



North Carolina
Total Retirement Plans



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MEMORANDUM

TO: NC Supplemental Retirement Board of Trustees

FROM: Reid Chisholm, Assistant General Counsel

DATE: August 27, 2020

SUBJECT: Amendments to the plan documents for the NC 401(k) and NC 457 Plans

RMD Age (NC 401(k) and NC 457 Plans)

The Setting Every Community Up for Retirement Enhancement (SECURE) Act, enacted in December 2019, increased the age at which participants in certain retirement plans, including 401(k) and 457(b) plans, are required to begin receiving distributions. The SECURE Act raised the beginning age for required minimum distributions (RMDs) from 70½ to 72. The NC 401(k) and NC 457 Plans have used the RMD age in the Internal Revenue Code, so the increased RMD age was implemented earlier this year in the plans. The revised plan documents for the NC 401(k) and NC 457 Plans that incorporate this change are in Attachments 1 and 2, respectively.

In addition, the definition of “normal retirement age” in the NC 457 Plan uses 70½, so the revisions in Attachment 2 also include changing 70½ to 72 in the definition of “normal retirement age.” The normal retirement age is used to determine the period for which a participant can make special “catch-up” contributions above the normal annual limit.

In-service Withdrawal Age (NC 457 Plan)

A provision passed with the SECURE Act reduced the minimum age for a 457(b) plan participant to take an in-service withdrawal from 70½ to 59½. This change, which brings the minimum age for the NC 457 Plan in line with the NC 401(k) Plan, is included in Attachment 2.

Recommendation

Staff recommends that the Board approve the amendments in Attachments 1 and 2.



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Attachment 1 – Amendments to the Plan Document for the NC 401(k) Plan

**SUPPLEMENTAL RETIREMENT INCOME PLAN
OF NORTH CAROLINA**

Effective January 1, 1985
As Amended and Restated Effective December 10, 2015
Amended as of December 13, 2018
Amended as of March 21, 2019
Amended as of August 27, 2020

attained ages as of the Member's and the spouse's birthdays in the distribution calendar year.

For purposes of this paragraph (c), the following definitions apply:

(i) "Designated beneficiary" means the individual who is designated as the Beneficiary and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Treasury regulations.

(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 ~~72~~70½.

(iii) "Life expectancy" means life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(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.

(d) Effective January 1, 2009, notwithstanding any provision of this Article 9 to the contrary, a Member or Beneficiary who would have been required to receive payments in accordance with Section 9.03(d) below for 2009 but for the enactment of Code section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are equal to the 2009 RMDs will: (1) for Members or Beneficiaries who received payments in accordance with Section 9.03(d) prior to 2009, receive 2009 RMDs unless the Member or Beneficiary affirmatively elects not to receive such distributions; and (2) for Members or Beneficiaries who had not received payments in accordance with Section 9.03(d) prior to 2009, not receive 2009 RMDs unless the Member or Beneficiary affirmatively elects to receive such distributions. In addition, notwithstanding any provision of this Article 9 to the contrary, and solely for

purposes of applying Section 9.08, 2009 RMDs will not be eligible for direct rollover from the Plan.

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 ~~72~~70½.

(d) In no event, however, shall the provisions of this Section operate so as to allow the distribution of a Member's Accounts to begin later than the April 1 following the calendar year in which he attains age ~~72~~70½ or retires, if later.

9.04 Mandatory Distribution of De Minimis Accounts

(a) Notwithstanding any provision of the Plan to the contrary, if a Member has a termination of employment and the value of the Member's Accounts amounts to \$1,000 or less, the Primary Administrator shall distribute the Member's entire account in a lump sum payment as soon as administratively practicable following notification to the Plan's recordkeeper of the Member's termination of employment; provided that the Member is not reemployed by an Employer as of the date of distribution and the value of the Member's Accounts remains less than \$1,000 as of the date of the distribution.



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Attachment 2 – Amendments to the Plan Document for the NC 457 Plan

**North Carolina Public Employee Deferred Compensation Plan
(NC 457 Plan)**

*Revised ~~August 27~~ ~~May~~
~~28~~, 2020*

Section 2.13 Enrollment Agreement

An agreement or agreements entered into between an Employee and the Plan Administrator or Third-party Administrator, including any amendments or modifications thereof, for the purpose of allowing an Employee to become a Participant in the Plan.

