MINNESOTA SERVICE COOPERATIVES VEBA PLAN

Model Personnel Policy for Nonunion Employees

Postretirement Health Care Savings Arrangement

Instructions. The Minnesota Service Cooperatives VEBA Committee requests that parties adopting the VEBA programs for nonunion employees adopt a personnel policy that is substantially similar to the following. The model personnel policy is designed for three purposes. First, it is intended to comply with Minnesota law requiring that employer contributions to a Health Care Savings Arrangement be made pursuant to a personnel policy. Next, it is intended to comply with IRS requirements that contributions to the VEBA be made solely by the employer without giving employees an option to take cash or other benefits. And finally, it is designed to establish an arrangement that is consistent with existing plan documents and administration agreements.

The VEBA Committee will require that appropriate personnel policies be adopted as a condition of participation in the VEBA arrangements.

Important Note: Employees may not be given a choice at retirement whether to receive a VEBA contribution or cash or other benefits. If an employee is allowed to choose between a VEBA contribution and cash, any amount contributed to the VEBA must be included in each employee's taxable wages for the year in which the contribution is made.

Disclaimer. Model language may not be appropriate for every situation, and employers should make their own determination as to the suitability of model language for their purposes. Legal review of these arrangements is recommended.

Step 1: Define a Class of Eligible Employees

1. **Introduction.** Each personnel policy for the Postretirement VEBA should clearly identify who is eligible and if applicable, who is not eligible for the benefit. Employers must comply with IRS eligibility requirements. Model language is provided, and employers have a fair amount of flexibility in determining eligibility criteria.

2. Nondiscrimination in Eligibility.

A. Unions. If health benefits are subject to good faith negotiations with a union, union members may be excluded in determining who is eligible. Unions that participate in the VEBA under a separate collective bargaining agreement are generally "deemed" to meet IRS nondiscrimination rules. The union must be "bona fide" per IRS regulations. We have determined in the past that "unions of one" (such as school superintendents) do not qualify for the union exception from nondiscrimination under IRS regulations. Unions that are certified under Minnesota Statutes Section 179A.12 will always qualify for this exception.

B. Non-Union Employees. IRS rules prevent discrimination in eligibility that favor non-union employees in the top 25% of pay. The rules generally require that eligibility for the Postretirement VEBA follow one of two methods.

(i) Under the "safe harbor" method, the plan must benefit at least 70% of employees (not including union members and certain excludable employees – more on that below).

(ii) Under the "fair cross section" method, the class of employees eligible for a VEBA contribution at retirement must include *more than nominal* numbers of employees from middle and lower wage brackets (i.e., employees who are not in the top 25% of pay). Because there is little guidance from the IRS on the fair cross section test, employers that define the class of eligible employees using the fair cross section test should include as many lower-paid employees as practicable.

Between the two approaches, the safe harbor provides more certainty that the arrangement is compliant. But many employers cannot meet the safe harbor method, and the fair cross section method is a viable option.

Notes at the end of this document include more information on the "fair cross section" and "safe harbor" rules for determining eligibility.

C. General rule for including or excluding employees. Regardless of which method is used above, employers should select who is eligible for the Postretirement VEBA (and who is not) based on "reasonable classifications" of employees. This generally includes specified job categories, nature of salary (hourly vs. salaried), geographical location or similar bona fide business criteria. Listing employees by name or other specific criteria having the same effect is not considered a reasonable classification.

SAMPLE PERSONNEL POLICY [OPTIONAL PROVISIONS IN BRACKETS]

THE POSTRETIREMENT HEALTH CARE SAVINGS ARRANGEMENT

In order to help eligible employees pay for medical expenses in retirement, [Employer Name] ("Employer") has adopted the Postretirement Health Care Savings Arrangement. This arrangement provides for individual medical reimbursement accounts funded with Employer contributions. If eligible for this benefit, you, your spouse, and your dependents may draw on this account after you retire for the tax-free reimbursement of medical expenses. Money contributed to your account will be held in trust.

The Postretirement Health Care Savings Arrangement is made available through the Minnesota Service Cooperatives VEBA Plan and Trust (the “VEBA”). It is intended that this arrangement constitute a voluntary employees’ beneficiary association under Section 501(c)(9) of the Internal Revenue Code.

