

ACTION ITEM #1

Amendments to the Washington State University Supplemental Retirement Plan (Roger Patterson/Theresa Elliot-Cheslek/Ann Monroe)

TO ALL MEMBERS OF THE BOARD OF REGENTS

SUBJECT: Amendments to and Restatement of the Washington State University 401(a) Supplemental Retirement Plan

PROPOSED: That the Washington State University Board of Regents approve and adopt the Washington State University 401(a) Supplemental Retirement Plan in substantially the same form as the version attached to the agenda item; as amended and restated effective January 24, 2014 (collectively, the "Plans"); and

That the Washington State University Board of Regents delegate to the President or his designee(s) the authority to make such changes in the plan document in substantial conformity with the versions presented at this meeting, to execute the plans in the University's name, and to take such other actions as deemed necessary or appropriate to implement the Plans.

SUBMITTED BY: Roger Patterson, Vice President for Finance & Administration

SUPPORTING INFORMATION: Washington State University Supplemental Retirement Plan

The Washington State University Board of Regents has authority pursuant to RCW 28B.10.400 through 28B.10.423, RCW 28B.30.095 and RCW 28B.30.150 to establish and govern retirement plans for eligible employees of the University. Pursuant to this authority, the Board of Regents adopted the Washington State University Supplemental Retirement Plan Rules effective January 1, 2009, addressing the 401(a) benefit separately from the 403(b) Washington State University Retirement Plan, where the supplemental benefit previously had been addressed. Revisions have been made since that time, the most recent on March 23, 2012.

To maintain the tax qualification of the Plan, Washington State University is required to amend the Plan for certain provisions of

the Heroes Earnings Assistance and Tax Relief Act of 2008, commonly referred to as the "HEART Act". Needed amendments, as tracked in the attached plan document, include:

NEW SECTION 5.12: HEART ACT PROVISIONS

- (a) Death Benefits. If a Participant is on military leave from Washington State University and dies while performing qualified military service, the SRP benefits will be calculated to determine if the Participant's Beneficiary is entitled to any additional benefits provided under the Plan.
- (b) No Benefit Accrual. For benefit accrual purposes, the Plan does not provide benefit accruals to a Participant who dies or becomes disabled while performing qualified military service, (i.e. treat their military service as service with the Washington State University for accruals)
- (c) Differential Wage Payments. Washington State University does not presently make differential wage payments an amount to make up some or all of what the Participant would have been paid if they kept working at WSU). If Washington State University elected to do so in the future, these amounts will be treated as plan compensation for various purposes and the Participant would be treated as not have terminated employment.

Other changes are to provide clarification of wording/formatting unless specifically addressed/identified below.

SECTION 1. INTRODUCTION

- 1.1, 1.2 Updated to reflect current status of the document's amendment and restatement status.

SECTION 2. DEFINITIONS

- 2.09 "HEART" definition added
- 2.11 "Plan" updated to reflect current restatement date.
- 2.13 "QDRO" definition added to be in alignment with Pension Protection Act.
- 2.20 "Year of Service" updated to properly identify employee as "Participant", and the employer as "WSU", in accordance to established definitions.

SECTION 5. BENEFITS

- 5.5 Changed to clarify this section is applicable to actively employed Participants. Retired Participants are addressed in Section 5.6.
- 5.9 Preferred wording to reflect the requirements of Code Section 401(a)(9).

SECTION 9. MISCELLANEOUS

- 9.1 QDRO clarification added to be in alignment with Pension Protection Act.

Attachments: 401(a) Supplemental Retirement Plan (red-lined)
401(a) Supplemental Retirement Plan (clean-copy)

BOARD OF REGENTS

Resolution to adopt the amended and restated Washington State University Retirement Plan and the Washington State University Supplemental Retirement Plan

Resolution #140123-476

WHEREAS, the Washington State University Board of Regents has authority pursuant to RCW 28B.10.400 through 28B.10.423; RCW 28B.30.095 and RCW 28B.30.150 to establish and govern retirement plans for eligible employees; and

WHEREAS, the Board of Regents of Washington State University by virtue of RCW 28B.10.528 has authority to delegate by resolution to the President of the University, or designee, to act on behalf of the Board of Regents in matters relating to the administration and governance of the University;

NOW, THEREFORE, BE IT RESOLVED: That the Washington State University Board of Regents acknowledge the amended section of the Washington State University Supplemental Retirement Plan 401(a) provided; and

BE IT FURTHER RESOLVED: That the Washington State University Board of Regents delegate to the President or his designee(s) the authority to make such changes in the plan document in substantial conformity with the version presented at this meeting, to execute the plan in the University's name, and to take such other actions as deemed necessary or appropriate to implement the Plans.

Dated this 24th day of January 2014.

Chair of the Board of Regents

Secretary to the Board of Regents

WASHINGTON STATE UNIVERSITY

401(a) Supplemental Retirement Plan
Amended and Restated on ~~January 24~~ ~~March 23~~, 201~~4~~²

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SECTION 1. INTRODUCTION

1.1. **Amendment and Restatement.** This document amends, restates, and continues ~~Section 8 of~~ the Washington State University 401(a) Supplemental Retirement Plan (~~WSURP~~), ~~which previously set setting~~ out the terms and conditions of the supplemental retirement benefit provided for in RCW 28B.10.400(~~c3~~), as amended.

1.2. **401(a) Status.** The Plan, ~~as set forth herein and previously in the WSURP document,~~ is a governmental plan as defined in Section 410(d) of the Code intended to qualify under Section 401(a) of the Code, and shall be construed accordingly.

SECTION 2. DEFINITIONS

2.1. **“Average Annual Salary”** means the average annual Basic Salary paid to a Participant for his or her highest two consecutive Years of Service.

