



## MEMORANDUM

TO: Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: November 30, 2023

SUBJECT: Review of Policies for Participants and Employers

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The Board's Policies for Participants and Employers, which are posted [here](#) on the Board's web page on [www.myNCRetirement.com](http://www.myNCRetirement.com), consist of the Policy Statement and policies on the following:

1. Participants and Beneficiaries;
2. Employer Participation;
3. Participant Contributions;
4. Employer Contributions;
5. Investments and Accounts;
6. Distributions;
7. Loans;
8. Domestic Relations Orders;
9. Plan Administration; and
10. Complaints and Requests.

Staff reviews the policies annually and recommends revisions as needed. In addition, members of the Board can propose revisions to the policies. Staff recommends updates to the Policy on Loans and the Policy on Participation and Beneficiaries as described below.

### **Policy on Loans**

In the NC 401(k) and NC 457 Plans, when a participant with an outstanding loan leaves employment, the participant has the option of paying off the remaining loan balance in a single payment or to continue making loan repayments over the remaining term of the loan. If a participant elects to continue on a repayment schedule, the participant can make repayments (1) by mailing a paper check; or (2) electronically by ACH/EFT. Upon request, Empower will provide a coupon book for those who elect to pay by check; the cost of the coupon book is \$100.

With the migration to Empower's platform in the first quarter of 2024, Empower will no longer offer the option of a coupon book. Also, while check repayment will continue to be an option, repayment by ACH/EFT will be the preferred method.

The changes to the Policy on Loans are tracked in Attachment 1 to this memo.

### **Policy on Participation and Beneficiaries**

The new provision in the policy clarifies how to handle the situation where a participant names a single beneficiary but fails to provide for the beneficiary to receive 100% of the participant's account. If a participant fails to provide any percentage for the beneficiary (i.e., leaves the percentage field blank in the form), then the reasonable assumption is that the participant intended for the beneficiary to receive the participant's entire account.

However, in the case where a participant assigns a percentage to the beneficiary, but the percentage is not 100%, it is unclear whether the participant intended to name a single beneficiary to receive the entire account or whether the participant intended, but failed, to name an additional beneficiary. Therefore, the beneficiary designation is invalid.

This is consistent with the approach to two or more beneficiaries where either no percentages are included or the percentages that do not add to 100%. In the former situation, the participant's account is divided equally among the beneficiaries. In the latter, the beneficiary designations are invalid.

The changes to the Policy on Participation and Beneficiaries are tracked in Attachment 2 to this memo.

### **Recommendation**

Staff recommends the Board adopt the revised Policy on Loans and Policy on Participation and Beneficiaries in the attachments to this memo.

## Attachment 1 – Policy on Loans (with revisions)

### POLICY ON LOANS

#### North Carolina Supplemental Retirement Plans

Amended and Restated: August 26, 2021

Last Revised: ~~November 30, 2023~~ December 1, 2022

#### 1. Loans Fees.

- a. Application fee. The recordkeeper will charge participants a one-time, nonrefundable application fee of \$60 for each new loan. The recordkeeper is Empower as of the effective date of this policy.
- b. [The following provision shall be deemed deleted upon the Supplemental Retirement Plans conversion to Empower's recordkeeping system in 2024Q1.] Coupon book fee. The recordkeeper will charge one-time, nonrefundable fee of \$100 for a coupon book and re-amortization following a participant's separation from employment. See Section 17.b below. The coupon book is an option offered by the recordkeeper as a convenience; a coupon book, and therefore the fee, are not required for a participant to repay a loan following separation from employment. This fee will not be charged if a participant establishes loan payments via ACH/EFT directly from the participant's bank.
- c. Maintenance fee. The plans do not charge a loan maintenance fee but may impose such fee by amending this policy. However, the maintenance fee will apply only to loans issued following the effective date of the fee.
- d. The Department or the Board may increase a fee, but such fee will apply only to loans issued following the effective date of the increased fee.

#### 2. Application Methods. Participants may apply for loans by telephone (866-627-5267) or online ([www.myNCPlans.com](http://www.myNCPlans.com)).

