



MEMORANDUM

TO: Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: November 30, 2023

SUBJECT: Amendment to the NC 401(k) and NC 457 Plans

Retroactive compliance amendment for the NC 401(k) Plan

In 2021, the North Carolina Department of State Treasurer (DST) learned that Orange County was limiting the frequency of employee deferrals, which was inconsistent with the plan document for the NC 401(k) Plan. The county uses a biweekly payroll frequency; however, for over 20 years the county permitted employees to defer money to the NC 401(k) Plan in only 24 of the 26 annual pay periods. In particular, for the two months during the year with three pay periods, employee deferrals were permitted only for the first and third periods. The NC 401(k) Plan does not restrict employee deferrals to certain pay periods, thereby providing employees the right to make deferrals for all of its employers pay periods during the year.

Staff worked with the county and Empower to determine the extent of the error. Staff notified the county that it needed to correct its deferral frequency, and the county has permitted deferrals for all 26 pay periods during the year since April 1, 2022.

DST 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 deferral frequency used by Orange County. The amendment applies only to Orange County and only for the period of June 1, 2000-March 31, 2022. Notably, the proposal did not include a corrective payment because the county communicated to employees that deferrals were permitted only for 24 of the 26 pay periods during the year.

The IRS issued a compliance statement on September 6, 2023, approving the correction. Therefore, staff requests that the Board adopt the amendment to the NC 401(k) Plan in Attachment 1. With the Board's adoption of the attached amendment, the correction process will be complete.

SECURE 2.0 Act amendments for required minimum distributions

SECURE 2.0 Act, enacted in December 2022, made several changes to required minimum distributions (RMDs) from 401(k) and 457 plans, and two of those changes require updates to the NC 401(k) and NC 457 Plans. The proposed revisions to the NC 401(k) and NC 457 Plans

are in Attachments 2 and 3, respectively. The age at which a retired participant must begin taking RMDs increased from 72 to 73 effective January 1, 2023. In addition, beginning January 1, 2024, a participant is no longer required to take RMDs from a Roth account during the participant's lifetime; however, the change does not apply to RMDs from Roth accounts that were required for 2023 but permitted to be paid in 2024.

Recommendation

Staff recommends the Board adopt the amendments to the NC 401(k) Plan and NC 457 Plans in Attachments 1-3.

Attachment 1 – 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 maintains 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 frequency of Employee deferrals under the Plan for employees of Orange County, North Carolina (the “Employer”).

NOW THEREFORE, be it

RESOLVED, that, solely with respect to employees of Employer, and effective June 1, 2000 through March 31, 2022, the Plan, be and hereby is amended in the following respects:

1. A new second sentence shall be added to Section 3.01(a) of the Plan to read as follows:

Notwithstanding the foregoing, Deferred Cash Contributions shall be made solely on the Compensation paid in the first and last pay periods during each month.

2. A new second sentence shall be added to Section 3.01(b) of the Plan to read as follows:

Notwithstanding the foregoing, Catch-Up Contributions shall be made solely on the Compensation paid in the first and last pay periods during each month.

Attachment 2 – Amendment to NC 401(k) Plan

Section 5.3 Limitation on Options

(a) Except as provided in Section 5.3(b) but notwithstanding any other provision of this Article V, all distributions from the Plan shall conform to the requirements of Code § 401(a)(9) and applicable Treasury Regulations and IRS guidance thereunder (collectively, the “Distribution Rules”), including the incidental death benefit provisions of Code § 401(a)(9)(G), and no payment option may be selected by a Participant or Beneficiary under Section 5.2, 5.4, or 5.5 unless it satisfies the Distribution Rules. The Distribution Rules shall override any Plan provision that is inconsistent with the Distribution Rules.

(b) To the extent provided in Code § 402A(5) and any Treasury Regulations thereunder, required minimum distributions pursuant to Code § 401(a)(9)(A) shall not apply to a designated Roth Account during the lifetime of a Participant. The preceding sentence shall apply to required minimum distributions on or after January 1, 2024, except for distributions that are required with respect to years prior to January 1, 2024 but are permitted to be paid on or after such date.

