

# Summary Plan Description

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Prepared for

Franklin Pierce University  
Defined Contribution Retirement  
Plan

## **INTRODUCTION**

Franklin Pierce University has restated the Franklin Pierce University Defined Contribution Retirement Plan (the “Plan”) to help you and other Employees save for retirement.

Your Employer restated the Plan by signing a complex legal agreement – the Plan document - which contains all of the provisions that the Internal Revenue Service (IRS) requires. The Plan document must follow certain federal laws and regulations that apply to retirement plans. The Plan document may change as new or revised laws or regulations take effect. Your Employer also has the right to modify certain features of the Plan from time to time. You will be notified about changes affecting your rights under the Plan.

This Summary Plan Description (SPD) summarizes the important features of the Plan document, including your benefits and obligations under the Plan. If you want more detailed information regarding certain plan features or have questions about the information contained in this SPD, you should contact your Employer. You may also examine a copy of the plan document by making arrangements with your Employer. Certain terms in the SPD have a special meaning when used in the Plan. These terms are capitalized throughout the SPD and are defined in more detail in the DEFINITIONS section of the SPD. If any information in this SPD conflicts with the terms of the Plan document adopted by your Employer, the terms of the Plan document – not this SPD - will govern.

All dollars contributed to the Plan will be invested either in annuity contracts or in mutual funds held in custodial accounts. The agreements constituting or governing the annuity contracts and custodial accounts (the “Individual Agreements”) explain your rights under the contracts and accounts and the unique rules that apply to each Plan investment which may, in some cases, limit your options under the Plan. For example, the Individual Agreement may contain a provision which prohibit loans, even if the Plan generally allows loans. If this is the case, you would not be able to take a loan from the accumulation in an investment option governed by that Individual Agreement. You should review the Individual Agreements along with this SPD to gain a full understanding of your rights and obligations under the Plan. Contact your Employer or the investment vendor to obtain copies of the Individual Agreements or to receive more information regarding the investment options available under the Plan.

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## ELIGIBILITY

### **Am I eligible to participate in the Plan?**

- You will be eligible to participate in the Plan and receive contributions made by your Employer after meeting certain requirements described below, unless you fall into one of the following categories of excluded employees.
- You are a student enrolled and attending classes offered by your Employer and your Employer is a school, college, or university.

The Plan document is being amended or restated on to new Plan documents. If you were eligible to participate in the prior plan, you will continue to be eligible to participate in this Plan without satisfying any additional age or service requirements.

What requirements do I have to meet before I am eligible to participate in the Plan? Unless you are part of an excluded class of employees, you must reach age 21 before you will be eligible to receive contributions made by your Employer.

Unless you are part of an excluded class of employees, you must complete:

- 1 consecutive year(s) of service with the Employer before you are eligible to receive contributions made by your Employer.
- Your initial eligibility measuring period will be the 12-month period beginning with your hire date. If you do not satisfy the eligibility requirements during that first measuring period, eligibility will be calculated based on the Plan Year.
- You will be credited with a year of service if you work at least 1,000 hours for your Employer during the eligibility measuring period.

### **When can I enter the Plan?**

#### Employer Contributions

Once you have met the age and service requirements listed above, you will enter the Plan the first day of the next month and become eligible to receive Employer Contributions from your Employer.

What happens to my Plan eligibility if I terminate my employment and am later rehired?

Once you satisfy the eligibility requirements and enter the Plan, you will continue to participate while you are still employed by the Employer, even if you have a break in eligibility service. A break in service occurs when you do not work more than 500 hours. If you had not yet satisfied the eligibility requirements and had a break in eligibility service, periods before your break in service will not be taken into account and you will have to satisfy the eligibility requirements following your break in service. Periods during which you have a break in eligibility service will not count against you if you were absent because you were pregnant, had a child or adopted a child, were serving in the military, or provided service during a national emergency and re-employment is protected under federal or state law, and you return to employment within the time required by law.

If you had met the eligibility requirements for Employer Contributions and were a Participant in the Plan before terminating employment or having a break in eligibility service, and are later rehired, you will enter the Plan

immediately. If you were not a Participant before the break in eligibility service, and are rehired, you will need to again satisfy the Plan's eligibility requirements for Employer Contributions.

