

PLAN SPONSOR'S OBRA REFERENCE GUIDE



Table of Contents

- Overview** 2
 - I. General Information
 - II. Important Facts

- Classifying Employees** 3
 - I. Non-OBRA, OBRA Mandatory and OBRA Voluntary
 - II. Contributions
 - III. Age Restrictions
 - IV. OBRA Exemptions
 - V. Multiple Positions – Same Employer vs. Different Employer
 - VI. Rehired Retirees/Annuitants
 - VII. OBRA Investment and Distribution Restrictions
 - VIII. Medicare
 - IX. Senior Citizen Property Tax Work-Off Abatement

- Administering OBRA Employees**..... 9
 - I. OBRA Mandatory and Voluntary Participant Enrollment Forms
 - II. Submission of OBRA Contributions
 - III. Distributions to OBRA Participants

- Questions & Answers**..... 13
- Glossary of OBRA Terms** 20
- Exhibits** 25
 - Exhibit I – Summary of Investment, Distribution and Default SMART Plan Provisions
 - Exhibit II – Local SMART Plan Representatives
 - Exhibit III – Section 218 Agreements



OVERVIEW

I. General Information

This guide is intended for use by SMART Plan OBRA administrators and is designed to answer many of the questions encountered while administering OBRA employees. This document is not intended to provide tax and/or legal advice. Any questions regarding tax and/or legal matters should be referred to your tax and/or legal advisors. For specific interpretations of the Social Security Act, contact the Social Security Administration at 800-772-1213. The information contained in this guide is based on Internal Revenue Code §3121 and the Treasury Regulations thereunder.

Questions regarding payroll submissions or the SMART Plan Service Center website should be directed to the Client Services Support team at **800-695-4952**. Please voice your request when prompted, and you will be transferred to the appropriate representative. SMART Plan Client Services representatives are available Monday through Friday from 8:30 a.m. to 8 p.m. Eastern time.

To obtain additional information regarding the Massachusetts Deferred Compensation SMART Plan (SMART Plan), you may contact your local SMART Plan representative at **877-457-1900** anytime Monday through Friday 8 a.m. to 10 p.m. Eastern time and Saturdays 9 a.m. and 5:30 p.m. Eastern time. You can also visit the website at www.mass-smart.com for information about the Plan, investment options and educational materials.

II. Important Facts

The Omnibus Budget Reconciliation Act of 1990 (OBRA) expanded the definition of “employment” for Social Security coverage and FICA tax purposes to include service performed after July 1, 1991, by a state or local government employee, unless the employee is a member of the employer’s retirement system at the time the service is rendered or is already covered under an agreement between the employer and the Commissioner of Social Security (referred to as a Section 218 agreement).

- Most full-time, state or local public employees are members of their employer’s retirement system. By virtue of that membership, full-time service is not covered employment for purposes of the Old Age Survivors and Disability Insurance (OASDI) portion of taxes under the Federal Insurance Contributions Act

(FICA), sometimes called Social Security tax, on the wages of employees paid by employer with respect to employment.

- Generally, temporary, seasonal and part-time employees are not members of their employer’s retirement system, and their employment may be excluded from mandatory Social Security coverage provided they participate in an appropriate alternative plan under OBRA.
- Employees who are not covered by their employer’s retirement system and who are excluded from Social Security coverage may not opt out of Mandatory OBRA participation.

The SMART Plan has been designated as an alternative retirement system for individuals not covered by their employer’s retirement system.

- Simply stated, an individual who participates in the SMART Plan as an OBRA employee will not be required to pay for Social Security (OASDI) coverage. Instead, they will make mandatory contributions into the SMART Plan at a rate of not less than 7.5% of gross compensation per pay period.
- In order to qualify for the exclusion from Social Security coverage, Massachusetts state law mandates participation in the SMART Plan for any state employee who is not a participant in a Massachusetts contributory retirement system governed by Chapter 32 of the Massachusetts General Laws. Many local employers have also mandated OBRA coverage in the SMART Plan.
- Some authorities in Massachusetts have executed a Section 218 agreement voluntarily electing Social Security coverage; employees covered under these agreements must contribute to FICA (both the OASDI and Medicare portions) and would not be required to make OBRA mandatory contributions into the SMART Plan. (Refer to Exhibit III, Section 218 Agreements, for a list of employers that have entered into a 218 Section agreement.)

OBRA Mandatory employees may make additional contributions (voluntary contributions) above the mandatory contribution of 7.5% of gross compensation per pay period. If an OBRA Mandatory employee is interested in making voluntary contributions to the SMART Plan or wants to learn more, please instruct them to contact a local SMART Plan representative by phone at **877-457-1900**.

There are three other important items to keep in mind regarding the administration of OBRA:

1. FICA is composed of two portions: Social Security OASDI and Medicare. Any individual hired after March 31, 1986, is subject to the Medicare portion of FICA, unless specifically excluded by law. OBRA governs the OASDI portion. (Refer to Classifying Employees, Section VIII, Medicare.)
2. Under federal age discrimination law, a plan cannot restrict the opportunity to make contributions by reason of age. An OBRA employee would be required to make mandatory contributions to the SMART Plan whether or not the employee is receiving distributions or is over 70½ years of age. Certain types of employees are exempt from mandatory OBRA or Social Security coverage as explained in Section IV.
3. The Social Security Administration website at www.socialsecurity.gov/form1945 reminds State and local governmental employers of the requirement under the Social Security Protection Act of 2004 to disclose the effect of the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO) to employees hired on or after January 1, 2005, in jobs not covered by Social Security. Some jobs may not be covered under Social Security because they are not subject to mandatory coverage and there is no Section 218 agreement that covers them. The GPO provision impacts the amount of Social Security benefits received as a spouse or as an ex-spouse. The WEP affects the retirement or disability benefits received under Social Security if an individual has worked for an employer that does not withhold Social Security taxes.

Employer Action Required

The law requires newly hired public employees to sign a statement, Form SSA-1945, that they are aware of a possible reduction in their future Social Security benefit entitlement. A copy of Form SSA-1945 is available at www.socialsecurity.gov/form1945/SSA-1945.pdf.

It is the participating employer's responsibility to ensure all OBRA employees have been made aware of the impact this provision may have on their future Social Security benefits.

CLASSIFYING EMPLOYEES

I. Non-OBRA, OBRA Mandatory and OBRA Voluntary Employees

The three employee classifications this guide refers to are Non-OBRA, OBRA Mandatory and OBRA Voluntary. OBRA Mandatory and OBRA Voluntary employees may be collectively referred to as OBRA employees. The corresponding SMART Plan accounts are as follows:

- Non-OBRA: 98966-01
- OBRA Mandatory: 98966-02
- OBRA Voluntary: 98966-03

Each employee classification is maintained in a separate account, because the provisions of the SMART Plan vary by employee classification (e.g., investment options, distribution options, etc.). Proper classification of an employee is critical to determining the correct SMART Plan account in which to enroll the employee. Misclassification of an employee may subject the employer to payment of back taxes, penalties and interest.

A. Non-OBRA Employees

Full-time employees and part-time retirees eligible for their pension under the same retirement system are referred to as Non-OBRA by virtue of their membership in their employer's retirement system unless they elect out or are not a qualifying member of their employer's retirement system, in which case they are required to participate in the SMART Plan as an OBRA Mandatory employee. Non-OBRA employees may elect to participate in the Non-OBRA 98966-01 plan regardless of their full-time or part-time status.

B. OBRA Mandatory Employees

OBRA Mandatory employees include:

- Part-time employees, seasonal employees and temporary employees who are receiving compensation from an employer for services performed for the employer and who are not otherwise eligible to participate in a retirement system provided under

Massachusetts General Laws Chapter 32 or any other retirement system that meets the requirements of Internal Revenue Code § 3121 (b)(7)(F) and the Treasury Regulations.

- Any employees who are receiving compensation from an employer for services performed for the employer and who are not otherwise eligible to participate in a retirement system provided under Massachusetts General Laws Chapter 32 or any other retirement system that meets the requirements of Internal Revenue Code § 3121 (b)(7)(F) and the Treasury Regulations thereunder, because they have not satisfied the probationary period of employment before being eligible for participation in that retirement plan.
- Any employees who are receiving compensation from an employer for services performed for the employer and who have exercised an option not to otherwise participate in a retirement system provided under Massachusetts General Laws Chapter 32 or any other retirement system that meets the requirements of Internal Revenue Code § 3121 (b)(7)(F) and the Treasury Regulations thereunder.

Potential categories of OBRA Mandatory employees include:

i. Part-Time Employees

Employees who normally work 20 hours or less per week. A teacher employed by a post-secondary institution is not a part-time employee if they normally have classroom hours of one-half or more of the number of classroom hours reasonably designated by the educational institution as constituting full-time employment.

ii. Seasonal Employees

Employees who normally work on a full-time basis less than five months in a year.

iii. Temporary/Contracted Employees

Employees performing services under a contractual arrangement with the employer of two (2) years or less duration that is not likely to be extended.

