



## MEMORANDUM

TO: NC Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: August 26, 2021

SUBJECT: Plan document amendments for the NC 401(k) and NC 457 Plans

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Proposed amendments to the plan documents for the NC 401(k) and NC 457 Plans are attached to this memo. The amendments cover the waiting period for post-termination distributions, the distribution of rollover funds, and the CARES Act.

### Waiting period for distributions

When a participant in the NC 401(k) or NC 457 Plan separates from employment, the participant must wait at least 60 days to take a distribution, unless the participant has retired or would be eligible for an in-service distribution if the participant were still employed (e.g., has reached age 59½). This procedure manages the risk of an improper in-service distribution when a participant moves from one participating employer in the NC 401(k) or NC 457 Plan to another. A participant who changes employers within the NC 401(k) or NC 457 Plan remains in-service and eligible to contribute to the plan; therefore, the in-service distribution restrictions in the plan document and Internal Revenue Code continue to apply. The proposed amendments will formally incorporate this distribution restriction into the plan documents for the NC 401(k) and NC 457 Plans.

### Distribution of rollover funds

The proposed amendments to the NC 401(k) Plan permit a participant to take an in-service distribution of funds that the participant rolled into the NC 401(k) Plan from another plan (e.g., at a previous employer). These funds rolled into the NC 401(k) Plan are funds for which a participant could have taken a distribution from another plan but instead chose to move to the NC 401(k) Plan. As currently structured, funds rolled into the NC 401(k) Plan are subject to the same distribution restrictions as deferrals of compensation and employer contributions – specifically, termination of employment, reaching age 59½, or hardship.

While the proposed amendment will provide another opportunity for participants to withdraw funds prior to retirement, the in-service distribution of rollover funds may encourage participants to roll funds into the NC 401(k) Plan.

The NC 457 Plan already permits the in-service distribution of rollover funds, as do most of the plans serviced by Prudential.



**North Carolina**  
Total Retirement Plans



*Dale R. Folwell, CPA*  
STATE TREASURER OF NORTH CAROLINA  
DALE R. FOLWELL, CPA

### CARES Act

The proposed amendments formally incorporate into the plan documents the CARES Act relief adopted last year by the Board. Specifically, the amendments address the increased loan amount, the deferral of loan repayments, coronavirus-related distributions, and the recontribution of coronavirus-related distributions. The loan-related amendments mirror the CARES Act revisions to the loan policy.

The current plan documents are posted on the Board's page on [www.myncretirement.com](http://www.myncretirement.com), and a link to the plan documents is [here](#).

### Recommendation

Staff recommends the Board adopt the amendments to the plan documents that are attached to this memo.

**SUPPLEMENTAL RETIREMENT INCOME PLAN OF  
NORTH CAROLINA**

**Effective January 1, 1985**

**As Amended and Restated on December 10, 2015**

**Amended through ~~March 11~~August 26, 2021**

Section 401(a)(37) of the Code and any applicable guidance thereunder.

### **3.10 Annual Automatic Increase Program**

In accordance with procedures established by the Primary Administrator, and if elected by an Employer participating in the Plan, an Eligible Employee may elect to automatically increase his rate of Tax-Deferred Contributions or Roth Contributions (limited to only Tax-Deferred Contributions if the Participant fails to specify in his election which deferral type is to be increased) annually by one percent (1%) to eight percent (8%) in one percent (1%) increments of Compensation until the rate of the automatically increased deferral type (Tax-Deferred Contributions or Roth Contributions) made to the Plan on his behalf equals eight percent (8%) of his Compensation, effective as soon as administratively practicable on or after the first day of the month of each Plan Year elected by the Participant (if the Participant fails to elect an annual increase month, then the annual increase will begin as soon as administratively practicable on or after August 1 of each Plan Year).

Notwithstanding the foregoing, in no case shall any automatic increase election become effective before August 1, 2016.

### **3.11 Recontributions of Coronavirus-related Distributions**

If a Member withdraws a “coronavirus-related distribution” (as defined in Section 2202(a)(4)(A) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, a “CRD”) from the Plan or another eligible plan described in Section 2202(a)(3) of the CARES Act, the Member may contribute to the Plan, as one or more rollovers, a total amount not in excess of the amount of such CRD, within three years of withdrawing such CRD. The contribution of a CRD to the Plan is subject to Section 2202(a)(3) of the CARES Act and the procedures and restrictions of the Primary Administrator.

Relief Event: Hurricane Florence

IRS Announcement: Internal Revenue Service Announcements 2018-236 and 2017-15 and *Federal Register*, Vol. 83, No. 220, Wednesday, November 14, 2018, 56766

Applicable Date: September 7, 2018 for North Carolina, September 8, 2018 for South Carolina, and September 13, 2018 for Virginia (or other applicable incident date as specified by FEMA)

Ending Date: March 15, 2019

(v) Hurricane Michael

Relief Event: Hurricane Michael

IRS Announcement: Internal Revenue Service Announcements 2018-236 and 2017-15 and *Federal Register*, Vol. 83, No. 220, Wednesday, November 14, 2018, 56766

Applicable Date: October 7, 2018 for Florida, October 9, 2018 for Georgia, and October 10, 2018 for Alabama (or other applicable incident date as specified by FEMA)

Ending Date: March 15, 2019

**7.08 Withdrawal from Rollover Account**

Notwithstanding Section 7.01, a Member may elect to withdraw part or all of the Member's Rollover Account, subject to the procedures and restrictions of Section 7.03, even if the Member is employed by an Employer.

