

BOARD OF HIGHER EDUCATION
REQUEST FOR COMMITTEE AND BOARD ACTION

COMMITTEE: Fiscal Affairs and Administrative Policy **NO.:** FAAP 17-25

COMMITTEE DATE: June 13, 2017

BOARD DATE: June 20, 2017

**ADOPTION OF THE MASSACHUSETTS 403(B) ELECTIVE DEFERRAL SAVINGS
PLAN RESTATEMENT**

MOVED: In accordance with the applicable provisions of Chapter 15, Section 18A, of the Massachusetts General Laws, as amended, the Board of Higher Education herein adopts the restatement of the Massachusetts 403(b) Elective Deferral Savings Plan, represented by the attached plan document, to be effective as of January 1, 2017.

Authority: Massachusetts General Laws Chapter 15, Section 18A

Contact: Richard Nunes, Public Higher Education Employee Retirement
Director

Background

History

The Massachusetts 403(b) Elective Deferral Savings Plan (“Plan”) is a voluntary, tax-favored savings plan for employees of the State Universities, Community Colleges and the following Executive Office of Education departments:

- Secretariat of Education
- Department of Higher Education
- Department of Elementary and Secondary Education
- Department of Early Education and Care

Employees’ savings under the Plan meet a variety of goals, including:

- Provide a supplemental income alongside one’s state-funded retirement benefits;
- Serve as an emergency fund in retirement.
- Provide tax-deferral on current income during one’s working years.

The Commonwealth has offered individual agreements to eligible employees under Internal Revenue Code Section 403(b) since the 1960s. However, the IRS completely revised and updated its regulations governing these arrangements in 2007, which regulations became effective in 2009. These regulatory changes compelled employers to begin operating what had been a collection of individual agreements as a *bona fide* plan, with all of its attendant responsibilities.

Hence, this Plan became effective on January 1, 2009. The Board of Higher Education (“Board”) has amended and restated the Plan from time to time since 2009, incorporating required changes from the IRS and fine-tuning various sections as needed.

2017 Restatement

The Board is restating the 403(b) Plan’s provisions and features, as evidenced in the updated plan document, effective January 1, 2017. The restatement is attached as Attachment A and accomplishes several important objectives for the Plan:

1. The restatement incorporates technical language recommended by outside counsel that will allow the Plan to remain compliant with IRS requirements. These changes include:
 - Definition of Includible Compensation
 - Definition of the Plan Administrator
 - Definition of Severance of Employment
 - Expanding information participants must provide to the Plan Administrator
 - Adjustments to the definition of distributions eligible for rollover treatment
 - Expanding options for searching for Plan participants that cannot be found to include current technology and publicly available services
2. The restatement also incorporates the changes included in Amendment No. 1, which was adopted by the Board in December 2016, to allow Former Providers to make Hardship Withdrawals.

3. The restatement also reflects the revised line-up of Providers following last year's procurement and new contracts. The number of Providers has been reduced from six to three.

Commonwealth of Massachusetts
403(b) Elective Deferral Savings Plan

January 1, 2017

Establishment of the Plan

Establishment of Plan. The Commonwealth of Massachusetts established the Commonwealth of Massachusetts 403(b) Elective Deferral Savings Plan as of January 1, 2009 (the “Plan”). The Plan was restated as of January 1, 2010, as of January 1, 2012, and as of January 1, 2017.

This plan document sets forth the provisions of the Plan, which is intended to operate under Internal Revenue Code Section 403(b). Additionally, the Commonwealth intends the Plan to be a governmental plan under the terms of Code Section 414(d).

For purposes of the Employee Retirement Income Security Act of 1974 (ERISA), this retirement plan is a governmental plan within the meaning of ERISA Section 3(32). Accordingly, the Plan is not subject to the requirements of ERISA.

Fiduciary Standards. Plan Contributions shall be held for the exclusive benefit of Participants and their beneficiaries. The Commonwealth will administer and operate the Plan in accordance with the standards of Massachusetts General Laws Chapter 32, Section 23.

Section 1: Definition of Terms Used

The following words and terms, when used in the Plan, have the meaning set forth below.

1.1 "**Account**": The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.

