



MEMORANDUM

TO: NC Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: September 4, 2019

SUBJECT: Changes to the loan policy for the NC 401(k) and NC 457 Plans

When newly retired or separated participants initiate full or partial account distributions from the NC 401(k) or NC 457 Plan, it is often to pay off outstanding debt. This leakage from the plans may be mitigated by giving these participants the same access to loans as active employees. As with any participant loan, principal and interest would be repaid to the participant's account and would not be considered a taxable distribution.

To enhance the participant experience, staff proposes revising the loan policy and the plan documents for the NC 401(k) and NC 457 Plans to permit loans to all participants, not just to participants who are currently employed by a participating employer. The change would allow retirees, as well as other former employees of participating employers, to access their account balances without requiring them to take a taxable distribution.

In addition, a 15-day waiting period has long been in place to ensure adequate time to confirm that funds have cleared and the loan obligation has been satisfied. Today, funds typically clear in two or three days, and a seven-day waiting period is sufficient time to confirm receipt of funds.

Therefore, staff proposes reducing the waiting period between loans from 15 to seven days. The reduced waiting period allows a reasonable amount of time for a final payoff amount by check or EFT (i.e., non-payroll) to clear. With the reduced waiting period, the Department would no longer consider requests to waive the waiting period.

The remaining proposed revisions to the loan policy are administrative or clarifying in nature. The resolution at the beginning of the policy is unnecessary because the Plans no longer use Prudential's policy. The attachment at the end of the policy regarding automated loans is removed because it involves a process instead of a policy.

Attachment 1 is the revised version of the loan policy with the proposed changes tracked.

The extension of loans to retired and separated participants also requires changes to the plan documents for the NC 401(k) and NC 457 Plans. Attachments 2 and 3 include the revised loan provisions for the NC 401(k) and NC 457 Plans, respectively, with the proposed changes tracked. In Attachment 3, the revised plan document for the NC 457 Plan also includes the correction of a typographical error in Section 9.02(a).

Staff recommends that Board approve the changes in Attachments 1-3.

RESOLUTION

~~THE SUPPLEMENTAL RETIREMENT INCOME PLAN OF NORTH CAROLINA~~

and

~~NORTH CAROLINA PUBLIC EMPLOYEE DEFERRED COMPENSATION PLAN~~

~~The Administrator, as defined herein, hereby adopts the Loan Policy for the NC 401(k) and NC 457 Plans, attached hereto (the "Loan Policy"). The Loan Policy is incorporated into the Plan Documents by reference and supplements Article 8 of the Supplemental Retirement Income Plan of North Carolina and Article IX of the North Carolina Public Employee Deferred Compensation Plan (hereafter known as the "NC 401(k) Plan" and the "NC 457(b) Plan," respectively, and together known as the "Plans"). The "Primary Administrator," as described in Articles 8.02(a), 8.02(c), 10.01, and 10.05 of the 401(k) Plan document, and the "Plan Administrator," as described in Articles 2.23, 9.1(b), and 9.2(l) of the 457(b) Plan document, are referred to collectively as the "Administrator." The plan documents for the NC 401(k) Plan and the NC 457(b) Plan are referred to collectively as the "Plan Documents."~~

- ~~1. Prudential Retirement, a business unit of The Prudential Insurance Company of America, or "Prudential," is authorized to maintain the records of the Member loan program under the Plans and is authorized by the Administrator to follow its systematic loan processing procedures by authorized electronic means or other related method acceptable to Prudential.~~
 - ~~2. The Loan Policy describes the procedure for applying for loans, the basis on which loans will be approved or disapproved, the maximum and minimum amounts of loans, the procedure for determining a reasonable rate of interest, the collateral required to secure a loan, events constituting default and other important information about the loan program.~~
 - ~~3. The Administrator is the party responsible for overall control and management of the operation and administration of the Plans, including but not limited to, administration of the loan program, exercise of all discretion concerning loans and review and audit of the loan program. Prudential will only serve as a record keeper and service provider and will not exercise discretion as a plan fiduciary.~~
 - ~~4. The Loan Policy is intended to be consistent with the Plan Documents and applicable law. In the event of a conflict between the provisions of the Loan Policy and the provisions of the Plan Documents and/or applicable law, the provisions of the Plan Documents and/or applicable law shall control.~~
 - ~~5. In fulfilling its obligations regarding the Loan Policy, Prudential will adhere to its Automated Loans Process, attached hereto.~~
-