2.2. **“Basic Salary”** means the amount paid by WSU to a Participant under the terms of his or her appointments, including summer and other extended appointments. Basic Salary shall be determined before taking into account any salary reduction under Code ~~S~~ections 125, 132, 403(b) or 457(a). Basic Salary shall not include leave cash out payments, any settlement, severance or tenure purchase payments, any amounts paid for, teaching overloads, extra services, and royalties from intellectual property, and any other amounts that are not taken into account in computing WSURP contributions. In the case of employees on contract, the contract may exclude additional items from Basic Salary. For any Participant who first became a participant in this Plan or the WSURP on or after July 1, 1996, Basic Salary shall not be taken into account for any Plan Year in excess of the limit that shall apply for such Plan Year under Section 401(a)(17) of the Code~~).~~

2.3. **“Beneficiary”** means either: (a) the surviving spouse of the Participant; or (b) with the written consent of the Participant’s spouse, if any, in accordance with Section 5.7, such other person or persons as shall have an insurable interest in the Participant’s life at the time of retirement and shall have been designated by the Participant in a written designation~~ing~~ duly executed and filed with WSU Human Resource Services.

2.4. **“Board”** means the Board of Regents of Washington State University.

2.5. **“Code”** means the Internal Revenue Code of 1986, as amended (Title 26 of the United States Code).

2.6. **“Eligible Employee”** means any employee of WSU who is employed in an Eligible Position and who: (a) who was a participant in the WSURP at any time prior to July 1, 2011; or (b) who was eligible to participate in the WSURP as of June 30, 2011, and who subsequently, without a break in employment, became a participant in the WSURP; or (c) who accepted an offer of employment for an Eligible Positions prior to July 1, 2011. In no case may an employee who has retired from a position that is covered by RCW 28B.10.400 et seq. be an “Eligible Employee.” ~~(Note: Amended and effective June 30, 2011; incorporated into restated Plan of January 1, 2012).~~

2.7. **“Eligible Position”** means a WSU faculty, administrative or professional staff position in which the employee has at least 50 percent full-time equivalency in at least one semester of each Plan Year, or the equivalent of one semester, but does not include Agricultural Extension Service employees on a federal appointment or persons rendering a professional service on a fee, retainer or special contract basis, or as an incident to the private practice of a profession. Classified positions prior to April 26, 1973 and administrative professional positions prior to April 26, 1973 or after September 30, 1992 are Eligible Positions, provided that the employees holding such positions did not elect to participate in or transfer to the Public Employees Retirement System (PERS) prior to January 1, 1974. An Eligible Employee, once having begun participation in this Plan, shall be deemed to be employed in an Eligible Position even if his or her position no longer requires at least 50 percent of the normal full-time workload per month in at least one semester of each plan year or the equivalent of one semester, so long as the position otherwise qualifies as an Eligible Position.

2.8. **“Fixed Annuity”** means a fixed annuity contract (or index reflecting experience of fixed annuity contracts) selected by WSU.

2.9. **“HEART”** means the Heroes Earnings Assistance and Tax Relief Act of 2008.

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2.9.2.10. **“Participant”** means any Eligible Employee of WSU who participates in the Plan in accordance with Section 3.1.

2.10.2.11. **“Plan”** means the Washington State University 401(a) Supplemental Retirement Plan set forth in this document as it may be amended from time to time and, prior to January 1, 2009, as set forth in Section 8 of the WSURP. The Plan as restated in this document is effective on January 1, 2014, except as otherwise provided in the Plan.

2.11.2.12. **“Plan Year”** means the calendar year.

2.13. **“QDRO”** means a qualified domestic relations order under Code Section 414(p).

2.12.2.14. **“Trust”** means the trust established to hold and invest assets of the Plan.

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2.13.2.15. **“Trustee”** means the trustee or trustees appointed by WSU to administer the Trust.

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2.14.2.16. **“USERRA”** means the Uniformed Services Employment and Reemployment Rights Act of 1994.

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2.15.2.17. **“WSU”** means Washington State University.

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2.16.2.18. **“WSURP”** means the Washington State University Retirement Plan.

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2.17.2.19. **“Variable Annuity”** means a variable annuity contract (or index reflecting experience of variable annuity contracts) selected by WSU.

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2.18.2.20. **“Year of Service”** means a Plan Year in which a person provides at least one semester, or the equivalent of one semester, of full-time service. On or after July 1, 1979, a

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Year of Service shall include only those academic years in which contributions were made by the Participant under the WSURP or any other plan established pursuant to RCW 28B.10.400. Authorized leaves of absence will also be included, as will periods of absence in the uniformed services to the extent provided in USERRA. A Participant's Years of Service will also include his or her credited years of service in a position covered by the Washington State Retirement System, provided that, with regard to the Washington State Retirement System (a) the Participant was vested and will receive a retirement income benefit from the Washington State Retirement System, (b) service that has been withdrawn does not count, and (c) the Participant signs a release, as needed to obtain the relevant information from the Washington State Retirement System. Any retirement income benefit that he or she is eligible to receive under the Washington State Retirement System attributable to Years of Service that are covered under the preceding sentence shall be included in the assumed benefit offset described in Section 5.3. Except as otherwise provided in USERRA, ~~an Employee a Participant~~ may receive credit for no more than two years during his or her entire working career for periods of authorized leave without pay, provided that the ~~Employee Participant~~ contributes both the ~~Employer WSU~~ and ~~Participant mandatory Employee~~ contributions under the WSURP while on authorized leave and returns to the employment of WSU immediately following the leave for a period of not less than two years. The ~~Employee Participant mandatory contributions~~ and ~~Employer WSU~~ contributions shall be based on the average of the ~~Participant Employee's~~ compensation at the time the leave of absence was authorized and the time the ~~Employee Participant~~ resumes employment. The benefit provided by this Plan shall be based only on the Participant's Average Annual Salary earned from employment with WSU.