## **CONTRIBUTIONS & VESTING**

Will the Employer make any additional contributions to the Plan?

- The Employer has the option to make Employer Contributions to the Plan but may choose not to make those contributions in certain years.
- The Employer Contributions made by the Employer to the Plan will be allocated using a discretionary formula. Under this formula the amount of Employer Contributions, if any, will be determined each year by your Employer and divided among all eligible Plan Participants based on their Compensation as compared to all eligible Participants' Compensation.
- To qualify to receive an Employer Contribution, you must satisfy the eligibility requirements for Employer Contributions and must also work 1000 service hours during the Plan Year.

If I have money in other retirement plans, can I combine them with my accumulation under this Plan?

Your Employer may allow you to roll over dollars you have saved in other retirement arrangements into this Plan after you become eligible to participate in the Plan. Your Employer will provide you with the documents or other information you need to determine whether your prior plan balance is qualified to be rolled into this Plan.

The Plan will accept amounts rolled over from the prior plan to this Plan if the prior plan was a:

- qualified retirement plan (e.g., 401(k) plan, profit sharing plan, money purchase pension plan, target benefit plan)
- 403(b) tax-sheltered annuity plan
- government 457(b) plan
- Traditional IRA

Rollover contributions are always 100 percent vested and nonforfeitable.

Are there any limits on how much can be contributed for me?

You may not have total contributions of more than \$49,000 in 2011 or an amount equal to 100% of your Compensation, whichever is less, allocated to the Plan for your benefit each year. The \$49,000 limit will be increased as the cost of living increases, and is the total amount that can be contributed across all retirement plans sponsored by your Employer.

Will contributions be made for me if I am called to military service?

If you are reemployed by your Employer after completing military service, you may be entitled to receive certain make-up contributions from your Employer. If your Plan permits Deferrals or Nondeductible Employee Contributions, you may also have the option of making up missed employee contributions and receiving a Matching Contribution, if applicable, on these contributions.

If you are reemployed after military service, contact your Plan Administrator for more information about your options under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Will I be able to keep my Employer contributions if I terminate employment or am no longer eligible to participate in the Plan?

Contributions that you receive from your Employer will always be fully vested and cannot be forfeited, even if you terminate employment or become ineligible to participate in the Plan.

## **WITHDRAWING MONEY FROM THE PLAN (AND LOANS)**

When can I take a distribution from the plan?

You may always request a distribution of contributions you have received from your Employer upon termination of employment after reaching age 65.

You may request a distribution of the contributions you receive from your Employer at the times listed below, if they are invested in annuity contracts.

- You terminate employment
- You become Disabled

You may elect a distribution of your transfer contributions and/or rollover contributions at any time subject to the restrictions in the Individual Agreements.

You may be able to take a penalty-free distribution from your Deferrals if you were called to active military duty after September 11, 2001. In order to qualify for these penalty-free distributions, you must have been ordered or called to active duty for a period of at least 180 days or an indefinite period and your distribution must have been taken after you were called to duty and before your active duty ended.

The Individual Agreements governing the investment options that you selected for your Plan contributions may contain additional limits on when you can take a distribution, the form of distribution that may be available as well as your right to transfer among approved investment options. Please review both the following information in this Summary Plan Description and the terms of your annuity contracts or custodial agreements before requesting a distribution. Contact your Employer or the investment vendor if you have questions regarding your distribution options.

How do I request a payout?

- You must complete a payout request form provided or approved by your Employer or follow other procedures established by your Employer for processing distributions.
- If you die, become Disabled, or reach age 65 and you qualify for and request a distribution, your distribution will begin as soon as administratively feasible after the date you (or your beneficiary in the case of your death) request a distribution.
- If you terminate your employment and you qualify for and request a distribution, your distribution will begin as soon as administratively feasible after the date you (or your beneficiary in the case of your death) request a distribution.

If I am married, does my spouse have to approve my distributions from the Plan?

If you are married, you must get written consent from your spouse to take a distribution from the Plan in any form other than a qualified joint and survivor annuity. Your spouse's consent is also needed if you want to name someone other than your spouse as your beneficiary. The annuity would need to be structured to provide a benefit while you are both alive and then to provide a survivor benefit that is equal to 50 percent of the amount you received while you were both living. You can designate a different survivor percentage subject to certain limits under the qualified optional survivor annuity regulations. Your Employer will provide you with more information regarding your annuity options when it comes time for you to make a decision. Follow the procedures established by your Employer to document your spouse's consent to waive the annuity and take the payment in some other form permitted by the Plan. Your spouse must also consent to any Plan loans that you

request.