1.2 "**Account Balance**": The bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant's Account under all Accounts, including the Participant's Elective Deferrals, the earnings or loss of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).

1.3 "**Annuity Contract**": A nontransferable contract as defined in section 403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in Commonwealth of Massachusetts and that includes payment in the form of an annuity.

1.4 "**Beneficiary**": The individual(s), institution, trust, or estate designated by the Participant, in a form acceptable to the Administrator, to receive the Participant's benefits at his or her death. In the absence of a named beneficiary under the Plan, the payment of the Participant's benefits upon his

or her death will be made to the Participant's spouse; in the absence of a spouse then benefits will be paid to the Participant's estate.

1.5 "**Custodial Account**": The group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.

1.6 "**Code**": The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.7 "**Contract for Services**": The Commonwealth of Massachusetts' Standard Contract.

1.8 **Compensation** means an Employee's salary, wages or other compensation in whatever form, including bonus, overtime, any and all unused sick leave and vacation pay, early retirement incentives; plus any elective deferrals under Code Sections 125, 132(f), 403(b) and 457(b), lawfully determined for the individual service of the Employee by the employing authority.

Differential Pay: Effective on and after January 1, 2009, Differential Pay means any payment which is made by the Employer to a Participant with regards to any period during which the individual is performing services in the uniformed services while on active duty for a period of more than 30 days and such amount represents all or a portion of the wages such Participant would have received from the Employer if the Participant was performing services for the Employer. Differential Pay is included in Compensation for purposes of determining benefits under the Plan.

1.9 "**Disabled**": To the extent not inconsistent with the definition of disability provided in the applicable Individual Agreement, Participants are disabled when they meet the conditions of Code Section 72(m)(7).

1.10 "**Elective Deferral**": The Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.

1.11 "**Eligible Department**": Departments of the Commonwealth whose employees may participate in the Plan; including the following:

1. The Secretariat of Education
2. Department of Higher Education
3. Department of Elementary and Secondary Education
4. Department of Early Education and Care

5. State Universities and Colleges

6. Community Colleges

1.12 "**Eligible Employee**": Each individual, whether appointed or elected, who is a common law employee of the Employer performing services as an employee of the Employer. This definition is not applicable unless the employee's compensation for performing services is paid by the Employer. Except that students within the meaning of Code Section 3121(b)(10) are not Eligible Employees.

Further, a person occupying an elective or appointive public office is not an employee performing services for the Employer unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State or local government.

1.13 "**Employer**": The Commonwealth of Massachusetts is the Employer. The Employer's federal TIN is 04-6002284.

1.14 "**Funding Vehicles** ": The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically identified by Employer for use under the Plan.

1.15 "**Includible Compensation**": An Employee's compensation received from the Employer that is includible in the Employee's gross income for Federal income tax purposes (computed without regard to section 911 of the Code) for the most recent period that is a year of service. Includible Compensation also includes any elective deferral or other amount contributed or deferred by the Employer at the election of the employee that would be includible in the gross income of the Employee but for the rules of section 125, 132(f)(4), 402(e)(2), 402(h)(1)(b), 402(k) or 457(b). The amount of Includible Compensation of each Employee taken into account in determining contributions shall not exceed \$270,000, as adjusted for cost-of-living increases in accordance with section 401(a) (17)(B) of the Internal Revenue Code for periods after 2017. The amount of Includible Compensation is determined without regard to any community property laws.

1.16 "**Individual Agreement**": The agreements between a Vendor and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.

1.17 "**Participant**": An individual for whom Elective Deferrals are currently being made, or for whom Elective Deferrals have previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.

1.18 "**Plan**": The Commonwealth of Massachusetts 403(b) Elective Deferral Savings Plan described by the provisions of this document and which become effective January 1, 2009.

1.19 "**Plan Administrator**": The Commonwealth of Massachusetts is the Plan Administrator. The Plan Administrator has identified the Department of Higher Education (or its successor) to be responsible for day-to-day administration and operation of the Plan. Administrative functions, including functions to comply with section 403(b) of the Internal Revenue Code and other tax requirements, may be allocated among various persons pursuant to service agreements or other written documents. However, in no case shall administrative functions be allocated to Participants (other than permitted Participants to make investment elections for self-directed accounts). Any administrative functions not allocated to other persons are reserved to the Administrator.

