

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 050 – DEFERRED COMPENSATION**

459-050-0077

Loan Program

(1) Definitions. For purposes of this rule:

(a) “Cure period” is that time from when a default occurs until the end of the quarter following the quarter in which the default occurred.

(b) “Deferred Compensation Account” means the account described in OAR 459-050-0001, but does not include any amount in the Self-Directed Brokerage Option.

(c) “Designated Roth Account” means the account described in OAR 459-050-0001, but does not include any amount in the Self-Directed Brokerage Option.

(d) “Loan balance” means the outstanding principal and accrued interest due on the loan.

(e) “Participant Loan” means a loan that affects the Deferred Compensation Account, Designated Roth Account, or a combination of both, of a participant.

(f) “Promissory note” means the agreement of loan terms between the Program and a participant.

(g) “Third Party Administrator (TPA)” means the entity providing record keeping and administrative services to the Program.

(2) Eligibility for loan. Participants who are currently employed by a Plan Sponsor that has agreed to participate in a Participant Loan program are eligible for a Participant Loan. Retired participants, participants separated from employment, designated beneficiaries, and alternate payees are not eligible.

(3) Application for loan: A participant must apply for a loan and meet the requirements set forth in this rule.

(a) Once a loan is approved, a participant must execute a promissory note in the form prescribed by the Program.

(b) If a participant is deceased before the disbursement of the proceeds of a loan, the participant’s loan application shall be void as of the date of death.

(4) Loan Types:

(a) General purpose loan — a loan not taken for the purpose of acquiring a principal residence. General purpose loans must be repaid over a non-renewable repayment period of up to five years.

(b) Residential loan — a loan made for the purpose of acquiring a principal residence, which is, or within a reasonable time shall be, the principal residence of the participant. Residential loans must be repaid over a non-renewable repayment period of up to 15 years. A refinancing does not qualify as a residential loan. However, a loan from the Program that will be used to repay a loan from a third party will qualify as a residential loan if the loan would qualify as a residential loan without regard to the loan from the third party.

(5) Interest Rate: The rate of interest for a loan shall be fixed at one percent (1%) above the prime interest rate as published by the Wall Street Journal on the last business day of the month before the month in which the loan is requested.

(6) Loan Fees: A loan fee of \$50.00 shall be assessed when the loan is approved. The fee shall be deducted from a participant’s deferred compensation account on a pro-rata basis from existing investments.

(7) Loan Limitations:

- (a) The maximum loan amount is the lesser of:
 - (A) \$50,000; or
 - (B) One-half of the combined value of the participant's Deferred Compensation Account and the Designated Roth Account on the date the loan is made.
- (b) The minimum loan amount is \$1,000.
- (c) A participant may only have one outstanding loan.
- (d) A participant who has received a loan may not apply for another loan until 12 months from the date the previous loan was paid in full.
- (8) Source of Loan: The loan amount will be deducted from a participant's Deferred Compensation Account, Designated Roth Account, or a combination of both.
 - (a) Loan amounts will be deducted first from the Deferred Compensation Account.
 - (b) Loan amounts will be deducted pro-rata from existing investments in a participant's account(s).
 - (c) A participant may not transfer a loan to or from another retirement or deferred compensation plan.
- (9) Repayment Terms: The loan amount will be amortized over the repayment period of the loan with interest compounded daily to calculate a level payment for the duration of the loan.
 - (a) Loan payments must be made by payroll deduction. To receive a loan from the Program a participant must enter into a payroll deduction agreement. For the purposes of this rule, a promissory note or other document that includes the payroll deduction amount and is signed by a participant as a requirement to obtain a loan may be a payroll deduction agreement. Except as provided in this rule, a participant may not submit a loan payment directly to the Program or the Third Party Administrator.
 - (b) A participant is responsible for loan repayment even if the employer fails to deduct or submit payments as directed under the payroll deduction agreement. To avoid defaulting on a loan by reason of the employer's failure to deduct or submit a payment a participant may submit a loan payment by sending a money order or certified check to the Third Party Administrator.
 - (c) A participant may repay the loan balance in a single payment at any time before the date the final loan payment is due.
 - (d) Partial payment of a scheduled payment and partial prepayment or advance payment of future payments may not be permitted.
 - (e) Loan payments will be allocated in a participant's account(s) in the same manner as the participant's current contribution allocation. If, for any reason, the allocation is not known, the payment will be allocated to the Stable Value Option.
 - (f) Any overpayment will be refunded to the participant.
- (10) Leave of Absence. Terms of outstanding loans are not subject to revision except as provided in this section.
 - (a) Loan payments may be suspended up to one year during an authorized leave of absence if a participant's pay from the employer does not at least equal the payment amount.
 - (A) Interest on a loan continues to accrue during a leave of absence.
 - (B) A participant must immediately resume payments by payroll deduction upon return to work.
 - (C) The loan balance will be re-amortized upon the participant's return to work to be repaid within the remaining loan repayment period.
 - (D) Loan payments may be revised to extend the remaining loan repayment period to the maximum period allowed in the event the loan originally had a term shorter than the maximum period allowed under section (4) of this rule.

