

## **SECTION 8. DISTRIBUTIONS, WITHDRAWALS AND LOANS.**

### 8.9 Loans.

- (a) In General. The Administrator may make loans available to an eligible Participant who is an Employee from his or her Account in accordance with this section. The County will determine which Participants are eligible for such a loan.
- (b) Minimum Loan Amount. No loan may be made to any Participant from his or her Account unless the amount of the loan requested is equal to at least \$1,000.00.
- (c) Maximum Loan Number and Amount. A Participant may not at any time have more than one outstanding loan under the Plan; a Participant who receives a loan from his or her Account may not receive another loan under the Plan until the outstanding loan is fully repaid. In addition, no loan may be made to any Participant from his or her Account to the extent that such loan, when added to the outstanding balance of all other loans to the Participant from all other section 457(b) plans and qualified plans maintained by the Employer or any Affiliate, exceeds the lesser of:
  - (1) \$50,000, reduced by the excess, if any, of:
    - (A) the highest outstanding balance of loans to the Participant from the Plan and all other section 457(b) plans and qualified plans maintained by the Employer or any Affiliate during the one-year period ending on the day before the date the loan is approved (not taking into account any payments made during such one-year period), over
    - (B) the outstanding balance of loans from the Plan and all other section 457(b) plans and qualified retirement plans maintained by the Employer or any Affiliate to the Participant on the date the loan is made; or
  - (2) 50% of the Participant's vested Account balance under the Plan and under all other section 457(b) plans and qualified plans maintained by the Employer or any Affiliate as of the day immediately preceding the date on which such loan is approved.
- (d) Evidence and Terms of the Loan. Any loan made to a Participant from his or her Account must be evidenced by a written promissory note, which promissory note must:

- (1) specify the amount of the loan, including interest, the date of the loan and the repayment schedule;
  - (2) require level amortization with repayments, not less frequently than quarterly, over the term of the loan, except that the Administrator may, upon the receipt of a Participant's written election to do so, suspend the Participant's loan repayments for:
    - (A) a period, not to exceed one year, during which he or she is on a Bona Fide Unpaid Leave of Absence, but only if (i) the loan, including any accrued interest, must be repaid by the latest date permitted under section 8.9(d)(2), and (ii) the amount of the installments after the leave ends must not be less than the amount required under the terms of the original promissory note; or
    - (B) all or any portion of a period during which he or she is on a leave of absence while performing service in the uniformed services (as defined in 29 U.S.C. chapter 43), but only if (i) loan repayments must resume upon completion of such military service, and (ii) the loan, including any accrued interest, must be repaid in full by amortization in substantially level payments over a period that ends no later than the latest date permitted under section 8.9(d)(2);
  - (3) Require that the loan be repaid within five years from the date of the loan; and
  - (4) Provide for interest at a reasonable rate, as determined by the Administrator, commensurate with interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.
- (e) Security. Any loan to a Participant under the Plan must be secured by the pledge of the portion of the Participant's Account balance invested in such loan.
- (f) Default. In the event that a Participant fails to make a loan payment by the last business day of the calendar quarter following the calendar quarter in which the payment is due, a default on the loan will occur. In the event of such default:
- (1) All remaining payments on the loan will be immediately due and payable;

- (2) The Participant will not be allowed to initiate another loan from the Plan until the defaulted amount is repaid;
- (3) The Administrator will apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan upon his or her Severance From Employment;
- (4) If the Participant defaults before his or her Severance From Employment, the outstanding loan balance, including any accrued interest, will be reported on an IRS Form 1099-R as a deemed distribution.
- (5) Notwithstanding anything elsewhere in this Section to the contrary, in the event a loan is outstanding on the date of a Participant's death, his or her estate will be his or her beneficiary as to the portion of the interest in the Plan invested in such loan (with the beneficiary or beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

(g) Repayment.

- (1) The Participant will be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the County to make payroll deductions from the Participant's compensation as long as the Participant has an outstanding loan or as long as the Participant is an employee (with an outstanding loan) and to transfer such payroll deduction amount to the loan administrator in payment of such loan plus interest. Repayments of a loan will be made by payroll deduction of equal amounts (comprised of both principal and interest) from the paycheck on or about the tenth of each month, with the first such deduction to be made as prescribed by the loan agreement.
- (2) Notwithstanding paragraph (1) of this subsection, a Participant may prepay the entire outstanding balance of the loan at any time, provided that the prepayment shall not change the payment schedule or the interest rate on the loan.
- (3) If any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence and the loan suspension provision is not in effect or the Participant's must pay directly to the loan administrator the full amount that would have been deducted from the Participant's paycheck, with such payment

to be made by the last business day of the calendar month in which the amount would have been deducted.

- (h) Severance From Employment. In the event a Participant has a Severance From Employment, the outstanding balance of any loan will be due and payable no later than the last day of the month in which the Participant receives their final compensation from the County. For the purpose of this paragraph, "final compensation" includes any payments for unused accrued leaves for which the Participant may be eligible.
- (j) Loan fees. A loan initiation fee and a regularly scheduled loan maintenance fee may, with the Administrator's approval, be deducted from the Participant's Account or, alternatively, from the Participant's paycheck by County Auditor-Controller's Office.
- (k) Loan Procedures. The Administrator may establish such rules and procedures with respect to the loan program as the Administrator deems advisable, which procedures may include, but are not necessarily limited to:
  - (1) The identity of the person or positions authorized to administer the loan program;
  - (2) A procedure for applying for loans;
  - (3) The basis on which loans will be approved or denied;
  - (4) The limitations, if any, on the types and amount of loans offered;
  - (5) The procedure under the program for determining a reasonable rate of interest; and
  - (6) The events constituting default and the steps that will be taken by the Plan Administrator in the event of such default.
- (l) Definitions.
  - (1) "Affiliate" means a member of a controlled group of corporations (as defined in Code section 414(b)), a group of commonly controlled trade or business (as defined in Code section 414(c)), or an affiliated service group (as defined in Code section 414(m)) of which the Employer is a member, and any other entity required to be aggregated with the Employer pursuant to Code section 414(o).

- (2) "Bona Fide Unpaid Leave of Absence" means that the borrower has completed Contra Costa County Form AK-14, it has been completed by the Participant's Department Head, approved by the Director of Human Resources and filed with the Human Resources Department Personnel Services Unit. A bona fide leave of absence shall be only for the time as documented on the Contra Costa County form AK-14, and cannot exceed one year.