1.20 "**Plan Year**": The twelve month period beginning each January 1 and ending December 31.

1.21 "**Related Employer**": The Employer and any other entity which is under common control with the Employer under section 414(b) or (c) of the Code. For this purpose, the Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

1.22 "**Severance from Employment**" occurs when the Employee ceases to be employed by the Employer or a Related Employer that is eligible to maintain a section 403(b) Plan under section 1.403(b)-2(b)(8) of the Regulations (an "eligible employer"), even if the Employee remains employed with another entity that is a Related Employer where either (a) such Related Employer is not an eligible employer or (b) the Employee is employed in a capacity that is not employment with an eligible employer.

1.23 "**Vendor**":

The provider of an Annuity Contract or Custodial Account under the Plan meeting one of these conditions:

A. *Contract Provider*: A Payroll Slot Provider which has entered into and operates under a Contract for Services with the Employer.

Contract Providers may make and receive Custodial Account and Annuity Contract exchanges and Plan-to-Plan Transfers in accordance with the Plan's provisions (Sections 6.2, 6.3 and 6.4) and such policies established by the Employer from time to time which govern such transactions under the Plan.

Contract Providers may make loans in accordance with Section 4 and Hardship Distributions under Section 5.4 to the extent provided in their Custodial Accounts and/or Annuity Contracts that are issued under the Plan.

B. *Former Provider*: A Vendor that may have issued Custodial Accounts and/or Annuity Contracts under the Plan; holds plan assets; is not a Payroll Slot Provider; and does not currently hold a valid Contract for Services with the Employer.

Former Providers may not issue Custodial Accounts and/or Annuity Contracts under the Plan.

Former Providers may not receive either Custodial Account and/or Annuity Contract exchanges or Plan-to-Plan Transfers, except in accordance with the Plan's provisions (Sections 6.2, 6.3 and 6.4) and such policies established by the Employer from time to time which govern such transactions under the Plan.

Former Providers may make Custodial Account and/or Annuity Contract exchanges only to Contract Providers in accordance with the Plan's provisions (Sections 6.2, 6.3 and 6.4) and such policies established by the Employer from time to time which govern such transactions under the Plan.

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

Former Providers may not accept Eligible Rollovers described in Section 6.1.

1.24 "**Valuation Date**": The close of each business day.

Section 2: Participation and Contributions

2.1 Eligibility. Each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf hereunder immediately upon becoming employed by the Employer.

2.2 Compensation Reduction Election.

General Rule. An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed as an Elective Deferral on his or her behalf) and filing it with the Plan Administrator. This Compensation reduction election shall be made on the agreement provided by the Plan Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan.

The Plan Administrator may establish an annual minimum deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time.

The participation election shall include designation of the Contract Provider therein to which Elective Deferrals are to be made. Any such election shall remain in effect until a new election is filed. Only an Eligible Employee may reduce his or her Compensation under the Plan. Each Eligible Employee will become a Participant in accordance with the terms and conditions of the Individual Agreements. All Elective Deferrals shall be made on a pre-tax basis. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the Employee's election.

2.3 Information Provided by the Employee. Each Employee enrolling in the Plan should provide to the Plan Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Plan Administrator to administer the Plan, including any information required under the Individual Agreements. During each calendar year, each Employee should provide to the Plan Administrator the sum of the Participant's contributions during the calendar year to any other 403(b) plan of any other employer. If an Employee is in control of any other employer during the calendar year, the information provided to the Administrator should include the sum of the Participant's contributions for the calendar year under any defined contribution plans maintained by a Participant-controlled employer.

2.4 Change in Elective Deferrals Election. Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation election, including a change of the amount of his or her Elective Deferrals, and the Contract Provider to which his or her Elective Deferrals are remitted. A change of Contract Provider shall take effect as soon as is administratively feasible.

2.5 Contributions Made Promptly. Elective Deferrals under the Plan shall be transferred to the respective Contract Providers within fifteen (15) business days following the end of the month in which the amount would otherwise have been paid to the Participant.

2.6 Leave of Absence. Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan shall continue to the extent that Compensation continues.