How will my money be distributed to me if I request a payout from the Plan?

If you obtain the proper consents, you may choose from the following options for your payout.

- Lump sum
- Partial payments
- Installment payments
- Annuity contract (if assets are held in a custodial account) or converted to an income option (if your assets are invested in an annuity contract)

The Individual Agreements governing the investment options that you selected for your contributions may further restrict your payout options. Please review the annuity contracts or custodial agreements before requesting a distribution and contact your Employer or the investment vendor if you have questions regarding your distribution options.

If your distribution is eligible to be rolled over, you may choose to have your distribution paid to another eligible retirement arrangement. Contact your Employer for information regarding rollover procedures.

Do any penalties or restrictions apply to my payouts?

- Generally, if you take a payout from the Plan before you are age 59½, a 10 percent early distribution penalty will apply to the taxable portion of your payout. There are some exceptions to the 10 percent penalty. Your tax adviser can assist you in determining whether you qualify for a penalty exception.
- If your payout is eligible to be rolled over, 20 percent of the taxable portion of your payout will be withheld and remitted to the IRS as a credit toward the taxes you will owe on the payout amount unless you do a direct rollover.
- **EXAMPLE:** You request a \$10,000 payout from the pre-tax portion of your Plan balance. If the amount is eligible to be rolled over to another plan, but you choose not to roll it over directly, you will receive \$8,000 and \$2,000 will be remitted to the IRS.

Can I take a loan from the Plan?

Your Plan is designed to help you save for retirement and does not allow you to take a loan from the Plan.

What if I die before receiving all of my money from the Plan?

- If you die before taking all of your assets from the Plan, the remaining balance will be paid to your designated beneficiary. To designate your beneficiary, you must follow the procedures established by your Employer. If you are married and decide to name someone other than your spouse as your beneficiary, your spouse must consent in writing to your designation. It is important to review your designation from time to time and update it if your circumstances change (e.g., a divorce, death of a named beneficiary).
- If you do not name a beneficiary, 50% of your balance will be paid to your spouse and 50% will be paid to your estate. If you do not name a beneficiary and have no surviving spouse, your remaining balance in the Plan will be paid to your estate, unless a different alternative is provided in the Individual Agreement.
- If your Plan balance is \$5,000 or less at the time of your death, your beneficiary will generally have the same options regarding the form of the distribution that are available to you as a Participant. If the balance is greater than \$5,000, your beneficiary may be required to take the payouts in the form of a life annuity, unless the annuity has been properly waived by you and your spouse during your lifetime. Your beneficiary may also have the option of rolling their distribution into an IRA. The Individual

Agreements governing the investment options that you selected for your contributions may further restrict your beneficiary's options regarding the manner in which the accumulation will be distributed.

If you die after beginning age 70½ distributions, as described in the following question, your beneficiary must continue taking distributions from the plan at least annually. If you die before beginning age 70½ payments, your beneficiary may have the option of (1) taking annual payments beginning the year following your death (or the year you would have reached age 70½, if your spouse is your beneficiary), or (2) delaying their distribution until the year containing the fifth anniversary of your death, provided they take the entire amount remaining during that fifth year.

How long can I leave the money in my Plan?

When you terminate from employment, your balance will generally not be paid out of the Plan until you request a payout from your Employer.

### **Age 70½ Required Distributions**

When you reach age 70½ you will generally need to begin taking a distribution each year based on your balance in the Plan. However, unless you own more than 5% of the Employer, you can delay required distributions until you actually separate from service. Contributions for periods before 1987 (excluding earnings on those contributions) will generally not be subject to the required distribution rules until you reach age 75. You may also have the option to satisfy your required minimum distribution from the Plan by aggregating all your 403(b) plans and taking the required minimum distribution from any one or more of the individual 403(b) plans.

What if the Plan is terminated?

If the Plan is terminated, your entire account balance will be distributed from the Plan. To the extent you are invested in an annuity contract, you will receive a distribution of the contract.

