

MAINE COMMUNITY COLLEGE SYSTEM

**EMPLOYEE RELATIONS
Section 401.1**

SUBJECT: DEFERRED COMPENSATION PLAN ADMINISTRATION

PURPOSE: To guide the administration of MCCS Deferred Compensation Plans

A. Introduction

MCCS offers as a benefit of employment several Deferred Compensation Plans that qualify under I.R.S. Code Sections 403(b) or 457. The purpose of this procedure is to facilitate the consistent and efficient administration of those Plans.

B. Types and Copies of Plans

MCCS currently offers two §403(b) Plans administered by TIAA-CREF, and three §457 Plans administered by VOYA, AIG and MassMutual (formerly The Hartford Life Insurance Company). MCCS shall post online copies of each Plan for employees to access.

C. Plans Administrator

The MCCS Chief Human Resource Officer shall serve as the MCCS Plan Administrator for each §403(b) and §457 Plan. Each such Plan shall be administered consistent with the requirements of federal law (such as the I.R.S. Code Sections which authorize all such Plans), state law (such as 20-A M.R.S.A. §12722 which authorizes MCCS to offer such Plans), and each Plan itself.

D. De Minimus §403(b) Plan Balance Exemption

Employees who participate in a §403(b) Plan and who have a balance of less than \$_____ may request approval from the MCCS Chief Human Resource Officer to withdraw that balance as a de minimus exemption from otherwise applicable withdrawal rules or constraints.

E. Hardship Withdrawal Process for All Plans

Each §403(b) and §457 Plan has a hardship withdrawal provision that must be administered consistent with the requirements of law and the Plan. Such provisions shall also be administered as follows.

1. Application Forms

MCCS shall provide copies online of the hardship withdrawal forms provided by TIAA-CREF, VOYA, AIG and MassMutual. An employee who seeks to apply for hardship withdrawal under either a §403(b) and §457 Plan shall submit the pertinent form to the MCCS Chief Human Resource Officer. As explained below, I.R.S. Code §403(b) requires less detailed information than does I.R.S. Code §457 for their respective hardship withdrawal provisions. As a result, the forms may vary depending upon the type of Plan (§403(b) or §457), as well as upon the company (VOYA, AIG or MassMutual).

2. Review of Form

An application for hardship withdrawal under either a §403(b) and §457 Plan shall be reviewed by a committee consisting of the MCCA Chief Human Resource Officer, Chief Financial Officer and General Counsel or their impartial designees (“Review Committee”). The MCCA Controller and Benefits Manager shall upon request assist and advise the Committee.

3. Committee Decision

The Review Committee may request from the employee any information reasonably necessary to determine whether an application qualifies for the withdrawal. The Committee shall render its decision as promptly as reasonably possible. The Committee’s decision shall be final.

F. Hardship Withdrawal Standards for §403(b) Plans

Employees qualify for withdrawal from a §403(b) Plan “if the distribution both is made on account of immediate and heavy financial need of the employee and is necessary to satisfy the financial need.” *26 C.F.R. §1.401(k)-1(d)(3) (cross-referenced from 26 CFR §1.403(b)-6(d)(2)).*

1. Determination of “On Account of Immediate and Heavy Financial Need”

A distribution is “on account of immediate and heavy financial need” of the employee if it is for:

- a) Expenses for (or necessary to obtain) medical care that would be deductible under IRS §213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);
- b) Costs directly related to the purchase of a principal residence for the employee (excluding mortgage payments);
- c) Payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the employee or the employee’s spouse, children, or dependents (all as defined in the IRS code);
- d) Payments necessary to prevent the eviction from or foreclosure on the employee’s principal place of residence;
- e) Payments for burial or funeral expenses for the employee’s deceased parent, spouse, children or dependents (all as defined in the IRS code);
or

- f) Expenses for the repair of damage to the employee's principal residence that would qualify for a casualty deduction.

Under IRS rules, a financial need may be "immediate and heavy" even if the need was reasonably foreseeable or voluntarily incurred by the employee. The purchase of commodities such as televisions and boats are specifically listed as examples of what does not constitute a legitimate basis for a hardship distribution.

