



North Carolina Retirement Systems

NC 401(k) & NC 457 Plans

MEMORANDUM

TO: Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: February 20, 2025

RE: SECURE 2.0 Act amendments to the NC 401(k) and NC 457 Plans

Domestic Abuse Distributions

Section 314 of the SECURE 2.0 Act creates a distribution option for 401(k) and 457 plans (as well as other plans) for victims of domestic abuse and exempts it from the 10% additional tax on certain distributions from a 401(k) plan. For each incident of domestic abuse, a victim can withdraw up to the lesser of (1) \$10,000 (adjusted for inflation in future years); and (2) 50% of the participant's account balance. The distribution limit applies to the total distributions aggregated across all of an employer's plans, so distributions from both the NC 401(k) and NC 457 Plans would be aggregated.

A participant has the option to recontribute a domestic abuse distribution to the NC 401(k) or NC 457 Plan within three years of receiving the distribution, provided that such participant was eligible to roll funds into the plan.

Section 314, which became effective on January 1, 2024, is optional for plan sponsors. Empower has made domestic abuse distributions available to plan sponsors that want to provide them. Plan document amendments to implement the distributions for the NC 401(k) and NC 457 Plans are in Attachment 1 and Attachment 2, respectively.

Self-Certification of Hardship/Unforeseeable Emergency Withdrawals

Section 312 of the SECURE 2.0 Act allows plan sponsors to accept self-certification by participants when they request hardship withdrawals from 401(k) plans and unforeseeable emergency withdrawals from 457 plans. A participant may self-certify to the following:

1. The existence of an immediate and heavy financial need (401(k) plan) or unforeseeable emergency (457 plan);
2. The amount of the withdrawal that is required to satisfy such financial need (401(k) plan) or emergency need (457 plan); and
3. The availability of alternative, reasonably available means to satisfy such financial need (401(k) plan) or emergency need (457 plan).



North Carolina Retirement Systems

NC 401(k) & NC 457 Plans

Notwithstanding self-certification, Empower will still have the right to request documentation if necessary, and Empower will require documentation for withdrawal requests in excess of two in a year.

The hardship withdrawal provision in the NC 401(k) Plan also has been revised for clarity and to align it more closely with how the provision is implemented in practice.

Section 312, which became effective on January 1, 2023, is optional for plan sponsors. In the first half of 2025, Empower will make self-certification available to plan sponsors that want to provide it. Plan document amendments to implement self-certification for the NC 401(k) and NC 457 Plans are in Attachment 3 and Attachment 4, respectively.

Clarification

Attachment 5 also includes a clarification in the NC 401(k) Plan that a reference to “Administrator” in the definition of “Beneficiary” is the “Primary Administrator” (i.e., the Department’s Retirement Systems Division).

Recommendation

Staff recommends that the Board adopt the plan document amendments in Attachments 1-5.

ATTACHMENT 1
Amendments to the NC 401(k) Plan for Domestic Abuse Distributions

The following provision is added as Section 3.13 (Recontributions of Eligible Distributions to Domestic Abuse Victims) of the NC 401(k) Plan:

3.13 Recontributions of Domestic Abuse Distributions

If a Member receives a Domestic Abuse Distribution (as defined in Section 7.09) from the Plan, the Member may contribute to the Plan, as one or more rollovers, a total amount not in excess of the amount of such Domestic Abuse Distribution, within three years of the date following the date on which the Domestic Abuse Distribution was received. The contribution of a Domestic Abuse Distribution to the Plan is subject to Code § 72(t)(2)(K)(iv) (and any U.S. Treasury regulations thereunder) and the procedures and restrictions of the Primary Administrator and the Third-Party Administrator. A Member who recontributes a Domestic Abuse Distribution to the Plan will be treated as having received the distribution in an eligible rollover distribution and as having transferred the amount to the Plan in a direct trustee-to-trustee transfer within 60 days of the distribution. A Member must be eligible to make rollover contributions to the Plan in order to recontribute a Domestic Abuse Distribution.