Section 3: Limitations on Amounts Deferred

3.1 Basic Annual Limitation. Except as provided in Sections 3.2 and 3.3, the maximum amount of the Elective Deferral under the Plan for any calendar year shall not exceed the lesser of (a) the applicable dollar amount or (b) the Participant's Includible Compensation for the calendar year. The applicable dollar amount is the amount established under section 402(g)(1)(B) of the Code, which is \$16,500 for 2009, and is adjusted for cost-of-living after 2009 to the extent provided under section 415(d) of the Code.

3.2 Age 50 Catch-up Elective Deferral Contributions. An Employee who is a Participant who will attain age fifty (50) or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$5,500 for 2009 and is adjusted for cost-of-living after 2009 to the extent provided under the Code.

3.3 Coordination. Amounts in excess of the limitation set forth in Section 3.1 shall be, where applicable, allocated as an age 50 catch-up contribution under Section 3.2. However, in no event can the amount of the Elective Deferrals for a year be more than the Participant's Compensation for the year.

3.4 Special Rule for a Participant Covered by Another Section 403(b) Plan. For purposes of this Section 3, if the Participant is or has been a participant in one or more other plans under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 3.

For this purpose, the Plan Administrator shall take into account any other such plan maintained by the Employer or any Related Employer and shall also take into account any other such plan for which the Plan Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

3.5 Correction of Excess Elective Deferrals. If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another plan of the Employer under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code for which the Participant provides information that is accepted by the Plan Administrator), then the Elective Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant in accordance with applicable provisions of the Internal Revenue Code.

3.6 Protection of Persons Who Serve in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Code, this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

Section 4: Loans

4.1 Loans. Loans shall be permitted under the Plan to the extent permitted by the Individual Agreements issued by Contract Providers controlling the Account's assets from which the loan is made and by which the loan may be secured and the conditions under which a Contract Provider and its Individual Agreements are made available under the Plan.

Loans will be made in accordance with applicable Sections of the Internal Revenue Code. The Employer will not accept Alternative Collateral for any loan under the Plan.

4.2 Information Coordination Concerning Loans. Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in

connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Plan Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 4.3, including the collection of information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Plan Administrator shall also take such steps as may be appropriate to collect information from Vendors, and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

4.3 Maximum and Minimum Loan Amount.

1. Maximum: Except as otherwise provided under the Code, and as may be permitted under the Individual Agreements, no loan to a Participant under the Plan may exceed the lesser of:

(a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Plan Administrator (not taking into account any payments made during such one-year period); or

(b) one half of the value of the Participant's vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved by the Plan Administrator).

For purposes of this Section 4.3, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

2. Minimum: The minimum loan amount under the Plan is \$1,000.00.

4.4 Limitation on Number of Loans. Participants may maintain not more than two (2) loans with un-paid balances under the Plan at any time.

4.5 Loan Repayment Schedule. Loans made under the Plan must be repaid over any period, but not to exceed five (5) years. Except that loans used for the purchase of a Participant's primary residence must be repaid over any period, not to exceed fifteen (15) years.

Section 5: Benefit Distributions

5.1 Benefit Distributions At Severance from Employment or Other Distribution Event.

Except as permitted under Section 3.5 (relating to excess Elective Deferrals), Section 5.4 (relating to hardship), or Section 8.3 (relating to termination of the Plan), distributions from a

Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.

5.2 Minimum Distributions. Participants shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of section 401(a)(9) of the Code, distributions shall be made as provided in § 1.403(b)-6(e) of the Income Tax Regulations.

Special Provision for 2009: Notwithstanding this Section 5.2 of the plan, a participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the participant or beneficiary chooses not to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding section 6.1 of the plan, and solely for purposes of applying the direct rollover provisions of the plan, certain additional distributions in 2009, as chosen by the employer, will be treated as eligible rollover distributions. A direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to section 401(a)(9)(H).

5.3 In-Service Distributions From Rollover Account. If a Participant has a separate account attributable to rollover contributions to the Plan, such account may be distributed to the Participant only in accordance with the provisions of the Plan and this Section 5.