2. Determination of the "Necessity to Satisfy Immediate and Heavy Financial Need"

A distribution is "necessary to satisfy immediate and heavy financial need" if all of the following requirements are satisfied:

- a) The employee has already taken all currently available distributions (other than hardship) and nontaxable loans under the plan and all other plans maintained by the employer; and
- b) The need cannot be relieved by "alternative resources reasonably available to the employee" (including assets of the employee's spouse and minor children (except if held for such children under an irrevocable trust, Uniform Gifts to Minors Act or comparable State law). In determining whether "reasonably available alternative means" exist, the employer may rely on the written representations of the employee that the need cannot be met any way other than through the hardship distribution unless the employer has actual knowledge that the need can be reasonably relieved through or by:
 - (1) Reimbursement or compensation by insurance or otherwise;
 - (2) Liquidation of the employee's assets;
 - (3) Cessation of elective or employee contributions under the Plan;
 - (4) Other currently available distributions of dividends and nontaxable loans under plans maintained by any employer; or
 - (5) Borrowing from commercial sources on reasonable commercial terms an amount necessary to satisfy the need.

3. Documentation Requirements

Applications for a §403(b) hardship withdrawal require less documentation than applications for a §457 withdrawal. A §403(b) application only requires:

- a) Documentation of the expense(s) that gave rise to the need; and

- b) Certification from the employee that there are no other means available to meet the need. Employees are not required to provide documentation to establish that there are no alternative means available to satisfy the need.

4. Limit on Amount of Distribution

If an application qualifies for a §403(b) hardship withdrawal, the distribution:

- a) Can come from elective and/or non-elective contributions in accordance with state and federal law and the plan document; and
- b) Cannot exceed the amount necessary to satisfy the “immediate and heavy financial need,” although the amount can be increased to include any anticipated federal, state or local taxes or penalties.

G. Hardship Withdrawal Standards for §457 Plans

Employees qualify for withdrawal under a §457 Plan if there is an “unforeseeable emergency” that causes a “severe financial hardship.” *26 C.F.R. §1.457-6(c)*. This is intended to be a higher standard than for §403(b) Plan withdrawals. Under §457, the employee must seek the withdrawal as a true last resort, and must provide detailed documentation, and not mere attestations, of that level of need.

1. Determination of “Unforeseeable Emergency” Caused by a “Severe Financial Hardship”

An “unforeseeable emergency” that causes a “severe financial hardship” is:

- a) An illness or accident of the employee, the employee’s beneficiary, or the employee’s or beneficiary’s spouse or dependents;
- b) Loss of the employee’s or beneficiary’s property caused by casualty (including the need to rebuild a home following damage that is not otherwise covered by homeowner’s insurance, e.g. as a result of a natural disaster); or
- c) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the employee or beneficiary, such as funeral expenses of a spouse or dependent, medical expenses and the costs of prescription drug medication, and the imminent foreclosure of or eviction from the employee’s or beneficiary’s primary residence.

Note that, in direct contrast to the §403(b) which allows distributions for payments for a home purchase or college tuition, distributions under §457 for such payments are specifically excluded as “unforeseeable emergencies.”

2. Determination of Access to “Other Available Resources”

Distribution is prohibited if the employee’s “emergency” may be relieved by any one of the following:

- a) Reimbursement or compensation from insurance;
- b) Liquidation of the employee’s assets to the extent such liquidation would not cause severe financial hardship;
- c) Cessation of elective contributions or employee contributions under the Plan;
- d) Other currently available distributions (such as plan loans) under plans maintained by the employer or another employer of the employee; or
- e) Borrowing from commercial sources.

3. Documentation Requirements

Applications for a §457 withdrawal require more documentation than applications for a §403(b) withdrawal. Rather than an employee’s mere attestations which will suffice under §403(b), a §457 application requires detailed information on the employee’s assets, liabilities, income and expenses. This documentation must be adequate to establish that the employee is seeking the withdrawal as a true “last resort.” Commonly required documentation includes an:

- a) Explanation of the circumstances giving rise to the request;
- b) Explanation of benefits for medical bills;
- c) Copy of a foreclosure or /eviction notice or other documents;
- d) Pay stubs;
- e) Worker’s compensation or disability payments;
- f) Bill, receipts, or statements for a funeral, repairs to home or attorney’s fees;
- g) Personal financial statements; and/or
- h) Loan denial letters from commercial lenders.

4. Limit on Amount of Distribution

If an application qualifies for a §457 hardship withdrawal, the distribution cannot exceed the amount necessary to satisfy the emergency, although this amount can be increased to include any anticipated federal, state or local taxes or penalties.

REFERENCES: I.R.S. Code §403(b) and §457; 26 C.F.R. §1.401(k)-1(d)(3) (cross-referenced from 26 CFR §1.403(b)-6(d)(2)) and 26 C.F.R. §1.457-6(c); 20-A M.R.S.A. §12722

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