Acknowledged by the Administrator:

By (Signature): _____

Name: _____

Title: _____

Date: _____

Acknowledged by Prudential:

By (Signature): _____

Name: _____

Title: _____

Date: _____

Loan Policy for the NC 401(k) and NC 457 Plans

~~Article 8 of the NC 401(k) Plan document permits loans to be made to Members. Sec. 8.02 of the NC 401(k) Plan document provides that the Administrator may make additional rules and restrictions as may be appropriate or necessary to implement the loan program.~~

~~Article IX of the NC 457(b) Plan document permits loans to be made to Participants. Sec. 9.1(b) of the NC 457(b) Plan document provides that the Administrator may make additional rules and restrictions as may be appropriate or necessary to implement the loan program.~~

This Loan Policy is incorporated into, and is intended to be consistent with, applicable law and the plan documents for the NC 401(k) Plan and the NC 457 Plan. In the event of a conflict between the provisions of this Loan Policy and the provisions of the plan documents and/or applicable law, the provisions of the plan documents and/or applicable law shall control.

1. **Definitions.**

- a. **Administrator.** The “Primary Administrator,” as described in Articles 8.02(a), 8.02(c), 10.01, and 10.05 of the plan document for the NC 401(k) Plan~~document~~, and the “Plan Administrator,” as described in Articles 2.23, 9.1(b), and 9.2(l) of the plan document for the NC 457(b) Plan~~document~~, are referred to collectively as the “Administrator.”
 - b. **Employer.** The term “Employer” is defined in Sec. 1.14 of the plan document for the NC 401(k) Plan document and Sec. 2.12 of the plan document for the NC 457(b) Plan.
 - c. **Member.** The term “Member” is defined, as applicable, as a Member or a Participant, as defined in the plan document for the NC 401(k) Plan ~~document or a Participant, as defined in the NC 457(b) Plan~~, respectively~~document who is actively employed by an Employer.~~
 - d. **NC 401(k) Plan.** The Supplemental Retirement Income Plan of North Carolina.
 - e. **NC 457 Plan.** The North Carolina Public Employee Deferred Compensation Plan.
 - f. **Recordkeeper.** The vendor that provides recordkeeping and communications services for the NC 401(k) and NC 457 Plans, including maintaining Members’ accounts and processing loans.~~Prudential. Prudential Retirement, a business unit of The Prudential Insurance Company of America.~~
2. **Loan Fee.** ~~Prudential~~ The Recordkeeper will charge a one-time, non-refundable application fee of \$60.00 to Members for each new loan and a one-time, non-refundable fee of \$100 to establish loan repayments other than by payroll deduction (i.e., Direct Repayments in Section 18). The Administrator may increase this fee as to new loans and may charge an additional annual maintenance fee for all loans by notice to or agreement with the Record keeper or other party administering loans and repayments.
3. **Application Methods.** Members may apply for loans using one of the following methods:

- a. Interactive Voice Response System (IVR);
 - b. The Plans' website, www.ncplans.prudential.com; or
 - c. Member Service Representative.
4. **Outstanding Loans.** Each Member who applies for a loan must certify as to the existence and the amount of any outstanding loans (including any loans deemed distributed) from the NC 401(k) Plan and the NC 457(~~b~~) Plan.
5. **Loan Limit: Small Account.** A Member with an account balance equal to or less than \$20,000 can borrow the lesser of:
 - a. 100% of the Member's vested account balance; or
 - b. \$10,000.
6. **Loan Limit: Large Account.** A Member with an account balance of more than \$20,000 can borrow the lesser of:
 - a. \$50,000 (reduced by the excess, if any, of the Member's highest outstanding balance of loans from the Plans during the one-year period ending on the day before the date on which such loan is made); or
 - b. One-half (1/2) of the Member's vested account balance.
7. **Minimum Loan Amount.** A Member may not borrow less than \$1,000.
8. **Maximum Number of Loans.** A Member may simultaneously have only one outstanding loan in the NC 401(k) Plan and one outstanding loan in the NC 457(~~b~~) Plan. For purposes of this limit, an "outstanding loan" includes a loan for which a "deemed distribution" has occurred, following the Member's default and pursuant to Treas. Reg. §1.72(p)-1, unless the Member repays the outstanding balance of the defaulted loan (including accrued interest through the date of repayment).
9. **Rollovers.** A Member may not make and the Plans will not accept a direct rollover of a loan from the plan of a Member's former employer. A Member may not make a direct rollover of a loan issued under the Plans to another plan. A loan goes into default if a Member rolls over the unloaned amount of the account to another plan.
10. **Note: Pledge/Assignment.** A Member must agree to the terms of the loan as set forth in a promissory note along with a pledge or assignment of the portion of the account balance used for security on the loan. Negotiation of the loan check signifies acceptance of the loan terms and the pledge or assignment.
11. **Spousal Consent.** The Member is not required to obtain his/her spouse's consent to use the account balance as security for the loan regardless of the value of the Member's account balance.
12. **Loan Account.** A Member's loan is treated as a segregated investment on behalf of the individual Member for whom the loan is made. Payments of principal and interest on the loan shall be credited to the Member's account. Each loan shall be made in cash