## **INVESTING YOUR PLAN ACCOUNT**

What investments are permitted?

Your Employer (or someone appointed by your Employer) will select the investment vendors and investment options that will be available under the Plan. The investment options will be limited to annuity contracts and mutual funds purchased through a custodial account. The list of approved investment options and vendors may change from time to time as your Employer considers appropriate. Your Employer may restrict the list of vendors who may accept new contributions to the Plan and it may be different from the list of vendors and investment options available once the contributions have been made to the Plan through a contract exchange. You should carefully review the Individual Agreements governing the annuity contracts and custodial accounts, the prospectus, or other available information before making investment decisions.

Who is responsible for selecting the investments for my contributions under the Plan?

You have the right to decide how your Plan balance will be invested. Your Employer will establish administrative procedures that you must follow to select your investments. Your Employer will designate a list of vendors and investment options that you may select for new contributions to the Plan. You will have the ability to transfer your Plan balance among these vendors and investment options, to the extent permitted by the Individual Agreements. Contact your Employer if you are not certain whether a particular vendor or investment



option is permitted under the Plan. If you do not select investments for your Plan account, the Employer will determine how your account will be invested.

Your Employer intends to operate this Plan in compliance with Section 404(c) of the Employee Retirement Income Security Act (ERISA), and Title 29 of the Code of Federal Regulations Section 2550.404c-1. This means that your Employer and others in charge of the Plan will not be responsible for any losses that result from investment instructions given by you or your beneficiary.

How frequently can I change my investment elections?

You may change your initial investment selections as frequently as permitted under the Individual Agreements.

## **ADMINISTRATION INFORMATION AND RIGHTS UNDER ERISA**

Who established the Plan?

The official name of the Plan is Franklin Pierce University Defined Contribution Retirement Plan  
The Employer who adopted the Plan is:

Franklin Pierce University  
40 University Drive  
Rindge, NH 03461-5045  
603-899-0475

Federal Tax Identification Number: 020263136  
Fiscal Year End: 12/31

Your Employer has assigned Number 001 to the Plan.

The Plan is a 403(b) defined contribution plan, which means that contributions to the Plan made on your behalf (and earnings) will be separately accounted for within the Plan.

When did the Plan become effective?

Your Employer has amended and restated the Franklin Pierce University Defined Contribution Retirement Plan which was originally adopted 08/15/1968. The effective date of this amended Plan is 07/01/2011.

Who is responsible for the day-to-day operations of the Plan?

Your Employer is responsible for the day-to-day administration of the Plan. To assist in operating the Plan efficiently and accurately, your Employer may appoint others to act on its behalf or to perform certain functions.

Who pays the expenses associated with operating the Plan?

All reasonable Plan administration expenses including those involved in retaining necessary professional assistance, may be paid from the assets of the Plan, to the extent permitted by the Individual Agreements. These expenses may be allocated among you and all other Plan participants or, for expenses directly related to you, charged against your account balance. Examples of expenses that may be directly related to you include, general recordkeeping fees and expenses related to processing your distributions or loans (if applicable), qualified domestic relations orders, and your ability to direct the investment of your Plan balance, if applicable. Finally, the Employer may, in its discretion, pay any or all of these expenses. For example, the employer may pay expenses for current employees, but may deduct the expenses of former employees directly from their accounts. Your Employer will provide you with a summary of all Plan expenses and the method of payment of the expenses upon request.

Does the Employer have the right to change the Plan?

The Plan will be amended from time to time to incorporate changes required by the law and regulations governing retirement plans. Your Employer also has the right to amend the Plan to add new features or to change or eliminate various provisions. An Employer cannot amend the Plan to take away or reduce protected benefits under the Plan (e.g., the Employer cannot reduce the vesting percentage that applies to your current balance in the Plan).

Does participation in the Plan provide any legal rights regarding my employment?

The Plan does not intend to, and does not provide, any additional rights to employment or constitute a contract for employment. The purpose of the Summary Plan Description is to help you understand how the Plan operates and the benefits available to you under the Plan. The Plan document is the controlling legal document with respect to the operation of and rights granted under the Plan and if there are any inconsistencies between this Summary Plan Description and the Plan document, the Plan document will be followed.

Can creditors or other individuals request a payout from my Plan balance?

