



MEMORANDUM

TO: Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: February 22, 2024

SUBJECT: Amendment to the NC 401(k) Plan

Staff requests one minor amendment to align the text of the plan document for the NC 401(k) Plan with the operation of the plan. This update was inadvertently omitted from a set of amendments previously approved by the Supplemental Retirement Board of Trustees (Board).

As background, the Internal Revenue Code and Treasury Regulations permit 401(k) plans to offer hardship distributions. To be eligible for a hardship distribution, a participant must have an “immediate and heavy financial need,” and the distribution must be “necessary to satisfy the financial need.” The regulations provide a safe harbor list of seven situations that qualify as an “immediate and heavy financial need,” and this list is incorporated into the plan document for the NC 401(k) Plan.

Prior to 2018, Treasury Regulations required a participant to take loans from a 401(k) plan and to cease contributing to the plan before a distribution was deemed “necessary to satisfy the financial need.” Similarly, the regulations prohibited a participant from contributing to a 401(k) plan for six months after receiving a hardship distribution. In 2018, these restrictions were removed effective January 1, 2019, and the operation of the NC 401(k) Plan was modified accordingly.

The loan requirement and the six-month employee contribution prohibition were removed from the plan document; however, the third requirement – to cease contributions before the distribution was deemed “necessary to satisfy the financial need” – was unintentionally omitted from the plan document updates in 2018.

Recommendation

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

Attachment – Amendment to NC 401(k) Plan

7.02 Hardship Withdrawal

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- (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:
 - (i) The Member must certify to the Primary Administrator, on such form as the Primary Administrator may prescribe, that the financial need cannot be fully relieved (A) through reimbursement or compensation by insurance or otherwise, (B) by reasonable liquidation of the Member's assets, ~~(C) by cessation of Deferred Cash Contributions,~~ or (CD) by other distributions from the Plan or other plans of the Employer or by borrowing from commercial sources at a reasonable rate in an amount sufficient to satisfy the need. The actions listed are required to be taken to the extent necessary to relieve the hardship but any action which would have the effect of increasing the hardship need not be taken. For purposes of this clause (i) there shall be attributed to the Member those assets of the Member's spouse and minor children which are reasonably available to the Member. 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. If, on the basis of the Member's certification and the supporting documents, the Primary Administrator finds it can reasonably rely on the Member's certification, then the Primary Administrator shall find that the requested withdrawal is necessary to meet the Member's financial need.
 - (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. 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.