5.4 Hardship Withdrawals.

(a) Hardship withdrawals shall be permitted under the Plan where a hardship is deemed necessary to satisfy an immediate and heavy need if the requirements in Code Section 1.401(k)-1(d)(3)(iv)(E) are met, and to the extent permitted by the Individual Agreements issued by Providers controlling the Account's assets to be withdrawn to satisfy the hardship. No Elective Deferrals shall be allowed under the Plan during the six (6)-month period beginning on the date the Participant receives a distribution on account of hardship.

(b) The Employer and Contract Providers shall provide for the exchange of information to the extent necessary to implement the hardship withdrawal that is deemed to satisfy the financial need of the Participant (pursuant to § 1.401(k)-1(d)(3)(iii)(B) of the Income Tax Regulations); the Provider notifying the Employer of the withdrawal in order for the Employer to implement

the resulting 6-month suspension of the Participant's right to make Elective Deferrals under the Plan.

5.5 Rollover Distributions.

(a) A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution (as defined in section 6.1 (b)) may elect to have any portion of an eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover.

An eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) of the Code, an arrangement described in section 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the Participant's or the alternate payee's eligible rollover distribution.

In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).

(b) Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

Section 6: Rollovers to the Plan and Transfers

6.1 Eligible Rollover Contributions to the Plan.

(a) **Eligible Rollover Contributions.** To the extent provided in the Individual Agreements issued by Contract Providers, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Contract Provider may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code. However, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in section 402A(e)(1) of the Code or a Roth IRA described in section 408A of the Code.

Legacy and Former Providers may not accept Eligible Rollover Amounts.

(b) **Eligible Rollover Distribution.** For purposes of Sections 5.5 and 6.1(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under the Plan to another eligible retirement plan, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated beneficiary, or for a period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code (other than amounts that would have been required but for a statutory waiver of the section 401(a)(9) requirements); any hardship distribution; the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciate with respect to employer securities); any distribution(s) that is reasonably expected to total less than \$200 during a year; any corrective distribution of excess amounts under sections 402(g), 401(k), 401(m), and/or 415(c) of the Internal Revenue Code and income allocable thereto; any loans that are treated as deemed distributions pursuant to section 72(p) of the Internal Revenue Code; dividends paid on employer securities as described in section 404(k) of the Internal Revenue Code; the costs of life insurance coverage (P.S. 58 costs); prohibited allocations that are treated as deemed distributions pursuant to section 409(p) of the Internal Revenue Code; and a distribution that is a permissible withdrawal from an eligible automatic contribution arrangement within the meaning of section 414(w) of the Internal Revenue Code. A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to (a) an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code, respectively, or (b) a qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code or a tax-sheltered annuity described in section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(c) **Separate Accounts.** The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

6.2 Plan-to-Plan Transfers to the Plan.

(a) At the direction of the Employer, for a class of Employees who are participants or beneficiaries in another plan under section 403(b) of the Code, the Plan Administrator may permit a transfer of assets to Contract Providers under the Plan as provided in this Section 6.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the participant is an employee or former employee of the Employer. The Plan Administrator and any Contract Provider accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Plan Administrator or any Contract Provider accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance

with § 1.403(b)-10(b)(3) of the Income Tax Regulations and to confirm that the other plan is a plan that satisfies section 403(b) of the Code.

(b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.

(c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral by the Participant under the Plan, except that

(1) the Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan and

(2) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Section 3.

6.3 Plan-to-Plan Transfers from the Plan.

(a) At the direction of the Employer, and within the provisions of the Individual Agreements, the Plan Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another plan that satisfies section 403(b) of the Code in accordance with § 1.403(b)-10(b)(3) of the Income Tax Regulations. A transfer is permitted under this Section 6.3(a) only if the Participants or Beneficiaries are employees or former employees of the employer (or the business of the employer) under the receiving plan and the other plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

(b) The other plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the other plan shall impose restrictions on distributions to the Participant or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

(c) Upon the transfer of assets under this Section 6.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so

transferred for the Participant or Beneficiary. The Plan Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.3 (for example, to confirm that the receiving plan satisfies section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to § 1.403(b)-10(b)(3) of the Income Tax Regulations.