2.19.2.21. **“Washington State Retirement System”** means any retirement system paid for by the State of Washington and administered by the State of Washington Retirement Systems.

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SECTION 3. PARTICIPATION

3.1. **Commencement of Participation.** An Eligible Employee begins (or began) participation in this Plan on the later of: (a) the date he or she begins (or began) participation in the WSURP; or (b) the beginning of the first period for which the Eligible Employee has made a contribution under the WSURP.

3.2. **Cessation of Participation.** A Participant will continue to be a Participant so long as he or she continues to participate in the WSURP, and shall cease to be a Participant in this Plan when he or she ceases to participate in the WSURP.

SECTION 4. RETIREMENT

4.1. **Retirement Because of Age.** On the first of any month after attaining age 62, a Participant who is actively employed by WSU may elect to retire by submitting a written application to his or her superior with a copy to WSU Human Resource Services. A person is ineligible for any benefit under this Plan if he or she ceases to be a Participant prior to age 62 for ~~any reason excepts other than~~ retirement because of condition of health as described in Section 4.2.

4.2. **Retirement Because of Health Condition.** A retirement because of health condition may be approved by the President of WSU in the event a Participant has a serious health condition that prevents him or her from performing the duties of his or her Eligible Position. Any request for retirement and supplemental payments under the Plan because of health is referred to a special board which presents its recommendations to the President. This special board consists of the Director of the Health and Wellness Services, ~~;~~ another physician of the Health and Wellness Services, a member of the Faculty Affairs Committee or the equivalent Staff Committee appointed by the Committee chairperson, ~~;~~ the Dean of the College concerned or the equivalent administrative head, and a representative from Human Resource Services.

4.3. **Retiree Reemployment** means the reemployment of a former Participant up to 40 percent of full time following the date of retirement under Section 4.1. Such reemployment shall be subject to all applicable WSU rules. Such reemployment after retirement will not be counted as service under the Plan nor result in any eligibility for increased benefits under the Plan. A reemployed retiree is not a Participant under the Plan.

SECTION 5. BENEFITS

5.1. **Vesting.** A Participant vests in his or her benefit under this Plan if all of the following are true:

- (a) The Participant has reached age 62 while employed by WSU or retires under Section 4.2, ~~and;~~
- (b) The number of his or her Years of Service is ten or more, ~~and;~~ and
- (c) The amount of his or her benefit, as calculated under Section 5.2, is a positive amount.

The vested benefit payable to the Participant shall commence upon the Participant's retirement.

5.2. **Amount of Benefit.** The monthly amount of benefit payable to an eligible Participant at retirement is the amount determined by WSU to be the excess, if any, of:

- (a) one-twelfth of two percent of the Participant's Average Annual Salary multiplied by the number of his or her years of full-time service (such product not to exceed one-twelfth of 50 percent the Participant's Average Annual Salary) over
- (b) the amount of the assumed annuity benefit offset the retired Participant would receive in the first month of retirement, calculated as provided in Section 5.3.

The percentage factor in (a) above shall be 1.5 percent instead of two percent for any year of full-time service commencing on or after July 1, 1974, during any portion of which a Participant over age 50 fails to elect to participate in the WSURP at the ten percent plan contribution rate. The monthly amount of supplemental payments for a Participant who has not reached age 65 at retirement is the amount calculated under this Section 5.2, but reduced by 0.5 percent for each calendar month remaining until his or her 65th birthday, except that the supplemental payment to a Participant retired for reason of health condition is not so reduced.

5.3. **Assumed Annuity Benefit Offset.** The assumed annuity benefit offset for a married Participant is equal to the amount of monthly benefit from the Fixed and Variable Annuities calculated as a joint and two-thirds survivorship option and a ten-year guarantee (using actual ages of ~~retiree-the Participant~~ and spouse, but not exceeding a five-year difference). For an unmarried Participant, the benefit offset is calculated as a single life annuity with a ten-year guarantee from the Fixed and Variable Annuities. In either case, the assumed annuity benefit offset will be the amount estimated by WSU at the time of retirement. Benefits purchased on an individual basis or through another employer shall not be included. The following assumptions shall be used in computing the assumed annuity benefit offset:

(a) Benefit calculations related to contributions made prior to July 1, 1974 shall be computed using the Participant's actual allocation of contributions under the WSURP between TIAA and CREF during such period, ignoring any subsequent transfers of such contributions among TIAA and CREF or other investment vendors under the WSURP.;

(b) Benefit calculations related to contributions under the WSURP made on or after July 1, 1974 shall be computed on the assumption that the Participant had allocated 50 percent of such contributions to the Fixed Annuity and 50 percent of such contributions to the Variable Annuity during each of his or her years of full-time service and made no subsequent transfers from these accounts.;

(c) Any portion of a Participant's accumulation account under the WSURP which is awarded by a court to the Participant's spouse under a ~~domestic relations order~~ QDRO is included in any subsequent calculation of the benefit as if such portion had remained in the Participant's accumulation account under the WSURP until the date of retirement.;

(d) Annuity accumulations attributable to any additional voluntary employee contributions, beyond those provided for in the WSURP, and any contributions paid through employers other than State of Washington institutions of higher education, are excluded. and.

(e) All benefits that a retired Participant is eligible to receive from a plan established pursuant to RCW 28B.10.400 or (to the extent attributable to Years of Service) from a Washington State Retirement System shall be included in the assumed annuity benefit offset to the same extent as if received from the WSURP.

