

MERS RETIREMENT BOARD

TERMINATION POLICY AND PROCEDURE

Adopted March 15, 2018

POLICY

Sections 11 and 12 of the MERS Plan Document provide the limited circumstances under which a participating municipality or court (both referred to as “participating municipality” throughout) may terminate participation in MERS’ Defined Benefit, Defined Contribution and Hybrid Plan (each a “Plan” or collectively, the “Plans”). Intended to supplement the MERS Plan Document and incorporated by reference therein, this Termination Policy and Procedure (“Policy”) sets forth the administrative requirements for termination of participation in each Plan, and provides the procedure by which termination is effected. Full compliance with this Policy is mandatory for termination of participation in any of the Plans, unless otherwise authorized by the full Retirement Board or the CEO in writing. In the case of any conflict between this Policy and the MERS Plan Document, the MERS Plan Document controls.

This Policy may be amended by vote of the MERS Retirement Board.

DEFINITIONS

Unless otherwise expressly defined in this Policy, capitalized terms shall have the meaning as defined in the MERS’ Plan Document, as may be amended.

Retirees and Beneficiaries in pay status are collectively defined as “Retirees.”

Members, Vested Former Members, Participants not in pay status and non-vested former Members with accrued service standing to their credit or an account balance, as applicable, are collectively defined herein as “Members.”

PROCEDURES

I. Vote of the Governing Body

Summary: Under this termination option, the governing body of a participating municipality¹ may vote to terminate participation in one or more MERS’ Plans, and MERS will transfer all assets, liabilities and fiduciary duties to a successor plan that is a qualified plan under section 401(a) of the Internal Revenue Code. This process will be followed for subsections (a)(1)(i) of Sections 11 and 12 of the MERS Plan Document, and subsections (a)(1)(iii) of Sections 11 and 12 of the MERS Plan Document where participation in an existing MERS Defined Contribution Plan is terminated.

¹ For participating courts, any action required to be taken under this Policy by the governing body shall be implemented by administrative order of the chief judge of the participating court and by resolution and action of each governing body required by law to fund the participating court.

Phase One - Public Meetings, Notice and Termination Date

1. The topic of termination of participation in the Plan(s) must be an express agenda item on two consecutive regularly scheduled meetings of the governing body.
2. The participating municipality must notify MERS, in writing, of its intention to address the topic of termination of participation in the Plan(s) at least one month prior to the first of those two regularly scheduled meetings.
3. The participating municipality must notify, in a manner reasonably designed to provide adequate notice, Members and Retirees and the local business office of each collective bargaining unit representative with active employees as unit members, of the participating municipality's intention to terminate participation in the plan(s) 15 days prior to the first regularly scheduled meeting required herein, informing the recipients of the time, date and place of each scheduled meeting, that public comment will be permitted, that, if the municipality proceeds to terminate participation Plans(s), all assets and liabilities for the accrued service and all liability and assets for participant-directed accounts under the applicable Plan(s) will be transferred to the Non-MERS Successor Plan, that Members' accrued service with the Municipality will no longer be recognized under the MERS Plan Document or under the MERS system, the fiduciary duties owed to the Members and Retirees will be transferred to the Non-MERS Successor Plan, and that the participating municipality and/or the Non-MERS Successor Plan will be solely responsible for the payment of any payments after the termination of participation is implemented.
4. The topic must be introduced and discussed at the first meeting, and if requested by MERS, MERS shall be provided with a reasonable opportunity to provide information to the governing body at the meeting outside of the regular public comment opportunity afforded by law. Any vote must take place at the second consecutive regularly scheduled meeting, at which time a two-thirds majority vote of the members of the governing body is required to adopt a Termination Resolution, in a form prescribed by MERS, providing for termination of participation in the Plan and certifying:
 - a. The [governing body] and its Fiduciary Officials (defined below) have received and reviewed Section 11 of the MERS Plan Document and the MERS Termination Policy and Procedure;
 - b. A two-thirds majority of the members of [governing body] has voted to terminate participation in MERS;
 - c. Termination of participation in the MERS [name of plan(s)] will not result in a diminishment of any accrued financial benefit by Members under Article 9, Section 24 of the Michigan Constitution;

