

MEMORANDUM

TO: Milwaukee Board of School Directors
FROM: James M. Carroll, Assistant City Attorney
RE: Proposed Changes to MPS 403(b) Plan
DATE: May 26, 2020

1) Background

- IRS statutes and regulations require employer-sponsored retirement plans, including 403(b) plans, to maintain and regularly update a “plan document.” A plan document must clearly explain the plan’s features and processes. Failure to properly update a plan document may jeopardize a retirement plan’s tax-qualified status.
- In 2017, the IRS announced that 403(b) plan sponsors could self-correct plan provisions that violate Code Section 403(b)'s written plan rules by adopting plan amendments by March 31, 2020. In consideration of the COVID-19 crisis, the IRS extended this deadline to June 30, 2020.
- This memorandum addresses three categories of proposed changes to the Milwaukee Public Schools 403(b) Plan (“Plan”):
 - a. Required plan document amendments per federal law;
 - b. Optional, but recommended, plan document amendments; and
 - c. Optional (and temporary) recommended plan administration changes permitted under the CARES Act of 2020, the federal government’s recent coronavirus relief legislation
- The following outlines the potential substantive changes in each category. Please also note that the plan document will be reorganized to some extent and that definitions will be updated to align with IRS requirements.

2) Proposed Changes

a. Required Plan Document Amendments

- The SECURE Act, a 2019 federal law governing retirement plans, raises from 70 $\frac{1}{2}$ to 72 the age at which 403(b) participants must begin to take required minimum distributions (“RMDs”). Tax-deferred retirement plans generally must issue RMDs to prevent individuals who have reached retirement age from avoiding taxes. **(See Section 8.04(b))**

- ✓ **NOTE** – While the SECURE Act change re initial RMD age is permanent, RMDs for 2020 have been waived pursuant to the CARES Act, as further discussed in Section 3(c), below.
- IRS regulations have changed regarding hardship distribution rules for 403(b) plans. A hardship distribution permits a 403(b) participant to withdraw money without penalty under certain difficult personal circumstances. **(See Section 8.03)** The changes are:
 - Previously, a 403(b) participant was not allowed to resume contributions to the Plan for six months following a hardship distribution. That restriction has been eliminated effective January 1, 2020.
 - Previously, a 403(b) participant was required to take any available nontaxable loan from any plan sponsored by the employer before he or she could take a hardship distribution. That restriction has been eliminated effective January 1, 2020.
 - Effective January 1, 2020, IRS regulations have expanded the acceptable hardship categories under which a 403(b) plan may permit a hardship distribution.
 - Effective January 1, 2020, IRS regulations require a 403(b) participant requesting a hardship distribution to certify in writing that she or he has insufficient cash or other liquid assets to satisfy the financial need.
- In the past, MPS 403(b) Plan vendors permitted 66 Plan participants to make rollover contributions from Roth accounts into the Plan. The plan document is therefore being retroactively amended to correct this operational failure, as permitted by the IRS’ Self-Correction Program. **(See Section 4.04(d))**
- The plan document is also being retroactively amended to reflect that, in 2009, plan participants were not required to take RMDs unless they chose to do so. This waiver of RMDs in 2009 was permitted pursuant to federal legislation responding to the financial crisis/”Great Recession.” *(NOTE – For technical reasons, this change must be executed via a separate amendment to the plan document.)*

b. Optional Plan Document Amendments

- The amended plan document states that if a participant has not named a beneficiary, the beneficiary designation will default to the participant’s surviving spouse or, absent a surviving spouse, the participant’s estate. This provision will simplify plan administration. **(See Section 2.02(h))**
- The amended plan document phases out an administratively complex concept known as “15 years of service catch-up contributions” that allows employees with 15 or more years of service to contribute to the Plan in amounts beyond standard limits. Administration of catch-up contributions is challenging and may result in plan operational errors. Participants who are already making such contributions prior to June 1, 2020, may continue to do so. **(See Section 5.02)**

- The amended plan document permits MPS to distribute relatively small account balances (under \$1,000.00) to individuals no longer employed by MPS. This provision will simplify plan administration by eliminating the need to keep track of minimal account balances for ex-employees. (See Section 8.02(b))
- The amended plan document permits participants to request loans or hardship withdrawals from Roth contribution accounts. These provisions will afford participants more flexibility when facing financial challenges. (See Sections 7.01(a); 8.03(a))
- The amended plan document clarifies the process by which participants may request information and/or initiate claims regarding the Plan. (See Sections 11.04 & 11.05)

c. Optional CARES Act Provisions

- The “Coronavirus Aid, Relief and Economic Security Act” (“CARES Act”) became law on March 27, 2020. Among an array of features intended to ease economic hardships during the coronavirus health crisis, the CARES Act temporarily relaxes some of the rules normally applicable to employee retirement plans like the MPS 403(b) Plan.
- Pursuant to the CARES Act, the MPS 403(b) Plan *may* implement the following temporary provisions, but is not *required* to do so:
 - In calendar year 2020, the Plan may allow participants to take penalty-free “coronavirus-related distributions” of up to \$100,000.00. A coronavirus-related distribution is one taken by an individual who certifies that he or she has been diagnosed with coronavirus, who has a spouse or dependent who has been diagnosed with coronavirus, or who has experienced “adverse financial consequences” due to coronavirus. If such distributions are permitted, they may be repaid into the Plan over the following three-year period without regard to normal annual contribution limits and with favorable tax treatment. In addition, such distribution will not be subject to the 10% early distribution penalty.
 - Through September 23, 2020 (180 days after the CARES Act’s effective date), the Plan may allow participants to potentially take larger loans, the maximum permissible amounts of which have temporarily increased from the lesser of \$50K or 50% of participant’s vested account balance to the lesser of \$100K or 100% of participant’s vested account balance.
- It should also be noted that the CARES Act suspends RMDs for 2020 and extends repayment periods for loan payments due through the end of 2020. For employees who have terminated employment, it also waives the 10% penalty for any early distributions related to the coronavirus. These provisions are mandatory and thus require no action by the Plan at this time but additional guidance from the IRS will be forthcoming.

- The Plan may begin operating under the optional CARES Act provisions without amending the plan document now, though it must do so by December 31, 2024. However, the Plan should receive Board of School Directors approval before authorizing its third-party administrator to implement the optional CARES Act provisions.

3) Conclusion

For the reasons stated above, we are asking the Board of School Directors to do the following before the June 30, 2020, IRS deadline:

- a. Execute the revised plan document drafted by outside counsel, thus implementing the required and optional amendments discussed in Sections 2(a) and 2(b), above;
- b. Execute the separate plan document amendment retroactively acknowledging that the Plan did not require RMDs in 2009, as discussed in Section 2(a) above; and
- c. Instruct the Senior Director of Benefits, Pension, and Compensation to collaborate with the Plan's third-party administrator to promptly implement the optional administrative changes permitted under the CARES Act of 2020, and to subsequently and timely amend the plan document to reflect those changes.