



## MEMORANDUM

TO: Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: May 25, 2023

SUBJECT: Retroactive amendment to NC 401(k) Plan

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In 2019, the Department learned that Henderson County was using an employer match program that was inconsistent with the plan document for the NC 401(k) Plan. The county used a cliff (or threshold) method for employer contributions – if an employee contributed at least two percent of compensation, then the county also contributed two percent of the employee’s compensation. If an employee contributed less than two percent of compensation, the county did not provide a match.

In addition, the county aggregated contributions to three defined contribution plans to determine whether an employee met the two percent threshold to receive a match in the NC 401(k) Plan. If an employee contributed at least two percent of compensation to the NC 401(k) Plan, the NC 457 Plan, and a county-sponsored 457(b) plan combined, then the county provided a two percent match to the NC 401(k) Plan.

The cliff and aggregation features of the county’s match program were inconsistent with the Section 3.02(b) of the NC 401(k) Plan, which generally requires all employees to be treated equally. All employees must receive the same percentage or dollar match, subject to limited opportunities to place employees in different categories. In Henderson County’s case, employees should have received a dollar-for-dollar match up to two percent of compensation instead of receiving a match only if they contributed at least two percent.

The county also operated its match program using a definition of “compensation” that was different from the one required by the NC 401(k) Plan. The county calculated the match based on an employee’s standard base pay instead of the measure of compensation used in the NC 401(k) Plan, which includes actual salary and wages paid, overtime, bonuses, vacation payouts, and certain other items included in an employee’s paycheck.

Staff worked with the county and Empower to determine the extent of the error, and staff notified the county that it needed to correct its employer match program. The county corrected the program as of April 1, 2020, and now provides a dollar-for-dollar match of an employee’s

deferrals to the NC 401(k) Plan up to two percent of an employee's compensation, as defined in the plan document.

The Department filed a proposed correction under the IRS's Voluntary Correction Program. The proposal was limited to adopting a retroactive amendment to the NC 401(k) Plan to cover the employer match program operated by Henderson County. The amendment applies only to Henderson County and only for the period of September 12, 2003-March 31, 2020. Notably, the proposal did not include a corrective payment because the county operated its match program according to the terms it communicated to its employees.

The IRS issued a compliance statement on April 4, 2023, approving the correction. Therefore, staff requests that the Board adopt the attached amendment to the NC 401(k) Plan. With the Board's adoption of the attached amendment, the correction process will be complete.

**Recommendation**

Staff recommends the Board adopt the attached amendment to the NC 401(k) Plan.

## Attachment – Amendment to NC 401(k) Plan

### AMENDMENT TO THE SUPPLEMENTAL RETIREMENT INCOME PLAN OF NORTH CAROLINA

**WHEREAS**, the North Carolina Department of State Treasurer (Retirement Services Division) and the North Carolina Supplemental Retirement Board of Trustees maintain the Supplemental Retirement Income Plan of North Carolina (the “Plan”) for the benefit of its eligible employees; and

**WHEREAS**, the Internal Revenue Service approved this amendment in connection with the compliance statement granted regarding matching contributions under the Plan for employees of Henderson County, North Carolina (the “Employer”).

**NOW THEREFORE**, be it

**RESOLVED**, that, solely with respect to employees of Employer, and effective September 12, 2003 through March 31, 2020, the Plan, be and hereby is amended in the following respects:

1. The first sentence of Section 1.08 of the Plan is hereby amended to read as follows:  
**“Compensation”** means base salary and wages prior to any reduction pursuant to Sections 125, 132(f), 401(k), 403(b), 414(h)(2), and 457 of the Code, not including any bonuses, longevity pay, or terminal payments for unused sick leave derived from public funds, which are earned by a Member while an Employee of an Employer.
2. The first sentence of Section 3.02(b) of the Plan is hereby amended to read as follows:  
The Employer may make Special Contributions to the Plan in an amount equal to 2% of Compensation on behalf of each Member who (i) has (A) Deferred Cash Contributions made to the Plan on his behalf during the Plan Year pursuant to an election under Section 3.01(a), plus (B) deferred cash contributions made to the North Carolina 457(b) Deferred Compensation Plan, plus (C) deferred cash contributions made to a Section 457(b) plan maintained by the same Employer, of at least 2% of Compensation, and (ii) has fulfilled such period of eligibility service to receive such contribution as the Employer shall determine (provided that such period shall not in any case exceed one year).