



MEMORANDUM

TO: Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: May 26, 2022

SUBJECT: Proposed amendment to the NC 403(b) Program

Participating employers in the NC 403(b) Program are the plan sponsors; by contrast, the NC 401(k) and NC 457 plans are sponsored by the State of North Carolina. As the plan sponsors, school districts and community colleges that participate in the NC 403(b) Program have the responsibility for selecting and managing the plan documents for their 403(b) plans. One of the features of the NC 403(b) Program is a plan document provided by the Department and the Board and approved by the Internal Revenue Service. Employers have the option to use the Program's plan document (specifically, a base plan document and an adoption agreement) or to use another plan document (e.g., from a third-party administrator).

As part of discontinuing the NC 403(b) Program, the Department and the Board need to provide a final amendment for adoption by employers using the Program-provided plan document, whether an employer is terminating its 403(b) plan or continuing to offer the plan. With the Board's approval, the attached amendment would be provided to the employers using the Program-provided base plan document and adoption agreement. The employers would then be responsible for adopting the amendment.

The amendment does the following:

1. Adds an option to terminate the plan effective July 1, 2022 (and an employer terminating its plan must select this option);
2. Permits a default distribution to a participant when a plan is terminated but a participant does not select a distribution option. The default distribution is a cash payment to the participant if the account balance is \$1,000 or less or a rollover to a Department-selected IRA if the account balance is greater than \$1,000;
3. Removes references to Prudential entities as the investment provider (i.e., the funding agent and the funding vehicles);

4. Adds CARES Act provisions corresponding to the relief approved by the Board in 2020;
5. Increases the age from 70½ to 72 in the definition of the “Required Beginning Age” for required minimum distributions, consistent with the SECURE Act; and
6. Amends an Internal Revenue Code reference for hardship distributions.

The amendment is included in a resolution that can be used by the employer to adopt the amendment.

The Department will notify employers using the Program-provided plan document that the employer is responsible for maintaining the plan document if the employer elects to continue offering its 403(b) plan.

The base plan document (posted [here](#)) and adoption agreement (posted [here](#)) provided by the NC 403(b) Policy are posted on the Board’s web page on www.myNCRetirement.com.

Recommendation

Staff recommends the Board adopt the resolution and amendment for use by employers in the NC 403(b) Program that use the base plan document and adoption agreement provided by Program.

ATTACHMENT

Amendment to the North Carolina Public School Teachers' and Professional Educators' Investment Plan 403(b) Volume Submitter Plan

WHEREAS, the Employer has established the _____ Plan (the "Plan") for the benefit of its eligible employees, originally effective _____;

WHEREAS the terms of the Plan are set forth in the North Carolina Public School Teachers' and Professional Educators' Investment Plan 403(b) Volume Submitter Plan Base Plan Document and Adoption Agreement; and

WHEREAS, the Plan is hereby amended in connection with the Plan's termination or conversion to an individually-designed plan, as applicable, to reflect (1) clarifying changes, (2) changes required pursuant to the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act"), as part of The Further Consolidated Appropriations Act of 2019, and (3) changes required pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").

NOW THEREFORE, IT IS RESOLVED that, effective as of the dates stated herein, the Plan is amended as follows:

ADOPTION AGREEMENT AMENDMENTS

1. Effective July 1, 2022, a new Item 1.2(d) is added to the Plan to read as follows:
 - d. *Termination Date (check the box if you are terminating your Plan). The Plan is terminated effective July 1, 2022.*
2. Effective _____ (July 1, 2022, unless an earlier date is entered), Appendix A is amended to remove "Prudential Retirement Insurance and Annuity Company" and "Prudential Bank & Trust Company, FSB Custodial Accounts" from lines II and III, respectively.

BASE PLAN DOCUMENT AMENDMENTS

1. Effective January 1, 2019, Section 6.2(d)(6) is amended to replace the phrase "Code section 165(h)" with the phrase "Code section 165(h)(5)."
2. Effective July 1, 2022, for a Plan terminating under Item 1.2(d) of the Adoption Agreement, Section 6.4(b) is amended to add a new subsection (3) to the end thereof:
 - (3) Notwithstanding anything else in this Section 6.4(b), in connection with the Plan's termination under Item 1.2(d) of the Adoption Agreement, if a Participant does not elect a distribution of his or her Account before August 30, 2022, the Plan shall distribute the entire Account as soon as administratively practicable on or after such date. Accounts valued at \$1,000 or less will be paid to the Participant in a lump sum. Accounts valued at greater than \$1,000 will be paid directly to an individual retirement plan designated by the Program Administrator in accordance with the requirements of Code section 401(a)(31)(B).

3. Effective January 1, 2020, a new Section 6.11 is added to the Plan to read as follows:

6.11 Coronavirus-Related Distributions

Notwithstanding anything in this Article VI, the following special rules apply to any Participant who received a Coronavirus-Related Distribution.