Possible contract extensions may be considered in determining the duration of a contractual arrangement if there is a significant likelihood that the employee's contract will be extended. Future contract extensions are considered likely if (1) on average, 80% of similarly situated employees have had bona fide offers to renew their contracts in the immediately preceding two academic or calendar years, or (2) the contract history of a particular employee in that position indicates that the employee is not a temporary employee.

iv. Probationary Employees

Probationary employees must complete a probationary period of employment before being eligible for participation in their employer's retirement plan. Probationary employees are considered OBRA employees during the probationary period of service. This is true even if an employee will receive credited service for the probationary period after becoming a participant in their employer's retirement system.

v. "Opted Out" Employees

Eligible employees who have elected not to participate in their employer's retirement system are classified as OBRA Mandatory employees in the SMART Plan.

A typical example of this situation is a judge who has a choice of retirement systems and has not chosen their employer's retirement system.

vi. Other

Employees (not described above) whose services are not covered under their employer's retirement system and are not exempt from OBRA. (Refer to Classifying Employees, Section IV, OBRA Exemptions.)

C. OBRA Voluntary Employees

OBRA Mandatory employees who elect to make contributions to the SMART Plan in excess of the mandated rate of 7.5% of gross compensation per pay period are referred to as OBRA Voluntary employees.

II. Contributions

A. Classification

i. Non-OBRA Contributions

Non-OBRA employees may elect to defer a minimum of \$10 per pay period or 1% of their gross income, whichever is less. Non-OBRA employees may contribute a maximum of 100% of their eligible compensation, not to exceed the annual IRS legal limits. Non-OBRA employees include full-time employees as well as rehired retirees who have become eligible for their pension but would like to contribute on a voluntary basis to the SMART Plan.

ii. OBRA Mandatory Contributions

OBRA Mandatory employees are required to make mandatory contributions to the SMART Plan at a rate of not less than 7.5% of their gross compensation per pay period.

Mandatory contributions must be made on a before-tax basis. The Mandatory OBRA plan cannot accept after-tax or Roth contributions.

iii. OBRA Voluntary Contributions

OBRA Voluntary employees may elect to make contributions to the SMART Plan in excess of the mandated rate of 7.5% of gross compensation per pay period. OBRA Voluntary employees may elect to defer a minimum of \$10 per pay period or 1% of their gross income, whichever is less. OBRA Voluntary employees may contribute a maximum of 100% of their eligible compensation, not to exceed the annual IRS legal limits. These deferral limits require combining all types of SMART Plan contributions, including Non-OBRA, OBRA Mandatory and OBRA Voluntary.

OBRA Mandatory contributions are required before OBRA Voluntary contributions will be permitted.

Voluntary contributions must also be made on a before-tax basis. The Voluntary plan cannot accept after-tax or Roth contributions.

iv. Roth and After-Tax Contributions

As described previously, no Roth or after-tax contributions are allowed in the OBRA Mandatory or OBRA Voluntary plans.

v. Employer Contributions

No employer contributions may be made to the OBRA Mandatory plan.

B. Eligible Compensation

Eligible compensation includes all payments made by the employer as remuneration for services rendered, including salary, bonus, overtime and other such similar forms of payment. Eligible compensation also includes accumulated sick pay, accumulated vacation pay and back pay. Back pay is pay received in a tax year(s) for actual or deemed employment in an earlier tax year(s) and includes delayed wage payments, as well as retroactive pay increases.

Damages for personal injury, interest, penalties and legal fees included with back pay awards are not considered eligible compensation and should not be included when calculating a deferral amount. Payments from workers' compensation programs or disability benefits are also not considered eligible compensation. Compensation as defined herein shall not affect Massachusetts General Law Chapter 32 in any respect.

C. Deferral Limits

For current annual IRS limits, please call the SMART Plan Customer Care Center at **877-457-1900**, or go to www.mass-smart.com > *About Your Plan* > *Plan Highlights*.

All contributions to the SMART Plan (Non-OBRA, OBRA Mandatory, OBRA Voluntary and Employer) must be considered when determining whether deferral limits have been exceeded.

For years prior to 2002, employees who participate in other retirement plans — like 403(b), 457(b), or 401(k) plans and 501(c)(18) — must consider deferral amounts in connection with each plan to ensure compliance with all plan maximum limits. It is up to the employee to comply with maximum deferral limits based on all plan types.

D. Catch-Up Provisions

If an employee is within three years of their normal retirement age, the employee may use the special catch-up provision that allows them to defer an additional amount. This catch-up provision may only be used once during plan participation. If an employee is age 50 or older during the calendar year, the employee may also defer an additional amount. For current annual catch-up provision limits, please call the SMART Plan Customer Care Center at **877-457-1900**, or go to www.mass-smart.com > *About Your Plan* > *Plan Highlights*.

The special catch-up and 50+ catch-up provisions cannot be used in the same year. The special catch-up maximum is limited by the amount of underutilized deferrals from prior years. For additional information, contact your local SMART Plan representative at **877-457-1900** (say “*Representative*”).

E. Investment of OBRA Mandatory Contributions

Treasury Regulation § 31.3121(b)(7)-2 regarding FICA alternative (OBRA) plans requires that employee accounts be credited with earnings at a rate that is reasonable.

To satisfy this requirement, the SMART Plan defaults investment of mandatory contributions made by participants who meet the requirements for eligibility under the OBRA Mandatory plan to a single option designed to preserve capital.

The Administrator has determined that the SMART Capital Preservation Fund is the most appropriate investment for this purpose.

III. Age Restrictions

There are no minimum or maximum age restrictions on contributing to the SMART Plan. Pursuant to federal law, the SMART Plan cannot restrict the ability to make contributions by reason of age. Therefore, an OBRA Mandatory employee is required to make contributions to the SMART Plan regardless of their age or distribution status. Voluntary contributions are also permissible regardless of age.

Special rules apply for “reired annuitants.” (Refer to Classifying Employees, Section VI, Reired Retirees/Annuitants.)

IV. OBRA Exemptions

There are certain types of employees who are exempt from mandatory OBRA or Social Security coverage, even though they do not participate in their employer’s retirement system. They include:

- Full-time students enrolled and regularly attending classes at the employer, which is a school, for which they are performing services.
 - Students include those in public/vocation schools, colleges/universities and other groups.
 - REV PROC 98-16 provides guidance for determining whether students employed by certain public or private schools, colleges or universities qualify for FICA exception under § Internal Revenue Code 3121 (b) (10). Specifically, the guidance addresses: standards applicable to career employees; standards applicable to undergraduate and graduate students; and institutions of higher learning.
 - Generally, the Student FICA exception does not apply to services performed by an individual who is not enrolled in classes during school breaks of more than five weeks (including summer breaks of more than five weeks).
 - The purpose of Student FICA exception was to exclude from employment only services that are performed as an incident to and for the purpose of pursuing a course of study at a school, college or university.
 - Transportation system employees who are performing service and are covered compulsorily under Section 210(k) of the Social Security Act.
 - Persons hired to be relieved from unemployment status.
 - Individuals paid for services performed in a hospital, home or other institution where they are a patient or inmate.
 - Election workers may be exempt from participation if their compensation is below the annual threshold. The annual threshold amount may be found on the Social Security Administration website at www.ssa.gov/oact/cola/CovThresh.html. The election worker threshold amount is adjusted annually for inflation.
- The federal threshold amount is \$2,300 for 2024, adjusted for inflation. For more information, visit www.irs.gov/government-entities/federal-state-local-governments/election-workers-reporting-and-withholding or www.ssa.gov/oact/cola/CovThresh.html.
- Emergency workers hired on a temporary basis due to fire, storm, snow, flood, hurricane, tornado, earthquake or other similar emergency.

- Non-resident aliens temporarily residing in the United States with F-1, J-1, M-1 or Q-1 visas, when the services are performed to carry out the purpose for which the alien was admitted to the United States.
- Individuals performing services compensated solely on a fee basis that are treated as a trade or business for purposes of inclusion of such fees in net earnings from self-employment.
- Such other employees who are exempted under applicable law.

V. Multiple Positions – Same Employer vs. Different Employer

Same Employer

- A full-time employee who is participating in their employer's retirement system and has more than one position with the same employer generally does not have to make OBRA Mandatory contributions to the SMART Plan. The determination may be made solely by reference to the service and compensation related to the single full-time position of the employee with the employer where a second part-time position is held.
- If a school district employee is employed in one position during the school year and in a different position during the summer with the same employer, the individual is considered to be employed simultaneously in multiple positions if the employee is expected to be employed year to year. The determination of OBRA may be made solely upon the service of a single position with the employer during the school year provided the position is not part-time, seasonal or temporary.

Different Employer

- If an employee worked for two different employers but participated in only the first employer's retirement system, they would be a Non-OBRA employee as to the first employer and an OBRA employee as to the second. The determination of whether an employee is a member of a qualified retirement system is based on an entity-by-entity (employer-by-employer) basis, rather than a position-by-position basis. (State is a separate entity from its political subdivisions, and an instrumentality is a separate entity from the state or political subdivisions. Political subdivisions include county, city, town, village or school district.)

- If an employee is employed with two different employers that participate in the same retirement system, and if the employee is participating in the first employer's retirement system but is not participating in the retirement system as to the second employer, then the employee would not be required to participate in Mandatory OBRA.