and shall be deemed to be made on a proportionate basis from each pre-tax type of contribution. Assets from a Roth account shall be included only if pre-tax contributions are insufficient to cover the loan.

13. **Interest Rate.** The interest rate on Members' loans will be equal to the bank prime loan rate, as reported by the U.S. Federal Reserve on the last business day of a calendar quarter, plus one percentage point. The rate will be declared quarterly and will be effective for loans made on and after the first business day of the subsequent quarter. The Administrator reserves the right to change the basis for determining the interest; however, such change will apply only to loans issued after the change takes effect.
14. **Term of Loan Generally.** The maximum loan term is five (5) years, except as provided in Items 15 and 22 below. No loan may be made for a term of less than twelve (12) months.
15. **Term of Residential Loan.** The maximum loan term for a loan obtained from the Plans that is used to acquire any dwelling unit, which, with a reasonable time, is to be used to purchase a principal residence of the Member, is up to fifteen (15) years. A copy of the purchase contract or signed statement from the Member confirming that the proceeds will be used to purchase or build a principal residence within a stated short period of time will be the level of proof to determine whether a loan is being used to buy a principal residence.
16. **Loan Refinancing.** Loan refinancing is not permitted.
17. **Repayments by Payroll Deductions.** Loan repayments will be made by a deduction from each payroll following issuance of the loan. Repayment will begin as soon as is administratively practicable following issuance of the loan, but no more than two (2) months from the date the loan is issued. Each Employer will remit repayments by payroll deduction in accordance with its own payroll schedule.
18. **Direct Repayments.** Should loan repayments not be possible from payroll, payments will be due directly from the Member by check or similar payment method. Should a Member not be expected to be able to use payroll repayment or to return promptly to payroll payment, the Administrator may authorize regular payment no less frequently than quarterly on a revised schedule of amount and payment dates calculated to repay the loan with interest in full in substantially equal payments over the remaining original period of the loan.
19. **Prepayments.** Loans may be paid in full at any time without penalty. Any amount paid in excess of the scheduled payment will be applied first to interest and then to principal unless otherwise specified by the Member. Prepayments will not change the amount or timing of subsequent payments due prior to pay-off of the loan but will simply reduce the total number of payments to be made unless otherwise specified by the Member.
20. **Timing of Loan.** ~~For repayments made by check or similar payment method, a~~ No loan may be made to a Member sooner than seven (7) ~~fifteen (15)~~ calendar days after the satisfaction or termination of a prior loan from the same Plan to the Member.
21. **Suspension of Loan Payments Generally.** A Member with an outstanding loan may suspend loan payments to the Plan from which the loan was made for up to 12 months for any period during which the Member is on an authorized leave of absence without pay or reduced pay that is less than the required loan repayments. Upon the Member's return to employment (or at the end of the 12-month period, if earlier), the Member shall resume making payments on the loan, based on one of the following two alternatives.

