



MEMORANDUM

TO: North Carolina Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: February 20, 2025

RE: Correction of loan administration error by Empower

In November 2024, Empower notified the Department of State Treasurer that Empower had made errors in administering the *Policy on Loans* for the NC 401(k) and NC 457 Plans. Under the policy and plan documents, a participant is allowed to take only one loan from each plan, with the exception of a CARES Act loan in 2020. However, between February and November of 2024, Empower allowed 151 participants to take a second loan from the plans (or a third loan in the case of participants with a CARES Act loan).

The error occurred when Empower moved the NC 401(k) and NC 457 Plans to a new recordkeeping system in February 2024. Specifically, Empower failed to set the new system (1) to consider loans that were in default but not offset; and (2) to aggregate loans for participants who were employed by more than one employer.

The error qualifies as an “eligible inadvertent failure” under Section 305 of the SECURE 2.0 Act and may be corrected using the Internal Revenue Service’s Self-Correction Program. Staff’s proposed correction consists of the following: (1) Empower’s correction of its recordkeeping system (which Empower confirmed in December); and (2) the Board’s adoption of the attached resolution, which retroactively incorporates the noncompliant loans into the *Policy on Loans* and the plan documents for the NC 401(k) and NC 457 Plans. The proposed correction does not affect the participants who received noncompliant loans; they will not be required to return the funds from noncompliant loans or to treat them as distributions.

The resolution also deletes a prior retroactive amendment from the *Policy on Loans* because the amendment is no longer applicable.

Recommendation

Staff recommends that the Board adopt the attached resolution.



RESOLUTION OF THE SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES

WHEREAS, the North Carolina Department of State Treasurer and the North Carolina Supplemental Retirement Board of Trustees (the “Board”) administer the Supplemental Retirement Income Plan of North Carolina (the “NC 401(k) Plan”) and the North Carolina Public Employee Deferred Compensation Plan (the “NC 457 Plan”);

WHEREAS, the NC 401(k) and NC 457 Plans offer participants the opportunity to take loans from their accounts;

WHEREAS, a participant may have a maximum of one loan outstanding from each plan plus, if applicable, a second loan under CARES Act provisions from 2020;

WHEREAS, Empower, in its role as the recordkeeper for the NC 401(k) and NC 457 Plans, administers loans to participants;

WHEREAS, when Empower moved the NC 401(k) and NC 457 Plans to a new recordkeeping system in February 2024, it failed to set the new system (1) to treat loans that were in default, but not offset, as outstanding loans; and (2) to aggregate loans for participants who were employed by more than one employer.

WHEREAS, as a result of its error and in violation of the NC 401(k) and NC 457 Plans’ *Policy on Loans* and plan documents, Empower issued an additional loan to 151 participants during the period of April 9, 2024- November 14, 2024, with a total value at origination of approximately \$930,000;

WHEREAS, the error qualifies as an “eligible inadvertent failure” under Section 305 of the SECURE 2.0 Act and may be corrected using the Internal Revenue Service’s Self-Correction Program;

WHEREAS, the correction consists of (1) the Empower’s correction of its recordkeeping system; and (2) the adoption of retroactive compliance amendments to incorporate the noncompliant loans into the *Policy on Loans* and the plan documents for the NC 401(k) and NC 457 Plans;

WHEREAS, Empower has corrected its recordkeeping system to prevent additional excess loans;

WHEREAS, the Board previously adopted a retroactive compliance amendment to incorporate excess loans issued by Empower from the NC 457 Plan (the “Prior Compliance Amendment”); and

WHEREAS, the Prior Compliance Amendment is not applicable after April 22, 2019 and can be removed from the *Policy on Loans*;



NOW, THEREFORE, be it

RESOLVED, that:

1. Effective from April 9, 2024 through November 14, 2024, a participant was permitted to have one outstanding loan from each of the NC 401(k) and NC 457 Plans in addition to the maximum number permitted by (1) Sections 6 (Maximum Number of Loans) and 24 (CARES Act Provisions) of the *Policy on Loans*; (2) Sections 8.02(a)(viii) and 8.03 (CARES Act Provisions) of the NC 401(k) Plan; and (3) Sections 9.2(d) (Number of Loans) and 9.3 (CARES Act Provisions) of the NC 457 Plan; provided that the participant had a loan that was defaulted but not offset or the participant was employed by more than one participating employer.
2. Section 25 (Limited Second Loan for NC 457 Plan) of the *Policy on Loans*, which was effective only for the period of April 17, 2009 through April 22, 2019, is hereby deleted.

Approved by the Board on February 20, 2025.

Jeff Hancock, Secretary
North Carolina Supplemental Retirement Board of Trustees