- d. The [participating municipality] acknowledges the requirement to fund the [name of Non MERS Successor Plan] for the benefit of its Members and Retirees, as required by all applicable laws and regulations and agrees to so fund the plan as required by law.
 - e. [Fiduciary of Non MERS Successor Plan] has been named as fiduciary to receive and administer the plan, and invest the assets transferred from the [name of MERS plan(s)] to the [Non MERS Successor Plan], as set forth in the termination valuation conducted by MERS for the Defined Benefit or Hybrid Plan and/or the account statement for the Defined Contribution Plan withdrawal agreement, the accuracy and completeness of which the [participating municipality] acknowledge;
 - f. The [successor plan] is a qualified pension plan under IRC section 401(a); it has, to the best of [governing body's] knowledge maintained that qualified status through the date of termination of participation under this Policy, and intends to maintain such status until final plan termination;
 - g. If the Non-MERS Successor Plan is a defined benefit plan, the plan sponsor of [successor plan], [participating municipality] has adopted or has directed the adoption of reasonable actuarial assumptions developed using the Actuarial Standards of Practice of the Actuarial Standards Board;
 - h. On the effective date of termination of participation in the [name of MERS plan(s)], to be determined by MERS, all responsibilities and liabilities of investment fiduciaries as set forth under the Public Employees Retirement Investment Security Act, Act 314 of 1965, as amended ("PERSIA"), and fiduciary, plan administrator and trustee (under all other applicable state or federal common or statutory laws or regulations) will transfer from MERS to [participating municipality] and its Fiduciary Officials as defined below; and
 - i. In accordance with MERS Plan Document Section 11 and the MERS' Termination Policy and Procedure, the [governing body] directs the individuals holding the specified job positions listed below ("Fiduciary Officials") to execute this resolution as an acknowledgment of the fiduciary duties being transferred.
5. The resolution must also be signed by the Fiduciary Officials of the municipality, defined as: (1) the chief elected officer of the municipality; (2) the chief administrative officer of the municipality; (3) the chief financial officer of the participating municipality; and/or (4) any agent of the municipality who exercises discretion over investment of pension funds, selection of employee benefit plans, or expenditures for employee benefit plans. The date on which the second meeting is held and the resolution is passed is the "Termination Date."
 6. The signed and certified Resolution must be provided to MERS within 5 days of its adoption by the governing body.

Phase Two: Termination Implementation through Effective Date

1. On and after the Termination Date, MERS will accept no further contributions remitted by or on behalf of the participating municipality and/or its employees, and will credit no further service to any Member. MERS will continue to pay Retiree benefits until the Effective Date, defined below.
2. Within ten (10) business days of the Termination Date, the participating municipality must provide written notice or notices to all Members with accrued service credit and/or an account balance, as applicable, that were, at any time, enrolled in the terminating Plan and Retirees as of the Termination Date. The notice or notices must state:
 - a. The participating municipality terminated participation in the applicable MERS Plan as of the Termination Date;
 - b. No further service under the MERS Plan will accrue after the Termination Date;
 - c. All active employees will be vested in their accrued service to date as required by law;
 - d. Members' service accrued while participating in the MERS' Plan(s) will no longer be recognized for coordination of service for purposes of eligibility to retire or receive a distribution under any MERS Plan.
 - e. All assets and liabilities for the accrued service or account balances, as applicable, under the Plan will be transferred to the Non-MERS Successor Plan;
 - f. The fiduciary duties owed to the Members and Retirees will be transferred to the Non-MERS Successor Plan; and
 - g. Municipality and the Non-MERS Successor Plan will be solely responsible for the payment of any payments after the termination of participation is implemented.
2. Within thirty (30) days of the Termination Date, or as soon as is reasonably practical, where the terminating plan is the MERS Defined Benefit or Hybrid Plan, MERS' actuary will conduct and provide to the governing body a termination liability valuation, at the participant municipality's expense, confirming total market value assets ("Transfer Amount"), liabilities ("Liability Amount") in total and as to each Member and Retiree and funded level of the Plan as of the Termination Date as a final valuation of the plan within the MERS system. In addition to the restrictions set forth in Sections 11 and 12 of the MERS Plan Document, if the participating municipality has had an emergency financial manager appointed pursuant to the Local Financial Stability and Choice Act, Act 436 of 2012, or its predecessor acts, former Act 101 of 1988, former Act 72 of 1990 PA 72, and former Act 4 of 2011, and its DB Plan is not funded at 60% according to the termination valuation, the participating municipality must contribute sufficient funds to the DB Plan to establish a funding level of greater than 60% to align with the Protecting Local Governmental

Retirement and Benefits Act, Act 202 of 2017 within thirty (30) days of receipt of the termination valuation.

