

**UNIVERSITY OF MARY WASHINGTON
FACULTY EARLY RETIREMENT PLAN**

Established Effective February 18, 2022

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PREAMBLE

University of Mary Washington (the “University”) establishes the University of Mary Washington Faculty Early Retirement Plan (the “Plan”) effective February 18, 2022, to effectuate its policy regarding early retirement of faculty members. The Plan is intended to provide a financial early retirement incentive for certain tenured faculty, thereby releasing tenured faculty resources for budget reallocation or reduction in accordance with University needs. The Plan is intended to be a qualified plan within the meaning of Section 401(a) of the Internal Revenue Code of 1986, as amended (the “Code”), and is a governmental plan within the meaning of Section 414(d) of the Code. As a governmental plan, the Plan is not subject to the Employee Retirement Income Security Act of 1974, as amended.

ARTICLE 1 DEFINITIONS

1.1 Administrator

The Chief Financial Officer for the University.

1.2 Agreement

An agreement between an Employee and the University, the terms of which are described in the Policy, under which the Employee agrees to terminate full-time employment at a specified date in the future.

1.3 Base Salary

(a) Generally

An Eligible Employee's final base salary as reflected in the records of the University and set forth in Appendix A.

(b) Limitation

In addition to other applicable limitations set forth in the Plan and notwithstanding any other provision of the Plan to the contrary, the annual compensation taken into account under the Plan shall not exceed the dollar limitation of Code Section 401(a)(17), which is incorporated herein by reference, as adjusted from time to time.

1.4 Benefit

The amount of a Participant's total benefit under the Plan, as determined in accordance with Section 3.1.

1.5 Board

The Board of Visitors of the University of Mary Washington.

1.6 Code

The Internal Revenue Code of 1986, as amended.

1.7 Eligible Employee

An Employee who is a teaching and research staff member employed full-time in a nonclassified faculty position who:

- (a) is at least sixty (60) years of age;

- (b) has completed at least ten years of full-time service with the University;
- (c) is tenured;
- (d) has executed a valid Agreement.

1.8 Employee

Any individual who is: (a) on the payroll of the Employer whose wages from the Employer are subject to withholding for the purposes of Federal income taxes and the Federal Insurance Contributions Act, or (b) on a leave of absence from the University.

1.9 Employer

The University.

1.10 Limitation Year

The Plan Year.

1.11 Participant

Any Eligible Employee who has commenced participation in the Plan in accordance with the provisions of Article 2 of the Plan.

1.12 Plan

The University of Mary Washington Faculty Early Retirement Plan as set forth in this document and as amended from time to time.

1.13 Plan Year

The twelve (12) month period commencing each January 1.

1.14 Policy

The University of Mary Washington Voluntary Retirement Incentive Policy for Instructional Faculty.

1.15 Retirement

The date a Participant terminates full-time employment with the University as set forth in the Agreement.

1.16 **Trust**

The Trust for the University of Mary Washington Faculty Early Retirement Incentive Plan created by the Trust Agreement entered into pursuant to Article 10 between the University and the Trustees.

1.17 **Trustee**

The person and/or bank or trust company which is named as the Trustee in the Trust Agreement described in Section 10.1.

1.18 **University**

The University of Mary Washington.

**ARTICLE 2
PARTICIPATION**

An Eligible Employee shall become a Participant upon his Retirement.

**ARTICLE 3
BENEFITS**

3.1 **Normal Benefit**

The aggregate Benefit shall equal up to one-hundred percent (100%) of a Participant's Base Salary, which shall be distributed in equal annual installments over a period of two years. The amount of the Benefit and the distribution period shall be specified in each Participant's Agreement and in Appendix A.

3.2 **Limitation on Benefits**

- (a) In no event shall the amount of any Benefit determined under this Article 3 for any Limitation Year exceed the defined benefit dollar benefit limitation under Code Section 415(b)(1)(A), as adjusted from time to time under Code Section 415(d).
- (b) If a Participant in the Plan is also a participant in another defined benefit plan sponsored or maintained by the Employer, the adjusted annual benefit payable from all such plans shall be combined in applying the maximum dollar benefit limit under Code Section 415(b).