5.4. **Alternative Method of Benefit Calculation.** The monthly amount of the benefit for a Participant whose full-time service began not later than October 1, 1955, is the greater of:

(a) The benefit defined in Section 5.2; or

(b) The supplemental benefit that would have been provided the Participant under the rules of the WSURP in effect on December 31, 2008.

5.5. **Death Benefit.** When a Participant dies at age 62 or older ~~while then employed~~ by WSU, the Participant's Beneficiary is paid the benefit in the amount, if any, the Beneficiary

would have received if the Participant had retired on the day of death and elected a joint and two-thirds survivorship option.

5.6. **Form of Distribution.** Benefit payments under the Plan are made in equal monthly installments, provided, however, that if such installments would be less than \$10, the payment may be made at longer intervals, at the sole discretion of WSU. Benefit payments continue only for the lifetime of the retired Participant; provided, however, that a Participant-However, prior to retirement, a Participant may make a written election, which is irrevocable after retirement, to provide for the continuation of benefits payments, on an actuarially equivalent reduced basis, to his or her designated-Bbeneficiaryies after the Participantretiree's death. Prior to the making of any benefit payments by WSU, the retiree and his or her designated Bbeneficiaryies, if any, shall execute and sign a document evidencing such Participantretiree's election of his or her benefit payment option.

5.7. **Selection of Benefits; Spousal Consent.** The WSU Human Resource Services will provide the necessary Plan-related forms to the Participant or the Beneficiary. WSU will pay Plan benefits upon receipt of satisfactorily complete supporting documents approved by the Human Resource Services. In any case in which the consent of the Participant's spouse is required, the consent must be in writing, must acknowledge the effect of the election or action to which the consent applies, and must be witnessed by a notary public. Unless the consent expressly provides that the Participant may make further elections without further consent of the spouse, the consent will be effective only with respect to the specific election of form of benefit, or Beneficiary, or both, to which the consent relates. Spousal consent will be effective only with respect to that spouse. Spousal consent will not be required if it is established to the satisfaction of WSU Human Resource Services that the spouse cannot be located.

5.8. **Benefit Payments.** Any benefits that become payable under this Section 5 will be paid from the general assets of WSU, unless paid from the Trust. If benefits are paid from general assets of WSU, they shall be treated as a contribution to the Trust and payment by the Trust. Nothing in this Plan will be construed to create a trust or obligate WSU to segregate a fund, purchase an annuity contract, or fund in any other way the future payment of any benefits under this Plan.

5.9. **Minimum Distributions.** All benefits under this Plan will be made-distributed in accordance with Code Section 401(a)(9) and the regulations thereunder, which requires that the Plan apply a reasonable and good faith interpretation of Code Section 401(a)(9). Minimum distributions must begin no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or, if later, April 1 following the calendar year in which the Participant retires from WSU. Upon the Participant's death after the time benefits are required to begin hereunder, any remaining benefits will be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death. If the Participant dies before benefit payments are required to begin under the second sentence of this Section 5.9, any benefits payable to (or for the benefit of) a designated Beneficiary will be paid beginning no later than the end of the first full calendar year after the Participant's death over the life of the designated Beneficiary.

5.10. **Maximum Benefit.** Benefits under the Plan shall not exceed the limitation of Section 415(b) of the Code, to the extent applicable.

5.11. **Forfeitures.** Forfeitures shall not be applied to increase the benefits any employee would otherwise receive under the Plan.

5.12. HEART Act Provisions.

(a) In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment with WSU and then terminated employment on account of death. In addition, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

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(b) For benefit accrual purposes, the Plan does not treat an individual who dies or becomes disabled on or after January 1, 2007; while performing qualified military service with respect to the Employer, as if: (i) the individual had resumed employment with WSU in accordance with the individual's reemployment rights under USERRA; on the day preceding death or disability (as the case may be); and (ii) then terminated employment on the actual date of death or disability.

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(c) The Employer-WSU has not after December 31, 2008, and does not presently make differential wage payments as described in Code Section 414(u)(12)(D). However, if the Employer-WSU does so in the future, the following provisions apply: (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an employee of the employer making the payment WSU; and (ii) the differential wage payment is treated as compensation for purposes of Code Section 415(c)(3) and Treasury Reg. Section 1.415(c)-2. Differential wage payments will not be taken into account for purposes of Plan benefit calculations.

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SECTION 6. ADMINISTRATION

6.1. **Plan Administration.** WSU is the administrator of this Plan and has designated WSU Human Resource Services to be responsible for the day to day administration of the Plan.

6.2. **Authority of WSU.** WSU shall have final authority to determine all questions concerning eligibility and benefits under the Plan, to interpret all terms of the Plan, including any uncertain terms, and to decide any disputes arising under and all questions concerning administration of the Plan. Any determination made by WSU shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary and capricious.

6.3. **Requests for Information.** Any request for information concerning eligibility, participation, benefits, or other aspects of the operation of the Plan should be in writing and directed to WSU Human Resource Services.

6.4. **Payment of Expenses.** All reasonable costs and expenses incident to the administration of the Plan and the Trust, including but not limited to legal, accounting, and Trustee fees, shall be paid by the Trust unless WSU elects to pay such expenses. Notwithstanding the foregoing, any and all expenses relating to settlor functions such as creation or termination of the Plan shall be paid by WSU and may not be paid from the Trust.

SECTION 7. FUNDING

7.1. **Trust Agreement or Declaration.** WSU shall appoint a Trustee (which may include WSU itself) and enter into a trust agreement or declaration of trust. The Trustee will receive and invest all contributions, if any, made under the Plan to the Trust and all income derived therefrom. WSU may remove a Trustee and may appoint a successor or additional Trustees and may divide their duties and responsibilities as it sees fit.