3. Regardless of funding level or type of plan, within ten (10) days of receipt of the termination valuation or the account statement, or as mutually agreed upon, the participating municipality, through an authorized official, must acknowledge receipt and affirm in writing to MERS if the municipality disputes or otherwise disagrees with the calculations of the termination valuation and/or account statement, after which the termination valuation and/or account statement shall be deemed final and accepted by the participating municipality as accurate and complete.
4. Within thirty (30) days of the Termination Date, or as soon as reasonably practical, for the MERS Defined Contribution Plan and defined contribution portion of the Hybrid Plan, MERS will: (a) provide a blackout notice to all Members and Retirees with an account balance identifying the final account balance, notifying them that their account will be frozen for a specified time period (during which investment changes and applications for distributions will not be processed) and liquidated for transfer, and (b) provide a termination account statement to the participating municipality and Non-MERS Successor Plan identifying the total amount of assets to be transferred (also the "Transfer Amount"), itemized by Member or Retiree name or other identifier.
5. Within thirty (30) days of the Termination Date, or as soon as reasonably practicable, for the Defined Benefit Plan and the defined benefit portion of the Hybrid Plan, MERS will send a written final statement to all Members identifying all accrued credited service and employee contributions attributable to each Member as of the date of the termination valuation.

Phase Three: Effective Date; Withdrawal Agreement and Transfer of Assets

1. Within thirty (30) days of the receipt of the termination valuation, the participating municipality must execute a withdrawal and transfer agreement, in form and substance as approved by MERS. The agreement will specify the "Effective Date" on which the plan assets will be transferred, which must be no earlier than sixty (60) days after the last date of execution of the agreement, and must be the first day of a calendar month. On the Effective Date:
 - a. All Adoption Agreements, Participation Agreements, Administrative Services Agreements and any other agreements or understandings between MERS and municipality regarding all plans of the municipality will be terminated;
 - b. The participating municipality's participation in the applicable plans will be terminated;
 - c. MERS will pay no further benefits and have no further liability to pay benefits to Members and Retirees.

- d. MERS will transfer the Transfer Amount(s) via wire transfer to the Non-MERS Successor Plan, and the Non-MERS Successor Plan will acknowledge receipt of the Transfer Amount(s) in writing within one (1) business day;
 - e. MERS will no longer have any role, obligation or liability as an investment fiduciary under PERSIA, or as a fiduciary, plan administrator or trustee under any state and federal common and statutory law and regulations, and the municipality will assume all such roles, obligations or liabilities as an investment fiduciary under PERSIA, and as a fiduciary, plan administrator and trustee under any state and federal common and statutory law and regulations.
 - f. The participating municipality will assume liability for all assets transferred, all liabilities for all benefits, and all responsibilities associated with the roles of investment fiduciary, fiduciary, plan administrator and trustee as set forth in PERSIA and under all other applicable state and federal common and statutory law and regulations, none of which roles, responsibilities or liabilities shall then remain with MERS for any purpose whatsoever.
2. On or before the Effective Date, MERS will provide participating municipality and the Non-Successor Plan with census data and benefit provisions in its possession related to the applicable Plan that is requested by the participating municipality and the Non-MERS Successor Plan and reasonably needed to properly administer the Members' and Retirees' pension benefits, and that it will maintain such information and data for a period of one (1) year after the Effective Date. MERS will provide the requested information and data electronically or in such form as MERS may reasonably determine.
 3. After the end of the calendar quarter in which the Effective Date occurred, for the Defined Benefit Plan and the defined benefit portion of the Hybrid Plan, MERS will transfer any investment income attributable to the Transfer Amount but not applied as of the Effective Date to the Non-MERS Successor Plan as soon as is practicable. MERS will retain an amount, reasonably determined by MERS, such that if there were investment losses attributable to the Transfer Amount for the portion of the quarter prior to the Effective Date, MERS will deduct such losses from the retained amount and pay the Non-MERS Successor Plan any remaining amount.

II. Cessation of Employer Eligibility

Summary: Under this termination option, where a participating municipality becomes or will become privatized, has or will dissolve, or otherwise has or will no longer meet the definition of "municipality" under the Municipal Employees' Retirement Act and/or the MERS Plan Document, participation in the Plan(s) is automatically terminated. Active employees will be immediately vested in their accrued financial benefits if required by law, and MERS will cease accepting regular employer or employee contributions and recording service credit. Assets will remain with MERS pursuant to the Actuarial Policy for the Defined Benefit and Hybrid Plans, and MERS will continue to issue benefits to Retirees, and will pay and make distributions to Members upon

eligibility for same under the MERS Plan Document. This process will be followed for terminations under subsection (a)(1)(ii) of Sections 11 and 12 of the MERS Plan Document.

Phase One: Notice and Termination Date

1. The participating municipality must inform MERS of its pending cessation of eligibility and provide supporting documentation of change in status as deemed necessary by MERS as far in advance of the change as possible by written notice.
2. MERS shall determine the Termination Date, after which time MERS will no longer accept employer or employee contributions or record service credit for Members.
3. Unless otherwise authorized by MERS, after the Termination Date, MERS will continue to pay benefits and make distributions to Retirees, and will pay benefits to Members if and when eligible under the terms of the MERS Plan Document.