Section 2.14 Entry Date

The first day of each calendar month during the Plan Year.

Section 2.15 Includible Compensation

The information required to be reported under Code §§ 6041, 6051, and 6052 (*i.e.*, “Wages, Tips and other Compensation” on Form W-2), as modified by Code § 415(c)(3) and the Treasury Regulations and IRS guidance thereunder, and to include post-severance payments as defined by the final Treasury Regulations under Code § 415 and as may be deferred and treated as deemed compensation under Code § 415. Pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008, amounts paid as differential military pay are included in the Code definition of includible compensation. Includible Compensation does not include amounts treated as “deemed 125 compensation” because of an Employer’s requirement that its Employees participate in an Employer-sponsored health insurance program unless they state that they are provided health care coverage elsewhere.

Section 2.16 Maximum Deferral Amount

The maximum Annual Deferral Amount for a Participant during a Plan Year, equal to the amount in effect under Code § 457(b)(2) for the applicable Plan Year. The Maximum Deferral Amount is the lesser of the Dollar Limitation and the Percentage Limitation, as increased (if applicable) by the catch-up contributions in Section 4.2.

Section 2.17 Normal Limitation

As defined in Section 4.1, the maximum Annual Deferral Amount for a Participant during any taxable year, other than the catch-up limitations described in Section 4.2.

Section 2.18 Normal Retirement Age

(a) **General Rule.** The Normal Retirement Age is the date that the Participant would be eligible to retire with an unreduced service retirement from the defined benefit or money purchase retirement system in which the Participant currently participates (“Age of Unreduced Benefit”), but not later than age ~~72~~^{70½}. If a Participant does not participate in a defined benefit or money purchase retirement system, then the Participant’s Normal Retirement Age is 65. Once a Participant has to any extent utilized the catch-up limitation of Section 4.2(b), his or her Normal Retirement Age may not be changed.

(b) **Election by Participant.** Notwithstanding subsection (a), a Participant may designate his or her Normal Retirement Age, provided that such age is between 65 (or Age of Unreduced Benefit, if younger than 65) and ~~72~~70½.

(c) **Qualified Police and Firefighters.** Notwithstanding subsection (a), a Participant that is a qualified police or firefighter (as defined in Code § 415(b)(2)(H)(ii)(I)) may designate his or her Normal Retirement Age, provided that such age is between 40 and ~~72~~70½.

(d) **Limitation.** Notwithstanding subsection (a)-(c), the Normal Retirement Age may not be earlier than the earliest age or later than the latest age permitted under Code § 457(b) and Treasury Regulations.

Section 2.19 Participant

Any person who joined the Plan while an Employee, pursuant to the requirements of Article III.

Section 2.20 Participating Employer

An Employer that has elected, according to the procedures required by the Plan Administrator and/or Third-party Administrator, to permit its Employees to participate in the Plan.

Section 2.21 Percentage Limitation

The Percentage Limitation means 100 percent of the Participant's Includible Compensation for the taxable year.

Section 2.22 Plan

The North Carolina Public Employee Deferred Compensation Plan (NC 457 Plan), as set forth in N.C.G.S. § 143B-426.24 and this document.

Section 2.23 Plan Administrator

The North Carolina Department of State Treasurer and the Board.

Section 2.24 Plan Year

The twelve-month period from January 1 through December 31.

Section 2.25 Severance Event

Severance Event means the severance of a Participant's employment with a Participating Employer within the meaning of Code § 457(d)(1)(A)(ii) and any Treasury Regulations

Article V Benefits

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 ~~72~~70½, 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.

(b) **In-Service Distributions after Age** ~~59~~70½. A Participant may elect to receive in-service distributions of Deferred Compensation from his or her Account on or after the calendar year in which the Participant attains age ~~59~~70½ to the extent permitted by Applicable Law.

(c) **Loans.** Notwithstanding the foregoing provisions of this Section 5.1, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount required to be distributed from a Participant's Account pursuant to the Plan Administrator's procedures in the event of a default of the Participant's loan.