VI. Rehired Retirees/Annuitants

Retirees hired to perform services for a new or former employer may be treated as Non-OBRA even though they are in a position (usually part time, seasonal or temporary) that might otherwise trigger OBRA Mandatory contributions provided the following conditions are met:

- Prior to retirement, the employee was a qualified participant in a retirement system;
- The retiree is in pay status (i.e., currently receiving retirement benefits) or has reached normal retirement age under the retirement system covering their former position; and
- The retiree performs services for an employer that maintains the same retirement system as the one covering their former position regardless of whether the current position would be covered under the retirement system.

If the preceding conditions are met, the retiree's post-retirement service is not subject to Mandatory OBRA.

If the above conditions are not met (i.e., the employer does not maintain the same retirement system that covered the retiree's former position), the retiree would be required to make OBRA Mandatory contributions to the SMART Plan.

Available Resource Material

- If you are uncertain as to a specific employer's retirement system, The Retired State, County and Municipal Employees Association of Massachusetts publishes a directory of Retirement Boards of the Commonwealth. To obtain a copy or to contact the Retired State, County and Municipal Employees Association of Massachusetts, call **617-723-7283** or **617-723-8815**, or e-mail **info@massretirees.com** (**www.massretirees.com**).

Working in Retirement - Part-time 960 Rule

(Re: www.mass.gov/service-details/working-in-retirement-msrb) If an employee has received a superannuation retirement benefit for at least one full calendar year, the limits to working in the public sector have been raised.

Limitations include:

1. If the employee goes back to work in a city, town, county, municipal or state government in Massachusetts, they may earn the difference between the current salary of the position they are retired from and their pension, plus an additional \$15,000;
2. If you go back to work in city, town, county, municipal or state government in Massachusetts, you can now earn the difference between the current salary of the position you retired from and your pension, plus an additional \$15,000. Rules pertaining to the maximum 1,200 hours certain retirees can work in a calendar year also apply. For example, if the current salary of the position you retired from is \$40,000 and your pension is \$20,000 per year, you would be able to earn up to \$35,000 per calendar year or work up to 1,200 hours, whichever comes first.
3. Certain post-work limitations were waived for all or a portion of calendar years 2020 and 2021 due to the COVID-19 pandemic. Employers may refer to Chapter 53 of the Acts of 2020 and Chapter 227 of the Acts of 2020 for additional information.

A retiree must cease employment whenever either one of the above two conditions are met. If the employee reaches their allowable limit and wishes to continue working, they must waive their retirement allowance.

Post-Retirement Limits on Employment for Disability Retirees

Questions regarding employees receiving a disability pension should be directed to the Massachusetts Public Employee Retirement Administration Commission at www.mass.gov/.

Private Sector Employment

There are no earnings limitations for superannuation retirees who work in the private sector. However, Chapter 21 of the Acts of 2009 added additional limitations to private sector employment. Specifically, if a retiree is directly employed, is an independent contractor, or a consultant for a private sector employer, and their duties consist of providing direct services to the Commonwealth, the employee is subject to the limitations listed above.

VII. OBRA Investment and Distribution Restrictions

Within the SMART Plan, a distinction is made as to the investment and distribution options available for OBRA Mandatory and OBRA Voluntary contributions.

OBRA Mandatory employees are required to make mandatory contributions of 7.5% of their gross compensation per pay period to the SMART Plan. These mandatory contributions will be invested in the SMART Capital Preservation Fund unless the participant makes an election to invest in another option available under the Plan. Distribution of benefits for OBRA Mandatory employees can only be made after attaining age 59½, upon severance from employment or upon death. Severance from employment occurs because of the OBRA Mandatory employee's voluntary or involuntary termination of employment or death. There is no early withdrawal penalty for taking a distribution upon separation of service, regardless of age. If the OBRA Mandatory employee no longer works for the Commonwealth of Massachusetts or a Massachusetts local government employer, they may take a lump-sum distribution (payable to the employee or to the employee's beneficiary upon their death) or roll over the assets into another eligible employer-sponsored plan or a traditional IRA.

OBRA Mandatory employees may elect to make additional contributions (voluntary contributions) above the mandatory contribution of 7.5% of gross compensation per pay period. Any voluntary contributions may be invested among the SMART Plan's wide array of investment options and are freely transferable among options in accordance with the terms of the SMART Plan. OBRA Voluntary contributions will not be charged an additional administrative fee. Distributions for voluntary contributions may be made in accordance with all available distribution options within the SMART Plan. (Refer to Exhibit I, Summary of Investment, Distribution and Default SMART Plan Provisions.)

VIII. Medicare

After March 31, 1986

While an employer may classify employees as OBRA and Non-OBRA employees, all state and local government employees hired or rehired after March 31, 1986, are subject to the Medicare portion of FICA, unless specifically excluded by law. (FICA is composed of Social Security OASDI and Medicare.) Even though these employees are excluded from the OASDI portion of FICA because of their participation in a retirement system, they, as well as the employer, must contribute to Medicare.

Before March 31, 1986

Any employee hired before April 1, 1986, who participated in a retirement system is exempt from the Medicare and OASDI portion of FICA. Any employee hired on or before March 31, 1986, who did not participate in a retirement system is subject to both the Medicare and OASDI portion of FICA. Retirement and separation of service ends this exemption from Medicare.

IX. Senior Citizen Property Tax Work-Off Abatement

The board of selectmen, town council or mayor with the approval of the city council in a community that has accepted G.L. Ch. 59 § 5K may establish a property tax work-off program for taxpayers over 60 years old. Under the program, participating taxpayers volunteer their services to the municipality in exchange for a reduction in their tax bills. A recent amendment to the local acceptance statute increases the maximum abatement a senior may earn each fiscal year under these programs to \$1,500.

A community that has accepted the statute may now grant abatements up to \$1,500, but any local by-laws, ordinances or rules adopted for the program that expressly limit the abatement to \$500 must first be amended before taxpayers can earn a higher abatement.

Prior to use, the specific details of this provision should be reviewed under the Massachusetts Property Tax Bureau, Informational Guideline Release (IGR) No. 02-210, September 2002.

ADMINISTERING OBRA EMPLOYEES

I. OBRA Mandatory and Voluntary Participant Enrollment Forms

OBRA Mandatory Employee Enrollment Procedure:

As OBRA Mandatory employees are hired, the payroll administrator is responsible for providing them with the following documents:

- OBRA Information Guide
- OBRA Mandatory Participant Enrollment Form
- Form SSA-1945

Payroll administrators may access these documents at www.mass-smart.com > *About Your Plan* > *OBRA* > *OBRA Plan Highlights* > *Forms* or by calling the SMART Plan Customer Care Center at **877-457-1900** (say "Representative").

The OBRA Mandatory employee must return the completed OBRA Mandatory Participant Enrollment Form to their payroll administrator. The payroll administrator must then establish the payroll deduction for the OBRA Mandatory employee and fax the completed enrollment form to **866-745-5766** or forward it to:

Empower
PO Box 173764
Denver, CO 80217-3764

OBRA is a federal requirement and completing an OBRA Mandatory Participant Enrollment Form is as important as the employee filling out a W-4 Form. Both are mandatory salary deductions and both require an authorization to deduct from the employee's salary. It is imperative that the payroll administrator receive the OBRA Mandatory Participant Enrollment Form from the employee, review the form to ensure it is complete and in good order, and submit it to Empower *prior* to the first salary deferral. An untimely form submission to Empower may result in deferral processing delays and potential interest loss.

For any questions about the enrollment process, please reach out to SMART@empower.com.

OBRA Voluntary Employee Enrollment Procedure:

An OBRA Mandatory employee may make additional contributions (voluntary contributions) above the mandatory contribution of 7.5% of gross compensation per pay period. To set up voluntary contributions, the employee should contact their local SMART Plan representative at www.mass-smart.com > *Plan Resources* > *Find Your Representative* or at 877-457-1900 (say "Representative").

Once the enrollment process has been completed, the payroll administrator should anticipate receiving the OBRA Voluntary employee's payroll deferral information through the Plan Service Center on the next deferral file.

It is important to note that OBRA employees electing to make additional voluntary contributions are limited to the maximum annual IRS deferral limits. These deferral limits require combining all types of SMART Plan contributions, including Non-OBRA, OBRA Mandatory and OBRA Voluntary. For current annual IRS limits, please call the SMART Plan Customer Care Center at 877-457-1900, or go to www.mass-smart.com > *About Your Plan* > *Plan Highlights*.

II. Submission of OBRA Contributions

Non-OBRA, OBRA Mandatory and OBRA Voluntary contributions must be reported separately to Empower using the corresponding SMART Plan accounts:

- Non-OBRA: 98966-01
- OBRA Mandatory: 98966-02
- OBRA Voluntary: 98966-03

Empower maintains separate accounts of Non-OBRA, OBRA Mandatory and OBRA Voluntary contributions in accordance with the provisions of the SMART Plan.

III. Distributions to OBRA Participants

An OBRA employee may receive a distribution under the following circumstances in accordance with the provisions of the Plan Document:

- Separation from service
- Death
- Plan-to-plan transfer
- Unforeseeable emergency (applicable only to OBRA Voluntary accounts)
- De minimis in-service distribution

- Attainment of age 59½
- Minimum distribution requirement

Distributions are subject to federal and some state income taxes based on ordinary income and taxes as reported on Form 1099R.