#### 3. Disclosure of Outstanding Loans. When applying for a loan, a participant must notify the recordkeeper of the participant's defined contribution plan loans and their amounts, including any loans that have been deemed distributed, that are outstanding or that have been outstanding within the past 12 months, whether such loans are from the Supplemental Retirement Plans or other defined contribution plans.

#### 4. Maximum Loan Amount.

- a. A participant with an account balance of \$20,000 or less can borrow the lesser of (i) 100% of the account balance; or (ii) \$10,000.
- b. A participant with an account balance greater than \$20,000 can borrow the lesser of the following:
  - i. \$50,000, reduced by the excess, if any, of the participant's highest outstanding loan balance from the Supplemental Retirement Plans during

the one-year period ending on the day before the date on which such loan is made; or

ii. 50% of the participant's account balance.

c. Pursuant to Internal Revenue Code Sections 72(p)(2)(A) & (D), the maximum loan amount may be reduced by a participant's previous loans from defined contribution plans other than the Supplemental Retirement Plans. A participant is solely responsible for complying with these restrictions and reducing the requested loan amount from the Supplemental Retirement Plans accordingly.

5. Minimum Loan Amount. The minimum loan amount is \$1,000.

6. Maximum Number of Loans. A participant may have a maximum of one outstanding loan from each Supplemental Retirement Plan at any given time. An "outstanding loan" includes a loan for which a deemed distribution has occurred following a participant's default and the defaulted loan has not been repaid or offset.

7. Interest Rate. The interest rate for a loan is equal to the prime loan rate, as reported by the U.S. Federal Reserve on the last business day of the prior calendar quarter, plus one percentage point. The Department or the Board may change the method for determining the interest rate, but such change will apply only to loans issued following the effective date of the new method.

8. Term of a Loan.

a. General. The maximum term of a loan is five years, except as otherwise provided in this policy. The minimum loan term is one year.

b. Residential loan. Notwithstanding part (a), the maximum term of a loan is 15 years if the loan is used to acquire a participant's principal residence. In order to determine whether a loan will be used to purchase a participant's principal residence, a participant must submit the following to the recordkeeper: (i) a copy of the purchase contract; or (ii) a signed statement from the participant that the loan will be used to purchase or build the participant's principal residence within a specific period of time.

9. Refinancing. The refinancing of a loan is not permitted.

10. Timing of a Loan. No loan may be made to a participant sooner than seven calendar days after the satisfaction or termination of a prior loan (including offset) from the same Supplemental Retirement Plan.

11. Rollovers.

a. A participant is prohibited from rolling over a loan from the participant's previous employer to the Supplemental Retirement Plans, and the Supplemental Retirement Plans will not accept such loans.

- b. A participant is prohibited from rolling over a loan from the Supplemental Retirement Plans to another plan and any attempt to do so will result in a default of the loan.
  - c. Notwithstanding subsections (a) and (b), a participating employer may elect to transfer participants' loans to the Supplemental Retirement Plans as part of the transfer of participants' accounts from another plan subject to the approval of the Department and the recordkeeper.
  - d. If a participant rolls over the entire account balance from one Supplemental Retirement Plan to another, then the participant also may roll over any loan in the account.
12. Note and Pledge/Assignment. A participant must agree to (a) the terms of the loan as set forth in a promissory note for the loan; and (b) the pledge or assignment of the portion of the participant's account balance that is used as security for the loan. Negotiation of the loan check by the participant signifies the participant's acceptance of the loan terms in (a) and the pledge or assignment in (b).
13. Spousal Consent. A participant is not required to obtain consent from his or her spouse to take a loan and use a portion of the participant's account balance as security for the loan amount, regardless of the amount of the participant's account balance.
14. Loan Fund (Account).
- a. All loans are made (i) in cash; (ii) from pre-tax contributions (to the extent sufficient to meet the loan amount); and (iii) on a proportionate basis from all of the participant's investments.
  - b. The outstanding loan balance is segregated from the participant's account balance and held by the recordkeeper in a separate loan fund (or loan account).
  - c. A loan is treated as a separate investment on behalf of the participant.
15. Investment of Repayments. Payments of principal and interest on a loan are credited to the participant's account balance and are invested according to the participant's investment allocation for current contributions. If the participant is not contributing to the plan at the time of a repayment, then the repayment amount will be invested on a proportionate basis in all of the participant's investments.
16. Repayments While Employed.
- a. Loan repayments will begin as soon administratively practicable, but no later than two months, following the issuance of the loan.
  - b. During a participant's employment with a participating employer in the Supplemental Retirement Plans, the employer will withhold loan repayments from the participant's pay according to the employer's payroll schedule and will remit the repayments to the recordkeeper.