The following provision is added as Section 7.09 (Eligible Distributions to Domestic Abuse Victims) of the NC 401(k) Plan:

7.09 Domestic Abuse Distributions

Notwithstanding Section 7.01, a Member may take one or more distributions during the one-year beginning on any date on which the Member is a victim of domestic abuse by a spouse or domestic partner ("Domestic Abuse Distributions"), subject to Code § 72(t)(2)(K) (and any U.S. Treasury regulations thereunder) and the procedures and restrictions of the Primary Administrator and the Third-Party Administrator. The aggregate amount of Domestic Abuse Distributions taken by a Member from the Plan and the North Carolina Public Employee Deferred Compensation Plan with respect to any incident of domestic abuse shall not exceed the maximum permitted by Code § 72(t)(2)(K)(ii) (as adjusted for inflation by Code §72(t)(2)(K)(vii)). The term "domestic abuse" is defined in Code § 72(t)(2)(K)(iii)(II).

ATTACHMENT 2
Amendments to the NC 457 Plan for Domestic Abuse Distributions

The last sentence of Section 5.1(a) (Post-Severance Event Distribution) of the NC 457 Plan is amended as follows:

Unless otherwise permitted by the Plan Administrator, a Participant's distribution request shall be paid no sooner than 60 days following termination of employment, unless the Participant (1) has retired; (2) is eligible for a distribution under Section 5.1(b), 5.6, 5.8, or 5.14, or 5.15; or (3) is required by the Code, Treasury Regulations, or the provisions of the Plan to take a distribution.

The following provision is added as Section 5.15 (Domestic Abuse Distributions) of the NC 457 Plan:

5.15 Domestic Abuse Distributions

Notwithstanding Section 5.1(b), a Participant may take one or more distributions during the one-year beginning on any date on which the Participant is a victim of domestic abuse by a spouse or domestic partner ("Domestic Abuse Distributions"), subject to Code § 72(t)(2)(K) (and any U.S. Treasury regulations thereunder) and the procedures and restrictions of the Plan Administrator and the Third-Party Administrator. The aggregate amount of Domestic Abuse Distributions taken by a Participant from the Plan and the Supplemental Retirement Income Plan of North Carolina with respect to any incident of domestic abuse shall not exceed the maximum permitted by Code § 72(t)(2)(K)(ii) (as adjusted for inflation by Code § 72(t)(2)(K)(vii)). The term "domestic abuse" is defined in Code § 72(t)(2)(K)(iii)(II).

The following provision is added as Section 6.8 (Recontributions of Domestic Abuse Distributions) of the NC 457 Plan:

6.8 Recontributions of Domestic Abuse Distributions

If a Participant receives a Domestic Abuse Distribution (as defined in Section 5.15) from the Plan, the Participant may contribute to the Plan, as one or more rollovers, a total amount not in excess of the amount of such Domestic Abuse Distribution, within three years of the date following the date on which the Domestic Abuse Distribution was received. The contribution of a Domestic Abuse Distribution to the Plan is subject to Code § 72(t)(2)(K)(iv) (and any U.S. Treasury regulations thereunder) and the procedures and restrictions of the Plan Administrator and the Third-Party Administrator. A Participant who recontributes a Domestic Abuse Distribution to the Plan will be treated as having received the distribution in an eligible rollover distribution and as having transferred the amount to the Plan in a direct trustee-to-trustee transfer within 60 days of the distribution. A Participant must be eligible to make rollover contributions to the Plan in order to recontribute a Domestic Abuse Distribution.



North Carolina Retirement Systems

NC 401(k) & NC 457 Plans

ATTACHMENT 3 **Amendments to the NC 401(k) Plan for Self-Certification of Hardship Withdrawals**

Section 7.02 (Hardship Withdrawal) of the NC 401(k) Plan is deleted in its entirety and replaced with the following:

7.02 Hardship Withdrawal

- (a) A Member may elect to take a withdrawal on account of hardship.
- (b) A withdrawal is taken on account of hardship only if:
 - (1) the withdrawal is made on account of the Member's immediate and heavy financial need; and
 - (2) the withdrawal is necessary to satisfy such financial need.
- (c) The Primary Administrator shall presume the existence of an immediate and heavy financial need if the requested withdrawal is for any of the following:
 - (1) Expenses for (or necessary to obtain medical care that would be deductible under Section 213(d) of the Code, determined without regard to the limitations in Section 213(a) of the Code (relating to the applicable percentage of adjusted gross income and the recipients of the medical care), provided that, if the recipient of the medical care is not listed in Section 213(a) of the Code, the recipient is a primary Beneficiary under the Plan;
 - (2) Costs directly related to the purchase of a principal residence for the Member (excluding mortgage payments);
 - (3) Payment of tuition, related educational fees, and expenses for room and board for the next 12 months of post-secondary education of the Member, the Member's spouse or dependents (as defined in Section 152 of the Code without regard to Section 152(b)(1), (b)(2), and (d)(1)(B) of the Code), or a primary Beneficiary under the Plan;
 - (4) Payments of amounts necessary to prevent eviction of the Member from the Member's principal residence or to avoid foreclosure on the mortgage on from the Member's principal residence;
 - (5) Payments for burial or funeral expenses for the Member's deceased parent, spouse, child, or dependent (as defined in Section 152 of the Code without regard to Section 152(d)(1)(B) of the Code) or for a deceased primary Beneficiary under the Plan;
 - (6) Expenses for the repair of damages to the Member's principal residence that would qualify for the casualty deduction under Section 165 of the Code (determined without regard to Section 165(h) of the Code and the loss exceeds 10% of the Member's adjusted gross income);

3200 ATLANTIC AVENUE, RALEIGH, NORTH CAROLINA 27604

Retirement Systems (919) 814-4590 • NC Plans (866) 627-5267

myNCPlans.com



North Carolina Retirement Systems

NC 401(k) & NC 457 Plans

- (7) Expenses and losses (including loss of income) incurred by a Member on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the Member's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; or
- (8) The inability of the Member to meet such other expenses, debts, or other obligations recognized by the Internal Revenue Service as giving rise to an immediate and heavy financial need for purposes of Section 401(k) of the Code.

For the purposes of this Section 7.02(c), "primary Beneficiary under the Plan" is an individual who is named as a Beneficiary under the Plan and has an unconditional right, upon the death of the Member, to all or a portion of the Member's account balance under the Plan.

- (d) The amount of the withdrawal shall not exceed the amount required to satisfy the immediate and heavy financial need (including any amounts necessary to pay any federal, state, or local taxes or penalties reasonably anticipated to result from the withdrawal).
- (e) A withdrawal will not be considered as required to satisfy the immediate and heavy financial need unless:
 - (1) The Member has taken all available withdrawals from the Plan (except loans and other hardship withdrawals) and the North Carolina Public Employee Deferred Compensation Plan (except loans and unforeseeable emergency withdrawals);
 - (2) The Member provides the Primary Administrator with a written certification (in the format requested by the Primary Administrator) that the Member does not have sufficient cash or other liquid assets that are reasonably available to satisfy the financial need; and
 - (3) The Primary Administrator does not have actual knowledge that is contrary to the Member's certification in subsection (2).
- (f) A withdrawal will not be considered as required to satisfy the immediate and heavy financial need if such financial need can be satisfied by reimbursement or compensation by insurance or otherwise.
- (g) The Primary Administrator shall determine the existence of an immediate and heavy financial need and the amount necessary to satisfy such financial need. In making such determinations, the Primary Administrator shall treat uniformly those Members who are similarly situated and will act according to:
 - (1) The uniform and nondiscriminatory rules and procedures established by the Primary Administrator;



