

Sec. 92. Mandatory Terms.

Any 401(h) Account established under this section must comply with the following conditions:

- (1) Trust Status.
 - (a) All assets held in the 401(h) Account, including all contributions received pursuant to the Plan Document and the Participation Agreement, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of participants in the Participating Employer's 401(h) Account.
 - (b) To the extent required by IRC section 401(h), all contributions received pursuant to the Plan Document and the Participation Agreement, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the 401(h) Account shall be held, managed, invested and distributed as part of the Trust Fund in accordance with the provisions of the Plan Document and the Participation Agreement.
- (2) Discrimination. The 401(h) Account does not permit any condition for eligibility or benefits that would discriminate in favor of any class of participants to the extent such discrimination is prohibited by applicable law.
- (3) Non-Diversion and Reversion Rules.
 - (a) At no time prior to the satisfaction of all liabilities under the 401(h) Account or termination of the 401(h) Account shall any assets in the 401(h) Account be used for, or diverted to, any purpose other than the providing of the benefits under this Article and the payment of administrative expenses. Assets in the 401(h) Account may not be used for retirement or disability benefits or any other purpose for which other assets held in the Trust Fund are used.
 - (b) As provided by IRC section 401(h)(5), upon the satisfaction of all liabilities under law and the 401(h) Account, any remaining amounts shall returned to the Participating Employer.
- (4) Amendment for Qualification of Plan. It is the intent of the Board that the 401(h) account shall be and remain an IRC section 401(h) account. The Plan administrator shall promptly submit the Plan Document and the Participation Agreement to the Internal Revenue Service for approval under the IRC, and all expenses incident thereto shall be borne by the 401(h) account. The Board may make any modifications, alterations, or amendments to the Plan Document,

Participation Agreement or Plan operations necessary to obtain and retain approval of the Secretary of the Treasury or the Secretary's delegate of the 401(h) Account as qualified under the provisions of the IRC or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. Any modification, alteration, or amendment of the Plan Document or the Participation Agreement, made in accordance with this section, may be made retroactively, if necessary or appropriate. A certified copy of the resolution of the Board making such amendment shall be delivered to the Plan administrator, and the Plan Document or Participation Agreement shall be amended in the manner and effective as of the date set forth in such resolution. The Board and the Participating Employer, eligible employees, participants, their spouses and dependents, and all others having any interest under the 401(h) Account shall be bound thereby.

- (5) Coverage. Benefits from the 401(h) Account may only be paid to a participant, a participant's spouse (an individual to whom the participant is married as determined under Michigan law) and dependents (as defined in IRC section 152) for Medical Care specified in the applicable Participation Agreement. A participant (and his or her spouse and dependents) has no rights to benefits from the 401(h) Account until he or she becomes a retired participant.
- (6) Benefits Payable from the 401(h) Account.
 - (a) Benefits payable from a 401(h) Account shall include only payments or reimbursements for Medical Care (as defined in IRC section 213(d)(1)). Benefits may be further limited by the terms of the Participation Agreement of a Participating Employer, which shall specify the specific benefits to be paid from a 401(h) Account.
 - (b) The Board shall administer the DB Component, if any, of each 401(h) Account on an actuarially sound basis.
 - (c) Medical Care payments shall only be paid pursuant to an application.
 - (d) No refunds of contributions shall be made. All contributions remain in the 401(h) Account until used for Medical Care payments.
 - (e) Reimbursements may not be made for any expense for which the retired participant or his or her spouse or dependents receive, or are eligible to receive, payment or reimbursement from another source.
 - (f) In order to receive benefits from the 401(h) Account, the retired participant must agree to provide appropriate documentation of the expenditure, subject to the following conditions:

- (i) In the case of premiums for insurance provided by the retired participant's employer, a certification of coverage by the employer is required before payments may be made directly to the insurance provider.
 - (ii) For Medicare B premiums, the retired participant must provide evidence of coverage in order for direct payments to be made.
 - (iii) Other Medical Care reimbursements shall be made to the retired participant only upon receipt of verified claims or pursuant to the certification procedure.
- (7) Protection of Benefits.
 - (a) A retired participant may assign the payment of benefits from the 401(h) Account in order to pay for Medical Care insurance if otherwise permitted by the applicable Participation Agreement. With this exception, no eligible employee or his or her spouse or dependent, or designee, may commute, sell, assign, transfer or otherwise convey the right to receive any payment under the 401(h) Account.
 - (b) The rights of eligible employees or their spouses or dependents under this Article shall not be subject to the rights of their creditors, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third person, including a domestic relations order.
- (8) Subordination of Contributions.
 - (a) Contributions to the 401(h) Account must be subordinate to the contributions to the System for retirement benefits. At no time shall contributions to the 401(h) Account be in excess of twenty-five percent (25%) of the total aggregate actual contributions made to the System Trust Fund (not including contributions to fund past service credits). The Plan administrator shall annually determine whether the twenty-five percent (25%) test has been met. If at any time the 401(h) Account contributions would exceed the twenty-five percent (25%) test, the excess amount of contributions shall be directed first to the Pension Assets.
 - (b) Forfeitures shall not be allocated to individual accounts under any Participating Employer's 401(h) Account, but shall be used for account expenses.
- (9) Treatment of Contributions for 415(c) Purposes. Contributions shall be treated as an annual addition to a defined contribution plan for purposes of IRC 415(c) in accordance with IRC 415(l).