Creditors (other than the IRS) and others generally may not request a distribution from your Plan balance. One major exception to this rule is that your Employer may distribute or reallocate your benefits in response to a qualified domestic relations order. A qualified domestic relations order is an order or decree issued by a court that requires you to pay child support or alimony or to give a portion of your Plan account to an ex-spouse or legally separated spouse. Your Employer will review the order to ensure that it meets certain criteria before any money is paid from your account. You (or your beneficiary) may obtain, at no charge, a copy of the procedures your Employer will use for reviewing and qualifying domestic relations orders.

How do I file a claim?

To claim a benefit that you are entitled to under the Plan, you must file a written request with your Employer. The claim must set forth the reasons you believe you are eligible to receive benefits and you must authorize the Employer to conduct any necessary examinations and take the steps to evaluate the claim.

What if my claim is denied?

- Except as described below, if your claim is denied, your Employer will provide you (or your beneficiary) with a written notice of the denial within 90 days of the date your claim was filed. This notice will give you the specific reasons for the denial, the specific provisions of the Plan upon which the denial is based, and an explanation of the procedures for appeal.
- In the case of a claim for disability benefits, if the Employer is making a determination of whether you are Disabled, you will be notified of a denial of your claim within a reasonable amount of time, but not later than 45 days after the Plan receives your claim. The 45-day time period may be extended by the Plan for up to 30 days if the Employer determines that an extension is necessary due to matters beyond the control of the Plan. The Employer will notify you, before the end of the 45-day period, of the reason(s) for the extension and the date by which the Plan expects to make a decision regarding your claim.
- If, before the end of the 30-day extension, your Employer determines that, due to matters beyond the control of the Plan, a decision regarding your claim cannot be made within the 30-day extension, the period for making the decision may be extended for an additional 30 days, provided that your Employer notifies you, before the end of the first 30-day extension, of the circumstances requiring the additional extension and the date as of which the Plan expects to make a decision. The notice will specifically explain the standards on which the approval of your claim will be based, the unresolved issues that

prevent a decision on your claim, and the additional information needed to resolve those issues. You will have at least 45 days within which to provide the specified information.

- The period of time within which approval or denial of your claim is required to be made generally begins at the time your claim is filed. If the period of time is extended because you fail to submit information necessary to decide your claim, the period for approving or denying your claim will not include the period of time between the date on which the notification of the extension is sent to you and the date on which you provide the additional information.
- Your Employer will provide you with written or electronic notification if your claim is denied. The notification will provide the following:
  1. The specific reason or reasons for the denial;
  2. Reference to the specific section of the Plan on which the denial is based;
  3. A description of any additional information that you must provide before the claim may continue to be processed and an explanation of why such information is necessary;
  4. A description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of your right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act (ERISA) following a claim denial on review; and
  5. In the case of a Plan providing disability benefits, if your Employer used an internal rule or guideline in denying your claim, either 1) the specific rule or guideline, or a statement that the rule or guideline was relied upon in denying your claim, and that 2) a copy of the rule or guideline will be provided free of charge to you upon request.

If the claim denial is based on a medical necessity, experimental treatment, or similar situation, either an explanation of the scientific or clinical basis for the denial, applying the terms of the Plan to your medical circumstances, or a statement that an explanation will be provided free of charge upon request.

May I appeal the decision of the Employer?

- You or your beneficiary will have 60 days from the date you receive the notice of claim denial in which to appeal your Employer's decision. You may request that the review be in the nature of a hearing and an attorney may represent you.
- However, in the case of a claim for disability benefits, if your Employer is deciding whether you are Disabled under the terms of the Plan, you will have at least 180 days following receipt of notification of a claim denial within which to appeal your Employer's decision.
- You may submit written comments, documents, records, and other information relating to your claim. In addition, you will be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information pertaining to your claim.
- Your appeal will take into account all comments, documents, records, and other information submitted by you relating to the claim, even if the information was not included originally.

If the claim is for disability benefits:

1. Your claim will be reviewed independent of your original claim and will be conducted by a named fiduciary of the Plan other than the individual who denied your original claim or any of his or her employees.
2. In deciding an appeal of a claim denial that is based in whole or in part on a medical judgment, the appropriate named fiduciary will consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment;
3. Your Employer will provide you with the name(s) of the health care professional(s) who was consulted in connection with your original claim, even if the claim denial was not based on his or her advice. The health care professional consulted for purposes of your appeal will not be the same person or any of his or her employees.