7.2. **Exclusive Benefit of Participants.** All assets of the Trust shall be held for the exclusive purpose of providing benefits to Participants and Beneficiaries under the Plan and defraying reasonable expenses of administering the Plan and as otherwise permitted by law and the Plan. In no event shall it be possible at any time prior to the satisfaction of all liabilities under Plan for any part of the assets of the Trust, whether principal or income, to be used for or diverted to purposes other than those stated herein.

7.3. **Return of Contributions.** Nothing herein shall prohibit a return to WSU, within one year after payment, of excess sums contributed to the Trust (adjusted for any income or loss in value, if any, allocable thereto) as a result of a mistake of fact. In addition, in the event that the Commissioner of Internal Revenue (or his or her delegate) determines that the Plan is not initially qualified under the Code, any WSU contributions made to the Plan shall be returned to WSU within one year after the date the initial qualification is denied.

SECTION 8. AMENDMENT AND TERMINATION

8.1. **Amendment and Termination.** The Board reserves the right at any time to amend or terminate the Plan, in whole or in part, to the extent permitted by law. If the Plan is terminated, WSU will notify all Participants. All benefits accrued to the date of termination will be nonforfeitable to the extent funded or as otherwise required by law. No amendment shall be effective if it permits any part of the Trust assets (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, or permits any portion of the Trust assets to revert to or become property of WSU, except as permitted by law.

8.2. **Limitation.** Notwithstanding the provisions of Section 8.1, the Board shall not make any amendment to the Plan that operates to recapture for WSU any contributions previously made under this Plan except to the extent permitted by law.

SECTION 9. MISCELLANEOUS

9.1. **Non-Alienation of Benefits.** Except as provided in this section, no benefit under the Plan may at any time be subject in any manner to alienation, encumbrance, the claims of creditors, or legal process. No participant will have power in any manner to transfer, assign,

alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. This Plan will comply with any judgment, decree or order that 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 treated as a ~~qualified domestic relations order-QDRO, under Code Section 414(p) ("QDRO")~~. A domestic relations order which otherwise satisfies the requirements for a QDRO- will not fail to be a QDRO solely because the order is issued after or revises another domestic relations order or QDRO, or solely because of the time at which the order is issued, including issuance after the annuity starting date or after the death of the Participant.

9.2. **Plan Does Not Affect Employment.** Nothing in this Plan is a commitment or agreement by any person to continue his or her employment with WSU, and nothing in this Plan is a commitment on the part of WSU to continue the employment or the rate of compensation of any person for any period. All employees of WSU will remain subject to nonrenewal, discharge or discipline to the same extent as if the Plan had never been put into effect.

9.3. **Claims of Other Persons.** The Plan does not give any Participant or any other person, firm, or corporation any legal or equitable right against WSU, or its officers, employees, or Regents, except for the rights that are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

9.4. **Governing Law.** Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Washington.

WASHINGTON STATE UNIVERSITY

Elson S. Floyd, President

Date

WASHINGTON STATE UNIVERSITY

401(a) Supplemental Retirement Plan
Amended and Restated on January 24, 2014

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SECTION 1. INTRODUCTION

1.1. **Amendment and Restatement.** This document amends, restates, and continues the Washington State University 401(a) Supplemental Retirement Plan setting out the terms and conditions of the supplemental retirement benefit provided for in RCW 28B.10.400(c), as amended.

1.2. **401(a) Status.** The Plan is a governmental plan as defined in Section 410(d) of the Code intended to qualify under Section 401(a) of the Code, and shall be construed accordingly.

SECTION 2. DEFINITIONS

2.1. **“Average Annual Salary”** means the average annual Basic Salary paid to a Participant for his or her highest two consecutive Years of Service.

2.2. **“Basic Salary”** means the amount paid by WSU to a Participant under the terms of his or her appointments, including summer and other extended appointments. Basic Salary shall be determined before taking into account any salary reduction under Code Sections 125, 132, 403(b) or 457(a). Basic Salary shall not include leave cash out payments, any settlement, severance or tenure purchase payments, any amounts paid for, teaching overloads, extra services, and royalties from intellectual property, and any other amounts that are not taken into account in computing WSURP contributions. In the case of employees on contract, the contract may exclude additional items from Basic Salary. For any Participant who first became a participant in this Plan or the WSURP on or after July 1, 1996, Basic Salary shall not be taken into account for any Plan Year in excess of the limit that shall apply for such Plan Year under Section 401(a)(17) of the Code.

2.3. **“Beneficiary”** means either: (a) the surviving spouse of the Participant; or (b) with the written consent of the Participant’s spouse, if any, in accordance with Section 5.7, such other person or persons as shall have an insurable interest in the Participant's life at the time of retirement and shall have been designated by the Participant in a written designation duly executed and filed with WSU Human Resource Services.

2.4. **“Board”** means the Board of Regents of Washington State University.

2.5. **“Code”** means the Internal Revenue Code of 1986, as amended (Title 26 of the United States Code).

2.6. **“Eligible Employee”** means any employee of WSU who is employed in an Eligible Position and who: (a) was a participant in the WSURP at any time prior to July 1, 2011; or (b) was eligible to participate in the WSURP as of June 30, 2011, and who subsequently, without a break in employment, became a participant in the WSURP; or (c) accepted an offer of employment for an Eligible Positions prior to July 1, 2011. In no case may an employee who has retired from a position that is covered by RCW 28B.10.400 et seq. be an “Eligible Employee.”