6.4 Annuity Contract and Custodial Account Exchanges.

(a) A Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Contract Providers, and from non-Contract Providers to Contract Providers under the Plan, in accordance with the conditions in paragraphs (b) and (c) of this Section 6.4, and subject to the terms of the Individual Agreements. However, an investment change to an investment with a Vendor that is not eligible to receive contributions under Section 2 (referred to below as an exchange) is not permitted.

(b) The Participant or Beneficiary must have an Account Balance immediately after the exchange that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account Balance of that Participant or Beneficiary under both section 403(b) contracts and custodial accounts immediately before the exchange).

(c) The Individual Agreement with the receiving Contract Provider has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.

6.5 Permissive Service Credit Transfers.

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 6.5(a) may be made before the Participant has had a Severance from employment.

(b) A transfer may be made under Section 6.5(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

(c) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the transferor plan, the Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

Section 7: Investment of Contributions

7.1 Manner of Investment. All Elective Deferrals or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

7.2 Investment of Contributions. Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made, if in accordance with the provisions of the Plan, to the extent provided in the Individual Agreements and permitted under applicable Income Tax Regulations.

7.3 Current and Former Vendors. The Plan Administrator shall maintain a list of all Vendors holding assets under the Plan. Such list is hereby incorporated as part of the Plan (Appendix A, and Appendix B). Each Vendor and the Plan Administrator shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

In the case of a Vendor which is not eligible to receive Elective Deferrals under the Plan, the Employer shall keep the Vendor informed of the name and contact information of the Plan Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

Section 8: Amendment and Plan Termination

8.1 Termination of Contributions. The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.

8.2 Amendment and Termination. The Employer reserves the authority to amend or terminate this Plan at any time.

8.3 Distribution upon Termination of the Plan. The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed, provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending twelve (12) months after the distribution of all assets from the Plan, except as permitted by the Income Tax Regulations.

Section 9: Miscellaneous

9.1 Non-Assignability. Except as provided in Section 9.2 and 9.3, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

9.2 Domestic Relation Orders. Notwithstanding Section 9.1, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan.

The Plan Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

9.3 IRS Levy. Notwithstanding Section 9.1, the Plan Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Plan Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

9.4 Tax Withholding. Contributions to the Plan may be subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals, which constitute wages under section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including section 3401 of the Code and the Employment Tax Regulations thereunder). A payee shall provide such information as the Plan Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

9.5 Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Plan Administrator, benefits will be paid to such person as the Plan Administrator may designate for the benefit of such Participant or beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

9.6 Mistaken Contributions. If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Plan Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Plan Administrator, to the Employer.

9.7 Procedure When Distributee Cannot Be Located. The Plan Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means the use of the following search methods: (a) Certified mail, (b) Check related plan and employer records, (c) Check with designated plan beneficiary, and (d) Use free electronic search tools. If, within the sole discretion of the Administrator, taking further steps is appropriate given the size of the account and the cost of the search, the additional search tools may be used: internet search tools, commercial locator services, credit reporting agencies, information brokers, investigation databases and analogous services that may involve charges. If the Plan Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

9.8 Incorporation of Individual Agreements. The Plan, together with the Individual Agreements, is intended to satisfy the requirements of section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or Section 403(b) of the Code.

9.9 Governing Law. The Plan will be construed, administered and enforced according to the Code and the General Laws (as amended) of the Commonwealth of Massachusetts.

9.10 Headings. Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

9.11 Gender. Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

9.12 Deduction of Advisor Fees. Advisor fees may be deducted from a Provider Account at the request of the Participant if the fees are for investment advice related to the Provider Account. Any such deductions are subject to the terms of the Provider and as authorized by the Administrator

9.13 Employer Selection. Subject to the fiduciary requirements of M.G.L.A. Chapter 32 Section 23, subsection 3, to the extent applicable, the Employer may, at its discretion:

1. select certain Individual Agreements and investment funds made available under the chosen Individual Agreements offered by the Providers for use by participants under the Plan; and

2. to the extent allowed under the Providers' annuity contracts and custodial accounts, discontinue the availability of investment funds for future deposit of Plan Contributions and other assets of the Plan; and in cases of such discontinuation, (i) effect the movement of assets held in such discontinued funds to other, appropriately chosen investment funds on behalf of Participants; (ii) re-direct Plan Contributions from discontinued funds, to other, appropriately chosen investment funds on behalf of Participants; and (iii) take such other actions it deems necessary and appropriate in connection with such discontinuance and re-direction.