4. You will be notified of the outcome of your appeal no later than 45 days after receipt of your request for the appeal, unless the Employer determines that special circumstances require an extension of time for processing the claim. If your Employer determines that an extension is required, written notice of the extension will be provided to you before the end of the initial 45-day period. The notice will identify the special circumstances requiring an extension and the date by which the Plan expects to make a decision regarding your claim.

Your Employer will provide you with written or electronic notification of the final outcome of your claim. The notification will include:

1. A statement that you are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim;
2. A statement describing any additional voluntary appeal procedures offered by the Plan, your right to obtain the information about such procedures, and a statement of your right to bring an action under Section 502(a) of ERISA; and
3. If the Employer used an internal rule or guideline in denying your claim, either 1) the specific rule or guideline, or a statement that the rule or guideline was relied upon in denying your claim, and 2) that a copy of the rule or guideline will be provided free of charge to you upon request.

If the claim denial is based on a medical necessity, experimental treatment, or similar situation, either an explanation of the scientific or clinical basis for the denial, applying the terms of the Plan to your medical circumstances, or a statement that an explanation will be provided free of charge upon request.

If I need to take legal action with respect to the Plan, who is the agent for service of legal process?

Your Employer is the agent to be served with legal papers regarding the Plan.

If the Plan terminates, does the federal government insure my benefits under the plan?

- If the Plan terminates, you will become fully vested in your entire balance under the Plan, even though you would not otherwise have a sufficient number of years of vesting service to be 100 percent vested in your balance. You will be entitled to take your entire balance from the Plan following termination.
- The type of plan in which you participate is not insured by the Pension Benefit Guarantee Corporation, the government agency that insures certain pension plan benefits upon plan termination.

What are my legal rights and protections with respect to the Plan?

As a Participant in this Plan, you are entitled to certain rights and protections under ERISA. ERISA provides that all Plan Participants shall be entitled to do the following.

### **Receive Information About Your Plan and Benefits**

1. Examine, without charge, at the Employer's office and at other specified locations, such as worksites and union halls, all Plan documents governing the Plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.
2. Obtain, upon request to the Employer, copies of documents governing the operations of the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated Summary Plan Description (SPD). The Employer may charge a reasonable fee for the copies.

3. Receive a summary of the Plan's annual financial report. The Employer is required by law to furnish each Participant with a copy of this Summary Annual Report.
4. Obtain, once a year, a statement of the total pension benefits accrued and the vested pension benefits (if any) or the earliest date on which benefits will become vested. The Plan may require a written request for this statement, but it must provide the statement free of charge.

### **Prudent Actions by Plan Fiduciaries**

In addition to creating rights for Plan Participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan Participants and beneficiaries. No one, including your Employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a pension benefit or exercising your rights under ERISA.

### **Enforce Your Rights**

If your claim for a benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules. Under ERISA, there are steps you may take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Employer to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Employer. If you have a claim for benefits which is denied, or ignored, in whole or in part, you may file suit in a state or Federal court. In addition, if you disagree with the Plan's decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support order, you may file suit in Federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay the costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if the court finds your claim is frivolous.

### **Assistance with Your Questions**

If you have any questions about your Plan, you should contact the Employer. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Employer, you should contact the nearest area office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

Further, if this Plan is maintained by more than one Employer, you may obtain a complete list of all such Employers by making a written request to your Employer.

## DEFINITIONS

Compensation – The definition of Compensation under the Plan can vary depending upon the purpose (e.g., allocations, nondiscrimination testing, tax deductions).

In general, the amount of your earnings from your Employer taken into account under the Plan is all earnings reported to you on Form W-2. Compensation will include amounts that are not included in your taxable income that were deferred under a cafeteria plan, a 401(k) plan, a salary deferral SEP plan, a 403(b) tax-sheltered annuity plan, a 457(b) deferred compensation plan of a state or local government or tax-exempt employer, or transportation fringe benefits that you receive.

The definition of Compensation used under the Plan has been further adjusted to exclude the following amounts.