2.7. **“Eligible Position”** means a WSU faculty, administrative or professional staff position in which the employee has at least 50 percent full-time equivalency in at least one

semester of each Plan Year, or the equivalent of one semester, but does not include Agricultural Extension Service employees on a federal appointment or persons rendering a professional service on a fee, retainer or special contract basis, or as an incident to the private practice of a profession. Classified positions prior to April 26, 1973 and administrative professional positions prior to April 26, 1973 or after September 30, 1992 are Eligible Positions, provided that the employees holding such positions did not elect to participate in or transfer to the Public Employees Retirement System (PERS) prior to January 1, 1974. An Eligible Employee, once having begun participation in this Plan, shall be deemed to be employed in an Eligible Position even if his or her position no longer requires at least 50 percent of the normal full-time workload per month in at least one semester of each plan year or the equivalent of one semester, so long as the position otherwise qualifies as an Eligible Position.

2.8. **“Fixed Annuity”** means a fixed annuity contract (or index reflecting experience of fixed annuity contracts) selected by WSU.

2.9. **“HEART”** means the Heroes Earnings Assistance and Tax Relief Act of 2008.

2.10. **“Participant”** means any Eligible Employee of WSU who participates in the Plan in accordance with Section 3.1.

2.11. **“Plan”** means the Washington State University 401(a) Supplemental Retirement Plan set forth in this document as it may be amended from time to time and, prior to January 1, 2009, as set forth in Section 8 of the WSURP. The Plan as restated in this document is effective on January 1, 2014, except as otherwise provided in the Plan.

2.12. **“Plan Year”** means the calendar year.

2.13. **“QDRO”** means a qualified domestic relations order under Code Section 414(p).

2.14. **“Trust”** means the trust established to hold and invest assets of the Plan.

2.15. **“Trustee”** means the trustee or trustees appointed by WSU to administer the Trust.

2.16. **“USERRA”** means the Uniformed Services Employment and Reemployment Rights Act of 1994.

2.17. **“WSU”** means Washington State University.

2.18. **“WSURP”** means the Washington State University Retirement Plan.

2.19. **“Variable Annuity”** means a variable annuity contract (or index reflecting experience of variable annuity contracts) selected by WSU.

2.20. **“Year of Service”** means a Plan Year in which a person provides at least one semester, or the equivalent of one semester, of full-time service. On or after July 1, 1979, a Year of Service shall include only those academic years in which contributions were made by the Participant under the WSURP or any other plan established pursuant to RCW 28B.10.400.

Authorized leaves of absence will also be included, as will periods of absence in the uniformed services to the extent provided in USERRA. A Participant's Years of Service will also include his or her credited years of service in a position covered by the Washington State Retirement System, provided that, with regard to the Washington State Retirement System (a) the Participant was vested and will receive a retirement income benefit from the Washington State Retirement System, (b) service that has been withdrawn does not count, and (c) the Participant signs a release, as needed to obtain the relevant information from the Washington State Retirement System. Any retirement income benefit that he or she is eligible to receive under the Washington State Retirement System attributable to Years of Service that are covered under the preceding sentence shall be included in the assumed benefit offset described in Section 5.3. Except as otherwise provided in USERRA, a Participant may receive credit for no more than two years during his or her entire working career for periods of authorized leave without pay, provided that the Participant contributes both the WSU and Participant mandatory contributions under the WSURP while on authorized leave and returns to the employment of WSU immediately following the leave for a period of not less than two years. The Participant mandatory contributions and WSU contributions shall be based on the average of the Participant's compensation at the time the leave of absence was authorized and the time the Participant resumes employment. The benefit provided by this Plan shall be based only on the Participant's Average Annual Salary earned from employment with WSU.

2.21. **“Washington State Retirement System”** means any retirement system paid for by the State of Washington and administered by the State of Washington Retirement Systems.

SECTION 3. PARTICIPATION

3.1. **Commencement of Participation.** An Eligible Employee begins (or began) participation in this Plan on the later of: (a) the date he or she begins (or began) participation in the WSURP; or (b) the beginning of the first period for which the Eligible Employee has made a contribution under the WSURP.

3.2. **Cessation of Participation.** A Participant will continue to be a Participant so long as he or she continues to participate in the WSURP, and shall cease to be a Participant in this Plan when he or she ceases to participate in the WSURP.

SECTION 4. RETIREMENT

4.1. **Retirement Because of Age.** On the first of any month after attaining age 62, a Participant who is actively employed by WSU may elect to retire by submitting a written application to his or her superior with a copy to WSU Human Resource Services. A person is ineligible for any benefit under this Plan if he or she ceases to be a Participant prior to age 62 for any reason except retirement because of condition of health as described in Section 4.2.

4.2. **Retirement Because of Health Condition.** A retirement because of health condition may be approved by the President of WSU in the event a Participant has a serious health condition that prevents him or her from performing the duties of his or her Eligible Position. Any request for retirement and supplemental payments under the Plan because of health is referred to a special board which presents its recommendations to the President. This

special board consists of the Director of the Health and Wellness Services, another physician of the Health and Wellness Services, a member of the Faculty Affairs Committee or the equivalent Staff Committee appointed by the Committee chairperson, the Dean of the College concerned or the equivalent administrative head, and a representative from Human Resource Services.

4.3. **Retiree Reemployment** means the reemployment of a former Participant up to 40 percent of full time following the date of retirement under Section 4.1. Such reemployment shall be subject to all applicable WSU rules. Such reemployment after retirement will not be counted as service under the Plan nor result in any eligibility for increased benefits under the Plan. A reemployed retiree is not a Participant under the Plan.

SECTION 5. BENEFITS

5.1. **Vesting.** A Participant vests in his or her benefit under this Plan if all of the following are true:

- (a) The Participant has reached age 62 while employed by WSU or retires under Section 4.2;
- (b) The number of his or her Years of Service is ten or more; and
- (c) The amount of his or her benefit, as calculated under Section 5.2, is a positive amount.