**7.09 Coronavirus-related Distributions**

Notwithstanding Section 7.01, a Member may elect to withdraw one or more CRDs (as defined in Section 3.11) from April 23, 2020 through December 31, 2020, subject to the procedures and restrictions of Section 7.03. The total amount of CRDs taken by a Member from the Plan and the North Carolina Public Employee Deferred Compensation Plan shall not exceed a combined maximum of \$100,000.

### **8.03 CARES Act Provisions**

- (a) Notwithstanding any other provision of this Article 8, this section applies to the extent permitted by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136).
- (b) A “CRD-eligible Member” is a Member who qualifies for a “coronavirus-related distribution” pursuant to Section 2202(a)(4)(A)(ii) of the CARES Act.
- (c) From March 27, 2020 through September 22, 2020, the maximum loan amount for a CRD-eligible Member is the lesser of \$100,000 or 100% of the Member’s account balance.
- ~~(a)~~(d) From March 27, 2020 through September 22, 2020, a CRD-eligible Member is permitted to take a second loan from the Plan.
- ~~(b)~~(e) If a CRD-eligible Member has an outstanding loan repayment due in the period from March 27, 2020 through December 31, 2020, the participant can defer this repayment through the end of 2020 and restart repayment in January 2021. The term of the loan shall be extended as follows:

  - (i) For deferral requests through July 5, 2020, the term shall be extended to account for the number of pay periods in 2020 for which payments were deferred; and
  - (ii) For deferral requests from July 6, 2020 through December 31, 2020, the term shall be extended for 12 months from the end of the current term.

However, interest continues to accrue during the deferral period. Following the deferral period, the Primary Administrator shall re-amortize the loan such that the loan shall be repaid with interest in full in substantially equal payments over the remaining term of the loan.

the date on which the Member would have attained age 72.

- (d) In no event, however, shall the provisions of this Section operate so as to allow the distribution of a Member's Account to begin later than the April 1 following the calendar year in which he attains age 72 or retires, if later.
- (e) Unless otherwise permitted by the Primary Administrator, a Member's distribution request shall be paid no sooner than 60 days following termination of employment, unless the Member (1) has retired; (2) is eligible for a distribution under Article 8; or (3) is required by the Code, Treasury Regulations, or the provisions of the Plan to take a distribution.

#### **9.04 Mandatory Distribution of De Minimis Accounts**

- (a) Notwithstanding any provision of the Plan to the contrary, if a Member has a termination of employment and the value of the Member's Accounts amounts to \$1,000 or less, the Primary Administrator may distribute the Member's entire account in a lump sum payment following notification to the Plan's recordkeeper of the Member's termination of employment; provided that the Member is not reemployed by an Employer as of the date of distribution and the value of the Member's Accounts remains less than \$1,000 as of the date of the distribution.
- (b) Notwithstanding the above, in the event that the Member's account is deemed to be Bailey Vested, the Member's account will not be subject to a mandatory distribution under Section 9.04(a). For the purposes of this section 9.04(b), "Bailey Vested" shall mean a Member who had contributed or contracted to contribute to the Plan prior to August 12, 1989.

#### **9.05 Status of Accounts Pending Distribution**

Until completely distributed under Section 9.03, the Accounts of a Member who is entitled to a distribution at a future date shall continue to be invested as part of the funds of the Plan and the Member (or his Beneficiary in the event of the death of the Member) shall retain investment transfer rights as described in Section 4.05 during this period. Until the commencement of payments under Section 9.03, a Member shall be permitted to make a partial withdrawal from his Account pursuant to the provisions of Section 7.03.

#### **9.06 Proof of Death and Right of Beneficiary or Other Person**

**North Carolina Public Employee Deferred Compensation Plan (NC 457  
Plan)**

Revised ~~August 26~~ March 11,  
2021

## Article V Benefits

### Section 5.1 Retirement Benefits And Election

(a) **Post-Severance Event Distribution.** Following a Severance Event, a Participant is entitled to the distribution of the Participant's Account, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 5.2. Subject to the following paragraphs of this Section 5.1, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date, but not later than April 1 of the year following the year of the Participant's Severance Event or attainment of age 72, whichever is later. A Participant may elect to receive a distribution of the Participant's Account in accordance with one of the payment options described in Section 5.2. Notwithstanding the foregoing, the Plan Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed. 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, or 5.8; or (3) is required by the Code, Treasury Regulations, or the provisions of the Plan to take a distribution.

(b) **In-Service Distributions after Age 59½.** A Participant may elect to receive in- service distributions of Deferred Compensation from his or her Account on or after the calendar year in which the Participant attains age 59½ to the extent permitted by Applicable Law.