(E) If a participant is on a leave of absence that exceeds one year, the loan shall be in default unless repayment begins one year from the participant's last date worked or the date the final payment is due under the promissory note, whichever is earlier.

(b) Military Leave. Loan payments for participants on military leave may be suspended for the period of military service.

(A) A leave of absence for military service longer than one year will not cause a loan to be in default.

(B) Loan payments by payroll deduction must resume upon the participant's return to work.

(C) The original repayment period of a loan will be extended for the period of military service or to the maximum repayment period allowed for that type of loan, whichever is greater.

(D) Interest on a loan continues to accrue during a leave of absence for military service. If the interest rate on the loan is greater than 6%, then under the provisions of the Servicemembers Civil Relief Act of 2003, the rate shall be reduced to 6% during the period of military service.

(E) The loan balance will be re-amortized upon the participant's return to work to be repaid within the remaining loan repayment period as determined under paragraph (C) of this subsection.

(c) A participant on an authorized leave of absence or military leave may submit loan payments by sending a money order or certified check to the Third Party Administrator.

(11) Tax Reporting.

(a) The loan balance of a general purpose loan will be reported as a taxable distribution to the participant on the earlier of the last day of the loan repayment period, as adjusted under paragraphs (10)(a)(D) or (10)(b)(C) of this rule, if applicable, or if the loan is in default, the last day of the cure period.

(b) The loan balance of a residential loan will be reported as a taxable distribution to the participant on the earlier of the last day of the loan repayment period, as adjusted under paragraphs (10)(a)(D) or (10)(b)(C) of this rule, if applicable, or if the loan is in default, the last day of the cure period.

(c) If a participant dies before the loan balance being repaid, and the participant's beneficiary does not repay the loan balance in a single payment within 90 days of the participant's death, the loan balance will be reported as a taxable distribution to the estate of the participant.

(d) If a participant is eligible to receive a distribution under the Program, the reporting of a loan balance as a taxable distribution under this section will cancel the loan at the time the taxable distribution is reported. A canceled loan is a distribution and is no longer outstanding in a participant's account.

(e) If a participant is not eligible to receive a distribution under the Program, a loan balance reported as a taxable distribution under this section will be a deemed distribution for tax reporting purposes. A loan deemed distributed may not be canceled until the loan balance is repaid or the participant becomes eligible to receive a distribution. The loan balance will remain outstanding in the participant's account and will continue to accrue interest until repaid or canceled.

(12) Default.

(a) A loan is in default if a payment is not paid as scheduled or under any of the provisions set forth in this rule, the promissory note, or any related loan agreement.

(b) A loan is in default if the participant separates from employment with the plan sponsor that administers the loan payment payroll deductions.

(c) If a participant with a loan in default resumes loan payments by payroll deduction before the end of the cure period, the default will be cured. The participant must pay any missed payments and accrued interest before the end of the loan repayment period.

(d) Except as provided in subsection (c) of this section, if the participant does not cure a default by repaying the loan balance before the end of the cure period, the loan balance will be reported as a taxable distribution to the participant as provided in section (11) of this rule.

(13) Notwithstanding any other sections of this rule, a participant who self-certifies through a process provided by the Deferred Compensation Program as a “qualified individual” as that term is defined in the Coronavirus Aid, Relief, and Economic Security Act of 2020, will have any repayment due date between March 27 and December 31, 2020 delayed for one year.

(a) 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 section 152 of the Internal Revenue Code of 1986) is diagnosed with such virus or disease by such a test; or

(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, or other factors as determined by the Secretary of the Treasury (or the Secretary’s delegate).

(b) Interest will continue to accrue on the outstanding balance of the loan during the period of repayment delay.

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Stats. Implemented: ORS 243.401 – 243.507, Pub. L. No. 116-136