- Bonuses that you receive will not be considered Compensation.
- Overtime pay will not be included in the Compensation.
- Amounts received during a paid leave of absence will not be included in Compensation.
- Other non-base pay items (imputed income, STI, INDV, OVER, ONCP, and COR). will not be considered Compensation.
- Amounts deemed to be compensation that relate to an automatic enrollment cafeteria plan where you fail to provide proof of insurance will be excluded when determining your Compensation.

If you receive payments from your Employer within 2 ½ months after severing your employment, any regular pay for services you performed prior to severance will be included in Compensation. Other post-severance payments will affect your Compensation as described below

- Unused accrued sick, vacation or other leave that you are entitled to cash out will be excluded from Compensation for purposes of amounts contributed by your Employer.
- Amounts received under a nonqualified unfunded deferred compensation program will be excluded from Compensation.

Effective 01/01/2009, if your Employer chooses to provide differential pay to you while you are on active duty with the uniformed services for a period of more than 30 days, the pay will be considered additional Compensation paid to you for purposes of determining Plan contributions. See your Plan Administrator to determine if your Employer provides differential pay.

The measuring period for Compensation will be the Plan Year- The maximum amount of Compensation that will be taken into account under the Plan is \$245,000 (for 2011). This amount increases as the cost of living rises.

Disabled – You will be considered Disabled if you cannot engage in any substantial, gainful activity because of a medically determined physical or mental impairment that is expected to last at least 12 months.

Early Retirement Age – There is no Early Retirement Age designated under the Plan.

Employer – The Employer is Franklin Pierce University. Your Employer will also serve as the Plan Administrator, as defined in ERISA, who is responsible for the day to day operations and decisions regarding the Plan, unless a separate Plan Administrator is appointed for all or some of the plan responsibilities. The term Employer, as used in this Summary Plan Description, will also mean Plan Administrator, as that term is used in ERISA.

Employer Contributions - Your Employer may choose to make Employer Contributions for Participants who

meet the certain eligibility requirements. Your eligibility to receive Employer Contributions is not dependent upon whether you make Deferrals and/or Nondeductible Contributions and/or Mandatory Employee Contributions.

**Highly Compensated Employee** – A Highly Compensated Employee is any employee who  
1) was a five percent owner at any time during the year or the previous year, or  
2) for the previous year had Compensation from the Employer greater than \$110,000 (for 2011).

The \$110,000 threshold is increased as the cost of living rises.

**Hour of Service** – An Hour of Service, for purposes of determining Plan eligibility, vesting and eligibility to receive Employer contributions will be based on actual hours for which you are entitled to pay.

If your Employer continues a plan from a prior employer, you will receive credit for time that you worked for the predecessor employer. If your Employer does not continue the prior employer's plan, you will receive credit for your hours of service with The contribution rate is calculated on years of service at Franklin Pierce. Prior years experience at another higher education institution only waives the one-year waiting period. and you will receive credit for your service with an institution of higher education only for determining whether you have satisfied service requirements to participate in this Plan.

**Individual Agreements** - All contributions to the Plan will be invested either in annuity contracts or in mutual funds held in custodial accounts. The agreements between the vendor and your Employer or you that constitute or govern the annuity contracts and custodial accounts are referred to as Individual Agreements. The Individual Agreements explain the unique rules that apply to each Plan investment and may, in some cases, limit your options under the Plan, including your transfer and distribution rights.

**Normal Retirement Age** – Age 65 is considered the Normal Retirement Age under the Plan.

**Participant** – An employee of the Employer who has satisfied the eligibility requirements and entered the Plan is referred to as a Participant.

**Plan** – The Franklin Pierce University Defined Contribution Retirement Plan is the Plan described in this Summary Plan Description.

**Plan Administrator** – Your Employer is responsible for the day-to-day administration of the Plan. To assist in operating the Plan efficiently and accurately, your Employer may appoint others to act on its behalf or to perform certain functions.

**Plan Year** – The calendar year will serve as the Plan Year.

**Qualified Nonelective Contribution** – Your Employer may make Qualified Nonelective Contributions to satisfy certain nondiscrimination tests that apply to the Plan. These contributions are discretionary and are 100 percent vested when made.

**Taxable Wage Base** – The Social Security Administration sets a contribution and benefit base level each year which is referred to as the Taxable Wage Base.