

RE: 403(b) Amendment for HEART and WRERA

Dear Plan Sponsor:

As your Independent Third Party Administrator (TPA) for your 403(b) Plan, we maintain your Plan Documents and any amendments or changes that are required by the IRS. We are pleased to offer this service to you.

Attached you will find the Amendment for HEART and WRERA needed for your 403(b) Plan. Adoption of this Amendment enables an employer to comply in form with various laws including the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) and suspension of 2009 Required Minimum Distributions (RMDs) as set forth in the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA).

Please Note: The provision options in Section 2.2 and 2.3 do not need to be selected, unless you are choosing to differ from the default provisions in Section 2.1.

As we wait for the IRS to release a prototype 403(b) plan document and issue guidance regarding interim amendments to 403(b) plan documents, it is unclear whether the amendments must actually be adopted by December 31 or be incorporated once the prototype plan document is released. However, we recommend signing the amendment to remove any doubt. Therefore, we request that you sign the attached amendment no later than **December 31, 2012** in order to incorporate the recent legislative changes.

Please print a copy, sign and date page 3 of the amendment, and attach to your 403(b) Plan Document. Also, please email a copy to Tammy Catlin at tammy.catlin@midamerica.biz or fax a copy to her at (863) 688-4200.

A Certificate of Adopting Resolution has also been enclosed for your convenience. This does not need to be returned but may be completed and retained for your records.

Please contact Tammy Catlin at tammy.catlin@midamerica.biz or (800) 430-7999 extension 166 with any questions.

Respectfully,

403(b) TPA Services Team
MidAmerica Administrative & Retirement Solutions, Inc.

**SUPPLEMENTAL AMENDMENT FOR
HEART AND WRERA
(403(b) Plan)**

What provisions of the law does this Amendment cover?

Adoption of this Amendment enables an employer to comply in form with various laws including the: (1) Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) (including HEART Act guidance contained in IRS Notice 2010-15) and (2) suspension of 2009 Required Minimum Distributions (RMDs) as set forth in the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA).

The Amendment assumes an employer has adopted a SunGard 403(b) plan document that has been updated to reflect the final 403(b) Regulations.

Which plans are required to be amended?

It is not clear whether 403(b) plans must adopt interim amendments to reflect changes in the law occurring after the final 403(b) Regulations were issued. The IRS has not issued guidance regarding interim amendment requirements for 403(b) plans (unlike qualified plans, which are subject to interim amendment rules set forth in Rev. Proc. 2007-44). The only IRS guidance relating to 403(b) plan document requirements is that employers have a document which is a good faith attempt to comply with the final 403(b) regulations. We are providing this amendment due to requests from numerous providers.

When must plans be amended?

As indicated above, there is no IRS guidance on whether an amendment to 403(b) plans is required. With respect to qualified plans, the deadline for adoption of the HEART provisions is the last day of the 2010 plan year (2012 plan year for governmental plans) and the deadline for adoption of WRERA provisions is the last day of the 2011 plan year (2012 plan year for governmental plans).

Can I modify the Amendment?

Yes. Note that WRERA provides that the RMD provisions of Code §401(a)(9) do not apply for 2009. This Amendment includes the IRS model amendment from IRS Notice 2009-82 which provides that Participants and beneficiaries may elect between receiving and not receiving distributions that include 2009 Required Minimum Distributions (RMDs) and, if a Participant or beneficiary makes no election, then the Plan will discontinue making distributions that include 2009 RMDs. **An Employer may still adopt this Amendment even if no one in the Plan was subject to 2009 RMDs (in which case the Amendment would have no effect on the Plan).**

If a Plan used the alternative default set forth in IRS Notice 2009-82 (i.e., absent an election, 2009 RMDs would continue), then the Employer must elect 2.3a. Similarly, if the Employer adopted a different approach to 2009 RMDs than either option provided in Notice 2009-82 (e.g., the plan did not provide an option not to take 2009 RMDs, or changed from one approach to another during 2009), the Employer must select 2.3b or c (as appropriate).

In addition to the Amendment, we have provided a sample Adopting Resolution (for an employer to adopt the Amendment, if applicable).

**AMENDMENT FOR
HEART AND WRERA
(403(b) Plan)**

**ARTICLE I
PREAMBLE**

- 1.1 **Effective date of Amendment.** The Employer adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all the default provisions of this Amendment except as otherwise elected in Article II.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these HEART and WRERA provisions).

**ARTICLE II
EMPLOYER ELECTIONS**

The Employer only needs to complete the questions in Sections 2.2 through 2.3 below in order to override the default provisions set forth below.

- 2.1 **Default Provisions.** Unless the Employer elects otherwise in this Article, the following defaults will apply:
- a. **Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided.**
 - b. **Differential wage payments are treated as Compensation for all Plan benefit purposes.**
 - c. **The Plan permits distributions pursuant to the HEART Act on account of "deemed" severance of employment.**
 - d. **Required Minimum Distributions (RMDs) for 2009 were suspended unless a Participant or Beneficiary elected to receive such distributions.**
- 2.2 **HEART ACT provisions** (Article III).
- Continued benefit accruals.** Amendment Section 3.2 will not apply unless elected below:
- a. The provisions of Amendment Section 3.2 apply effective as of: (select one)
 1. the first day of the 2007 Plan Year
 2. _____ (may not be earlier than the first day of the 2007 Plan Year).