**ARTICLE 4
FUNDING**

The University shall have complete and total discretion in determining the timing and amount of contributions to the Trust to fund Participants' Benefits within the limits set forth in the Policy. Notwithstanding the foregoing, the Trust shall have enough assets upon or before any

distribution described in Article 3 above so that the total amount to be distributed to Participants on such date shall be available for such distribution from the Trust.

ARTICLE 5 VESTING

A Participant shall be fully vested in his or her Benefit upon his or her Retirement.

ARTICLE 6 DISTRIBUTIONS

6.1 Distributions of Benefit

A Participant shall receive the annual annuity described in Section 3.1 in monthly payments.

6.2 Deferred Distribution

Notwithstanding Section 6.1 above, the University, in its sole and absolute discretion, may defer commencing the distribution of a Participant's Benefits until any date on or before April 1 of the calendar year following the calendar year in which the Participant attains age seventy-two (72) or such other age designated in Code section 401(a)(9).

6.3 Election of Beneficiaries

A Participant shall provide, in a form acceptable to the Administrator, one or more beneficiary(ies) to receive remaining distributions of the Participant's Benefit upon the Participant's death.

If a Participant has no valid beneficiary designation on file with the Administrator, or the beneficiary has predeceased the Participant, the Administrator shall designate as the beneficiary the Participant's estate. The Administrator's determination of this matter shall be binding.

6.4 Death or Disability of a Participant

- (a) If a Participant dies before his entire Benefit has been distributed to him, the remaining portion of such Benefit shall be distributed at least as rapidly as under the method of distribution being used as of the date of his death. If a Participant dies after the effective date of the Agreement but before a distribution under the Plan has commenced and a beneficiary is entitled to receive a distribution under the Plan, the Participant's Benefit shall be distributed to the beneficiary at least as rapidly as set forth in the terms of the Agreement.
- (b) If a Participant dies after executing an Agreement, but prior to its effective date, the University will not be liable for any payments under the Agreement and such Agreement shall be void.

- (c) If a Participant becomes permanently and totally disabled after an Agreement is executed, but prior to its effective date, the University will provide payments under the terms of the Agreement.
- (d) All distributions under the Plan will be made in accordance with Code section 401(a)(9) and the regulations thereunder.

6.5 Incompetence of Distributee

If the Administrator receives evidence that a person entitled to receive any distribution under the Plan is physically or mentally incompetent or incompetent by any reason of age to receive such distribution and give valid release therefore, the Administrator shall direct the Trustee to make such distribution to the Participant's legal representative (such as a guardian) provided the Administrator, in its sole and absolute discretion, determines that such individual has the authority as legal representative to request payment from the Plan. Any such payment made under this Section 6.5 shall constitute a complete discharge of any liability under the Plan.

6.6 Location of Participant or Beneficiary Unknown

In the event that all, or any portion, of the distribution payable to a Participant or his or her beneficiary remains unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or beneficiary after sending a registered letter, return receipt required, to the last known address, and further diligent effort, a savings account at a local financial institution shall be established in the person's name and the distribution shall be deposited therein.

6.7 Direct Rollover

(a) General

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 6.7, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions

(i) Eligible Rollover Distributions

An eligible rollover distribution is any distribution of all or any portion of the distributee's Benefit, except that an eligible rollover distribution does not include: any distribution that is one 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 Code section 401(a)(9); the portion of any distribution that is not includable in gross income; and any other payment that is treated as ineligible for a direct rollover under Code section 401(a)(31), the related regulations, and other guidance.

(ii) Eligible Retirement Plan

An eligible retirement plan is (1) an individual retirement account described in Code section 408(a); (2) an individual retirement annuity described in Code section 408(b); (3) an individual retirement annuity described in Code section 403(a); (4) a qualified retirement plan described in Code section 401(a) that accepts the distributee's eligible rollover distribution; (5) an eligible deferred compensation plan described in Code section 457(b) maintained by an eligible employer described in Code section 457(e)(1)(A) that separately accounts for eligible rollover distributions; (6) an annuity contract described in Code section 403(b); or (7) a Roth IRA described in Code section 408A(b) (subject to the rules and provisions set forth in Code section 408A(e) and any regulations thereunder). For a non-spouse beneficiary described in the last sentence of Section 6.7(b)(iii) an eligible retirement plan shall include only an individual retirement plan or annuity described in (1), (2), or (7) above, that is treated as an inherited IRA of the beneficiary.