Section 5.1 Retirement Benefits and Election

(a) **Post-Severance Event Distribution.** Following a Severance Event, a Participant is entitled to the distribution of the Participant’s Account, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 5.2. Subject to the following paragraphs of this Section 5.1, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date, but not later than April 1 of the year following the year of the Participant’s Severance Event or attainment of age 73½, whichever is later. A Participant may elect to receive a distribution of the Participant’s Account in accordance with one of the payment options described in Section 5.2. Notwithstanding the foregoing, the Plan Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed. Unless otherwise permitted by the Plan Administrator, a Participant’s distribution request shall be paid no sooner than 60 days following termination of employment, unless the Participant (1) has retired; (2) is eligible for a distribution under Section 5.1(b), 5.6, or 5.8; or (3) is required by the Code, Treasury Regulations, or the provisions of the Plan to take a distribution.

Attachment 3 – Amendment to NC 457 Plan

9.02 Forms of Distributions

(c)...

- (ii) “Distribution calendar year” means a calendar year for which a minimum distribution is required. The first distribution calendar year is the calendar year in which the Member who has terminated employment attains age 732.
- (iv) “Member's Accounts” means the balance of the Member's Accounts as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year ("valuation calendar year") increased by the amount of contributions made and allocated or forfeitures allocated to the Member's Accounts as of dates in the valuation calendar year after such last Valuation Date and decreased by distributions made in the valuation calendar year after such last Valuation Date. The Member's Accounts for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year. Notwithstanding the foregoing, “Member’s Accounts” does not include a designated Roth Account to the extent that such Roth Account is not subject to required minimum distributions due to the application of Section 9.11.

9.03 Commencement of Payments

- (a) Except as otherwise provided in this Article, distribution of a Member’s Accounts shall commence as soon as administratively practicable following the later of (i) the Member’s termination of employment or (ii) the 65th anniversary of the Member’s date of birth (but not more than 60 days after the close of the Plan Year in which the later of (i) or (ii) occurs).
- (b) In lieu of a distribution as described in paragraph (a) above, a Member may elect to have the distribution of his Accounts commence as of any Valuation Date coincident with or following his termination of employment, provided that such date is not later than the date described in paragraph (d) below.
- (c) Notwithstanding the above provisions of Article 9, if a Member dies in active service or terminates employment and dies before distribution of his Accounts has commenced, distribution of the Member’s Accounts to his designated Beneficiary shall not commence later than one year after the Member’s death; provided, however, if the designated Beneficiary is the Member’s surviving spouse, distribution shall commence not later than the date on which the Member would have attained age 732.
- (d) Except as provided in Section 9.11, if in no event, however, shall the provisions of this Section operate so as to allow the distribution of a Member’s Account to begin later than the April 1 following the calendar year in which he attains age 732 or

retires, if later.

- (e) Unless otherwise permitted by the Primary Administrator, a Member's distribution request shall be paid no sooner than 60 days following termination of employment, unless the Member (1) has retired; (2) is eligible for a distribution under Article 7; or (3) is required by the Code, Treasury Regulations, or the provisions of the Plan to take a distribution.

9.07 Distribution Limitation

Except as provided in Section 9.11, Notwithstanding any other provision of this Article 9, all distributions from the Plan shall conform to the requirements of Section 401(a)(9) of the Code, including the incidental death benefit provisions of Section 401(a)(9)(G) of the Code. Such requirements shall be administered in accordance with the regulations issued under Section 401(a)(9) of the Code, as follows:

- (a) With respect to distributions made for distribution calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the regulations under Section 401(a)(9) that were proposed on January 17, 2001; and
- (b) With respect to distributions made for distribution calendar years beginning on and after January 1, 2003, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the regulations under Section 401(a)(9) that were issued April 17, 2002, as prescribed in Section 9.02.

Except as provided in Section 9.11, Fthe provisions of Section 401(a)(9) of the Code and the regulations thereunder shall override any Plan provision that is inconsistent with Section 401(a)(9) of the Code.

9.11 RMDs from Roth Accounts

To the extent provided in Section 402A(5) of the Code and any Treasury Regulations thereunder, required minimum distributions pursuant to Section 401(a)(9)(A) of the Code shall not apply to a designated Roth Account during the lifetime of a Participant. The preceding sentence shall apply to required minimum distributions on or after January 1, 2024, except for distributions that are required with respect to years prior to January 1, 2024 but are permitted to be paid on or after such date.