Separation from Service*Part-time, Seasonal and Temporary Employees*

Upon separation from service, OBRA employees may request a withdrawal from their account. Temporary and seasonal OBRA employees who are expected to return to work or whose services may be required in the future should not be terminated. These employees are considered terminated when they are no longer available to accept assignments.

Contracted Employees

Special rules apply for separation from service for independent contractors, who are known as contract employees. In general, a contract employee is considered separated from service from the employer upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the employer if the expiration constitutes a good-faith and complete termination of the contractual relationship. Expiration will not constitute a good-faith and complete termination of the contractual relationship if the employer anticipates a renewal of a contractual relationship or the contract employee becomes an employee.

- For this purpose, if an employer anticipates the renewal of a contractual relationship with a contract employee and intends to again contract for the services provided under the expired contract, and neither the employer nor the contract employee has eliminated the contract employee as a possible provider of services under any such new contract, the employee should not be considered terminated.
- Further, if an employer intends to again contract for services provided under an expired contract and the renewed contract is conditioned only upon the employer incurring a need for the services or the availability of funds, or both, the employee should not be considered terminated.
- Notwithstanding the preceding, the contract employee can be considered terminated if, with respect to amounts payable to a participant who is a contract employee, a plan provides that:

1. No amount shall be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the employer (or in the case of more than one contract, all such contracts expire), and
 2. No amount payable to the participant on that date shall be paid to the participant if, after the expiration of the contract (or contracts) and before that date, the participant performs services for the employer as a contract employee or an employee. (Treas. Reg. § 1.457-6(b)(2)(ii))
- Payroll locations are responsible for understanding this provision for contract employees and notifying Empower of the separation of service once distribution should be made after any waiting period.

Employers using the HR/CMS system should enter termination dates through this system. Termination dates are then submitted to Empower bimonthly by HR/CMS personnel.

Non-state employers may enter termination dates through the Plan Service Center (PSC) website. As a reminder, a change in status from part time to full time or vice versa is not a reason for termination. If you do not have access to the PSC or are unable to submit termination dates through the PSC, please contact the SMART Plan Service Center voice response system at **800-695-4952**. You may voice your request for the support you need as prompted.

If no termination date is on file when a terminated participant requests a distribution, Empower will forward notification to both the employer and the employee requesting this information. If you receive notification requesting a termination date, please respond promptly so the employee's request may be processed in a timely manner. All termination dates must be provided by the employer.

Death

A beneficiary can make an election regarding the distribution of the account beginning on the participant's date of death. The beneficiary should call the SMART Plan Customer Care Center at **877-457-1900** (say "*Representative*"), to begin the process.

Transfers

If a temporary, part-time employee becomes a permanent, full-time employee and once made contributions to an OBRA Mandatory account, they may elect to transfer their OBRA Mandatory account to a Voluntary account in the SMART Plan.

If an employee no longer works for the employer, they may transfer their OBRA Mandatory account to their OBRA Voluntary account.

Note: In order to take advantage of these options, a participant cannot be actively contributing to the OBRA Mandatory plan. To implement this change, please refer participants to their local representative at **877-457-1900** (say "*Representative*").

A distribution from a 457 plan, such as the SMART Plan, to an OBRA employee or any other employee covered by a 457 plan may be eligible for rollover to an eligible employer plan or a traditional IRA.

If the participant severs employment to accept employment with or perform services for another employer which maintains an eligible plan of deferred compensation pursuant to Section 457(b) of the Internal Revenue Code the amounts deferred under this plan shall, at the participant's election, be transferred to such other eligible plan, provided such other plan provides or is able to provide for the acceptance of such amounts. The participant's election to transfer must be made prior to the date benefits would otherwise become payable pursuant to the terms of the plan.

A participant is permitted to transfer benefits under this plan to a qualified defined benefit plan described in Code Section 401(a) that is a governmental plan within the meaning of Code Section 414(d) while remaining employed with their current employer, if such amount is:

- For the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under such plan, or
- A repayment to which Code Section 415 does not apply by reason of subsection (k)(3) thereof.

In-Service Withdrawals

i. Unforeseeable Emergency

Under strict IRS regulations, a participant may request and receive a distribution for an unforeseeable emergency from their OBRA Voluntary account only. Unforeseeable emergency withdrawals are not permitted from OBRA Mandatory. An unforeseeable emergency is defined as a severe financial hardship of the participant or beneficiary resulting from: an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse or the participant's or beneficiary's dependent (as defined by the regulations under Section 152(a) of the Code and without regard to Sections 152(b)(1), (b)(2) and (d)(1)(B) of the Code); the loss of the participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for funeral expenses of participant's spouse, beneficiary or dependent (as defined by the regulations under Section 152(a) of the Code and without regard to Sections 152(b)(1), (b)(2) and (d)(1)(B) of the Code); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary. For example, the imminent foreclosure of or eviction from the participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency.

A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise; by liquidation of the participant's or beneficiary's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or by cessation of deferrals under the SMART Plan.

Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution).

ii. De Minimis In-Service Distribution

Eligible participants may receive a de minimis in-service distribution provided the following conditions are met:

- The participant's combined SMART Plan account balance (Non-OBRA, OBRA Mandatory and OBRA Voluntary) does not exceed \$5,000;
- The participant has not deferred any compensation under the SMART Plan during the two-year period ending on the date of distribution in the OBRA Plan; and
- The participant has not previously received a de minimis in-service distribution.

iii. Attainment of Age 59½

Upon attainment of age 59½, OBRA employees may request a withdrawal from their account even if they have not separated from service. Mandatory OBRA employees who qualify for an in-service age-59½ withdrawal must continue to contribute to OBRA until they have a separation from service or an exemption. OBRA mandatory employees who qualify for an in-service age-59½ withdrawal must continue to contribute to OBRA until they have had a separation from service or have an exemption. If the participant is separated from employment, they must begin withdrawing from their account upon attainment of age 73 as per the minimum distribution requirement listed below.

Minimum Distribution Requirement

As of January 1, 2023, the IRS generally requires that participants start taking required minimum distributions (RMDs) at age 73. If they turned 72 in 2022 and delayed their first-time RMD until April 1, 2023, they must take their 2022 RMD by April 1, 2023, and their 2023 RMD by December 31, 2023. They are not required to take a minimum distribution if they are still employed.

QUESTIONS & ANSWERS

Part-time employee

Q. Jane works for the Town of Webster as a clerical support person, working about 15 hours a week, though her hours fluctuate from 10 to 25 hours a week. She does not participate in a Massachusetts public employee retirement system. She is coded on the payroll as part time. Is she an OBRA employee as defined under part time?

A. Because Jane generally works 15 hours and is not eligible for participation in a Massachusetts public employee retirement system, she would be considered an OBRA employee.

Q. Joe works as a part-time teacher at Framingham State College, working less than half the hours of full-time teachers. Is Joe a part-time employee?

A. Even though Joe is teaching at a post-secondary institution, he is working less than half the hours of a full-time teacher and would be classified as part time for OBRA purposes.

Q. Lauren works as a part-time teacher at the City of New Bedford and is working 18½ hours a week. As a result of her 18½ hours, she is a qualified participant in the Massachusetts Teachers Retirement System. Would she be classified as part time for OBRA purposes?

A. Because Lauren is a qualified participant in the Massachusetts Teachers Retirement System, she does not have to make mandatory 7.5% contributions to OBRA even though she works less than 20 hours a week. If she wishes to participate in the deferred compensation plan, she would contribute as a non-OBRA participant.

Q. Anna works full time for the City of Boston and is a qualified participant in her employer's retirement system. She has been hired to do some clerical part-time work for the City of Boston. Is her part-time employment covered under OBRA?

A. No, by virtue of her full-time employment, her part-time services would not be covered under OBRA because of her multiple positions at the same employer. Had Anna's full-time position not been covered by the employer's retirement plan, she would have to make mandatory OBRA contributions.

Seasonal Employee

Q. Joan was hired during the tax season from January to April to help the accounting department in Lenox. Is Joan a seasonal employee?

A. Because a seasonal employee is defined as one who normally works on a full-time basis less than five months in a year and Joan worked from January to April (less than five months), she would be considered a seasonal employee under OBRA and would be required to make mandatory contributions. (It is assumed she was not a qualifying participant in a Massachusetts public employee retirement system.)

Q. Larry works full time during the summer for the Town of Falmouth and 12 hours per week during the school year for the City of Boston as a researcher. Is Larry an OBRA employee in Falmouth or Boston, or both?

A. Larry is an OBRA employee in both Falmouth and Boston as a seasonal and part-time employee for two different entities. (It is assumed he was not a qualifying participant in a Massachusetts public employee retirement system for either position.)

Temporary Employee

Q. Connie works for the Department of Transportation on a contractual basis. Connie is in the first year of her two-year contract, and it is unlikely that her contract will be renewed. Is Connie classified as a temporary employee under OBRA?

A. Yes, as an employee under a contract of two years or less without a likelihood of renewal, Connie is classified as an OBRA temporary employee.