(iii) Distributee

A distributee includes a Participant or former Participant. In addition, the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse or former spouse who is the alternate payee under an administrative domestic relations order are distributees with regard to the interest of the spouse or former spouse. A Participant or former Participant's non-spouse beneficiary is a distributee with respect to any otherwise eligible rollover distribution that is paid to the beneficiary.

(iv) Direct Rollover

A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

ARTICLE 7 AMENDMENT AND TERMINATION

7.1 Amendment

The University reserves the right to amend the Plan, through action by the Board at any time and from time to time, in whole or in part, including, without limitation, retroactive amendments necessary or advisable to qualify the Plan and Trust under the provisions of

Code Section 401(a). However, except as set forth in Section 7.3, no such amendment shall (1) cause any part of the assets of the Trust to revert to or be recoverable by the University or be used for or diverted to purposes other than the exclusive benefit of Participants and beneficiaries; (2) deprive any Participant or beneficiary of any benefit already vested; (3) alter, change, or modify the duties, powers, or liabilities of the Trustee without its written consent; or (4) permit any part of the assets of the Plan and the Trust to be used to pay premiums or contributions of the University under any other plan maintained by the University for the benefit of its Employees. No amendment to the vesting schedule shall deprive a Participant of unforfeitable rights to benefits accrued to the date of the amendment.

7.2 Termination

The Employer may in its sole and absolute discretion through an affirmative action of its Board discontinue contributions or terminate the Plan in whole or in part in accordance with its provisions at any time without any liability for the discontinuance or termination. Upon termination of the Plan, the assets of the Trust, after payment of expenses, shall be distributed to Participants (and beneficiaries) to the extent they are due Benefits under the Plan. The Trustees may furnish any consent otherwise required of the Employer or Administrator and may deal directly with the Participant in all matters relating to benefits. If Trust assets remain after payment and satisfaction of all liabilities to Participants, beneficiaries or others, such assets shall be returned to the Employer.

7.3 Permissible Reversions

- (a) Notwithstanding any other provision of the Plan:
 - (i) No Participant or beneficiary shall have any right or claim to any assets of the Trust or to any benefit under the Plan before the Internal Revenue Service determines that the Plan and Trust qualify under the provisions of Code Section 401(a), or any statute of similar import.
 - (ii) To the extent the University's contributions are made by reason of a mistake of fact, they may be returned to the University within one (1) year from the date of contribution.
- (b) The amounts that may be returned to the University under Section 7.3(a)(ii) above shall be the excess of the amounts contributed over the amounts that would have been contributed had there not been a mistake of fact. No earnings on the mistaken contributions may be returned to the University and losses sustained by the Trust after the date of contribution shall proportionately reduce the amount that may be returned to the University.

ARTICLE 8 CLAIMS

A Participant's (or beneficiary's) claim for distributions of the Participant's Benefit may be presented in writing by the Participant (or beneficiary) to the Administrator.

If the claim for benefits is wholly or partially denied, the Administrator shall notify the Participant (or beneficiary) in writing of such denial of benefits within sixty (60) days of receipt of the claim.

Any notice of a denial of benefits shall advise the Participant (or beneficiary) of:

- (a) the specific reason or reasons for the denial;
- (b) the specific provisions of the Plan or the applicable Agreement on which the denial is based;
- (c) any additional material or information necessary for the Participant (or beneficiary) to perfect the claim and an explanation of why such material or information is necessary; and
- (d) the steps which the Participant (or beneficiary) must take to have the claim reviewed.