Section 5.2 Payment Options

As provided in Sections 5.1, 5.4 and 5.5, a Participant or Beneficiary may elect to have the value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 5.3:

(a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;

(b) One lump-sum payment or a partial lump-sum payment of at least \$500;

(c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant or Beneficiary;

(d) Annual payments equal to the life-expectancy-based minimum distributions required under Code § 401(a)(9), including the incidental death benefit requirements of Code § 401(a)(9)(G);

(e) [Intentionally left blank];

(f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 5.1, provided

that all payments commence (or are made) by the latest benefit commencement date under Section 5.1;

(g) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at different times, as elected by the Participant or Beneficiary, as applicable, provided that all payments commence (or are made) by the latest benefit commencement date required under the Plan; and

(h) Subject to Section 5.3, any payment option elected by the Participant or Beneficiary, as applicable, and agreed to by the Plan Administrator and Third-party Administrator.

If a Participant or Beneficiary fails to make a timely election of a payment option, benefits shall be paid (1) in a lump sum or as otherwise permitted by the Plan, as selected by the Plan Administrator; or (2) as required by Applicable Law.

Section 5.3 Limitation on Options

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.

Section 5.4 Post-Retirement Death Benefits

If (1) the Participant has begun receiving benefits on an installment basis but dies before all installments have been paid; and (2) his or her surviving Beneficiary is a sole person, then such installments shall continue to be paid to the Beneficiary, unless the Beneficiary elects otherwise. Otherwise, if the Participant has begun receiving benefits but dies before the entire Account has been paid, then the remaining amount of the Participant’s Account shall be paid the Beneficiary in a lump sum. Any different payment option elected by a Beneficiary under this Section 5.4 must provide for payments at a rate that is at least as rapid under the payment option under which benefits were paid to the Participant. In no event shall the Plan Administrator be responsible for paying any amount to the Beneficiary in the name of the Participant before the Plan Administrator receives proof of death of the Participant. If the Beneficiary begins receiving payments pursuant to this section but dies prior to a full distribution of the Participant’s account, the remaining amount of the Participant’s account shall be paid in a lump sum to the Beneficiary’s estate.

Section 5.5 Pre-Retirement Death Benefits

If the Participant dies before he or she has begun to receive the benefits provided by Section 5.1, the value of the Participant’s Account shall be payable to the Beneficiary according to the provisions of Sections 5.2 and 5.3. Notwithstanding the foregoing, in the event that the Beneficiary is other than a sole person (including a trust that qualifies as a sole “designated

beneficiary” under Treasury Regulation § 1.401(a)(9)), payment shall be made in a lump sum. The benefit commencement date under this Section 5.5 shall not be later than the latest of (i) December 31 of the year following the year of the Participant’s death; (ii) for non-installment distributions, the December 31 of the fifth year following the year of the Participant’s death; or (iii) if the Beneficiary is the Participant’s spouse, December 31 of the year in which the Participant would have attained age ~~72~~70½. If the Beneficiary begins receiving payments pursuant to this section but dies prior to a full distribution of the Participant’s account, the remaining amount of the Participant’s account shall be paid in a lump sum to the Beneficiary’s estate.

Section 5.6 Unforeseeable Emergencies

(a) In the event an unforeseeable emergency occurs, a Participant may apply to the Third-party Administrator (or Plan Administrator, if no Third-party Administrator) to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Third-party Administrator (or Plan Administrator, if no Third-party Administrator), the Participant shall be paid only such amount as the Third-party Administrator (or Plan Administrator, if no Third-party Administrator) deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance, or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.

(b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant resulting from a sudden unexpected illness or accident of the Participant, his or her spouse, or a dependent (as defined in Code § 152 and for taxable years beginning on or after January 1, 2005, without regard to Code §§ 152(b)(1), (b)(2), and (d)(1)(B)) of the Participant, loss of the Participant’s property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner’s insurance, *e.g.*, as a result of a natural disaster), or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant. Imminent foreclosure of or eviction from the Participant’s primary residence, the need to pay for medical expenses (including non-refundable deductibles and the cost of prescription drug medication), and the need to pay for the funeral expenses of a spouse or a dependent (as defined in Code § 152 and for taxable years beginning on or after January 1, 2005, without regard to Code §§ 152(b)(1), (b)(2), and (d)(1)(B)) may each constitute an unforeseeable emergency. However, the need to send a Participant’s child to college or to purchase a new home shall not, of itself, be considered an unforeseeable emergency. The determination as to whether such an unforeseeable emergency exists shall be