

***WV Higher Education Policy Commission***

***Qualified 401(a)  
Defined Contribution Retirement Plan***

Plan Document as of February, 2002

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## Article I: Definitions

- 1.1 **Accumulation Account** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.
- 1.2 **Annual Additions** means the sum of the following amounts credited to a Participant's Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in section 415(l)(2) and 419A(d)(2) of the Code, if any.
- 1.3 **Beneficiary(ies)** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.
- 1.4 **Commission** means the WV Higher Education Policy Commission (HEPC).
- 1.5 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.6 **Compensation** means the amount paid by an institution to a Participant that must be reported as wages on the Participant's Form W-2, plus compensation that is not currently includable in the Participant's gross income because of the application of Code Sections 125 or 403(b) through a salary reduction agreement

In addition to other applicable limitations stated in the plan, and notwithstanding any other provision of the Plan to the contrary, for Plan years beginning on or after January 1, 1996 the annual compensation of each employee taken into account under the plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For plan years beginning on or after January 1, 1996, any reference in this plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit stated in this provision.

If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the compensation for that prior

determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1996.

**Notwithstanding the above, employees who became participants in the Plan before the first day of the plan year beginning on or after January 1, 1996, will not be subject to the annual compensation limit.**

1.7 ***Date of Employment or Reemployment*** means the effective date of the appointment for a faculty member. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service for performance of duties during the employee's most recent period of service with an institution.

1.8 ***Eligible Employee*** means all employees, except those employed on a part-time and temporary basis as defined in Addendum #1.

The term Eligible Employee shall **not** include any leased employee deemed to be an employee of the institution as provided in Code Section 414(n).

A leased employee shall not be considered an Eligible Employee of the Institution if: (a) such employee is covered by a money purchase pension plan maintained by the leasing organization providing: (1) a non-integrated employer contribution rate of at least 10 percent of Compensation, as defined in Code Section 415(c)(3) but including amounts contributed by the employer pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code Sections 125, 402(a)(8), 402(h) or 403(b)(2) and (b) leased employees do not constitute more than 20 percent of the Institution's non-highly compensated work force.

1.9 ***Fund Sponsor*** means an insurance, variable annuity or investment company that provides Funding Vehicles available to Participants under this Plan.

1.10 ***Funding Vehicles*** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.

1.11 ***Hours of Service*** means each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Institution.

1.12 ***Institution*** means the higher education institutions, the Commission Office, and the WV Network for Educational Telecomputing, under the policy jurisdiction of the WV Higher Education Policy Commission.

1.13 ***Institution Plan Contributions*** means contributions made by an Institution under this Plan.

1.14 ***Limitation Year*** means a calendar year.

- 1.15 **Normal Retirement Age** means age 65.
- 1.16 **Participant** means any Eligible Employee of an institution participating in this Plan.
- 1.17 **Participant Plan Contributions** means contributions made by a Participant under this Plan. Participant Plan Contributions are designated as being picked-up by an institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2). The pick-up amounts cannot be received directly by the Participant and are required to be made.
- 1.18 **Plan** means the Commission's Defined Contribution Retirement Plan as set forth in this document.
- 1.19 **Plan Contributions** means contributions made under this Plan by an institution and Participant.
- 1.20 **Plan Entry Date** means the first day of employment that the employee has met the participation requirements set forth in Article III.
- 1.21 **Plan Year** means January 1 through December 31.
- 1.22 **Year of Service** means a 12-month period of employment (computation period).

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## Article II: Establishment of Plan

- 2.1 **Establishment of Plan.** The Higher Education Policy Commission, as successor to the Board of Trustees and the Board of Directors of the State College and University Systems of West Virginia, established the Plan as of July 1, 1994. This Plan is established and maintained for the exclusive benefit of the Participants and Beneficiaries of the Commission and the Institutions.

This plan document sets forth the provisions of this Code Section 401(a) Plan, "which Plan is intended to be a money purchase pension plan." Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan. Plan Contributions shall be held for the exclusive benefit of Participants.

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## Article III: Eligibility for Participation

- 3.1 **Eligibility.** An Eligible Employee must, as a condition of employment, begin participation in this Plan on the Plan Entry Date following employment at an institution.
- 3.2 **Notification.** The Institution will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.
- 3.3 **Enrollment in Plan.** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms will be negatively enrolled in TIAA-CREF under the plan.
- 3.4 **Reemployment.** A former employee who is reemployed by an institution will be eligible to participate upon meeting the requirements stated in the "Eligibility" section of Article III. A former employee who satisfied these requirements before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.
- 3.5 **Termination of Participation.** A Participant will continue to be eligible for the Plan until one of the following conditions occur:
- ? he or she ceases to be an Eligible Employee;
  - ? the Plan is terminated.