- a. Payment Alternative #1. The Member may increase the monthly payments to an amount that is sufficient to repay the loan in full, including interest that accrues during the leave of absence, over the remaining term of the loan.
- b. Payment Alternative #2. The Member may re-amortize the outstanding loan amount, including interest that accrues during the leave of absence, over a period not to exceed five (5) years from the original date of the loan (the "Five-Year Term"); provided that the payment amounts after the suspension period are not less than before the suspension.

22. **Suspension of Loan Payments for Military Leave.** A Member with an outstanding loan who is absent from employment due to a military leave in the uniformed services of the U.S. may have his/her loan payments suspended for any period during which such Member is on military leave. The payment alternatives in Item 21 apply to such Member, except that:

- a. The Five-Year Term may be extended by the amount of time the Member was on military leave; and
- b. The interest rate may not exceed 6% during the military leave; provided that the Member provides the Administrator with written notice and a copy of his/her military orders no later than 180 days after the date the Member completes such military service.

23. **Investment of Loan Repayments.** Loan repayments will be invested according to the Member's investment allocation for current contributions.

24. **Grace Period and Default.** If payment is not received, whether because of insufficient payroll or failure to make a scheduled direct payment, the loan will be considered in default unless payment is made within a grace period. The grace period is defined as 90 days after each next expected payment date but may be extended by determination of the Plan Administrator to the date the late payment is actually made for specific causes that are beyond the Member's control and that are consistently determined and applied on a nondiscriminatory basis. In no event may the grace period extend beyond the end of the calendar quarter following the calendar quarter in which the payment was originally due.

25. **Deemed Distributions.** Loans are reported to the Internal Revenue Service as deemed distributions upon a determination by the Administrator (or its agent) of one of the following:

- a. The failure to make a payment within the grace period described in Item 24, above;
- b. Death of the Member, unless repaid within 90 days following the next expected payment date;
- c. Any statement or representation by the Member in connection with the loan which is false or incomplete in any material respect;
- d. Failure of the Member to comply with any of the terms of the note and other loan documentation; or
- e. Termination of the Plan.

26. **Direct Billing.** Within 90 days of termination of employment, a Member may request to make payments at least quarterly using direct billing on a revised schedule of amount and payment dates calculated by the Administrator to repay the loan with interest in full in substantially equal payments over the remaining original period of the loan. A conversion fee of \$100 will apply in changing from payroll deduction to direct billing.
27. **Termination of Employment.** The outstanding loan balance of a Member who terminates employment and does not request to make payments using direct billing as described in Item 26 will be reported to the Internal Revenue Service as a distribution for tax purposes on the earlier of the date on which he takes a distribution of all of his account or the end of the grace period described in Item 24.
28. **Offset.** If a Member defaults on a loan and it is deemed distributed, the Plans may not offset the Member's loan balance until the Member is otherwise entitled to an immediate distribution of the portion of the account balance equal to the outstanding loan balance. (For this purpose, a loan default is treated as an immediate distribution event to the extent the law does not prohibit an actual distribution of the type of contributions that would be offset as a result of the loan default.) The Member may repay the outstanding balance of a deemed distributed loan (including accrued interest through the date of repayment) at any time.
29. **Rules for Offset.** Pending the offset of a Member's account balance following a defaulted loan, the following rules apply:
- a. Post-default interest accrual on a defaulted loan applies only to loans initiated after December 31, 2001;
 - b. Interest continues to accrue on the amount in default until the time of the loan offset or, if earlier, the date the loan repayments are made current;
 - c. A subsequent offset of the amount in default is not reported as a taxable distribution, except to the extent the taxable portion of the default amount was not previously reported by the Plan as a taxable distribution;
 - d. The interest that accrues after a deemed distribution has been included in a loan offset is not reported as a taxable distribution at the time of the offset;
 - e. A Member may repay the outstanding balance of a defaulted loan at any time, even if such loan has been reported to the Internal Revenue Service.

Automated Loans Process

This Automated Loans Process applies to Prudential's fulfillment of its obligations regarding the Loan Policy for the NC 401(k) and NC 457 Plans (the "Loan Policy"). Capitalized terms in this Automated Loans Process have the same meaning as in the Loan Policy unless otherwise defined herein.

Screening

Prudential will screen the Member-supplied information on the loan Application (whether initiated through the Interactive Voice Response System (IVR), the NC 401(k) or NC 457 Plan's website, or a Member Service Representative) using a system designed to compare the Application with identifying data and other information in Prudential's record keeping files.