- Q. Bill has a three-year contract to work as a construction worker for the City of New Bedford and is included in a unit of employees covered by a collective bargaining agreement of less than two years in duration. Is he considered a temporary employee under OBRA?**
- A. Although the collective bargaining agreement is less than two years, Bill's specific contract determines his temporary status. He would not be considered an OBRA temporary employee because he performs services under a contractual arrangement of a duration that exceeds two years. He may be eligible to participate in a retirement system as a result of the collective bargaining agreement and, if so, he would not have to make mandatory contributions. If he is not eligible to participate in a retirement system or opts out, he must make OBRA mandatory contributions to the SMART Plan.
- Q. Alfred has a one-year contract that he has renewed four times, and he is significantly likely to renew it again due to the amount of work remaining. Is he classified as a temporary employee?**
- A. No, Alfred would not be considered an OBRA temporary employee because there is a significant likelihood that he will renew his contract and his contract history indicates such. He may be eligible to participate in a retirement system and, if so, he does not have to make OBRA mandatory contributions to the SMART Plan. If he is not eligible to participate in that system or opts out, he must make mandatory OBRA contributions to the SMART Plan.
- Q. Jim is an independent contractor and has a one-year contract to perform some systems work for the Town of Wrentham. He has been providing similar services for two years. He has been making OBRA mandatory contributions. His contract has ended. Is he entitled to distribution? The Town is in need of those services, but has not as of yet renewed Jim's contract.**
- A. Based on the information, Jim is not entitled to a distribution because the employer is in need of the services and has not ruled out Jim for renewal of the contract. Under special rules for independent contractors separating from service, no amount should be paid out to Jim before a date at least 12 months after the day on which the contract expires under which services are performed for the employer.

Other Types of Employees

- Q. Ruth is a full-time judge who elected not to participate in a Massachusetts public employee retirement system. Is she required to participate under the SMART Plan as an OBRA employee? (By statute, the ability to opt out applies to an extremely limited group of employees.)**
- A. Yes. An employee who elects not to participate (opts out) or is ineligible to participate in a Massachusetts public employee retirement system is required to contribute to the SMART Plan as an OBRA mandatory employee under Massachusetts law.
- Q. Luis is a full-time administrator at a charter school. He is not eligible to participate in any retirement system as a result of his full-time employment. He is not a part-time, seasonal or temporary employee (contractual employee). Must he make OBRA mandatory contributions?**
- A. Yes. Anyone not participating in a Massachusetts retirement system must make mandatory OBRA contributions.
- Q. Samuel was elected in 1999 to public office in the City of Marlboro. Is he required to participate as an OBRA employee under the SMART Plan?**
- A. No, elected and appointed officials are considered full-time employees of the public entity they serve and are not considered OBRA employees if they are part of their employer's retirement system. The exemption from OBRA federal regulations is for election workers or election officials — not elected or appointed officials — receiving less than \$1,000 in compensation, as indexed, in a calendar year. The indexed amount is \$2,300 for 2024.
- Q. Pat is a temporary employee with a contract of one year who has a history of contract renewals each year (three in the past). She is not eligible to participate in the Massachusetts public employee retirement system. Is she required under the SMART Plan to make OBRA mandatory contributions?**
- A. Yes. If Pat is not eligible to participate in a Massachusetts public employee retirement system, she would need to make OBRA mandatory contributions under the SMART Plan and Massachusetts law.

- Q. Lisa is a full-time professor at North Shore Community College and is a participant in the Massachusetts State Retirement System. She is also teaching one course at Bridgewater State University. Is her part-time employment at Bridgewater State University covered under OBRA?**
- A. No. Because teachers at both North Shore Community College and Bridgewater State University are state employees (same employer), the determination may be made solely by reference to the service and compensation related to a single full-time position with the employer. No mandatory OBRA contributions should be taken out.

Employees Exempted from OBRA Participation

- Q. Beth is an election worker for the Town of Eastham and earned \$3,000 in 2024. Is she required to make mandatory contributions under OBRA?**
- A. Although an election official earning less than \$2,300 (indexed annually as of 2024) is exempt from OBRA, Beth earned more than \$2,300. She would be required to make mandatory contributions as an OBRA seasonal employee. However, if she had made \$500, for example, she would have been exempted from OBRA participation.
- Q. Martha is an unemployed person attending a program to relieve her from unemployment. Is she exempt from OBRA requirements?**
- A. Yes, Martha is exempt from OBRA requirements. If the program's intent, however, was to provide work experience and training rather than relief from unemployment, Martha would not have been exempted from OBRA participation and would have to make the OBRA mandatory contributions.
- Q. Jack is a patient at a hospital where he is residing and works part time filing insurance claims. Is he exempt from OBRA?**
- A. Yes, Jack is exempt from OBRA because individuals paid for services provided in a hospital, home or institution in which they are patients or inmates are exempt. These services are not considered to be performed as employees.
- Q. Stephen is on call to work as a firefighter to respond to unforeseen emergencies and is called upon to provide services fighting a forest fire in the Town of Orange. Is he exempt from OBRA?**
- A. Yes, Stephen is exempt from OBRA for his services performed as an emergency worker. If Stephen provides other part-time services unrelated to an emergency or attends training classes, those services would require him to make mandatory OBRA contributions.
- Q. Kalle is a full-time student at UMASS and is working part time in the admissions office at UMASS. Is she exempt from OBRA?**
- A. Yes, Kalle is exempt from OBRA because she is employed at the same institution at which she is a full-time student. If she worked part time for the Town of Amherst, on the other hand, she would be subject to the mandatory contributions as a part-time employee under OBRA.
- Q. Joseph, on summer break for July and August, is working at Bridgewater State University. He is attending the university full time during the fall. He is expected back in September. Is he exempt from OBRA?**
- A. No, Joseph is not exempt from OBRA because the student FICA exception does not apply to services performed by an individual who is not enrolled in classes during school breaks of more than five weeks.
- Q. Ian, a doctor for a state agency, works one day per week. His payroll department is taking out mandatory OBRA contributions. He is enrolled in a 401(k) plan from his private practice. Is there a requirement that his 457 plan combined with his 401(k) plan contributions NOT exceed the maximum annual deferral limit? Is there any way that he could avoid contributing to OBRA?**
- A. Under the current employment arrangement, Ian has to contribute to the OBRA Mandatory Account and no reduction in the amount he contributed to his 401(k) plan is required. There is an exemption to OBRA regulation that the doctor might be able to fit into. A service performed in a position compensated solely on a fee basis by an individual who is treated as self-employed is exempt from OBRA. Ian would need to alter

the current employment relationship and could not be a part-time employee or independent contractor. He would need to be self-employed with respect to this work and be paid on a fee basis.

Medicare Coverage

- Q. Why does the paycheck of Jessica, a seasonal employee under OBRA, reflect the deduction for the Medicare portion of FICA?**
- A. FICA is composed of two parts: OASDI and Medicare. Every employee and employer must contribute to the Medicare portion of FICA; there are statutory exceptions for those hired on or before March 31, 1986. Because Jessica was hired as a seasonal employee and she is contributing 7.5% to mandatory OBRA, neither she nor her employer has to contribute to the OASDI portion of FICA.
- Q. Ruth is a full-time employee hired in 1983 and participates in a Massachusetts public employee retirement system. Is she subject to the Medicare portion of FICA?**
- A. No, Ruth is not subject to the Medicare portion of FICA. An employee hired on or before March 31, 1986, who participated in a retirement system is exempt from the Medicare tax and OASDI portion of FICA. If she had not participated in a retirement system, she would have been subject to both the Medicare and OASDI portion of FICA. An employee hired or rehired after March 31, 1986, would be subject to the Medicare portion of FICA.

Investment Options

- Q. Karen is a part-time employee as defined under federal law who has elected to contribute more than the 7.5% mandatory contributions. She would like to invest all her contributions in the International Equity Fund. Is she allowed to do so?**
- A. Karen is limited to investing the mandatory 7.5% of her compensation in the available options in the OBRA Mandatory Plan. Any contributions she makes in excess of the 7.5% mandatory contributions would be allowed to be invested in any of the available investment options offered within the SMART Plan as OBRA voluntary contributions. All contributions are subject to the annual deferral limits imposed by the IRS.

Distribution

- Q. Sue is a part-time employee in the admissions office at North Shore Community College and is leaving that position to be a full-time employee in the alumni office at North Shore Community College. Is she separating from service and entitled to a distribution?**
- A. Separation from service is defined as “the permanent and complete termination of the participant’s employment from the employer for any reason ...” This does not include changing positions, a leave of absence or suspension of service. Therefore, Sue would not be separating from service, and she would not be entitled to a distribution for this reason. If she had terminated her service and was later rehired, she would have separated from service and been entitled to a distribution, or she may have been able to transfer her OBRA Mandatory Account to her full-time Non-OBRA Voluntary Account under the SMART Plan.
- Q. Rob is a full-time public safety officer for the Town of Walpole participating in the Norfolk County Retirement System. He also works part-time as a public safety officer for the Town of Foxboro, also covered under the Norfolk County Retirement System. Is Rob exempt from OBRA participation under the Town of Foxboro?**
- A. Yes. Because both employers participate under the same retirement system, Rob is exempt from participation in OBRA under his part-time employment. If the part-time employment was covered under a different retirement system, then Rob’s part-time employment would be considered OBRA mandatory.
- Q. Can an employee who is currently working full time for the State and has an OBRA account from prior part-time State service take a distribution from the OBRA account while still actively employed by the State?**
- A. No. Because they are currently employed by the State, a termination date cannot be entered into the State payroll system.
- Q. Ron is a temporary employee under OBRA who terminated employment with the Town of Acton. He would like to take his distribution and roll it over into an individual retirement account (IRA). Is this permissible?**

A. Yes, this is permitted under the SMART Plan.

Q. Martin is a temporary employee under OBRA. He has separated from service. Does he have to receive his lump-sum distribution now?