- (a) A Coronavirus-Related Distribution shall be treated as meeting the requirements of Code section 403(b)(7)(A)(i) or 403(b)(11), and shall not be subject to the tax treatment that applies to an eligible rollover distribution.
- (b) Code section 72(t) shall not apply to any Coronavirus-Related Distribution. Unless the Participant elects otherwise, any Coronavirus-Related Distribution that would be included in the Participant's gross income for the taxable year of the distribution shall be included in gross income ratably over a three-year period beginning in the year of the distribution.
- (c) The aggregate amount of Coronavirus-Related Distributions for an individual shall not exceed \$100,000. As such, the aggregate amount of Coronavirus-Related Distributions from the Plan shall not exceed the excess (if any) of (i) \$100,000 over (ii) the aggregate amount treated as Coronavirus-Related Distributions received by the Participant from any other Employer plans.
- (d) A Participant who received a Coronavirus-Related Distribution that is otherwise an eligible rollover distribution may, at any time during the three-year period beginning on the day after receipt of the Coronavirus-Related Distribution, make one or more repayments to the Plan in an aggregate amount not to exceed the amount of the Coronavirus-Related Distribution. Amounts repaid hereunder shall be treated as direct trustee-to-trustee transfers within 60 days of the distribution and shall be credited to the Participant's Rollover Account.
- (e) "Coronavirus-Related Distribution" means any distribution from a Participant's Account on or after January 1, 2020 and before December 31, 2020 made to a Qualified Individual.
- (f) A "Qualified Individual" means an individual (A) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention, (B) whose Spouse or dependent (as defined in Code section 152) is diagnosed with such virus or disease by such a test, (C) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off, or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, (D) who experiences adverse financial consequences as a result of a reduction in pay (or self-employment income) or has a job offer rescinded or start date delayed due to such virus or disease, (E) who experiences adverse financial

consequences as a result of the individual's Spouse or member of the individual's household being quarantined, being furloughed or laid off, having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, having a reduction in pay (or self-employment income) or having a job offer rescinded or start date delayed due to such virus or disease, or (F) who experiences adverse financial consequences as a result of the closing or reducing hours of a business owned or operated by the individual's Spouse or member of the individual's household due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the Secretary's delegate). For this purpose, a member of the individual's household is someone who shares the individual's principal residence.

4. Effective July 1, 2022, Section 7.1(d)(1) is amended to replace the phrase "Section 6.4(a) and Section 6.4(b)(1)" with the phrase "Section 6.4(a), Section 6.4(b)(1), and Section 6.4(b)(3)."
5. Effective January 1, 2020, Section 9.1 is amended to add a new subsection (f) to the end thereof:

(f) **Coronavirus-Related Loans.**

- (1) Notwithstanding anything in this Section 9.1 to the contrary, the following special rules apply to loans made to any Participant who is a Qualified Individual (as defined in Section 6.11(f)):

The amount of any loan from the Plan made during the Applicable Loan Period may not, when added to the outstanding balance of all loans made to such Qualified Individual (including loans made to the Participant from a qualified plan, a plan described in Code section 403(a), or another 403(b) plan of the Employer), exceed the lesser of (A) \$100,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan during the one year period ending on the day before the loan is made over the outstanding balance of loans from the Plan on the date the loan is made or (B) 100% of the nonforfeitable accrued benefit of the Qualified Individual. For this purpose, "Applicable Loan Period" means the period beginning on March 27, 2020 and ending on September 22, 2020.

- (2) Notwithstanding anything in this Section 9.1 to the contrary, the Plan Administrator may delay any loan repayment that is due from a Qualified Individual beginning on the Qualified Beginning Date and ending on December 31, 2020, for a period not to exceed one year. Any subsequent repayments with respect to such loan shall be adjusted to reflect the delay and any interest accruing during such delay. The 5-year loan repayment schedule (or a home loan repayment schedule) required under Code section 72(p) and Section 9.1(c) shall be appropriately adjusted to reflect the period during which loan payments are delayed (i.e., the period of delay shall be disregarded for this purpose). For this purpose, "Qualified Beginning Date" means March 27, 2020.

6. Effective for distributions required to be made after December 31, 2019, the definition of "Required Beginning Date" in Appendix A is amended to read as follows:

"Required Beginning Date" means:

For Participants who attain age 70½ prior to January 1, 2020, April 1 of the calendar year following the later of (a) the calendar year in which the Participant attains age 70½ or (b) the calendar year in which the Participant retires.

For Participants who attain age 70½ on or after January 1, 2020, April 1 of the calendar year following the later of (a) the calendar year in which the Participant attains age 72 or (b) the calendar year in which the Participant retires.

IN WITNESS WHEREOF, the Employer has caused this amendment to be executed by a duly authorized representative this ____ day of _____, 2022.

Attest:

Name of Employer

By: _____

Title: _____