code § 408(a), an individual retirement annuity described in Internal Revenue Code § 408(b), an annuity plan described in Internal Revenue Code § 403(a), or a qualified plan described in Internal Revenue Code § 401(a), an annuity contract described in Internal Revenue Code § 403(b); an eligible deferred compensation plan described in Internal Revenue Code § 457(b) that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Internal Revenue Code § 408A, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Internal Revenue Code § 408A(e) that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

*Distributee:* An employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code § 414(p), are distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee includes a non-spouse beneficiary of a deceased employee or former employee who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.

*Direct rollover:* A direct rollover or payment by this Chapter to the eligible retirement plan specified by the distributee.

(j) Notwithstanding any provision of this Chapter to the contrary, distributions to members and their beneficiaries shall be made in compliance with Internal Revenue Code § 401(a)(9) and regulations issued thereunder, including the incidental death benefit requirement of Internal Revenue Code § 401(a)(9)(G).

(k) Notwithstanding anything in this Chapter to the contrary, the amount paid from the Retirement Allowance Account of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of Internal Revenue Code § 415(b) applicable to governmental plans, as defined for purposes of such section. If the member's benefit for any limitation year would exceed such maximum permissible amounts, the benefit shall be reduced for such limitation year so that it will equal such maximum permissible amount.

\*\*\*

April 1, 2011

Amy Rozier  
Benefits Manager  
Arlington County Government  
2100 Clarendon Blvd. Suite 511  
Arlington, VA 22201

***Re: Fiscal Impact of Proposed Plan Amendments***

Dear Amy:

At your request, we have determined that the proposed amendments to Chapters 21, 35, and 46 (Retirement Ordinances) of the Arlington County Code would have a *de minimis* impact on the cost to the County. The proposed amendments provided to us included the following:

- *As required by the HEART Act, any military differential wage payments that the County makes to employees who are called to qualified military service for a period expected to last at least 30 days shall be included in Internal Revenue Code §415 compensation.*

With respect to the determination of the County cost, this would have no material impact.

- *The HEART Act permits employers to include differential wage payments as compensation for purposes of determining benefits.*

We were informed that this has been the County's current practice and therefore, there is no material impact on the Plan.

- *In accordance with EGTRRA, distributions in excess of \$1,000 can not be automatically distributed without participant consent.*

We were informed that this has been the County's current practice and therefore, there is no material impact on the Plan.

- *The definition of Eligible Retirement Plan used in administering rollovers shall be expanded to include 403(b) arrangements, 457(b) governmental plans and Roth IRAs. In addition, non-spouse beneficiaries shall be eligible for a rollover to an IRA effective January 1, 2010.*

With respect to the determination of the County cost, this would have no material impact.



Board of Trustees  
April 1, 2011  
Page 2

- *Distributions shall comply with the required minimum distribution rule of IRC §401(a)(9) and distributions from the Retirement Allowance Account shall comply with IRC §415 defined benefit plan distribution limit.*

With respect to the determination of the County cost, this would have no material impact.

Please do not hesitate to contact me if you have any questions.

Sincerely,  
Cheiron

A handwritten signature in blue ink, appearing to read 'John Colberg', written over a light blue circular stamp.

John Colberg, FSA  
Consulting Actuary

cc: Danny Zito  
Steve McElhaney, FSA  
Kevin Woodrich, ASA