A. No, he may defer any form of payment until he makes the decision to distribute the account to himself or elect a rollover to another qualified account or IRA. An employee should consider fees when making their decision and remember to notify Empower of any address changes. The SMART Plan may mandate the lump-sum distribution of benefits when there has been a severance from employment if the account doesn't exceed \$1,000.

Q. Samantha is a substitute teacher and has just completed a one-month assignment. She is a regular substitute teacher and is called upon as needed to perform services for her local school system. Should she receive a distribution since she has left her assignment?

A. Like other employees who work on an as-needed basis, there is an assumption that the services of these employees will be used in the near future. It is not necessary to terminate Samantha at the completion of each assignment. These employees should be considered terminated when they are no longer available to accept assignments.

Q. Elizabeth is a contract employee who has had two other one-year contracts. Her contract has not been renewed due to funding issues at the City of Somerville. Her contract ended on June 30. Should Somerville process Elizabeth as separated from service when the contract ended on June 30?

A. No, because even though her contract has ended, there are special rules that apply for contract employees. The example would suggest that once the position is again funded, Elizabeth's contract may very well be renewed. Notification of termination should not occur until the position is filled or 12 months after the end of Elizabeth's contract.

More Than One Position

Q. Marie is employed at the Town of Framingham in a full-time position as a clerk in the Town Hall. She is participating in the Framingham Retirement System.

She is also employed as a part-time clerk in the surveyor's office. Would Marie have to make OBRA contributions due to her part-time position?

A. An employee who is a full-time employee of an entity in a position covered by the Framingham Retirement System and who takes a part-time position in another capacity with the same employer is not required to make OBRA contributions. OBRA participation is not required if the part-time position is with the same entity, even when the part-time position is not covered by the Framingham Retirement System. However, if the part-time position were in Quincy, she would be an OBRA employee for the part-time position, because two different employers would employ her.

Q. Lisa, a teacher who is covered by the Massachusetts State Teachers Retirement System during the academic year, also works a few hours per week in the summer in the school library. The library job is not covered by the State Teachers Retirement System because it does not fall during the normal 10-month school year. Are the wages for the summer job subject to OBRA?

A. The wages are not subject to OBRA because the teacher (Lisa) is a qualified participant in the Massachusetts Teachers Retirement System. A teacher who is expected to be employed on a continuing basis qualifies for treatment as an individual employed simultaneously in multiple positions with the same entity. Consequently, the determination is made solely by reference to service in the teacher's full-time position.

Q. A school district employs Fred, an education technician who works 20 hours per week, in a position covered by the Massachusetts Teachers Retirement System. Fred also concurrently works 15 to 20 hours for the same school district in another position, which is not covered by the Massachusetts Teachers Retirement System or any other retirement plan. Is the non-covered position subject to OBRA?

A. Fred has a part-time position (20 hours per week), which is covered by a retirement system. The other position he has would be full-time if he worked more than 20 hours, but it is not covered by a retirement system. Both positions may not be aggregated to determine whether Fred is treated as full time because the service in both

positions is not covered by the retirement system, even though the positions are for the same entity. The education technician position may not be considered to determine whether the employee is receiving a minimum level of benefits under the retirement system because it is not a full-time position. Consequently, OBRA is applicable with respect to the other, uncovered position.

If the education technician's position were considered a full-time position, OBRA would not apply to this position.

Q. Members of the school kitchen staff work only during the school year, when they are covered by the State Teachers Retirement System. They do not work, nor are they paid, during the summer. If a member of the kitchen staff worked during the summer as a grounds keeper in a position that was not covered by the State Teachers Retirement System, would OBRA apply to the compensation from the summer job?

A. Members of the kitchen staff are not seasonal employees because they work for more than five months out of the year. They are not part-time employees if they work more than 20 hours per week. They are not temporary employees unless they serve under a contractual arrangement of two years or less in duration. Possible contract extensions may be considered in determining the duration of a contractual arrangement if, under the facts and circumstances, there is a significant likelihood that the employee's contract will be extended. The terms of a collective bargaining agreement, if any, would have to be considered.

Revenue Ruling 60-114 concluded that when there is a clear understanding that teachers will be rehired by a school, the employment relationship is considered to continue throughout the period from the end of one school year to the beginning of the next. School district employees who are not part-time, seasonal or temporary employees are also continuously employed during the summer if there is a clear understanding that they will return to work year after year. Hence, they are treated as simultaneously employed in multiple positions. The IRS has determined that this same analysis applies to school district employees who are not teachers.

If the kitchen employees are full-time employees, the determination of whether they are qualified participants in a retirement system is made with respect to their full-time positions. Therefore, OBRA would not be applicable with respect to their summer earnings.

If any members of the kitchen staff are part-time or temporary employees during the school year, OBRA is due on the compensation they earn during the summer.

Rehired Retirees

Q. A man was recently elected as Register of Probate for Middlesex County after retiring from the City of Somerville as an elected official. He retired from the Somerville Retirement System and is receiving benefits. Middlesex County maintains the Massachusetts Retirement System. Does this man have to contribute to OBRA?

A. Yes. This man would not be considered a rehired annuitant exempt from participation because he was hired from a previous employer not participating in the SMART Plan. The key test for exemption is that the new employer maintains the same retirement system as the one covering the employee's former position.

Q. Brian is retired from the City of Springfield. He was a participant in the Massachusetts Teachers Retirement System and is receiving payouts. He is working part time for the town of Ludlow and participates in the same Massachusetts Teachers Retirement System as Springfield. Is Brian required to participate in OBRA?

A. No. Because Brian is a retiree from the same retirement system that Ludlow maintains, Ludlow may not require Brian to participate as an OBRA employee in the SMART Plan. If he had retired from a retirement system that his part-time employer did not maintain, Brian would be required to participate under OBRA and to make the mandatory contributions.

Q. A teacher retires from a school district, starts collecting a pension under the State Teachers Retirement System, and returns to work for the same school district as a bus driver. The bus driving position is not covered by the State Teachers Retirement System. Does OBRA apply with respect to the wages as a bus driver?

A. No. The teacher is a rehired annuitant. As a bus driver, he is deemed to be a qualified participant in a retirement system without regard to whether he continues to accrue a benefit. Therefore, OBRA does not apply with respect to the wages as a bus driver.

Q. A teacher retires from a school district, starts collecting a pension under the State Teachers Retirement System, and returns to work for a second school district as a bus driver. The bus driving position is not covered by the State Teachers Retirement System. Does OBRA apply with respect to the wages as a bus driver?

A. In general, the teacher's status as a participant in a retirement system is tested on an entity-by-entity basis. However, rehired annuitant status can apply with respect to service for another employer that maintains the same retirement system as the former employer. This provision allows a teacher retired from one school district to be treated as a rehired annuitant — and, thus, a qualified participant — in a different school district that maintains the same retirement system in which the teacher participated. The regulations do not require that the current position be covered under the retirement system, but only that the second school district must maintain the same retirement system. For these reasons, the teacher can be treated as a rehired annuitant if the second district maintains the same retirement system as the first. Therefore, OBRA would not apply to the wages as a bus driver.

Q. A teacher retires from a school district, starts collecting a pension under the State Teachers Retirement System, and returns to work for a second school district as a bus driver. The bus driving position is covered by the State Teachers Retirement System under a participating local district agreement. Is the employee subject to pay OBRA on the wages as a bus driver?

A. The teacher is treated as a rehired annuitant if the new district maintains the same retirement system under which the teacher retired. OBRA would not apply to the wages as a bus driver.

Q. A public school teacher worked part time for years as a grounds maintenance person after school and during vacations and summer. He is now retired and draws a pension from the State Teachers Retirement

System with respect to his teaching position. He still works part time for the entire school year and the summer doing grounds maintenance and, as needed, doing snow removal during the winter. Are his grounds maintenance earnings subject to OBRA?

A. Because he is working for the same employer, the teacher is treated as a rehired annuitant. The employee is thus deemed to be a member of the State Teachers Retirement System and not subject to OBRA for the grounds maintenance position.

Q. A retired teacher is rehired by the same school system as a substitute teacher and as a bus driver. The teacher draws a pension under the State Teachers Retirement System. Does OBRA apply?

A. If the teacher is drawing a pension under the State Teachers Retirement System, they should be treated as a rehired annuitant. This means the teacher is deemed to be a qualified participant in the retirement system without regard to whether they continue to accrue a benefit. Thus, OBRA is not applicable on either the substitute teacher or bus driver position because they are working for the same entity.

Q. A retired teacher is hired by a different school system as a substitute teacher and as a bus driver. The teacher draws a pension under the State Teachers Retirement System. Neither the substitute teacher nor the bus driver position is covered by the State Teachers Retirement System. Does OBRA apply?

A. A retiree hired by a different employer may be deemed a qualified participant in a retirement system provided: (i) the second employer maintains the same retirement system as the first employer, and (ii) the retiree is a former participant in the system by virtue of their service to the first employer. IRS regulations do not require that the post-retirement position be covered under the retirement system, but only that the new employer must maintain the same retirement system.