Phase Two: Termination Implementation

1. For the Defined Benefit and Hybrid Plans:
 - a. Within thirty (30) days of the written notice required in Phase One, MERS' actuary will conduct a termination valuation to determine the funded status of the applicable plans. The provisions of the Actuarial Policy Article IV, Section 3 apply.
 - b. Upon the participating municipality's meeting of the funding requirements under the Actuarial Policy, MERS and the participating municipality will enter into a withdrawal agreement in a form prescribed by MERS. Unless otherwise approved by MERS, in its sole discretion, the participating municipality must identify an entity to maintain the funding level required by the Actuarial Policy, and that entity must execute the withdrawal agreement affirming its obligations to maintain the funding level.
2. For the Defined Contribution Plan:
 - a. Within thirty (30) days of receipt of the written notice required in Phase One, MERS will send final account statements to all Members and Retirees, with written notice informing Members and Retirees that they may take a distribution as of the termination date.
 - b. MERS will timely process distributions as set forth in the MERS Plan Document.
 - c. MERS may, at its discretion, and at the request of the participating municipality, instead transfer all assets to a non-MERS defined contribution plan qualified under section 401(a) of the IRC through a plan-to-plan transfer. In that event, the participating municipality must meet the applicable requirements of Section II above, as determined by MERS.

III. Closure of MERS Defined Benefit Plan and Enrollment into a Non-MERS Defined Contribution Plan

Summary: under this termination option, the governing body may, by two-thirds majority vote of its membership, terminate participation in the MERS' Defined Benefit Plan where the municipality will be closing one or more defined benefit divisions and enrolling new hires to that division in a non-MERS defined contribution plan. Active employees as of the date of termination will continue to accrue service credit in the MERS' Defined Benefit Plan, and MERS will continue paying Retiree benefits pursuant to the MERS Plan Document. This process will be followed for terminations under subsections (a)(1)(iii) of Sections 11 and 12 of the MERS Plan Document for current MERS Defined Benefit Plans.

Phase One: Closure of Defined Benefit Plan and Notice

1. The governing body, by two-thirds majority vote of its members, may pass a resolution to close one or more defined benefit divisions in the MERS Defined Benefit Plan and enroll new hires that would have been placed in the applicable division(s) in a non-MERS defined contribution plan qualified under IRC section 401(a).
2. The governing body shall submit to MERS a resolution of the governing body providing for the closure of each defined benefit division to be closed. The applicable division(s) shall be closed as of the first day of the month following MERS' receipt of a completed and signed amended Adoption Agreement, which shall constitute the Termination Date.
3. As of the Termination Date, no further new employees shall be enrolled in the MERS Defined Benefit Plan. Active employees currently enrolled in the applicable Defined Benefit Plan division(s) will continue to accrue service credit, unless they elect to convert the Present Value of their Accrued Benefit ("PVAB") to the non-MERS defined contribution plan.

Phase Two: Termination Implementation

1. If the participating municipality elects for the option for active employees to convert:
 - a. MERS and the municipality will enter into a withdrawal agreement providing the terms of the closure of the Defined Benefit Plan division(s) and the option for conversion to be offered to active employees, in a form prescribed by MERS.
 - b. Within thirty (30) days of the Termination Date, MERS will send written notice to all active employees informing them of the closure of the Defined Benefit Plan division(s), and providing the deadline for and conditions under which the active employees may elect to remain in the closed division or convert the PVAB to the non-MERS defined contribution plan, and providing an opportunity to obtain a PVAB calculation prior to the election deadline, as set forth in MERS Plan Document Section 64.

- c. Within thirty (30) days after the deadline for election to convert, MERS will provide the municipality with information regarding the active employees who elected to convert the PVAB to the non-MERS defined contribution plan, and the converted amounts, as calculated under the MERS Plan Document and Actuarial Policy; and will transfer those amounts via wire to the non-MERS defined contribution plan within sixty (60) days thereafter, or as soon as is reasonably practicable, which date shall be the Effective Date as to each active employee electing to convert his/her PVAB. After the Effective Date, MERS shall have no further fiduciary duty or liability to active employees electing to convert their PVAB.
 - d. On and after the Termination Date, for active employees who elected not to convert to the non-MERS defined contribution plan, MERS will continue to pay benefits and make distributions to Retirees, and will pay benefits to Members upon eligibility under the terms of the MERS Plan Document.
2. On and after the Termination Date, the municipality will remain responsible for remitting employer and employee contributions, where applicable, for all remaining Members and Retirees under the applicable division(s) until no actuarial accrued liability exists for these divisions, as such employer contributions are determined by MERS through annual actuarial valuations, as set forth in the MERS Actuarial Policy.

End Policy.