1. Eligibility [Option A: Sample Fair Cross Section language]

See notes at the end of this document for a further explanation of this provision.

All non-union employees [*who are enrolled in the employer’s group health plan at the time of retirement*] [*who meet the age, service or disability requirements to receive an annuity or disability benefit from a Minnesota public pension plan (other than a volunteer firefighter plan),*] are eligible for and will be automatically enrolled in the Postretirement Health Care Savings Arrangement on their retirement date.

1. Eligibility [Option B: Sample Safe Harbor language]

See notes at the end of this document for a further explanation of this provision.

All employees who are not excluded below are eligible for and will be automatically enrolled in the Postretirement Health Care Savings Arrangement on their retirement date.

Exclusions (check all that apply):

- ☐ Collectively bargained employees, if health benefits were the subject to good faith bargaining.

- ☐ Employees who have not completed three years of service prior to the year in which they retire or otherwise become eligible for employer contributions.

- ☐ Employees who have not attained age twenty-five prior to the year in which they retire or otherwise become eligible for employer contributions.

- ☐ Employees whose customary weekly employment is for less than thirty-five hours, if other employees performing similar work for the same employer have substantially more hours (“substantially more” is not defined in the regulations). These rules have not caught up with the ACA and it is likely that the IRS will reduce this number to 30 hours per week in the future.

- ☐ Employees whose customary weekly employment is less than twenty-five hours.

- ☐ Seasonal employees whose customary annual employment is less than nine months, if other employees performing similar work for the same employer have substantially more hours.

- ☐ Seasonal employees whose customary annual employment is less than seven months.

☐ Other ________________________ [must be "reasonable classification" of employees].

2. Retirement

An employee's "retirement date" shall be the earlier of the following:

1) Termination of employment;
2) "Retirement" as that term may be defined under other policies or employee benefit plans of Employer;
3) The date an employee becomes totally disabled; or
4) The date an employee commences a medical leave of absence as determined by other policies or employee benefit plans of the Employer.

Note to Employers: The definition of "retirement" above is the default definition used by the Plan. Employers are free to modify this definition in any uniform and nondiscriminatory manner.

3. Source of Funding

The Postretirement VEBA is funded entirely with employer contributions. No employee may choose or be offered the choice between taxable cash compensation and contributions to this arrangement.

4. Employer Contributions

If you are eligible to participate in the Postretirement VEBA, your Employer will make contributions to the VEBA in an amount equivalent to the following:

Note to employer. The following longevity-based compensation programs are only examples. Your model policies should reflect actual policies in effect for employees.

(Select one or more)

☐ **Accrued Severance Pay:** Within sixty (60) days of the effective date of your retirement, Employer shall contribute _________% of the amount of your accrued severance pay, if any. You will not be eligible to receive this amount in the form of taxable cash compensation.

☐ **Perfect Attendance Bonus:** Within sixty (60) days of the effective date of your retirement, Employer shall contribute _________% of the amount of your perfect attendance bonus, if any. You will not be eligible to receive this amount in the form of taxable cash compensation.

☐ **Unused Sick Pay.** Within sixty (60) days of the effective date of your retirement, Employer shall contribute _________% of the amount of your unused sick pay/personal leave, if any. You will not be eligible to receive this amount in the form of taxable cash compensation.

☐ **Unused Paid Vacation.** Within sixty (60) days of the effective date of your retirement, Employer shall contribute _________% of the amount of your unused paid vacation, if any. You will not be eligible to receive this amount in the form of taxable cash compensation.

☐ **Longevity in Extra Duties.** Within sixty (60) days of the effective date of your retirement, Employer shall contribute _________% of the amount of your longevity in coaching (or other extra duties) bonus, if any. You will not be eligible to receive this amount in the form of taxable cash compensation.

☐ **Periodic Contributions for Retiree Health Savings.** Employer will make a[n annual] [monthly] [quarterly] contribution to your account in the amount of $__________ [until you attain age 65] [for ____ months] [other].

Note to Employer: If an employer checks the "periodic contribution" box, it must make the same contribution for all eligible retirees within a nondiscriminatory classification of employees (i.e., at least a fair cross section). Thus, retirees in Class A could receive $X per month for each year of service with the employer; retirees in Class B could receive $Y per month for each year of service. But Class A and Class B must each include more than nominal numbers of employees in lower and middle wage groups (i.e., employees who are not in the top 25% of pay).

