

# Retirement Plan Basics for Board Members

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## What is available?

- Primary Retirement Benefit
  - Defined Benefit Plan
- Optional Supplemental Retirement Benefits
  - 403(b) Plan
  - 457(b) Plan



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# What is a defined benefit or “pension” plan?

- Promises the participant a specified monthly benefit at retirement. (Other benefits may be included such as disability, survivor benefits etc.)
- Benefit amount can be based on factors such as the participant’s salary, age and number of years of working service.
- A DB plan may describe the promised benefit as
  - an exact dollar amount, such as \$100 per month at retirement; or,
  - calculate the benefit through a formula considering factor such as salary and service.



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# Three DB Retirement Systems in Missouri

- Public School and Education Employee Retirement Systems of Missouri (PSRS/PEERS)
- Kansas City Public School Retirement System (KCPSRS)
- Public School Retirement System of the City of St. Louis (PSRSSTL)

Each System is administered by a Board of Trustees and a paid staff.



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## PSRSSTL - established in 1944

- Covers employees of the St. Louis Public School District and charter schools within the District.
- Members are also covered by Social Security.
- Funded by member & employer contributions and investment earnings.
- Governed by Mo. Rev. Stat. §169.410 - 169.540 and other statutes. Internal Revenue Code also applies.



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## KCPSRS – established in 1944

- Covers employees of the Kansas City school district and charter schools within the District.
- Members are also covered by Social Security.
- Funded by member & employer contributions and investment earnings.
- Governed by Mo. Rev. Stat. §169.270 - 169.400 and other statutes. Internal Revenue Code also applies.



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# PSRS/PEERS – established 1945

- Covers employees of Missouri School Districts other than Kansas City & City of St. Louis.
- Most PSRS members are not covered by Social Security. PEERS members participate in Social Security.
- Funded by member & employer contributions and investment earnings.
- PSRS governed by Mo. Rev. Stat. §169.010 - 169.141. PEERS by §169.600 - 169.715. Other Mo. statutes & the Internal Revenue Code also apply.



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# What are 403(b) Plans and 457(b) Plans?

- **Optional.** Adoption is optional.
- **Internal Revenue Code.**
  - 403(b) plans, also known as tax-sheltered annuity plans, are subject to §403(b) and other Code sections.
  - 457(b) plans, also known as a deferred compensation plans, or non-qualified deferred compensation plans, are subject to Code §457(b).



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# What are 403(b) Plans and 457(b) Plans?

- **Defer Compensation.** Plans that allow employees to elect to contribute some of their salary to the plan.
- **Written Program.** Plans that have a written program that contains among other things the terms and conditions for eligibility, benefits, limitations, the form and timing of distributions and identify the party responsible for plan administration.
- **Comply with Internal Revenue Code.** Terms must satisfy the Internal Revenue Code and must be amended periodically as the law changes.



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# Differences Between 403(b) and 457(b) Plans

- **Eligibility to Participate.**
  - 403(b): almost all EEs must be eligible to participate in deferrals. Employer can determine for ER contributions.
  - 457(b): employer can determine who participates.
- **Certain Contributions Differ.** The formula for catch-up contributions for long term employees is not the same.
- **Treatment of Employer Contributions.** Employers can make “employer” contributions to a 403(b) Plan. Under 457(b) employer contributions are treated as EE contributions.



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# Advantages of 403(b) and 457(b) Plans

- Provide funds for retirement. However, plans can provide for loans and or hardship distributions.
- Employees can participate in both plans at the same time.
- Pre-tax contributions and earnings are not taxed until distributed.
- Provide a value added benefit for a District to offer; but can be structured so most if not all costs are borne by participants.



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# When can employees join a 403(b) Plan?

- Generally must allow all eligible employees to participate in deferral as of employment commencement (Universal Availability Rule).
- Exceptions:
  - employees who will contribute \$200 or less annually or who normally work less than 20 hours per week
  - employees who participate in a 457(b) plan or in another 403(b) plan of the employer;
  - nonresident aliens and or certain types of students.



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# May a 403(b) plan limit the employees who can contribute?

- Eligibility for deferral must extend to all employees not in the excludible groups.
- Probationary employees cannot be excluded.
- If eligible employees do not have the opportunity to participate as required, IRS procedures must be used to correct.