However, the provisions no longer apply effective as of: (select if applicable)

 3. _____.
- Differential pay.** Differential wage payments (as described in Amendment Section 3.3) will be treated, for Plan Years beginning after December 31, 2008, as compensation for all Plan benefit purposes unless b. is elected below:
- b. In lieu of the above default provision, the employer elects the following (select all that apply; these selections do not affect the operation of Amendment Section 3.3(ii)):
 1. the inclusion is effective for Plan Years beginning after _____ (may not be earlier than December 31, 2008).
 2. the inclusion only applies to Compensation for purposes of Elective Deferrals.
- Distributions for deemed severance of employment.** The Plan permits distributions pursuant to Amendment Section 3.4 unless otherwise elected below:
- c. The Plan does not permit such distributions.
 - d. The Plan permits such distributions effective as of _____ (may not be earlier than January 1, 2007).
- 2.3 **WRERA (RMD waivers for 2009).** The provisions of Amendment Section 4.1 apply (RMDs are suspended unless a Participant or

Beneficiary elects otherwise) unless otherwise elected below:

- a. The provisions of Amendment Section 4.2 apply (RMDs continued unless otherwise elected by a Participant or Beneficiary).
- b. RMDs continued in accordance with the terms of the Plan without regard to this Amendment (i.e., no election available to Participants or Beneficiaries).
- c. Other: _____

For purposes of Amendment Section 4.3, the Plan will also treat the following as eligible rollover distributions in 2009: (If no election is made, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H)):

- d. 2009 RMDs and Extended 2009 RMDs (both as defined in Article IV of this Amendment).
- e. 2009 RMDs (as defined in Article IV of this Amendment) but only if paid with an additional amount that is an eligible rollover distribution without regard to Code §401(a)(9)(H).

ARTICLE III HEART ACT PROVISIONS

- 3.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.
- 3.2 **Benefit accrual.** If the Employer elects in Amendment Section 2.2 to apply this Section 3.2, then effective as of the date specified in Amendment Section 2.2, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.
- a. **Determination of benefits.** The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 3.2 for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.
- 3.3 **Differential wage payments.** For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment; (ii) the differential wage payment is treated as compensation for purposes of Code §415(c)(3) and Treasury Reg. §1.415(c)-2 (e.g., for purposes of Code §415, top-heavy provisions of Code §416, determination of highly compensated employees under Code §414(q), and applying the 5% gateway requirement under the Code §401(a)(4) regulations); and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the differential wage payment. The Plan Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any deferrals, and if applicable, any matching contributions, attributable to differential wages. Differential wage payments (as described herein) will also be considered compensation for all Plan purposes unless otherwise elected at Amendment Section 2.2.

Section 3.3(iii) above applies only if all employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).

- 3.4 **Deemed Severance.** Notwithstanding Section 3.3(i), if a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a qualified reservist distribution), then the other Plan provision will control and the 6-month suspension will not apply.

ARTICLE IV
WAIVER OF 2009 REQUIRED DISTRIBUTIONS

- 4.1 **Suspension of RMDs unless otherwise elected by Participant.** This paragraph does not apply if the Employer elected Amendment Section 2.3a, b, or c. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("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 not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

- 4.2 **Continuation of RMDs unless otherwise elected by Participant.** This paragraph applies if Amendment Section 2.3a is selected. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("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.

- 4.3 **Direct Rollovers.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009, as elected by the Employer in Amendment Section 2.3, will be treated as eligible rollover distributions. If no election is made by the Employer in Amendment Section 2.3, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H).

* * * * *

This Amendment has been executed this _____ day of _____, _____.

Name of Plan: _____

Name of Employer: _____

By: _____
EMPLOYER

CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of _____ (the Employer) hereby certifies that the following resolutions were duly adopted by Employer on _____, _____, and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, the HEART/WRERA Amendment to the _____ Plan (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: _____

Signed: _____

[print name/title]

Board of Education
Dixon Unified School District

Subject: MidAmerica Amendment for HEART and WRERA

Meeting Date: October 25, 2012

Item #: **VII - G**

Agenda Item Submitted For:

- Consent
- Public Hearing
- Action, Information, Discussion
- Action
 - Resolution
- Information
- Discussion

SUBMITTED BY: Cecile L. Nunley

PRESENTED BY: Cecile L. Nunley

Management Recommendation:

Staff recommends approval of the agreement with MidAmerica as our third Party Administrator to insure the district complies with new requirements of the IRS.

Discussion:

The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART) and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) have recent legislative changes that require an amendment to our existing documents.

Financial Impact:

None.

District Goal this item addresses:

- Increasing Student Learning
- Improving the Learning Environment
- Increasing Parental Involvement
- Managing our Resources Effectively
- Building Confidence in District Leadership