A Participant (or beneficiary) whose claim has been denied may file a written request for a review by the Administrator of the denial of this claim. Such written request for review must be filed within sixty (60) days after receipt of written notification of the denial of this claim. The Administrator shall review the written comments and any submissions of the Participant (or beneficiary) and render its decision regarding the appeal within sixty (60) days of receipt of such appeal. Such decision shall be in writing setting forth the specific reasons and specific provisions of the Plan or Agreement on which the Administrator based its decision.

ARTICLE 9 ADMINISTRATION

9.1 Plan Administrator

The Administrator shall administer the Plan. The University Counsel is designated as the agent of the Plan for the service of legal process.

The Administrator's duties shall include, without limitation, powers with respect to the administration of the Trust as may be conferred upon it by the Trust. It shall have the power to take all action and to make all decisions that shall be necessary or proper in order to carry out the provisions of the Plan and, without limiting the generality of the foregoing, it shall have the following powers:

- (a) to make (and enforce by suspension or forfeiture) such rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;
- (b) to interpret or construe the Plan;

- (c) to decide questions concerning the Plan and the eligibility of any Employee to participate therein and the right of any person to receive benefits thereunder;
- (d) to decide any dispute arising under the Plan;
- (e) to compute the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan;
- (f) to authorize all disbursements by the Trustees;
- (g) to prescribe and require the use of such forms as it shall deem necessary or desirable in connection with the administration of the Plan;
- (h) to supply any remedies or corrections to omissions in the Plan;
- (i) to reconcile and correct any errors or inconsistencies in the Plan; and
- (j) to make equitable adjustments for any mistakes or errors made in the administration of the Plan.

The Administrator shall establish rules and regulations and shall take other necessary or proper action to carry out its duties and responsibilities.

9.2 **Actions Conclusive**

All actions and decisions taken by the Administrator shall be final and conclusive and binding on all persons having any interest in the Plan or Trust or in any benefits payable thereunder.

9.3 **Appointment of Agents**

The Administrator may employ or engage such accountants, counsel, other experts, and other persons as it deems necessary in connection with the administration of the Plan to the extent permitted by law.

9.4 **Reliance on Opinions, Etc.**

The Administrator and each member thereof and each person to whom it may delegate any power or duty in connection with administering the Plan shall be entitled to rely conclusively upon, and shall be fully protected in any action taken by them or any of them in good faith reliance upon any valuation, certificate, opinion, or report which shall be furnished to them or any of them by the Trustees or by any accountant, counsel, other expert, or other person who shall be employed or engaged by the Trustees or the Administrator.

9.5 **Records and Accounts**

The Administrator shall keep or cause to be kept all data, records and documents pertaining to the administration of the Plan, and shall execute all documents necessary to carry out the provisions of the Plan. The Administrator shall advise the Trustees of such facts as may be pertinent to the Trustees' administration of the Trust and shall give proper instruction to the Trustees for carrying out the purposes of the Plan.

9.6 **Payment of Expenses**

- (a) Subject to the provisions of paragraph (b) below, expenses in connection with the administration of the Plan and Trust including commissions, taxes, and expenses of the Trustees and of any accountant or other person who shall be employed by the Administrator or Trustees in the administration thereof, shall be paid by the Trust unless paid by the University.
- (b) In the event of permanent discontinuance of contributions or termination, any further payment of expenses which arise or have arisen in connection with the administration of the Plan and Trust shall be paid by the Trust unless paid by the University.

9.7 **Liability**

The Administrator shall incur no liability for any action taken or not taken in good faith reliance on advice of counsel, who may be counsel for the University or taken or not taken in good faith reliance on a determination as to a matter of fact which has been represented or certified by a person reasonably believed to have knowledge of the fact so represented or certified, or taken or not taken in good faith reliance on a recommendation or opinion expressed by a person reasonably believed to be qualified or expert as to any matter where it is reasonable or customary to seek or rely on such recommendations or opinions. Nor shall any employee of the Administrator be liable for the wrongful or negligent conduct of any other or any person having fiduciary responsibilities with respect to the Plan unless the employee (i) knowingly participates in or undertakes to conceal an act or omission of such other person knowing the act or omission is a breach of fiduciary duty, (ii) by failing to act solely in the interests of Participants and beneficiaries or to exercise the care, skill, prudence and diligence under the circumstances prevailing from time to time that a prudent man acting in a like capacity and familiar with such matters would exercise, has enabled the other fiduciary to commit a breach, or (iii) has knowledge of a breach by the other fiduciary and does not make reasonable efforts under the circumstances to remedy it. The University shall indemnify any employee and hold him harmless from loss, liability and expense in respect of the Plan for actions taken within the scope of his duties, including the legal cost of defending claims and amounts paid in satisfaction or settlement thereof provided only that no indemnification is intended that would be void as against public policy or the laws of the Commonwealth.