9.14 Plan Expenses and Fees.

(a) Credit Accounts: All direct expenses of the Plan shall be paid by the Employer or from Plan assets. The Employer may establish and maintain a Revenue Credit Account or another similar account ("Credit Account") under the Plan that is funded by any Vendor. Plan expenses may be paid from a Credit Account subject to the terms of the Account and subject to applicable law. To the extent that a Credit Account requires that the funds be fully expended prior to the close of the Plan Year and there are funds remaining in that Credit Account at the end of the Plan Year, the remaining funds shall be divided on a non-discriminatory basis among all participating employees in accordance with the method determined by the Plan Administrator.

Fees that are related to a particular Vendor Account may be assessed against such Vendor Account in accordance with the terms of such Vendor Account.

(b) Administrative Fee: The Plan Administrator may direct each Vendor to deduct from each participant's account, on a non-discriminatory basis, an amount to be remitted to a trust account established by the Administrator for the sole purpose of paying expenses related to the administration and operation of the Plan. The processes of deduction and remittance of such Plan Administrative Fee will be conducted in a form and manner prescribed by the Administrator and in accordance with the provisions of each Individual Agreement and the Vendor's technological capabilities.

IN WITNESS WHEREOF, the Employer has caused this Plan to be executed:

Signature

Date

Carlos E. Santiago
Name

Commissioner of the Department of Higher Education
Title

Appendix A

Vendors That Are Contract Providers

Appendix A Vendors As Of September 1, 2016

Vendors identified in this Appendix are payroll slot providers that have entered into and operate under a Contract for Services with the Commonwealth of Massachusetts, and in accordance with the conditions set forth in Section 1.22A.

List of Contract Providers

1. Fidelity Investments

Product available under the Plan: Group Custodial Agreement for Mutual Funds;

2. TIAA

Products available under the Plan: Annuities and Mutual Funds

- Retirement Choice Plus Annuity*
- Group Supplemental Retirement Annuity

* The Retirement Choice Plus Annuity is the only TIAA product that may be issued under the Plan as of July 1, 2016

Plan Loans: The provisions of Section 4.3(1)(b) notwithstanding, any loan made under the Plan from a TIAA-CREF Group Supplemental Retirement Annuity may not exceed the lesser of Section 4.3(1)(a) and forty-five percent (45%) of the value of the Participant's vested account balance (as of the valuation date immediately preceding the date on which such loan is approved by the Plan Administrator).

3. VALIC

Product available under the Plan: Annuities and Mutual Funds

- Mutual Fund Platform*

- Portfolio Director Products
 - Portfolio Director Series 2.20
 - Portfolio Director Series 2
 - Portfolio Director Series 1

Web Site: www.valic.com

Service: 800 448-2542 (Representatives are available M-F 8 a.m. to 9 p.m. ET)

* The Mutual Fund Platform is the only VALIC product that may be issued under the Plan as of July 1, 2016.

Appendix B

Vendors That Are Former Providers

Appendix C Vendors As of September 1, 2016

Vendors identified in this Appendix are not payroll slot providers; do not operate under a Contract of Services with the Commonwealth of Massachusetts, and operate under the Plan in accordance with the conditions set forth in Section 1.22B.

List of Former Providers

1. Ameriprise Financial (fka American Express)

Product available under the plan: N/A

2. Allianz Life Insurance Company of North America (aka Life USA)

Product available under the plan:

Flex Dex Bonus Annuity
Accumulator Annuity
Accumulator Buffet 10
Accumulator 8
Master Dex 5
Universal Annuity Life

3. American Century Investments

Product available under the plan: N/A

4. AXA – Equitable

Product available under the Plan: Annuities

EquiVest, group deferred annuity contract
Individual Equitable annuity contracts

5. First Investors Corporation

Product available under the plan: N/A

6. Franklin Templeton Investment Services (aka Templeton Funds, Franklin Templeton Bank and Trust F.S.B)

Product available under the plan: N/A

7. General American Life Insurance Company (aka General American Financial, GenAmerica Financial, a MetLife Company)

Product available under the plan: N/A

8. Great American Plan Administrators, Inc. (aka GALIC Disbursing Company, Great American, Great American Life Insurance Company)