The plan sponsor has decided that those employed by an entity which maintains the same retirement system as the first employer are considered rehired retirees who are not subject to OBRA. The determination by the plan sponsor must be applied consistently for all affected individuals.

Wage Limit Pay Deductions

- Q. Bruce is a temporary employee with a one-year contract. He is 48 years old with a base pay of \$115,000. He elects to make voluntary contributions in 2024 up to the annual deferral limit permitted under the Internal Revenue Code. What would be his mandatory and voluntary contributions and what investment options would be available?
- A. Based on his age, Bruce would be eligible to contribute \$23,000 into the SMART Plan in 2024. The Internal Revenue Code annual deferral limit is up to the lesser of the maximum of \$23,000 in 2024 (subject to annual cost of living adjustments) or 100% of eligible gross compensation. Bruce's contributions would be as follows: \$8,625 mandatory contributions (calculated as 7.5% of the FICA Wage Base of \$115,000 for the year 2024) to be deferred into the OBRA Mandatory Plan. All mandatory contributions will be invested in the SMART Capital Preservation Fund unless an election is made into SMARTPath Retirement Funds or Empower Advisory Services. The balance of \$14,375 could be deferred into the OBRA Voluntary plan and invested in any of the available SMART Plan investment options.
- Q. An election worker works a special election in the spring and makes less than \$1,800. The employer does not withhold for OBRA. Subsequently, the election worker is hired again for a general election in the fall and total compensation for the year exceeds \$2,300. Is the employer required to withhold the total annual OBRA deduction from the fall payroll?
- A. Yes. If the election worker meets or exceeds the \$2,300 threshold in 2024, then coverage applies to the entire amount earned (including the first \$2,299).

Terminating Employees

- Q. Linda is a part-time professor at Berkshire Community College and is rehired each semester to teach. Should Linda be terminated after each semester?
- A. As a part-time employee who is expected to return to work each semester, Linda should not be terminated at the end of each semester. Employees are considered terminated when they will no longer be utilized in their position or when they are no longer available to work in the position.

GLOSSARY OF TERMS

Catch-Up Provisions

Age 50+ Catch-Up

Participants who are at least 50 years old by the end of the taxable year may make additional deferrals to governmental 457(b) plans.

Participants in governmental 457(b) plans can contribute an additional \$7,500 in 2024. (For current Age 50+ Catch-up limits, please contact your local SMART Plan representative at **877-457-1900** or go to www.mass-smart.com > *About Your Plan* > *Plan Highlights*.)

Three-Year Catch-Up

Increases annual deferral limit if elected by the participant, if the participant is within three years of the year in which they reach normal retirement age under the SMART Plan, and if the participant has not previously deferred as much as they could have in prior years. The catch-up limit is twice the deferral limit in effect for the year: \$46,000 in 2024. (For current three-year catch-up limits, please contact your local SMART Plan representative at **877-457-1900** (say "Representative") or go to www.mass-smart.com > *Plan Resources* > *Find Your Representative*.)

Subsequent amounts are subject to annual cost of living adjustments. Catch-up amounts are not subject to any other contribution limits. NOTE: Any catch-up contributions made by a participant cannot exceed the greater of (i) the amount that the participant is eligible to defer under the age 50+ catch-up provision, or (ii) the amount that the participant is eligible to defer under the three-year 457(b) catch-up three years prior to the year in which the participant reaches normal retirement age.

Compensation

All payments made by the employer as remuneration for services rendered, including salary, bonus, overtime and other similar forms of payment, up to the Social Security taxable wage base.

De Minimis In-Service Distribution

Eligible participants may receive a de minimis in-service distribution provided the following conditions are met:

- The participant's SMART Plan account balance (Non-OBRA, OBRA Mandatory and OBRA Voluntary) does not exceed \$5,000.
- The participant has not deferred any compensation under the SMART Plan during the two-year period ending on the date of distribution.
- The participant has not previously received a de minimis in-service distribution.

FICA

Federal Insurance Contribution Act. FICA is composed of two portions: Social Security OASDI and Medicare tax. All public employees hired or rehired after March 31, 1986, are subject to the Medicare portion of FICA. Any public employee hired before April 1, 1986, and who participated in a retirement system is exempt from the Medicare and OASDI portion of FICA. Any employee hired before April 1, 1986, and who did not participate in a retirement system is subject to both the Medicare and OASDI portion of FICA.

FICA Alternative Plan

FICA alternative plans are qualified public retirement systems that have been established as a result of OBRA to provide meaningful retirement benefits comparable to the old-age (retirement) benefit portion of the OASDI program of Social Security.

Mandatory Contributions

The amount that an OBRA employee is required to contribute from each paycheck to the Plan is calculated as 7.5% of their gross compensation per pay period up to the FICA Social Security wage base (\$168,600 for 2024), which is indexed annually for cost of living.

Maximum Annual Deferral Limit

The maximum annual deferral limit is generally the lesser of \$23,000 (for 2024, and then indexed annually for cost of living) or 100% of eligible compensation salary up to the allowable maximum annual deferral limits set forth in the SMART Plan, unless the participant elects a catch-up provision.

Minimum Contributions

OBRA employees must defer at least the mandatory contribution amount of 7.5% of compensation per pay period. Non-OBRA and OBRA voluntary participants must contribute at least \$10 per pay period or 1% of gross income, whichever is less.

Multiple Positions

For individuals employed in more than one position, whether an employee is a member of a retirement system is determined on an entity-by-entity basis rather than a position-by-position basis. Thus, if an employee is a member of a retirement system with respect to service in one position, the employee is generally treated as a member of a retirement system with respect to all service performed for the same employer.

Non-Forfeitable Right

Special vesting rules for part-time, seasonal and temporary employees. These employees must be immediately and fully vested (100%) in any retirement system and must receive a payment equal to 7.5% of compensation plus reasonable interest, minus administrative services fees.

Normal Retirement Age (NRA)

Under 457 law, you are allowed to declare your own NRA. When declaring your NRA, you cannot elect an age that is younger than when you would be eligible to receive an unreduced pension benefit, nor can you elect an age greater than 70½. Example: If you were eligible to receive an unreduced benefit at age 62, then your NRA could be age 62 or older up to age 70½. A participant's election of an NRA is irrevocable once contributions have been made utilizing the special catch-up. Election of your NRA for catch-up purposes has nothing to do with when you actually plan to retire.

OBRA

OBRA is the Omnibus Budget Reconciliation Act of 1990. It expanded the definition of employment for Social Security coverage and FICA tax purposes to include service performed after July 1, 1991, by a state or local government employee, unless the employee is a member of the employer's retirement system at the time the service is rendered or is already covered under an agreement between the employer and the Secretary of Health and Human Services.

OBRA Exemptions

There are certain types of OBRA employees who are exempt from mandatory Social Security coverage, even though they do not participate in their employer's retirement system. They include:

- Full-time students enrolled and regularly attending classes at the employer, which is a school, for which they are performing services.
- Persons hired to be relieved from unemployment status (other than employees participating in a work-training or work-study program).
- Individuals paid for services performed in a hospital, home or other institution in which they are a patient or inmate.
- Emergency workers hired on a temporary basis due to fire, storm, snow, flood, hurricane, tornado, earthquake or other similar emergency.
- Election officials or election workers receiving less than \$2,300 in compensation in 2024.
- Non-resident aliens temporarily residing in the United States with F-1, J-1, M-1 or Q-1 visas, when the services are performed to carry out the purpose for which the alien was admitted to the United States.
- Services performed in a position compensated solely on a fee basis that is treated as a trade or business for purposes of inclusion of such fees in net earnings from self-employment.
- Transportation system employees who are performing services and are covered compulsorily under Section 210(k) of the Social Security Act.

Part Time

A part-time employee, for purposes of mandatory Social Security and Medicare tax, is any employee who normally works 20 hours or less per week.

Exception: A teacher employed by a postsecondary educational institution (e.g., a community or junior college, post-secondary vocational school, college, university or graduate school) is not considered part-time if the teacher normally teaches classroom hours of one-half or more of the number of classroom hours normally considered to be full-time employment.

Plan-to-Plan Transfers/Allowable Transfers

If you become a permanent, full-time employee and once made contributions to an OBRA Mandatory Account, you may now elect to transfer your OBRA Mandatory Account to your Non-OBRA account in the SMART Plan.

If you no longer work for your employer, you may transfer your OBRA Mandatory Account to your OBRA Voluntary Account.

Note: In order to take advantage of these options, you cannot be actively contributing to the OBRA Mandatory plan. To implement this change, please contact your local SMART Plan representative at **877-457-1900** (say "Representative").

A distribution from a 457 plan, such as the SMART Plan, to an OBRA employee or any other employee covered by a 457 plan may be eligible for rollover to an eligible employer plan or a traditional IRA.

The Internal Revenue Code allows 457 plan assets, such as the SMART Plan's, to be transferred to other eligible 457 plans. The Commonwealth of Massachusetts allows for in-service 457 plan-to-plan transfers with certain restrictions if the amounts transferred from OBRA Mandatory Accounts are invested in an account bearing a reasonable rate of interest to meet the requirements of Chapter 29, Section 64D of the Massachusetts General Laws and Section 3121(b)(7)(F) of the Internal Revenue Code and regulations thereunder.