If the Application is inconsistent with the file information, the Application will be rejected.

If the Application is incomplete or contains obviously erroneous or garbled information, Prudential will attempt to contact the applicant for clarification or additional data. If Prudential is unable to obtain a clarification or additional data, the Application will be rejected.

If the Application is determined to be clear and complete, and meets the criteria agreed upon by the Administrator, it will be processed.

Processing

Prudential will process the Application using a system designed to compare the Application against the Plan Documents, the Loan Policy, and statutory and regulatory requirements. Prudential will test the Application for all of the required elements, including without limitation minimum loan amounts, maximum loan amount, eligibility, loan duration, and available reinvestment alternatives. If any test of an element fails, the Application will be rejected. If all tests are passed, the Application will be processed.

Issuance of Loan

Upon completion of processing, Prudential will prepare and supply the standard loan package to the Member.

Unless the Administrator and Prudential specifically agree otherwise, the standard package will contain the forms and other information that Prudential from time to time sets forth for its clients generally.

The package will indicate that by signing any check included in a loan package the Member is agreeing to be bound by all of the terms of the loan documentation, including the loan note, the Loan Policy, and the applicable Plan Document.

The package will be dispatched to the Member in the standard manner which Prudential from time to time sets forth for similarly situated clients or in the manner specified in the Application.

A loan will be set up on Prudential's systems for repayment on the specified amortization schedule.

Rejected Applications

If an Application is rejected, Prudential will inform the Member of that fact and the reason(s) for such rejection.

~~Should a Member object to the rejection of an Application and Prudential can ascertain no error on its part during processing, the issue will be referred to the Administrator or other authorized person for resolution. Prudential will comply with any reasonable request for assistance in answering the Member's objection.~~

~~If the Administrator decides the loan is appropriate, Prudential will continue processing from the point where the problem was identified and issue the loan under Administrator's instructions.~~

Attachment 2 – Revised Plan Document for the NC 401(k) Plan

ARTICLE 8. LOANS TO MEMBERS

8.01 Amount Available

- (a) Subject to the following provisions of this Article 8, a Member ~~who is an Employee of an Employer~~ may borrow, on Notice to the Primary Administrator and on approval by the Primary Administrator under such uniform rules as it shall adopt, up to 90% (100% effective with respect to loans made on or after October 1, 2003, or such later date prescribed by the Primary Administrator) of his Accounts. Notwithstanding the foregoing, such Member may borrow no more than an amount which equals the lesser of (i) or (ii) where (i) is \$50,000, and (ii) is the greater of \$10,000 or one-half of the value of his Accounts (with respect to a loan made on or after June 1, 2006 and prior to April 1, 2008, excluding his Roth Account). The minimum loan shall be \$1,000. All loans previously made shall be subject to the rules in effect under the Plan at the time the loan was made; however, any loans made, renewed, renegotiated, modified or extended on or after January 1, 1987 shall be subject to the provisions of this Article 8 as in effect at that time.

Attachment 3 – Revised Plan Document for the NC 457 Plan

Article IX Loans to Participants

Section 9.1 Availability of Loans to Participants

- (a) A Participant may apply for a loan from the Plan, subject to the limitations and other provisions of this Article and Applicable. Loans shall be made available to all Participants on a reasonably equivalent basis.
- (b) The Plan Administrator shall establish written policies and procedures governing loans (“Loan Policy”); provided that (I) such Loan Policy is not inconsistent with the provisions of this Article IX and applicable provisions of the Code, Treasury Regulations, and IRS guidance; and (II) loans are made available to all Participants on a reasonably equivalent basis. The Loan Policy (1) shall be posted on the Plan Administrator’s website or otherwise made available to Participants; and (2) is hereby incorporated into the Plan by reference. The Plan Administrator is authorized to make such revisions to the Loan Policy as it deems necessary.

~~(c) Loans are limited only to Participants who are eligible to defer Includible Compensation into the Plan.~~

Section 9.2 Terms and Conditions of Loans to Participants

Any loan by the Plan to a Participant under Section 9.1 of the Plan shall satisfy the following requirements:

- (a) **Interest Rate.** Loans ~~from~~ shall bear an interest rate reasonably determined by the Plan Administrator.