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## Article IV: Plan Contributions

- 4.1 **Plan Contributions.** Plan Contributions will be made for Eligible Employees who have satisfied the requirements of Article III in accordance with the schedule below.

Plan Contributions as a Percentage of Compensation

<u>By the Institution</u>	<u>By the Participant</u>
<b>6.0%</b>	<b>6.0%</b>

Plan Contributions are considered to be credited to Participants no later than the last day of the Plan Year for which the Plan Contributions are made.

- 4.2 ***When Contributions Are Made.*** Plan Contributions will begin each year when an Institution has determined that the Participant has met or will meet the requirements. Any part of a year's Plan Contributions not contributed before this determination will be included in contributions made for that year after the determination. Plan Contributions will be forwarded to the Funding Vehicle(s) in accordance with the procedures established by an Institution. Institution Plan Contributions will be forwarded to the Funding Vehicles at least annually.
- 4.3 ***Allocation of Contributions.*** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. A Participant may change her or his allocation of future contributions to the Funding Vehicle(s) at any time.
- 4.4 ***Leave of Absence.*** During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the Institution. No Plan Contributions will be made during an unpaid leave of absence.
- 4.5 ***Disability.*** Participants who are totally disabled (as defined in the Institution sponsored employee-paid long-term disability policy with TIAA-CREF) receive an Annuity Premium Benefit plan contribution based on the compensation each such Participant would have received for the Limitation Year if the Participant had been paid at the rate of compensation paid immediately before becoming totally disabled, to the extent permitted by Code Section 415 or 403(b).
- 4.6 ***Transfer of Funds from Another Plan.*** The Fund Sponsor shall accept contributions that are transferred directly from any other qualified plan under sections 401(a), 401(k) or 403(a) of the Code, whether such plans are funded through a trustee arrangement or through an annuity contract, if such contributions are attributable only to employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer and employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable.
- 4.7 ***Acceptance of Rollover Contributions.*** If a Participant is entitled to receive a distribution from another qualified plan under sections 401(a), 401(k) or 403(a) of the Code that is an eligible rollover distribution under section 402 of the Code, the Fund Sponsor will accept such amount under this Plan provided the rollover to this Plan is made 1) directly from another plan; or 2) by the Participant within 60 days of the receipt of the distribution.
- 4.8 ***Uniformed Services.*** Notwithstanding any provision of this plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.
- 4.9 ***Maximum Plan Contributions.*** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 are hereby incorporated by reference.  
For the purpose of calculating the limits of Code Section 415, compensation means a Participant's earned income, wages, salaries, and fees for professional services and other

amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan and excluding the following: (a) employer contributions to a plan of deferred compensation that are not includable in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation; and (2) other amount that received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement towards the purchase of an annuity described in Code Section 403(b) (whether or not the amounts are actually excludable from the gross income of the employee). For years beginning after December 31, 1997, compensation shall include any elective deferrals (as defined in Code Section 402(g)(3) and any amount which is contributed or deferred by the Institution at the election of the Participant and which is not includable in the gross income of the Participant by reason of Code Section 125 or 457.

To the extent permitted by Code Section 415 and the regulations promulgated thereunder, if the Annual Additions exceed the Section 415 limitations, the excess amounts will be disposed of as follows: (a) any Participant Plan Contributions (plus any gain attributable to the excess), to the extent they would reduce the excess amount, will be returned to the Participant; and, to the extent necessary, (b) if, after the application of (a) an excess still exists, the excess will be held unallocated in a suspense account and will be applied to reduce Institution Plan Contributions in succeeding limitation years.

If the limitations are exceeded because the Participant is also participating in another Plan required to be aggregated with this Plan for Code Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

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## Article V: Funding Vehicles

5.1 **Funding Vehicles.** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors and their Funding Vehicles are:

A. Teachers Insurance and Annuity Association (TIAA)

**TIAA Group Retirement Annuity**

Traditional Annuity  
Real Estate Account

**TIAA Retirement Loan Contract**



B. College Retirement Equities Fund (CREF)

**CREF Group Retirement Unit-Annuity:**

Stock Account  
Money Market Account  
Bond Market Account  
Social Choice Account  
Global Equities Account  
Growth Account  
Equity Index Account

The commission's current selection of Fund Sponsors and Funding Vehicles is not intended to limit future additions or deletions of Fund Sponsors and Funding Vehicles. Any additional accounts offered by a Fund Sponsor will automatically be made available to Participants in accordance with the procedures established by the Commission and the Fund Sponsor.

