BOARD OF HIGHER EDUCATION

REQUEST FOR COMMITTEE AND BOARD ACTION

COMMITTEE: Fiscal Affairs and Administrative Policy **NO**.: FAAP 17-10

COMMITTEE DATE: November 29, 2016

BOARD DATE: December 6, 2016

CONFIRMATION OF THE MASSACHUSETTS 403(B) ELECTIVE DEFERAL SAVINGS PLAN NAMED FIDUCIARIES AND AUTHORIZED SIGNATORIES

MOVED: Be it resolved, that the Board of Higher Education hereby amends the Massachusetts 403(b) Elective Deferral Savings Plan, effective immediately, by :

1. Section 1 Definitions of Terms Used; Subsection 1.23(B) Former Provider

Deleting the fifth paragraph and replacing it with the following:

Former Providers may not issue loans as described in Section 4.

2. Section 5 Benefit Distributions; Subsection 5.4(a) Hardship Withdrawals

Deleting the word “Contract” from the first sentence

3. Section 5 Benefit Distributions, Subsection 5.4(b) Hardship Withdrawals

Deleting the word “Contract” from the first sentence

Authority: Massachusetts General Laws Chapter 15 Section 18A

Contact: Sean P. Nelson, Deputy Commissioner for Administration and Finance

BACKGROUND INFORMATION

As currently written, the Plan prohibits Former Providers from making Hardship Withdrawals to eligible participants. The Department seeks to remove this prohibition in order to benefit participants whose current Providers are being phased out of the Plan, and which status will change from a Contract Provider to a Former Provider.

Hardship Withdrawals, as defined by the Internal Revenue Service (IRS), represent situations of immediate and heavy financial need for a participant, that cannot be met by other resources. The IRS offers these circumstances as a guide in determining such needs:

The purchase of one's primary residence;

Payments required to prevent eviction from one's primary residence

Tuition payments for the participant and certain direct relations

Medical payments for the participant and certain direct relations

Funeral expenses for the participant and certain direct relations

Un-insured losses that meet the requirements for deduction of from one's taxable income (IRS Form 1040 Schedule A)

Contract Providers are those firms holding a current contract with the Commonwealth to provide certain services under the Plan. These are the primary Providers that receive Plan Contributions and may make all forms of distributions from the Plan. Under the recent Provider procurement, the current Contract Providers are Fidelity Investments, TIAA and VALIC.

Former Providers are those companies formerly serving as Contract Providers, that may not receive Plan Contributions or make Hardship Withdrawals. Under the recent Provider procurement, Lincoln Financial Group, MetLife and VOYA have become Former Providers.

Under the Plan's current terms, a participant holding assets with a Former Provider, who requests a Hardship Withdrawal from the Plan, could be forced to liquidate their investments with that Former Provider in order to fund their account with their Contract Provider, which is positioned to make the Hardship Withdrawal.

The Department seeks to allow Former Providers to make Hardship Withdrawals to obviate the need of liquidating Former Provider assets where the participant can incur exit fees and deferred sales charges (up to 5% of assets) in order to ensure the sufficient funding of the Contract Provider account, thereby satisfying the Withdrawal.

The current prohibition was implemented as a policy by the Higher Education Coordinating Council in 2001, when large numbers of Providers were being forced from the Plan. The Council sought to encourage consolidation of Plan assets in the remaining Providers. Participants seeking loans and Hardship Withdrawals would be compelled to transfer assets from their old Provider to their current Provider.

The Board of Higher Education retained this prohibition as a feature of the Plan when it was formalized on January 1, 2009. The intent was to encourage participants to move their assets from old Providers to new Providers. The desired consolidation results in greater management and control of the Plan by the Commonwealth. Over time, the Department has reduced the number of Providers from nearly sixty to three.

Insofar as the Providers being removed from the Plan during the early years held relatively few assets and served very few participants, the impact of this prohibition was negligible.

However, under the current reduction in Providers, today's Former Providers are major firms with substantial assets and significant numbers of participants. Hence the Department's concern of burdening participants in need of a Hardship Withdrawal with potential exit fees and deferred sales charges imposed by their Former Provider. Moreover, the Withdrawal of assets from the Former Providers accelerates the Department's objective of eliminating Plan assets with non-contract Providers.