



## MEMORANDUM

TO: NC Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: March 11, 2021

SUBJECT: Amendments to the plan documents

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### **Waiver of 2020 Required Minimum Distributions**

The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), enacted on March 27, 2020, waived required minimum distributions from 401(k), governmental 457(b), and 403(b) plans. The waiver was implemented last year for the NC 401(k) Plan, the NC 457 Plans, and the NC 403(b) Program.

Attachment 1 includes provisions for all three plan documents that acknowledge the implementation of the RMD waiver for 2020. The provisions are adapted from the sample amendment provided by the IRS in IRS Notice 2020-51.

### **Hardship Distributions**

Attachments 2 and 3 include amendments to the hardship distribution provisions in the NC 401(k) Plan and NC 403(b) Program, respectively. The plans rely on the safe harbor reasons for hardship distributions included in the Treasury regulations, and the amendments update the plan document provisions to current regulations and Prudential's implementation for the plans.

The two main changes are:

- (1) the addition of a safe harbor provision for expenses and losses related to FEMA-declared disasters; and
- (2) the expansion of three safe harbor provisions to cover expenses related to a participant's primary beneficiary.

### **Recommendation**

Staff recommends that the Board approve the plan document amendments in Attachments 1, 2, and 3.



## Attachment 1 - NC 401(k) Plan – Hardship Withdrawals

### 7.02 Hardship Withdrawal

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(c) As a condition for Hardship there must exist with respect to the Member an immediate and heavy need to draw upon his Accounts. The Primary Administrator shall presume the existence of such immediate and heavy need if the requested withdrawal is on account of any of the following:

- (i) expenses for (or necessary to obtain) medical care that would be deductible under~~described in~~ 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~~previously incurred by the Member, his spouse or any of his dependents (as defined in Section 152 of the Code) or necessary for these persons to obtain such medical care;~~
- (ii) costs directly related to the purchase of a principal residence ~~for~~ the Member (excluding mortgage payments);
- (iii) payment of tuition, related educational fees, and expenses for room and board for the next 12 months of post-secondary education of the Member, his 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 for a primary Beneficiary under the Plan;
- (iv) payment of amounts necessary to prevent eviction of the Member from his principal residence or to avoid foreclosure on the mortgage of his principal residence; or
- (v) payments for burial or funeral expenses for the Member's deceased parent, spouse, children or dependents (as defined in Section 152 of the Code and



- without regard to Section 152(d)(1)(B) of the Code), or for a deceased primary Beneficiary under the Plan;
- (vi) 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 whether the loss exceeds 10 percent of the Member's adjusted gross income); ~~or~~
  - (vii) 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
  - (viii) the inability of the Member to meet such other expenses, debts or other obligations recognized by the Internal Revenue Service as giving rise to 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.

The amount of the withdrawal may not be in excess of the amount of the immediate and heavy financial need of the employee including any amounts necessary to pay any federal, state, or local income taxes and any amounts necessary to pay any penalties reasonably anticipated to result from the distribution.

In evaluating the relevant facts and circumstances, the Primary Administrator shall act in a nondiscriminatory fashion and shall treat uniformly those Members who are similarly situated. The Member shall furnish to the Primary Administrator such



supporting documents as the Primary Administrator may request in accordance with uniform and nondiscriminatory rules prescribed by the Primary Administrator.

- (d) As a condition for a Hardship withdrawal, the Member must demonstrate that the requested withdrawal is necessary to satisfy the financial need described in paragraph (c). To demonstrate such necessity, the Member who requests a hardship withdrawal to satisfy a financial need described in (c) above must comply with either (i) or (ii) as follows:

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- (ii) The Member must request, on such form as the Primary Administrator may prescribe, that the Primary Administrator makes its determination of the necessity for the withdrawal solely on the basis of his application. In that event, the Primary Administrator shall make such determination, provided the Member has obtained all distributions, other than distributions available only on account of Hardship, under all other plans of the Employer. ~~Effective for hardship withdrawals received in 2001, the Member is prohibited from making contributions (other than Rollover or Transfer Contributions) to the Plan and all other plans of the Employer under the terms of such plans or by means of an otherwise legally enforceable agreement until the later of January 1, 2002 or the date that is six months after receipt of the distribution.~~ For purposes of this subparagraph (ii), "all other plans of the Employer" shall include qualified and non-qualified deferred compensation plans and such other plans as may be designated under regulations issued under Section 401(k) of the Code, but shall not include health and welfare benefit plans or the mandatory employee contribution portion of a defined benefit plan.



## **ATTACHMENT 2 – NC 403(b) Program**

### **A. NC 403(b) Program – Base Plan Document**

#### **Section 6.2 Distribution On Account of Hardship**

- (a) **General Rule.** Unless otherwise provided for the Adoption Agreement, and subject to the provisions of this Section 6.2, a Participant, upon written application, may request a hardship withdrawal from his or her Elective Deferrals Account if:
- (1) **Immediate and Pressing Financial Need.** The Participant has an immediate and heavy financial need as described in Section 6.2(d); and
  - (2) **Necessary to Satisfy Financial Need.** The withdrawal is necessary to satisfy the immediate and heavy financial need pursuant to Treasury Regulation section 1.401(k)-1(d)(3)(~~iii~~)(**E**).

A hardship distribution made pursuant to this Section 6.2 shall be paid in a lump sum.