- 5.2 ***Fund Transfers.*** Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles.

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## Article VI: Vesting

- 6.1 ***Plan Contributions.*** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

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## Article VII: Benefits

- 7.1 ***Retirement Benefits.*** A Participant who has terminated employment may elect to receive retirement benefits under any of the forms of benefit, as provided below.

**Forms of Benefit.** The forms of benefit are the benefit options offered by the Funding Vehicles available under this Plan. These forms are equally available to all Participants choosing the Funding Vehicle. The forms of benefit available under this Plan include:

- ? Single life annuities as provided under the Funding Vehicle contract.
- ? Joint and survivor annuities as provided under the Funding Vehicle contract.

- ? Lump Sum and Systematic Cash withdrawals (to the extent the Funding Vehicle permits and subject to the limitations in the "Cash Withdrawal" section of this Article.)
- ? Fixed period annuities, as permitted by the Funding Vehicle contract.
- ? Retirement Transition Benefit.
- ? Such other annuity and withdrawal options as provided under the Funding Vehicle contract.

7.2 **Cash Withdrawals.** A Participant who has terminated employment may receive benefits in any form the relevant Funding Vehicle permits, including a cash withdrawal.

7.3 **Retirement Transition Benefit.** The Retirement Transition Benefit (RTB) permits a Participant to receive a one-time lump-sum payment of up to 10 percent of her or his Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one-sum payment from each TIAA contract and/or CREF account(s) doesn't exceed 10 percent of the respective Accumulation Account(s) being converted to retirement income.

7.4 **Survivor Benefits.** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary(ies) under the options offered by the Funding Vehicle. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).

7.5 **Application for Benefits.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary(ies) by the Fund Sponsor.

7.6 **Minimum Distribution Requirements.** The requirements of this section shall apply to any distribution of a Participant's vested Accumulation Account(s) and will take precedence over any inconsistent provisions of this Plan. Distributions in all cases will be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the proposed regulations.

- (a) **Limits on Settlement Options.** Distributions may only be made over one of the following periods (or a combination thereof): i) the life of the Participant; ii) the life of the Participant and a designated Beneficiary(ies); iii) a period certain not extending beyond the life expectancy of the Participant; or iv) a period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated Beneficiary(ies).
- (b) The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's required Beginning Date. The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant

attains age 70 1/2 or, if later, April 1 following the calendar year in which the Participant retires.

- (c) **Death Distribution Provisions.** Upon the death of the Participant, the following distribution provisions will take effect:
- i) If the Participant dies after distribution of her or his vested Accumulation Account has begun, the remaining portion of the vested Accumulation Account(s) will continue to be distributed at least as rapidly as under the method of distribution being used before the Participant's death;
  - ii) If the Participant dies before distribution of her or his vested Accumulation Account(s) begins, distribution of the Participant's entire vested Accumulation Account(s) shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except where an election is made to receive distributions in accordance with (1) or (2) below:
    - (1) If any portion of the Participant's vested Accumulation Account is payable to a designated Beneficiary(ies), distributions may be made over a period certain not greater than the life expectancy of the designated Beneficiary(ies) commencing by December 31 of the calendar year immediately following the calendar year in which the Participant died;
    - (2) If the designated Beneficiary(ies) is the Participant's surviving spouse, the date distributions are required to begin in accordance with (1) above must not be earlier than the later of (a) December 31 of the calendar year immediately following the calendar year in which the Participant died and (b) December 31 of the calendar year in which the Participant would have attained age 70 1/2.

If the Participant has not made an election pursuant to this section by the time of her or his death, the Participant's designated Beneficiary(ies) must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this section, or (2) December 31 of the calendar year that contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated Beneficiary(ies), or if the designated Beneficiary(ies) does not elect a method of distribution, distribution of the Participant's entire vested Accumulation Account(s) must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

7.7 **Loans.** Subject to the terms of the Funding Vehicles, loans are available to Participants before the commencement of benefit payments.

7.8 **Direct Rollovers.** This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan 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.

