WHITEFORD, TAYLOR & PRESTON L.L.P.
MEMORANDUM

TO: Howard County Retirement Plans

FROM: Paul Madden

DATE: April 23, 2020

RE: **CARES Act Impact On Howard County Retirement Plans**

The CARES Act provides for increased access to funds in employer retirement plans for individuals impacted by the Coronavirus. The relief can be provided to a "qualified individual":

- Diagnosed with COVID-19 or SARS-CoV-2,
- Whose spouse or dependent is diagnosed with COVID-19 or SARS-CoV-2, or
- Who experiences adverse financial consequences because of a quarantine, work layoff or furlough, loss of child care, or business closure due to COVID-19.

Coronavirus Related Distributions

The CARES Act provides that distributions of up to $100,000 may be made from qualified retirement plans from January 1, 2020 through December 31, 2020 and will not be subject to the 10% penalty for early distributions and will not be subject to federal and state income tax withholding. The distributions may be repaid over three years and will be taxed over a three year period to the extent the distributions are not repaid. This appears to be an optional plan provision.

Under 1.432 and 1.432A, a terminated vested participant can request a lump sum separation benefit in the amount of the participant's employee contributions benefit. In addition, the Police and Fire Plan (Section 1.438A(k)) allows a participant exiting DROP to elect a lump sum payment of their DROP account

Howard County is permitted to amend the plans to permit Coronavirus Related Distributions.

Reasons to Amend

- Tax advantages to participants exiting DROP and terminated vested former employees who are "qualified individuals."

Reasons Not to Amend

- Not clear whether Coronavirus related distributions can be made to former employees
- Plans would need to create new distribution election forms to allow Coronavirus related distributions
- Repayment provisions are not consistent with current plan provisions

Expanded Loan Opportunities

The CARES Act also provides for expanded loans from qualified plans for qualified individuals for the 180- day period following enactment. The typical loan limit of the lesser of $50,000 or 50% of the participant's vested account balance is increased to the lesser of $100,000 or 100% of the participant's vested account balance. In addition, if a qualified individual has a loan outstanding from a qualified plan, loan repayments may be delayed for one year. The plan loans will be reamortized to reflect the delayed repayments.

This provision has no application to the Howard County Retirement Plans because the plans do not provide for participant loans.

Suspension of Minimum Distributions

Required minimum distributions for individuals age 70-1/2 or older are suspended for all individuals, not just "qualified individuals," for 2020. The suspension applies to required distributions from defined contribution plans such as 401k) plans, tax deferred annuity contracts, governmental 457 plans, and individual retirement accounts.

This provision has little or no application to Howard County Retirement Plans because most benefits are paid in the form of an annuity.