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# Types of elective deferral contributions that can be made to 403(b) and 457(b) Plans

**Pre-Tax Elective Deferrals** - employee contributions under salary reduction agreements.

**Designated Roth Elective Deferrals** – salary reduction contributions the employee elects to include in gross income.



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# Employer contributions to 403(b) Plans

- Employer Contributions are not required.
- Types of Employer Contributions
  - matching contributions
  - discretionary contributions
  - contributions based on formula contained in the Plan
- Employer contributions are subject to Internal Revenue Code limits that are separate but reduced by certain employee contributions.



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# Cap on elective deferrals by employees to 403(b) and 457(b) Plans

- The annual maximum is the lesser of:
  - 100% of includible compensation; or
  - \$17,500 (subject to annual cost-of-living increases).
- EE can contribute the maximum to both plans
- All Employer contributions to 457(b) plans are treated as EE salary reduction. Unlike 403(b) where ER contributions are subject to a separate limit.



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# Maximum Employee Deferrals - Continued

- Elective deferral catch-up contributions:
  - Long term EE catch-up (403(b) and 457(b) catch-ups are not the same)
  - Age 50 catch up (\$5,500 currently, but COLA)
- In 457 Plans - long term catch-up and Age 50 catch-up cannot be used in same year.



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# Plan Administration

Generally 457(b) and 403(b) Plans are administered by

- School District staff
- Financial Advisors
- Record-keepers

Plans are administered in accordance with Plan documents, Missouri law and the Internal Revenue Code.



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# ERISA does not apply to governmental plans.

- The Employee Retirement Income Security Act of 1974 is a federal law administered by the U.S. Department of Labor applicable to private sector retirement plans. It does not apply to governmental plans.
- Financial institutions, advisors and record-keepers often use ERISA language or apply ERISA although it does not apply.
- ERISA practices and procedures are often viewed as best practices.



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# Using Consultants to Manage Plan Investments – ERISA Language

**ERISA section 3(21) fiduciary.** Advisor rendering investment advice for a fee. Shares fiduciary responsibility with other plan fiduciaries. Mitigates the potential liability of other plan co-fiduciaries. Provides investment expertise and process to assist in investment decision-making process.

**ERISA section 3(38) fiduciary.** “Investment manager” with discretionary control over investment decisions. Investment committees, board members, etc. remove themselves from the ongoing investment decision-making process.



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# Administration of 403(b) and 457(b) Plans

Participants self direct the investment of their accounts.

The District is generally responsible for:

- The process used to procure the investment platform and record-keeper
- Selection of investments vehicles or open architecture
- Plan document adoption and design



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# Administration of 403(b) and 457(b) Plans

Areas of administrative oversight include:

- Interpretation of plan documents
- Monitoring fees and expenses for reasonableness
- Comparing investment expenses with peers
- Periodically issuing RFPs for service providers
- Participant communication and education
- Level and quality of service



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# Other Administrative Responsibilities

Areas of administrative oversight include:

- Maintaining confidentiality & security of information
- Monitoring accuracy of accounting, record-keeping
- Keeping plan documents in compliance with the Internal Revenue Code and state law
- Assuring that all actions are in accordance with the applicable plan documents



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# Administrative Responsibilities

If any action with respect to the Plan violates the Internal Revenue Code or is inconsistent with Plan documents:

- Correction must be made.
- The Internal Revenue Service publishes guidance on correction process and procedures



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# Missouri Open Records

- Under the Sunshine Law, certain pension information is considered an open record.
- In Pulitzer Publishing Co. v. Missouri State Employees' Retirement System, 927 S.W.2d 477 (Mo. App. W.D. 1996), a reporter was entitled to obtain MOSERS' records pertaining to pensions paid to former state officials. The records were not closed under the "personnel record" exemption. Although pensions were not listed with salaries as open records, the Court stated that the legislature intended disclosure of the same information about retirees as is required for active public officials.



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# OPINION NO. 93-2012 (February 6, 2012)

## Attorney General of Missouri

- Sunshine Law allows a governmental body to close personally identifiable personnel records and records pertaining to employees, which includes certain pension database records. §610.021(13).
- Pension database records of the name, position, salary, and length of service of public employees must be open. Accordingly, records consisting of the names and pension payments to public employees must be disclosed, but the rest may remain closed.



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- Voluntary Contributions to Deferred Compensation Plan. Plan allowing employees to voluntarily defer compensation and make contributions to increase their retirement benefits is essentially a savings account, and such contributions are not part of an employee's salary, and may properly be closed.
- Earnings on Deferred Compensation. Pulitzer required disclosure of benefit payments even if partially a result of investment income, rather than tax dollars. However, Pulitzer did not refer to an individual's deferred compensation account.



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Questions?

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