For this section, the following definitions apply:

1) Eligible rollover distribution: An eligible rollover distribution is 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 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 years or more; any distribution to the extent such distribution is required under Code Section 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).

2) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in section 408(b) of the Code, or a qualified retirement plan described in Code Section 401(a) or 403(a) of the Code, 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.

3) Distributee: A distributee includes 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 or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

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

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## Article VIII: Administration

8.1 **Plan Administrator.** The Commission, located at 1018 Kanawha Blvd. East, Suite 700, Charleston, WV, 25301-2827, is the administrator of this Plan. The plan administrator may designate certain persons or entities to be responsible for enrolling Participants, sending Plan Contributions for each Participant to the Fund Sponsors, and for performing other duties required for the operation of the Plan.

- 8.2 ***Authority of the Commission.*** The Commission has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Commission shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Commission will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Commission may employ attorneys, agents, and accountants as it finds necessary or advisable to assist it in carrying out its duties. The Commission, by action of its Board, may designate a person or persons other than the Commission to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.
- 8.3 ***Action of the Commission.*** Any act authorized, permitted, or required to be taken by the Commission under the Plan, which has not been delegated in accordance with the "Authority of the Commission" section of Article VIII, may be taken by a majority of the members of the Commission, either by vote at a meeting, or in writing without a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Commission under the Plan will be in writing and signed by either (i) a majority of the members of the Commission, or by any member or members as may be designated by an instrument in writing, signed by all members, as having authority to execute the documents on its behalf, or ii) a person who becomes authorized to act for the Commission in accordance with the provisions of the "Authority of the Commission" section of Article VIII. Any action taken by the Commission that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the Commission and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Commission.
- 8.4 ***Indemnification.*** The Commission will satisfy any liability actually and reasonably incurred by any members of the Commission or any person to whom any power, authority or responsibility of the Commission is delegated pursuant to the "Authority of the Commission" section of Article VIII (other than the Fund Sponsors). These liabilities include expenses, attorney's fees, judgements, fines, and amounts paid in connection with any threatened, pending or completed action suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the Commission, under any provision of law, or under any other agreement.
- 8.5 ***Investment Manager.*** To the extent that Participants allocate contributions to the TIAA Real Estate Account, TIAA will be the investment manager (within the meaning of Section 3(38) of ERISA) with respect to the account balance in the TIAA Real Estate Account. TIAA acknowledges that it is a fiduciary with respect to such assets.
- 8.6 ***No Reversion.*** Under no circumstances or conditions will any Plan Contributions of an Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact,

these amounts may be returned to the Institution within one year of the date that they were made.

- 8.7 **Statements.** The Commission in accordance with applicable legislation shall determine the total amount of contributions to be made for each Participant from time to time on the basis of its records and in accordance with the provisions of this Article. When each contribution payment is made by an Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment that is made for her or him, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the Institution, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contribution's payment.
- 8.8 **Reporting.** Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Fund Sponsors will send each Participant a report summarizing the status of her or his Accumulation Account(s) as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.
- 8.9 **Calendar Year Election.** For purposes of determining the highly compensated employees for the Plan Year, an Institution may make a calendar year election in accordance with the provisions of the Code and regulations issued thereunder.

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## Article IX: Amendment and Termination

- 9.1 **Amendment and Termination.** While it is expected that this Plan will continue indefinitely, the Commission reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of the Commission. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Commission will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.
- 9.2 **Limitation.** Notwithstanding the provisions of the "Amendment and Termination" section of Article IX, the following conditions and limitations apply:
- (a) No amendment will be made which will operate to recapture for an Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to an Institution within one year of the date on which the Plan Contribution was made. Also, Plan Contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan.

- (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.

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## Article X: Miscellaneous

- 10.1 ***Plan Non-Contractual.*** Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue her or his employment with an Institution, and nothing in this Plan will be construed as a commitment on the part of an Institution to continue the employment or the rate of compensation of any person for any period, and all employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 10.2 ***Claims of Other Persons.*** The provisions of the Plan will not be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against the Commission its officers, or employees, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 ***Merger, Consolidation, or Transfers of Plan Assets.*** In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.
- 10.4 ***Finality of Determination.*** All determinations with respect to the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there will be no duplication of Years of Service credited to an employee for any one period of her or his employment.
- 10.5 ***Non-Alienation of Retirement Rights or Benefits.*** No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber her or his benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under section 414(p) of the Code.