(c) **Loans.** Notwithstanding the foregoing provisions of this Section 5.1, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount required to be distributed from a Participant's Account pursuant to the Plan Administrator's procedures in the event of a default of the Participant's loan.

### Section 5.2 Payment Options

As provided in Sections 5.1, 5.4 and 5.5, a Participant or Beneficiary may elect to have the value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 5.3:

(a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;

(b) One lump-sum payment or a partial lump-sum payment of at least \$500;

(c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant or Beneficiary;

(d) Annual payments equal to the life-expectancy-based minimum distributions required under Code § 401(a)(9), including the incidental death benefit requirements of Code § 401(a)(9)(G);

(e) [Intentionally left blank];

(f) A split distribution under which payments under options (a), (b), (c) or (e) commence

make an election as to whether or not to receive a 2020 RMD.

(b) In addition, notwithstanding Section 6.2(b) of the Plan, and solely for purposes of applying the direct rollover provisions of the Plan, 2020 RMDs and Extended 2020 RMDs will be treated as eligible rollover distributions.

(c) This Section 5.12 is effective as of April 10, 2020.

**Section 5.13 Coronavirus-related Distributions**

Notwithstanding Section 5.1(b), a Participant may elect to withdraw one or more “coronavirus-related distributions” (as defined in Section 2202(a)(4)(A) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, “CRDs”) from April 23, 2020 through December 31, 2020, subject to the procedures and restrictions of Section 5.1(b). The total amount of CRDs taken by a Participant from the Plan and the Supplemental Retirement Income Plan of North Carolina shall not exceed a combined maximum of \$100,000.

## **Section 6.4 Transfers and Permissive Service Credit**

To the extent permitted by Code § 457(e)(17) and other Applicable Law, a Participant may elect to have all or a portion of the pre-tax Participant's Account transferred directly to the trustee of a defined benefit governmental plan (as defined in Code § 414(d)) if such transfer is (1) for the purchase of permissive service credit (as defined in Code § 415(n)(3)(A)) under such plan; or (2) a repayment to which Code § 415 does not apply by reason of subsection (k)(3) thereof.

## **Section 6.5 Distribution of Certain Previously Rolled Over Amounts**

(a) **Availability for Distribution.** Amounts previously rolled over to the Plan shall be distributable in accordance with procedures adopted by the Plan Administrator and/or Third-party Administrator; provided, however, that distributions under this Section shall only be permitted to the extent that each distribution satisfies the requirements of the Code and any Treasury Regulations and IRS guidance thereunder.

(b) **Application of Code Section 72(t).** For purposes of Code section 72(t), a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Code section 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Code section 4974(c)).

## **Section 6.6 Recontributions of Coronavirus-related Distributions**

If a Participant withdraws a CRD (as defined in Section 5.13) from the Plan or another eligible plan described in Section 2202(a)(3) of the CARES Act, the Participant may contribute to the Plan, as one or more rollovers, a total amount not in excess of the amount of such CRD, within three years of withdrawing such CRD. Contributions in this section are subject to Section 2202(a)(3) of the CARES Act and the procedures and restrictions of the Plan Administrator.

loan shall be canceled, and the outstanding loan balance shall be distributed pursuant to this Plan document. If a Participant enters the uniformed services of the United States, the interest rate applicable to the unpaid loan balance during the period of leave shall be reduced to 6%, in accordance with the Soldiers' and Sailors' Civil Relief Act of 1940; provided that, the Participant provides the Plan Administrator with written notice and a copy of his or her military orders no later than 180 days after the date that the Participant completes such military service.

(4) Upon a Participant's reemployment from the leave of absence, the Participant shall resume payments either in the same amount as before the leave with the full balance due upon the expiration of the repayment period or by re-amortizing the loan in substantially level installments over the remaining term of the loan.

(i) **Prepayment.** The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.

### Section 9.3 CARES Act Provisions

(a) Notwithstanding any other provision of this Article 9, this section applies to the extent permitted by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136).

(b) A "CRD-eligible Participant" is a Participant who qualifies for a "coronavirus-related distribution" pursuant to Section 2202(a)(4)(A)(ii) of the CARES Act.

(c) From March 27, 2020 through September 22, 2020, the maximum loan amount for a CRD-eligible Participant is the lesser of \$100,000 or 100% of the Participant's account balance.

(d) From March 27, 2020 through September 22, 2020, a CRD-eligible Participant is permitted to take a second loan from the Plan.

(e) If a CRD-eligible Participant has an outstanding loan repayment due in the period from March 27, 2020 through December 31, 2020, the participant can defer this repayment through the end of 2020 and restart repayment in January 2021. The term of the loan shall be extended as follows:

(1) For deferral requests through July 5, 2020, the term shall be extended to account for the number of pay periods in 2020 for which payments were deferred; and

(2) For deferral requests from July 6, 2020 through December 31, 2020, the term shall be extended for 12 months from the end of the current term.

However, interest continues to accrue during the deferral period. Following the deferral period, the Plan Administrator shall re-amortize the loan such that the loan shall be repaid with interest in full in substantially equal payments over the remaining term of the loan.