- c. Notwithstanding part (b), a participant remains responsible for making loan repayments directly to the recordkeeper. Direct payments by participants should be made ACH/wire when reasonably possible; when ACH/wire payment is not reasonably possible, participants may send a paper check to the recordkeeper. Loan repayment by ACH/EFT, check, or other method (e.g., ACH/EFT) authorized by the Department or of the Board is referred to as an "Authorized Repayment Method". If the employer does not, or is unable to, withhold loan repayments from payroll and/or remit loan repayments to the recordkeeper, then to the extent authorized by the Department or the Board and approved by the recordkeeper, a participant may make loan repayments directly to the recordkeeper by an Authorized Repayment Method no less frequently than quarterly on a revised schedule of amount and payment dates calculated by the recordkeeper to repay the loan in full with interest and in substantially equal payments over the remaining original period of the loan.

#### 17. Separation from Employment.

- a. Repayments. Following separation from employment, a participant may (i) repay the outstanding loan balance in full; or (ii) continue repaying the loan by making repayments directly to the recordkeeper by an Authorized Repayment Method~~check or other method (e.g., ACH/EFT) authorized by the Department of the Board.~~ If the participant elects to continue repaying the loan, then the participant must make regular payments no less frequently than quarterly on a schedule of amount and payment dates calculated to repay the loan in full with interest and in substantially equal payments over the remaining original period of the loan.
- b. [The following provision shall be deemed deleted upon the Supplemental Retirement Plans conversion to Empower's recordkeeping system in 2024Q1.] Coupon book and re-amortization. To assist the participant in direct billing repayments following separation from employment, a participant may request a coupon book and a re-amortization of the loan from the recordkeeper, provided that the re-amortization requires payment dates and amounts calculated by the recordkeeper to repay the loan in full with interest and in substantially equal payments over the remaining original period of the loan. The recordkeeper charges a one-time, nonrefundable fee of \$100 for the coupon book and re-amortization. The participant must request the coupon book and re-amortization within 90 days of separation from employment.
- c. Special Separation Allowance. If the former employer of a retired law enforcement officer ("LEO") pays Special Separation Allowance ("SSA") payments to the LEO through the employer's payroll, the employer may withhold loan payments from the LEO's SSA payments unless otherwise notified in writing by the LEO.
- d. Deemed Distribution and Offset. Following separation from employment, if a participant does not repay the loan as required by this section, then the recordkeeper will report the outstanding balance to the Internal Revenue Service as a distribution for tax purposes, and will offset the outstanding balance, on the sooner of (i) the date on which the participant takes a full distribution of the plan account; or (ii) the occurrence of a deemed distribution pursuant to Section 22.