*West Virginia Higher Education Policy Commission*  
*Employer Identification Number: 55-0517092*  
*Plan Number: 001*

The Commission Office, the West Virginia Network for Educational Telecomputing and each state college and university within the West Virginia Higher Education Policy Commission all maintain a separate employer identification number.

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



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# Addendum #1

## Eligibility for Benefits

### Purpose:

To outline the definition and requirements for an employee to be considered benefits eligible.

### Authority:

The Higher Education Policy Commission Series 8

### Employee Eligibility:

This policy applies to Commission Office staff, the West Virginia Network for Educational Telecomputing, and the state college and university employees: classified staff, non-classified, faculty and faculty equivalents/academic professionals (FE/AP) as defined below.

### Benefits Eligibility:

In order for a classified, non-classified, or FE/AP position to be benefits eligible, the position must be created to last for at least nine months or a twelve month period and be scheduled to work a minimum of 1040 hours during the 12 month period.

Faculty employed for a full academic year, with a minimum 9 month contract, with at least 6 credit hours teaching per semester or its equivalent are benefits eligible.

### Determination of Full-Time Equivalency (FTE):

Classified, Non-Classified, Faculty and Faculty Equivalents/Academic Professionals (FE/AP); Full-time equivalency is the percentage of time (hours) for which a position is established, in a twelve month period, based on a 1950 hours per year being a 1.00 FTE.

### Faculty:

Full-time equivalency for faculty members is determined by their workload, for an academic year, based on 1.00 FTE being the equivalent of teaching four three credit undergraduate lecture courses in each of the two regular academic semesters (Fall & Spring).

### Definitions:

#### Full-Time Regular Classified Employees:

Any employee in a regular classified position created to last a minimum of nine months in a twelve month period and working a minimum of 1040 hours during this period of time is considered full-time regular for benefits purposes: The FTE (full time equivalent) of such an appointment must be reported at no less than .53 FTE.

A full-time regular classified employee, as defined above, is benefits eligible, provided the employee meets the qualifying standards or conditions for each benefit.

AMENDMENT OF THE WV Higher Education Policy Commission Qualified 401(a) Defined  
Contribution Retirement Plan for EGTRRA

IN WITNESS WHEREOF, the West Virginia Higher Education Policy Commission herein amends the Qualified 401(a) Defined Contribution Retirement Plan, as follows:

A. PREAMBLE

1. Adoption and effective date of amendment. This amendment of the Plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued there under. Except as otherwise provided, this amendment shall be effective as of the first day of the first plan year beginning after December 31, 2001.
2. Supersession of inconsistent provisions. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

B. LIMITATIONS ON CONTRIBUTIONS

Maximum Annual Addition. The annual addition that may be contributed or allocated to a Participant’s account under the Plan for any limitation year shall not exceed the lesser of:

- (a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
- (b) 100 percent of the Participant’s compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419(f)(2) of the Code), if any, otherwise treated as an annual addition.

C. INCREASE IN COMPENSATION LIMIT

1. Annual Compensation Limit. The annual compensation of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means

compensation during the plan year or such other consecutive 12 month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

2. Plan Definition of Compensation. To the extent the Plan's definition of Compensation includes compensation not currently includable because of the application of Code Section 125 or 403(b), this definition is amended to include compensation not currently includable because of the application of Code §§ 132(f)(4) and 457.
3. Special Rule for Governmental Plans. Notwithstanding the above, employees of governmental employers who became Participants in the Plan before the first day of the plan year beginning after December 31, 1995, will be subject to the annual compensation limit in effect under the Plan before that date, as determined by IRS regulations.

#### D. DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS

1. Effective date. This section shall apply to distributions made after December 31, 2001.
2. Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions in Article VII of the Plan, an eligible retirement plan shall mean a qualified retirement plan described in section 401(a) of the Code. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.
3. Modification of definition of eligible rollover distribution to exclude hardship distributions. For purposes of the direct rollover provisions in Article VII of the Plan, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

#### E. ROLLOVERS FROM OTHER PLANS

1. Direct Rollovers: The Plan will accept a direct rollover of an eligible rollover distribution from:
  - a. A qualified plan described in section 401(a) of the Code including after-tax employee contributions.

2. Participant Rollover Contributions from Other Plans: The Plan will accept a Participant contribution of an eligible rollover distribution from:
  - a. A qualified plan described in section 401(a) of the Code.
3. Participant Rollover Contributions from IRAs: The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.