The vested benefit payable to the Participant shall commence upon the Participant's retirement.

5.2. **Amount of Benefit.** The monthly amount of benefit payable to an eligible Participant at retirement is the amount determined by WSU to be the excess, if any, of:

- (a) one-twelfth of two percent of the Participant's Average Annual Salary multiplied by the number of his or her years of full-time service (such product not to exceed one-twelfth of 50 percent the Participant's Average Annual Salary) over
- (b) the amount of the assumed annuity benefit offset the retired Participant would receive in the first month of retirement, calculated as provided in Section 5.3.

The percentage factor in (a) above shall be 1.5 percent instead of two percent for any year of full-time service commencing on or after July 1, 1974, during any portion of which a Participant over age 50 fails to elect to participate in the WSURP at the ten percent plan contribution rate. The monthly amount of supplemental payments for a Participant who has not reached age 65 at retirement is the amount calculated under this Section 5.2, but reduced by 0.5 percent for each calendar month remaining until his or her 65th birthday, except that the supplemental payment to a Participant retired for reason of health condition is not so reduced.

5.3. **Assumed Annuity Benefit Offset.** The assumed annuity benefit offset for a married Participant is equal to the amount of monthly benefit from the Fixed and Variable Annuities calculated as a joint and two-thirds survivorship option and a ten-year guarantee (using actual ages of the Participant and spouse, but not exceeding a five-year difference). For an

unmarried Participant, the benefit offset is calculated as a single life annuity with a ten-year guarantee from the Fixed and Variable Annuities. In either case, the assumed annuity benefit offset will be the amount estimated by WSU at the time of retirement. Benefits purchased on an individual basis or through another employer shall not be included. The following assumptions shall be used in computing the assumed annuity benefit offset:

(a) Benefit calculations related to contributions made prior to July 1, 1974 shall be computed using the Participant's actual allocation of contributions under the WSURP between TIAA and CREF during such period, ignoring any subsequent transfers of such contributions among TIAA and CREF or other investment vendors under the WSURP;

(b) Benefit calculations related to contributions under the WSURP made on or after July 1, 1974 shall be computed on the assumption that the Participant had allocated 50 percent of such contributions to the Fixed Annuity and 50 percent of such contributions to the Variable Annuity during each of his or her years of full-time service and made no subsequent transfers from these accounts;

(c) Any portion of a Participant's accumulation account under the WSURP which is awarded by a court to the Participant's spouse under a QDRO is included in any subsequent calculation of the benefit as if such portion had remained in the Participant's accumulation account under the WSURP until the date of retirement;

(d) Annuity accumulations attributable to any additional voluntary employee contributions, beyond those provided for in the WSURP, and any contributions paid through employers other than State of Washington institutions of higher education, are excluded; and

(e) All benefits that a retired Participant is eligible to receive from a plan established pursuant to RCW 28B.10.400 or (to the extent attributable to Years of Service) from a Washington State Retirement System shall be included in the assumed annuity benefit offset to the same extent as if received from the WSURP.

5.4. Alternative Method of Benefit Calculation. The monthly amount of the benefit for a Participant whose full-time service began not later than October 1, 1955, is the greater of:

(a) The benefit defined in Section 5.2; or

(b) The supplemental benefit that would have been provided the Participant under the rules of the WSURP in effect on December 31, 2008.

5.5. Death Benefit. When a Participant dies at age 62 or older while then employed by WSU, the Participant's Beneficiary is paid the benefit in the amount, if any, the Beneficiary would have received if the Participant had retired on the day of death and elected a joint and two-thirds survivorship option.

5.6. Form of Distribution. Benefit payments under the Plan are made in equal monthly installments, provided, however, that if such installments would be less than \$10, the

payment may be made at longer intervals, at the sole discretion of WSU. Benefit payments continue only for the lifetime of the retired Participant; provided, however, that a Participant prior to retirement, may make a written election, which is irrevocable after retirement, to provide for the continuation of benefits payments, on an actuarially equivalent reduced basis, to his or her Beneficiary after the Participant's death. Prior to the making of any benefit payments by WSU, the retiree and his or her Beneficiary, if any, shall execute and sign a document evidencing such Participant's election of his or her benefit payment option.

5.7. Selection of Benefits; Spousal Consent. The WSU Human Resource Services will provide the necessary Plan-related forms to the Participant or the Beneficiary. WSU will pay Plan benefits upon receipt of satisfactorily complete supporting documents approved by the Human Resource Services. In any case in which the consent of the Participant's spouse is required, the consent must be in writing, must acknowledge the effect of the election or action to which the consent applies, and must be witnessed by a notary public. Unless the consent expressly provides that the Participant may make further elections without further consent of the spouse, the consent will be effective only with respect to the specific election of form of benefit, or Beneficiary, or both, to which the consent relates. Spousal consent will be effective only with respect to that spouse. Spousal consent will not be required if it is established to the satisfaction of WSU Human Resource Services that the spouse cannot be located.

5.8. Benefit Payments. Any benefits that become payable under this Section 5 will be paid from the general assets of WSU, unless paid from the Trust. If benefits are paid from general assets of WSU, they shall be treated as a contribution to the Trust and payment by the Trust. Nothing in this Plan will be construed to create a trust or obligate WSU to segregate a fund, purchase an annuity contract, or fund in any other way the future payment of any benefits under this Plan.