5. Administration Fees

Administrative fees for 2016 and 2017 are $2.11 per account per month for the Premium Saver program, $1.60 per account per month for the Basic Saver program, and $.60 for the Thrift Saver program. Retirees may select the program and its associated interest tier. Fees will be deducted from each retiree's account.

The Minnesota Service Cooperative VEBA Plan is subject to public bidding laws and will seek competitive bids for plan administrators and other service providers from time to time as required by Minnesota law. Administrative fees, investment fees, investment options, interest rates, service providers, and other program features will change over time as a result of this process. As a result, fees deducted from retiree accounts will also change over time.

6. Interest Rates for SelectAccount Cash Deposits as of January 2016

Interest payable on retiree accounts will vary depending upon the "tier" (how much is in the account), program (whether the retiree elects Thrift, Basic or Premium), and market conditions. Rates are subject to change, and are determined by MII Life, Incorporated, a Minnesota domiciled life insurance company, dba SelectAccount. Deposits are not FDIC insured. VEBA funds are invested in a depository agreement with SelectAccount. SelectAccount and its parent company, Blue Cross Blue Shield of Minnesota, guarantee repayment of the principal amount and any interest on deposits.

SelectAccount January 2016 Crediting Rates			
Tier	**Thrift Saver**	**Basic Saver**	**Premium Saver**
$0 to...	**.05%**	**.25%**	**1.05%**
$25	**.05%**	**.25%**	**1.05%**
$500	**.10%**	**.25%**	**1.05%**
$1,000	**.10%**	**.40%**	**1.05%**
$1,500	**.20%**	**.40%**	**1.05%**
$2,500	**.20%**	**.40%**	**1.05%**
$5,000	**.20%**	**.50%**	**1.05%**
$10,000	**.30%**	**.75%**	**1.15%**
$25,000	**.50%**	**1.00%**	**1.75%**
$50,000	**.70%**	**1.25%**	**2.00%**

Rates will vary with market conditions and are subject to change. Interest accrues daily. Deposits are not FDIC insured. VEBA funds are invested in a depository agreement with MII Life, Incorporated, a Minnesota domiciled life insurance company, dba SelectAccount. SelectAccount and its parent company, Blue Cross Blue Shield of Minnesota, guarantee repayment of the principal amount and any interest on deposits.

7. Investment Fees

Retirees who wish to invest all or a portion of their accounts in mutual funds will pay an extra $1.50 per account per month. Investment fees will be deducted from accounts. Investment Fees are subject to change from time to time. No sales load will be charged on mutual funds. Mutual funds made available as investment alternatives may charge certain management, administration, marketing and similar fees depending on the funds selected (the “expense ratio”). The expense ratio on the funds will be applied against a participant’s investment in said funds.

8. Opt-Out Rights

To be eligible for federal subsidies and premium tax credits on a health care exchange (such as MNsure), individuals may not be enrolled in other health coverage, and may not have an account under the Postretirement VEBA. Retirees that wish to purchase coverage on an exchange and apply for premium tax credits will be given the option, at the time of retirement and at least annually thereafter, to irrevocably suspend access to their Postretirement VEBA account until they attain age 65 and certify that they have enrolled in Medicare.

9. Impact on Other Arrangements

This policy supersedes and revokes all previous policies on this matter, including, to the extent applicable, other written or oral statements of policy and procedure that address the payment of accumulated sick pay, vacation pay, severance pay, or other welfare benefits. The policies and procedures outlined herein are not intended to create any contractual rights or duties, and will be applied at Employer's discretion. Although contributions made to your account in the Postretirement Health Care Savings Arrangement are irrevocable, Employer may amend or terminate its contribution policy or any portion of this Personnel Policy at any time.

Your employment with Employer is "at-will." Your at-will status is not altered by any statement in this policy.

Notes on using the "fair cross section" method to determine eligibility

Employers may define who is eligible for the Postretirement VEBA by starting with all employees and including a detailed list of exclusions. Most employers, however, adopt a more narrow definition of who is eligible, and employees who do not meet the definition are ineligible. Employers may wish to consider the following considerations in defining a class of eligible employees:

(a) Age and Service Requirements.