North Carolina Retirement Systems

NC 401(k) & NC 457 Plans

- (2) The provisions of the Plan, Section 401(k)(14) of the Code, and Section 1.401(k)-1(d)(3) of the Treasury Regulations.
- (h) The Member shall provide the documentation, certifications, and other information requested by the Primary Administrator.
- (i) The Primary Administrator may permit or require a Member to certify in writing (in the format requested by the Primary Administrator) to one or more of the following, without providing supporting documentation or other information:
 - (1) The existence of an immediate and heavy financial need;
 - (2) The amount of the withdrawal that is required to satisfy such financial need; and/or
 - (3) The availability of alternative, reasonably available means to satisfy such financial need.
- (j) Notwithstanding the availability of certification by a Member, at any time the Primary or Third-party Administrator may require the Member to provide adequate documentation and/or other information to support (1) the existence of an immediate and heavy financial need; (2) the amount of the withdrawal that is required to satisfy such financial need; and/or (3) the availability of alternative, reasonably available means to satisfy such financial need.
- (k) The amount of the hardship withdrawal will be paid from the sources in the Member's account in the following order: (1) Rollover Account; (2) Transfer Account; (3) Employer Account; (4) Roth Account; and finally (5) Deferred Account.

ATTACHMENT 4
Amendments to the NC 457 Plan for Self-Certification of Unforeseeable Emergency Withdrawals

Section 5.6 (Unforeseeable Emergencies) of the NC 457 Plan is amended as follows:

Section 5.6 Unforeseeable Emergencies

(a) In the event an unforeseeable emergency occurs, a Participant may apply to the Third-party Administrator (or Plan Administrator, if no Third-party Administrator) to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Third-party Administrator (or Plan Administrator, if no Third-party Administrator), the Participant shall be paid only such amount as the Third-party Administrator (or Plan Administrator, if no Third-party Administrator) deems necessary to meet the emergency need (including any amounts necessary to pay any federal, state, or local taxes or penalties reasonably anticipated to result from the withdrawal), but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferrals under the Plan, insurance, or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

(b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant resulting from (i) an sudden-unexpected illness or accident of the Participant, his or her spouse, or his or her a dependent (as defined in Code § 152 and for taxable years beginning on or after January 1, 2005, without regard to Code §§ 152(b)(1), (b)(2), and (d)(1)(B)) of the Participant; (ii) loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or (iii) other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant. Imminent foreclosure of or eviction from the Participant's primary residence, the need to pay for medical expenses (including non-refundable deductibles and the cost of prescription drug medication), and the need to pay for the funeral expenses of a spouse or a dependent (as defined in Code § 152 and for taxable years beginning on or after January 1, 2005, without regard to Code §§ 152(b)(1), (b)(2), and (d)(1)(B)) may each constitute an unforeseeable emergency. However, the need to send a Participant's child to college or to purchase a new home shall not, of itself, be considered an unforeseeable emergency. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case. Unforeseeable emergency distributions may be made from pre-tax or Roth Deferred Compensation (including rollover contributions).

(c) The Participant shall provide the documentation, certifications, and other information requested by the Plan or Third-party Administrator.

(d) The Plan Administrator may permit or require a Participant to certify in writing (in the format requested by the Plan Administrator) to one or more of the following, without providing supporting documentation or other information:

(1) The existence of an unforeseeable emergency;



North Carolina Retirement Systems

NC 401(k) & NC 457 Plans

(2) The amount of the withdrawal that is required to satisfy such emergency need; and/or

(3) The availability of alternative, reasonably available means to satisfy such emergency need.

A Participant may request no more than two unforeseeable emergency withdrawals per year using self-certification. Unforeseeable emergency requests in excess of two per year must be accompanied by the supporting documentation requested by the Plan or Third-party Administrator.

(e) Notwithstanding the availability of certification by a Participant, at any time the Plan or Third-party Administrator may require the Participant to provide adequate documentation and/or other information to support (1) the existence of an unforeseeable emergency; (2) the amount of the withdrawal that is required to satisfy such emergency need; and/or (3) the availability of alternative, reasonably available means to satisfy such emergency need.



North Carolina Retirement Systems

NC 401(k) & NC 457 Plans

ATTACHMENT 5 Amendment to the NC 401(k) Plan to Correct a Reference

The first sentence of Section 1.04 (Post-Severance Event Distribution) of the NC 401(k) Plan is amended as follows:

“Beneficiary” means any person or person (whether individual(s) or entity(ies)) named by a Member by written designation filed with the Primary Administrator to receive benefits payable in the event of the Member’s death.