Product available under the plan: N/A

9. GPM Life Insurance Company (aka Government Personnel Mutual Life Insurance Company)

Product available under the plan: N/A

10. Great-West Life (aka Great-West)

Product available under the plan: N/A

11. Hartford Life Insurance Company

Product available under the plan: N/A

12. Horace Mann Life Insurance Company

Product available under the plan: N/A

13. Knights of Columbus

Product available under the plan: N/A

14. The Legend Group Advisory Services Group

Product available under the plan: N/A

15. Life Insurance Company of the Southwest

Product available under the plan:

Secure Plus Platinum

16. Lincoln Benefit Life Insurance Company

Product available under the plan: N/A

17. Lincoln Investment Planning, Inc.

Product available under the plan:

Retirement Solutions 403(b)(7)

18. Lincoln Financial Group

Product available under the Plan:

Lincoln Alliance: mutual funds, brokerage account, stable value fund

19. Lincoln National Life Insurance Company

Product available under the plan: individual annuity contracts

20. Mainstay Investments (aka MainStay Funds, managed by New York Life Investment Management LLC, a wholly owned subsidiary of New York Life Insurance Company)

Product available under the plan: N/A

21. MassMutual Life Insurance Company (aka MassMutual Financial Group, MMLIC)

Product available under the plan: N/A

22. Merrill Lynch Life Insurance Company; Merrill Lynch Retirement

Product available under the plan: Merrill Lynch Retirement Selection Account (RSA)

23. MetLife

Products available under the plan: MetLife Financial Freedom Select, including FKA Security First Life Insurance Company; MetLife Resources, including FKA Copeland, Citistreet; FKA Travelers Life and Annuity*, Citigroup: Universal Annuity, T-Flex ; * may include life insurance in contracts sold prior to February, 2005

Product available under the Plan: MetLife Resources; Mutual Fund Select Portfolio and Strategic Value Fund (annuity)

24. MFS Investment Management; MFS Fund Distributors (aka Mass Financial Services)

Product available under the plan: N/A

25. Nationwide Financial (aka Nationwide)

Product available under the plan: N/A

26. New England Financial (aka New England Mutual Life Insurance Company)

Product available under the plan: N/A

27. New York Life Insurance Company

Product available under the plan:

NVAII – Flexible Premium

28. Northwestern Mutual Life Insurance Company

Product available under the plan: N/A

29. The Penn Mutual Life Insurance Company

Product available under the plan: N/A

30. Phoenix Investment Partners; Phoenix Funds

Product available under the plan: N/A

31. Phoenix Life Insurance Company

Product available under the plan: N/A

32. Pioneer Investments; Pioneer Funds Distributors

Product available under the plan: N/A

33. Primerica Financial Services; PFPC

Product available under the plan: N/A

34. Putnam Investments (aka Putman Fund Distribution)

Product available under the plan: N/A

35. ReliaStar ING (Northern Life Insurance Company)

Product available under the plan: individual annuity contracts

36. Security Benefit Life Insurance Company

Product available under the plan:

NEA Valuebuilder Annuity, Variflex, Variflex 98

37. Symetra Financial (fka Safeco Life Insurance Company)

Product available under the plan: N/A

38. Thrivent Financial for Lutherans (fka Lutheran Brotherhood)

Product available under the plan:

Fixed Annuity

39. Union Central Life Insurance Company

Product available under the plan:

VA1

40. USAA Life Insurance Company (aka USAA Life Insurance and Investment Services)

Product available under the plan: N/A

41. Voya Financial (fka ING)

Product available under the Plan: Annuities

Voya Custom Choice Voluntary TDA

42. Waddell & Reed Financial, Inc.

Product available under the plan: N/A

43. Western National Life Insurance, (aka American General Annuity Insurance, AIG Annuity)

Product available under the plan: N/A

44. Western Reserve Life, subsidiary of Aegon

Product available under the plan: N/A