It's not uncommon for employers to limit eligibility for the Postretirement VEBA to employees who meet age and service or disability requirements for a public pension (i.e., to the same employees who are authorized to remain on the employer's plan after retirement under Minnesota law). This is typically the case where the primary purpose of the Postretirement VEBA is to help early retirees pay premiums and remain on employer-sponsored coverage as required by Minnesota law.

As long as the arrangement is available to employees in lower and middle wage brackets, imposing age and service requirements should meet the "fair cross section" test. One reason to impose this requirement is to prevent tying up accumulated sick and severance pay for younger employees who have a separation from public service (they may "retire" at 30, but have more pressing needs for cash than for VEBA contributions). Another reason is to limit the number of former employees who must be reported on Form 1095-B or C each year because they have a VEBA account.

(b) Enrolled Plan Participants

Employers should consider whether to exclude employees from the Postretirement VEBA if they are not enrolled in employer-sponsored group health coverage at the time of retirement, either through the employer or a spouse's employer. (Note: the VEBA may reimburse a retiree for premiums paid under the plan of a spouse's employer if the spouse pays premiums with after-tax dollars. But the VEBA may not reimburse premiums that have been paid with pre-tax dollars).

One reason to exclude retirees who are not enrolled in employer-sponsored coverage at the time of retirement is that they may be part-time employees with less than 30 hours per week who have purchased coverage on a state or federal health care exchange. Early retirees with coverage through a state or federal health care exchange are not eligible for premium tax credits if they have a balance in the VEBA, unless they make an irrevocable election to suspend access to their VEBA until they enroll in Medicare at age 65. All retirees (and persons with a VEBA account who are not enrolled in employer-sponsored coverage) have the right to make this election at least once per year.

On the other hand, Medicare does not pay all medical expenses, and a VEBA account continues to be helpful long into retirement. Employers should also keep in mind that if the exclusion of employees who are not enrolled in coverage results in a substantial reduction of middle and lower wage employees who are eligible for the VEBA, the arrangement might not meet the fair cross section test. To meet the fair cross section test, eligibility for the VEBA must include more than a nominal number of employees in middle and lower wage classes.

(c) Other Exclusions

Decisions for eligibility in the Postretirement VEBA must be made by the employer. But employers should solicit input on employee preferences in designing employee benefits in order to remain competitive in the labor market. Employers may also amend their personnel policies from time to time to adjust to employee preferences and the marketplace, but should avoid frequent changes that may give rise to an inference that they are accommodating individual choice. As long as eligibility meets the safe harbor or covers a fair-cross-section of employees, and eligibility is based on reasonable classifications (rather than by an employee's name or similar criteria), the Postretirement VEBA may cover some employees but not others.

Notes on using the "safe harbor" method to determine eligibility

IRS rules permit employers to exclude certain types of employees when determining whether the plan meets the safe harbor 70% test. Persons who may be excluded include the following:

- Collectively bargained employees, if health benefits were the subject to good faith bargaining. Union employees may still participate in the Postretirement VEBA if described in separate collective bargaining agreements. Collectively bargained groups are deemed to meet nondiscrimination requirements and need not pass the 70% test or the fair-cross-section test.

- Employees who have not completed three years of service prior to the year in which they retire or otherwise become eligible for employer contributions.

- Employees who have not attained age twenty-five prior to the year in which they retire or otherwise become eligible for employer contributions.

- Employees whose customary weekly employment is for less than thirty-five hours, if other employees performing similar work for the same employer have substantially more hours ("substantially more" is not defined in the regulations). These rules have not caught up with the ACA and it is likely that the IRS will reduce this number to 30 hours per week in the future.

- Employees whose customary weekly employment is less than twenty-five hours.

- Seasonal employees whose customary annual employment is less than nine months, if other employees performing similar work for the same employer have substantially more hours.

- Seasonal employees whose customary annual employment is less than seven months.

- Other (see below).

To determine whether the plan meets the "safe harbor" method for determining eligibility, start with the total number of employees and subtract all employees that fall within any of the first 7 boxes checked. This is the "standard eligible population." If the "other" box is checked, subtract employees in the "other" category from the standard eligible population. If at least 70% of the standard eligible population will benefit, you will have met the safe harbor. If the plan does not meet the eligibility safe harbor, however, and will cover more than nominal numbers of middle or lower paid employees, the plan should meet the fair cross section test.