5.9. Minimum Distributions. All benefits under this Plan will be distributed in accordance with Code Section 401(a)(9) and the regulations thereunder, which require that the Plan apply a reasonable and good faith interpretation of Code Section 401(a)(9). Minimum distributions must begin no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or, if later, April 1 following the calendar year in which the Participant retires from WSU. Upon the Participant's death after the time benefits are required to begin hereunder, any remaining benefits will be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death. If the Participant dies before benefit payments are required to begin under the second sentence of this Section 5.9, any benefits payable to (or for the benefit of) a designated Beneficiary will be paid beginning no later than the end of the first full calendar year after the Participant's death over the life of the designated Beneficiary.

5.10. Maximum Benefit. Benefits under the Plan shall not exceed the limitation of Section 415(b) of the Code, to the extent applicable.

5.11. Forfeitures. Forfeitures shall not be applied to increase the benefits any employee would otherwise receive under the Plan.

5.12. **HEART Act Provisions.**

(a) In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment with WSU and then terminated employment on account of death. In addition, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

(b) For benefit accrual purposes, the Plan does not treat an individual who dies or becomes disabled on or after January 1, 2007 while performing qualified military service as if: (i) the individual had resumed employment with WSU in accordance with the individual's reemployment rights under USERRA on the day preceding death or disability (as the case may be); and (ii) then terminated employment on the actual date of death or disability.

(c) WSU has not after December 31, 2008, and does not presently make differential wage payments as described in Code Section 414(u)(12)(D). However, if WSU does so in the future, the following provisions apply: (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an employee of WSU; and (ii) the differential wage payment is treated as compensation for purposes of Code Section 415(c)(3) and Treasury Reg. Section 1.415(c)-2. Differential wage payments will not be taken into account for purposes of Plan benefit calculations.

SECTION 6. ADMINISTRATION

6.1. **Plan Administration.** WSU is the administrator of this Plan and has designated WSU Human Resource Services to be responsible for the day to day administration of the Plan.

6.2. **Authority of WSU.** WSU shall have final authority to determine all questions concerning eligibility and benefits under the Plan, to interpret all terms of the Plan, including any uncertain terms, and to decide any disputes arising under and all questions concerning administration of the Plan. Any determination made by WSU shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary and capricious.

6.3. **Requests for Information.** Any request for information concerning eligibility, participation, benefits, or other aspects of the operation of the Plan should be in writing and directed to WSU Human Resource Services.

6.4. **Payment of Expenses.** All reasonable costs and expenses incident to the administration of the Plan and the Trust, including but not limited to legal, accounting, and Trustee fees, shall be paid by the Trust unless WSU elects to pay such expenses. Notwithstanding the foregoing, any and all expenses relating to settlor functions such as creation or termination of the Plan shall be paid by WSU and may not be paid from the Trust.

SECTION 7. FUNDING

7.1. **Trust Agreement or Declaration.** WSU shall appoint a Trustee (which may include WSU itself) and enter into a trust agreement or declaration of trust. The Trustee will receive and invest all contributions, if any, made under the Plan to the Trust and all income derived therefrom. WSU may remove a Trustee and may appoint a successor or additional Trustees and may divide their duties and responsibilities as it sees fit.

7.2. **Exclusive Benefit of Participants.** All assets of the Trust shall be held for the exclusive purpose of providing benefits to Participants and Beneficiaries under the Plan and defraying reasonable expenses of administering the Plan and as otherwise permitted by law and the Plan. In no event shall it be possible at any time prior to the satisfaction of all liabilities under Plan for any part of the assets of the Trust, whether principal or income, to be used for or diverted to purposes other than those stated herein.

7.3. **Return of Contributions.** Nothing herein shall prohibit a return to WSU, within one year after payment, of excess sums contributed to the Trust (adjusted for any income or loss in value, if any, allocable thereto) as a result of a mistake of fact. In addition, in the event that the Commissioner of Internal Revenue (or his or her delegate) determines that the Plan is not initially qualified under the Code, any WSU contributions made to the Plan shall be returned to WSU within one year after the date the initial qualification is denied.

SECTION 8. AMENDMENT AND TERMINATION

8.1. **Amendment and Termination.** The Board reserves the right at any time to amend or terminate the Plan, in whole or in part, to the extent permitted by law. If the Plan is terminated, WSU will notify all Participants. All benefits accrued to the date of termination will be nonforfeitable to the extent funded or as otherwise required by law. No amendment shall be effective if it permits any part of the Trust assets (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, or permits any portion of the Trust assets to revert to or become property of WSU, except as permitted by law.

8.2. **Limitation.** Notwithstanding the provisions of Section 8.1, the Board shall not make any amendment to the Plan that operates to recapture for WSU any contributions previously made under this Plan except to the extent permitted by law.

SECTION 9. MISCELLANEOUS

9.1. **Non-Alienation of Benefits.** Except as provided in this section, no benefit under the Plan may at any time be subject in any manner to alienation, encumbrance, the claims of creditors, or legal process. No participant will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. This Plan will comply with any judgment, decree or order that 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 treated as a QDRO. A domestic relations order which otherwise satisfies the requirements for a QDRO will not fail to be a QDRO solely because the order is issued after or revises another domestic relations order or QDRO, or solely because of

the time at which the order is issued, including issuance after the annuity starting date or after the death of the Participant.

9.2. **Plan Does Not Affect Employment.** Nothing in this Plan is a commitment or agreement by any person to continue his or her employment with WSU, and nothing in this Plan is a commitment on the part of WSU to continue the employment or the rate of compensation of any person for any period. All employees of WSU will remain subject to nonrenewal, discharge or discipline to the same extent as if the Plan had never been put into effect.

9.3. **Claims of Other Persons.** The Plan does not give any Participant or any other person, firm, or corporation any legal or equitable right against WSU, or its officers, employees, or Regents, except for the rights that are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

9.4. **Governing Law.** Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Washington.

WASHINGTON STATE UNIVERSITY

Elson S. Floyd, President

Date