- (b) **Inclusion of Taxes and Penalties.** An “immediate and pressing financial need” includes all taxes and penalties attributable to a distribution.
- (c) **Approval.** If provided for in the Adoption Agreement, the Plan Administrator’s approval is required for each hardship withdrawal request. Otherwise, the Funding Agent shall process each hardship withdrawal request.
- (d) **Immediate and Pressing Financial Need.** Under Section 6.2(a)(1), in accordance with Treasury Regulation section 1.401(k)-1(d)(3)(~~iii~~)(**B**), a withdrawal is treated as on account of an immediate and heavy financial need of the Participant if the withdrawal is on account of:
- (1) **Medical Care.** Expenses for (~~or necessary to obtain~~) medical care ~~that would be deductible under~~ Code section 213(d), ~~determined without regard to the limitations in Code section 213(a) (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 Code section 213(a), the recipient is a primary Beneficiary under the Plan previously incurred by the Participant, the Participant’s Spouse, any dependents of the Participant (as defined in Code section 152), or a primary Beneficiary, or amounts necessary for these persons to obtain medical care described in Code section 213(d);~~
  - (2) **Principal Residence.** Purchase (excluding mortgage payments) of a principal residence ~~for~~ the Participant;



- (3) **Educational Fees.** Tuition payment and related educational fees for the next twelve months of post-secondary education for the Participant, the Participant's spouse or a dependent (as defined in Code section 152, without regard to Code sections 152(b)(1), (b)(2) and (d)(1)(B)) in his or her immediate family, or a primary Beneficiary under the Plan;
- (4) **Eviction.** Need to prevent the eviction of the Participant from his or her principal residence or foreclosure on the Participant's principal residence;
- (5) **Funeral Expenses.** Payments for burial or funeral expenses for the Participant's deceased parents, Spouse, children, dependents (as defined in Code section 152, without regard to Code section 152(d)(1)(B)), or primary Beneficiary under the Plan; and
- (6) **Casualty.** Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code section 165 (determined without regard to Code section 165(h) and whether the loss exceeds 10% of adjusted gross income).
- (7) **FEMA Disaster.** 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.

For the purposes of this Section 6.2(d), "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 Participant, to all or a portion of the Participant's account balance under the Plan.

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**B. NC 403(b) Program – Adoption Agreement**

**6.2 DISTRIBUTIONS**

a. *Distribution Events.*

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(4)  Hardship Distributions. A Participant may receive a distribution when he or she incurs a hardship. Any contributions (not including earnings on those contributions) otherwise available to the Participant for a hardship withdrawal shall be reduced by the amount of any distributions of such contributions previously made to the Participant. The rules governing the determination of hardship are as follows (*complete (i) and (ii)*).

(i) *Definition of "Immediate and Heavy Financial Need."* The Plan's definition of "immediate and heavy financial need" is:

(A)  The definition set forth in Section 6.2(d) of the Base Plan Document.

(B)  *Other (please describe).*

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*Note: This definition may be more or less restrictive than the definition set forth in Section 6.2(d) but must be nondiscriminatory, objective, and satisfy Treasury Regulation sections 1.401(k)-1(d)(3)(ii)(A) and (iii)(A).*

(ii) *Plan Administrator Approval.* The Plan Administrator's approval  is /  is not (*check one*) needed for each hardship withdrawal request.

(iii) *Employer Contributions.* A Participant  may /  may not receive a hardship distribution from Employer Contributions.

(iv) *Rollover Contributions.* A Participant  may /  may not receive a hardship distribution from Rollover Contributions.



### **Attachment 3 – 2020 RMD Waiver Provisions (CARES Act)**

The sections below were adapted from the sample amendment in IRS Notice 2020-51.

#### **NC 401(k) Plan – New Section 9.02(e)**

Notwithstanding any other provision of this Article 9, a Member or Beneficiary who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a participant with a required beginning date of April 1, 2021) but for the enactment of Code section 401(a)(9)(I) (“2020 RMD”), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMD) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and the participant’s designated beneficiary, or for a period of at least 10 years (“Extended 2020 RMDs”), will not receive a 2020 RMD unless the Member or Beneficiary chooses to receive the distribution, and a Member or Beneficiary will be given an opportunity to make an election as to whether or not to receive a 2020 RMD.

In addition, notwithstanding Section 9.08 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.

This Section 9.02(e) is effective as of April 10, 2020.

#### **NC 457 Plan – New Section 5.12**

Notwithstanding any other provision of this Article V, a Participant or Beneficiary who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a participant with a required beginning date of April 1, 2021) but for the enactment of Code section 401(a)(9)(I) (“2020 RMD”), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMD) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and the participant’s designated beneficiary, or for a period of at least 10 years (“Extended 2020 RMDs”), will not receive a 2020 RMD unless the Participant or Beneficiary chooses to receive the distribution, and a Participant or Beneficiary will be given an opportunity to make an election as to whether or not to receive a 2020 RMD.

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.

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



**North Carolina**  
Total Retirement Plans



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**NC 403(b) Program – New Section 6.10**

Notwithstanding any other provision of this Article VI, a Participant or Beneficiary who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a participant with a required beginning date of April 1, 2021) but for the enactment of Code section 401(a)(9)(I) ("2020 RMD"), and who would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMD) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs"), will not receive a 2020 RMD unless the Participant or Beneficiary chooses to receive the distribution, and a Participant or Beneficiary will be given an opportunity to make an election as to whether or not to receive a 2020 RMD.

In addition, notwithstanding Section 6.5 of this Base Plan Document, 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.

This Section 6.10 is effective as of April 10, 2020.