**ARTICLE 10
TRUST AGREEMENT**

10.1 The Trust Agreement

“Trust Agreement” means the University of Mary Washington Retirement Benefit Trust. The Trustees are to hold, invest, and distribute the Trust Fund in accordance with the terms and provisions of the Trust Agreement. The duties and rights of the Trustees shall be determined solely by reference to the Trust Agreement.

10.2 No Diversion of Corpus or Income

In no event shall any portion of the corpus or income of the Trust Fund be used for or diverted to purposes other than the exclusive benefit of Participants and their beneficiaries.

**ARTICLE 11
MISCELLANEOUS**

11.1 Limitation of Rights; Employment Relationship

Neither the establishment of the Plan and the Trust nor any modifications of them, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as modifying or affecting in any way the terms of employment of any Employee.

11.2 Merger; Transfer of Assets

- (a) If the University merges or consolidates with or into another entity, or if substantially all the assets of the University are transferred to another entity, the Plan shall terminate on the effective date of the merger, consolidation, or transfer. However, if the surviving entity resulting from the merger or consolidation, or the entity to which the assets have been transferred, adopts this Plan, the Plan shall continue and the successor entity shall succeed to all rights, powers, and duties of the University under the Plan, and the employment of any Employee who is continued in the successor entity’s employ shall not be deemed to have been terminated for any purpose under the Plan.
- (b) This Plan shall not be merged or consolidated with any other employee benefit plan, nor shall there be any transfer of assets or liabilities from this Plan to any other plan, unless, immediately after the merger, consolidation, or transfer, each Participant’s benefits, if the other plan were then to terminate, are at least equal to the benefits to which the Participant would have been entitled had this Plan been terminated immediately before the merger, consolidation, or transfer.

11.3 Prohibition Against Assignment

- (a) Except as provided below, the benefits provided by this Plan may not be assigned or alienated. Neither the University nor the Trustees shall recognize any transfer,

mortgage, pledge, hypothecation, order, or assignment by any Participant or beneficiary of all or part of his or her interest under the Plan, and the interest shall not be subject in any manner to transfer by operation of law and shall be exempt from the claims of creditors or other claimants from all orders, decrees, levies, garnishment, and/or executions, and other legal or equitable process or proceedings against the Participant or beneficiary to the fullest extent that may be permitted by law.

- (b) This provision shall not apply to an “administrative domestic relations order” and those other domestic relations orders permitted to be so treated by the Administrator under the Code. To the extent provided under such a domestic relations order, a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

11.4 Applicable Law; Severability

This Plan shall be construed, administered, and governed in all respects in accordance with the laws of the Commonwealth of Virginia, provided, however, that if any provision is susceptible to more than one interpretation, it shall be interpreted in a manner consistent with the Plan’s being a qualified plan within the meaning of the Code. If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

11.5 Reliance Upon Copy of Plan

Any person dealing with the Trustees may rely upon copies of the Plan and the Trust Agreement, and any amendments thereto, certified by the Administrator to be true and correct copies.

11.6 Gender and Number; Captions or Headings

Wherever appropriate to the meaning or interpretation of this Plan, the masculine gender shall include the feminine, and the singular number shall include the plural and vice versa. Captions or headings are inserted and intended for organizational format and convenience of reference only; they are not to be given independent substantive meaning or effect.

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this Plan to be executed this ____ day of _____, 2022.

UNIVERSITY of MARY WASHINGTON

By: _____

Name: _____

Title: _____

Appendix A

Eligible Employee Name [Name]	Benefit [\$[Amount], X% of Base Salary]	Distribution Period [X Years]