Political Subdivision

Under the Social Security Administration, political subdivision includes a county, city, town, village or school district.

Qualified Public Retirement System

Under the law governing Social Security coverage, a qualified public retirement system is any pension, annuity, retirement or similar fund that is maintained by a state, political subdivision or instrumentality that provides a minimum retirement benefit or plan with reasonable earnings to its OBRA participants. 457(b) eligible deferred compensation plans, 403(b) tax-deferred annuity plans, 401(a) qualified retirement plans (defined benefit or defined contribution plans) and other tax-sheltered plans are qualifying retirement plans. The SMART Plan is a qualifying retirement system for public employees not participating in another Massachusetts public employee retirement system.

Rehired Annuitant

Rehired annuitant is an IRS term for a rehired retiree who may be treated as Non-OBRA. Qualifying criteria is based on whether the current employer maintains the same retirement system that covered the retiree's former position.

Seasonal Employee

Seasonal employees are employees who work on a full-time basis for less than five months in a year.

Section 218 Agreement

In 1950, the Social Security Act ("Act") was amended to permit states to voluntarily enter into agreements with the Social Security Administration ("SSA") to offer Social Security coverage to public employees. These agreements are often called Section 218 Agreements because they are authorized by Section 218 of the Act. These agreements are between the public employer and the Secretary of Health and Human Services. If a worker's services are covered by a Section 218 agreement, generally both OASDI and Medicare taxes apply.

Separate Entity

A state is a separate entity from its political subdivisions, and instrumentality is a separate entity from the state or political subdivision.

Severance of Employment

Severance of employment is defined in the Plan Document as, "The date the Employee dies, retires, or otherwise severs from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). An Employee whose employment is interrupted by qualified military service under Code Section 414(u) shall be deemed severed from employment until such time as s/he is reemployed following the term of duty. All other Participants shall be deemed to have severed his/her employment with the Employer for purposes of this Plan when both parties consider the employment relationship to have terminated and neither party anticipates any future employment of the Participant by the Employer. In the case of a Participant who is a Contracted Employee, Severance from Employment shall be deemed to have occurred when the Participant's contract for services has completely expired and terminated, there is no foreseeable possibility that the Employer shall renew the contract or enter into a new contract for services to be performed by the Participant, and it is not anticipated that the Participant shall become an Employee of the Employer."

Social Security Administration Contact

www.ssa.gov/boston/MA.htm

You may locate an office near you online by using your ZIP code.

Toll-free number: 800-772-1213

Social Security representatives are available Monday through Friday, 8 a.m. to 7 p.m.

Deaf or hearing impaired dial:

800-325-0778 (toll-free TTY number)

Monday through Friday, 8 a.m. to 7 p.m.

Temporary

Temporary employees are employees who perform services for the employer under a contract of no more than two years in duration that is not likely to be extended. However, possible contract extensions may be considered in determining the duration of a contractual arrangement if there is a significant likelihood that the employee's contract will be extended. Future contract extensions are considered likely if (i) on average 80% of similarly situated employees have had bona fide offers to renew their contracts in the immediately preceding two academic or calendar years, or (ii) the contract history of a particular employee in that position indicates that the employee is not a temporary employee.

Treatment of Former Participants

Special rules apply if a former participant returns to work after a break in service from the same employer. They may continue to be qualified participants under a defined benefit retirement system even though they do not resume participation as long as the total accrued benefit under the system meets the minimum retirement benefit requirement, regardless of whether the employee accrues additional benefits under the SMART Plan for service in the new position. (Potential issues exist if the employee is hired for an indefinite period.)

Unforeseeable Emergency

Under strict IRS regulations, a participant may request and receive a distribution for an unforeseeable emergency from their OBRA Voluntary Account only. An unforeseeable emergency is defined as a severe financial hardship of the participant or beneficiary resulting from: an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined by the regulations under Section 152(a) of the Code and without regard to Sections 152(b)(1), (b)(2) and (d)(1)(B) of the Code); the loss of the participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not

otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for funeral expenses of participant's spouse, beneficiary or dependent (as defined by the regulations under Section 152(a) of the Code and without regard to Sections 152(b)(1), (b)(2) and (d)(1)(B) of the Code); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary. For example, the imminent foreclosure of or eviction from the participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including nonrefundable deductibles and the cost of prescription drug medication, may constitute an unforeseeable emergency.

A distribution on account of an unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the participant's or beneficiary's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship), or by cessation of deferrals under the SMART Plan.

Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution).

Voluntary Contributions

An OBRA Mandatory Employee may choose to make a voluntary contribution in excess of their mandatory contribution up to the maximum annual IRS deferral limit. Voluntary contributions are posted to the SMART Plan in account 98966-03. A voluntary contribution must be at least \$10 per pay period or 1% of gross income, whichever is less. Mandatory contributions are required before any voluntary contributions will be permitted.

Exhibit I – Summary of Investment, Distribution and Default SMART Plan Provisions

Contribution	Minimum contributions	Participation forms necessary	Investment options	Distribution options
OBRA Mandatory	7.5% of compensation per pay period is the Mandatory Contribution amount.	OBRA Mandatory Participant Enrollment Form	Restricted to investments available in the OBRA Mandatory Plan	All SMART Plan options are available <ul style="list-style-type: none"> • Lump sum • Installment payments • Required minimum distribution (RMD) • 59½ years of age
OBRA Voluntary	Mandatory Contributions are required before making additional Voluntary Contributions. Minimum Voluntary Contributions must be \$10 or more per pay period or 1% of gross income.	Enrollment Form for Non-OBRA and OBRA voluntary employees	All available SMART Plan investment options	All SMART Plan options are available <ul style="list-style-type: none"> • Lump sum • Installment payments • Required minimum distribution (RMD) • 59½ years of age
Non-OBRA	Contributions must be \$10 or more per pay period or 1% of gross income.	Enrollment Form for Non-OBRA and OBRA voluntary employees	All available SMART Plan investment options	All SMART Plan options are available <ul style="list-style-type: none"> • Lump sum • Installment payments • Required minimum distribution (RMD) • 59½ years of age



Exhibit II – Local SMART Plan Representatives

To contact your local SMART Plan representative, call **877-457-1900** (say “*Representative*”), or go to www.mass-smart.com > *Plan Resources* > *Find Your Representative*. A map of Massachusetts will appear. Click on the area code in which you work to find the name of your local SMART Plan representative.

Contact your local SMART Plan representative for these services:

- New enrollments for Non-OBRA and OBRA Voluntary Accounts
- Group education and enrollment meetings
- One-on-one participant counseling
- Prospectus distribution
- Product and SMART Plan information and education
- Catch-up initiation and monitoring
- Contribution rate changes
- Retiree and termination counseling
- Payroll training and education

Payroll Location Home Office Support

Submit the following correspondence to the Empower Home Office.

Correspondence:

- Completed OBRA Mandatory Participant Enrollment Form
- Beneficiary Designation Form
- Death Claims
- QDRO related questions/documentation
- Subpoenas

Mail Correspondence To:

Empower
PO Box 173764
Denver, CO 80217-3764

Contribution Submissions:

Empower
Dept. 0889
Denver, CO 80256-0889

Express/Overnight Address

Empower
8515 E. Orchard Rd.
Greenwood Village, CO 80111

Please send any overnight requests to the attention of the appropriate department or personnel.

Fax:

866-745-5766

For contribution details, payroll location inquiries and procedural questions, please call **877-457-1900**. You may voice your request for “website support,” “Plan questions,” “participant information” or “something else” and your call will be transferred to the appropriate representative. For OBRA Mandatory Participant Enrollment Forms, please go to www.mass-smart.com > *About Your Plan* > *OBRA* or call **877-457-1900** (say “*Representative*”).

Exhibit III – Section 218 Agreements

The following list of employers has entered into a Section 218 agreement:

The original Section Agreement to extend Social Security coverage was executed between the Commonwealth and the Federal Security Administration in 1952. The original entities covered by the Agreement were:

- Greenfield / Montague Transportation Area
- Massachusetts Market Authority
- Mystic River Bridge Authority
- Nashoba Associated Boards of Health

Thereafter several modifications (amendments) extending coverage were approved:

Modification #1 (1954): Massachusetts Turnpike Authority & Boston Arena Authority

Modification #2 (1968): Terminated the Turnpike's coverage

Modification #3 (1971): Massachusetts Health & Educational Facilities Authority

Modification #4 (1978): Massachusetts Board of Bar Overseers

Modification #5 (1987): Springfield Parking Authority

Modification #6 (1987): Pioneer Valley Transit Authority

Modification #7 (1989): North East Solid Waste Committee

Modification #8 (1999): Greater Lawrence Sanitary District (Medicare coverage only)

Modification #9 (1999): Montachusett Regional Planning Board (Medicare coverage only)

Modification #10 (2003): Southeastern Regional Planning & Economic Development District (Medicare coverage only)

Modification #11 (2003): Pioneer Valley Planning Commission (Medicare coverage only)

Carefully consider the investment option's objectives, risks, fees, and expenses. Contact Empower for a prospectus, summary prospectus for SEC-registered products, or disclosure document for unregistered products, if available, containing this information. Read each carefully before investing.

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