18. Prepayments. A participant may repay a loan 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 participant. Prepayments will not change the amount or timing of subsequent payments due prior to payoff of the loan but will simply reduce the total number of payments to be made, unless otherwise specified by the participant.
19. Suspension of Loan Repayments During a General Leave of Absence. A participant with an outstanding loan balance may suspend repayments for up to 12 months for any period during which the participant is on an authorized leave of absence (i) without pay; or (ii) with reduced pay that is less than the required repayment amount. Upon the participant's return to employment (or at the end of the 12-month period, if earlier), the participant shall resume making repayments on the loan, based on one of the following two alternatives.
- a. Payment Alternative #1. The participant 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 participant 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.
20. Suspension of Loan Repayments During Military Service. A participant may elect to have loan repayments suspended during a period during which the participant is performing military service (i.e., service in the uniformed services). The payment alternatives in Item 19 apply to such participant, except that:
- a. The Five-Year Term may be extended by the amount of time the participant was performing military service; and
  - b. The interest rate may not exceed 6% during the period of military service; provided that the participant provides the recordkeeper with written notice and a copy of his/her military orders no later than 180 days after the date the participant completes such military service.
21. Default and Grace Period.
- a. If a participant's loan repayment is not received from the employer or the participant as required by the repayment schedule, the loan will be considered in default, unless payment is made within the grace period.
  - b. The grace period lasts 90 days after the date on which a loan repayment was due; however, the grace period may be extended by the Department to the end of the calendar quarter following the calendar quarter in which the repayment was originally due.
  - c. Interest continues to accrue on the amount of the loan in default until the sooner of (i) the date that the loan is offset; or (ii) the date that loan repayments are made current.

22. Deemed Distributions. The recordkeeper will report the outstanding loan balance to the Internal Revenue Service as a deemed distribution upon the occurrence of one of the following:

- a. Failure to make a repayment within the grace period;
- b. Failure to repay the loan in full within 90 days of the participant's death;
- c. Any statement or representation by the participant in connection with the loan that is inaccurate or incomplete in any material respect;
- d. Failure by the participant to comply with the provisions of the note, this policy, and the plan document, other loan documentation, or applicable law (including the Internal Revenue Code); or
- e. Termination of the plan.

23. Offset.

- a. A loan that has been deemed distributed will be offset when the participant is entitled to an immediate distribution from his/her plan account balance of an amount that is at least equal to the outstanding loan balance.
- b. For the purpose of an offset, a loan default will be treated as an immediately distributable event to the extent that applicable law (including the Internal Revenue Code) does not prohibit an actual distribution of the type of contributions that would be offset.
- c. Prior to the offset of a defaulted loan, the participant may repay the outstanding loan balance (including accrued interest through the date of repayment), even if the loan has been deemed distributed and reported to the Internal Revenue Service.
- d. The amount of a loan that is offset is reported to the Internal Revenue Service as a distribution only to the extent that such amount was not reported previously.
- e. The amount of a loan that is offset does not include the interest that accrues following a deemed distribution.

24. CARES Act Provisions. This section applies to the extent permitted by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136).

- a. CRD-eligible participant. 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.
- b. Increased loan maximum. 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.



- c. Second loan. From March 27, 2020 through September 22, 2020, a CRD-eligible participant is permitted to take a second loan from each plan.
- d. Loan deferral. 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:
  - 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 recordkeeper 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.

- 25. Limited Second Loan for NC 457 Plan. From April 17, 2009 through April 22, 2019, a participant was permitted to take a second loan from the NC 457 Plan if such participant defaulted on the first loan and the loan was offset in error when the participant turned 59½ instead of 70½.

#### Revision History and Effective Dates

Version	Effective Date	Description of Changes
1.0	August 26, 2021	Amended and restated version
1.1	May 26, 2022	Permit certain loan rollovers
1.2	December 1, 2022	Changed Prudential Retirement to Empower and updated URL ( <a href="http://www.myNCPlans.com">www.myNCPlans.com</a> ).
<u>1.3</u>	<u>November 30, 2023</u>	<u>Removed the option of a coupon book following separation from employment, effective upon the Supplemental Retirement Plans' conversion to Empower's recordkeeping system in 2024Q1.</u>

Approved by the North Carolina Supplemental Retirement Board of Trustees:

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Secretary of the Board

## **Attachment 2 – Policy on Participation and Beneficiaries (with revisions)**

### **POLICY ON PARTICIPATION AND BENEFICIARIES**

#### **North Carolina Supplemental Retirement Plans**

Adopted: August 26, 2021

Last Revised: ~~November 30, 2023~~December 1, 2022

#### **Enrollment and Information**

1. To enroll in a Supplemental Retirement Plan, a participant must use the process and complete the form (which may be online or by telephone) that are provided by the plans' recordkeeper. Paper forms must be received by the recordkeeper within 90 days of the participant's signature. The recordkeeper is Empower as of the date of this policy.
2. A participant is responsible for providing, and keeping current, a current mailing address, telephone number, and email address to the recordkeeper. The Department and the recordkeeper are entitled to rely on a participant's contact information that is on file with the recordkeeper.
3. A participant must communicate with the recordkeeper by using the communication methods and procedures established by the recordkeeper.

#### **Beneficiaries**

1. A participant, including an alternate payee or beneficiary who becomes a participant, may designate or change one or more beneficiaries.
2. To designate a beneficiary (including changing a beneficiary), a participant must use the process and complete the form (which may be online or by telephone) that are provided by the Department or the recordkeeper. Paper forms must be notarized and must be received by the recordkeeper within 90 days of the participant's signature.
3. If a participant designates a single beneficiary but does not provide a percentage of the participant's account that the beneficiary shall receive, the percentage shall be deemed 100%, and the beneficiary shall receive the participant's entire account. If a participant designates a single beneficiary but provides a percentage other than 100%, then the beneficiary designation is invalid and will not replace the current beneficiary designation, if any, that is on file with the recordkeeper.
4. If a participant designates two or more beneficiaries, then the participant must provide a percentage of the participant's account that each beneficiary shall receive. If the percentages are not provided by the beneficiary, then the beneficiaries shall receive equal shares. If the percentages do not equal 100%, then the beneficiary designations are invalid and will not replace the current beneficiary designations, if any, that are on file with the recordkeeper.
5. If a primary beneficiary pre-deceases the participant, then the beneficiary's share of the participant's benefit will be paid in equal shares to any remaining primary beneficiaries. If a contingent beneficiary pre-deceases the participant, then the beneficiary's share of the participant's benefit will be paid in equal shares to any remaining contingent beneficiaries. A "primary beneficiary" is a beneficiary that is first in line to receive the participant's

account upon the death of the participant. A “contingent beneficiary” is a beneficiary that receives the participant’s account only if there is no living primary beneficiary at the time of the participant’s death.

6. The estate of the participant shall be the beneficiary if, at the time of the participant’s death, the participant has not designated a living beneficiary with the recordkeeper.
7. To claim as a beneficiary from a Supplemental Retirement Plan, a beneficiary must use the process and complete the form (which may be an online form) that are provided by the plans’ recordkeeper. Paper forms must be received by the recordkeeper within 90 days of the participant’s signature. The funds in a deceased participant’s account shall be paid to a beneficiary’s estate if the beneficiary survives the participant but dies before the recordkeeper receives a valid, timely beneficiary claim form from the beneficiary.
8. A beneficiary other than an estate may waive the right to receive a benefit payable under a plan.

### **Termination**

1. A person’s participation in the NC 401(k) Plan is terminated only if the person has no assets in the NC 401(k) Plan and the person is no longer eligible to defer compensation into the NC 401(k) Plan. Participation in the NC 401(k) Plan shall not terminate due to separation from employment with one participating employer and beginning employment with another participating employer.
2. A person’s participation in the NC 457 Plan is terminated only if the person has no assets in the NC 457 Plan and the person is no longer eligible to defer compensation into the NC 457 Plan. Participation in the NC 457 Plan shall not terminate due to separation from employment with one participating employer and beginning employment with another participating employer.

### **Revision History and Effective Dates**

Version	Effective Date	Description of Changes
1.0	August 26, 2021	Original version
<del>1.12.0</del>	December 1, 2022	A beneficiary can name a beneficiary
<u>1.2</u>	<u>November 30, 2023</u>	<u>Clarification of single beneficiary with no percentage of account included or percentage less than 100%</u>

Approved by the North Carolina Supplemental Retirement Board of Trustees:

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Secretary of the Board