

DECLARATION OF EMERGENCY

Department of Treasury Deferred Compensation Commission

Administration and Distributions
(LAC 32:VII.101, 701, 1103, 1105)

The Louisiana Deferred Compensation Commission has exercised the emergency provision in accordance with the Administrative Procedure Act, R.S. 49:953(B) and pursuant to the authority set forth in R.S. 42:1303, to amend LAC 32:VII.101, 701, 1103, and 1105 regarding qualified birth and adoption distributions, the age at which participants may make in-service distributions, coronavirus-related distributions, and repayment of certain loans to qualified participants. This Emergency Rule is necessary to allow plan participants who qualify for the relief provided by the Setting Every Community Up for Retirement Enhancement (“SECURE”) Act (effective December 20, 2019) and the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act (effective March 27, 2020).

The Louisiana Deferred Compensation Commission hereby finds that the following circumstances constitute an immediate danger to the public health, safety, or welfare: Due to public health threat created by COVID-19, on March 11, 2020, Governor John Bel Edwards declared a public health emergency in the State of Louisiana (Proclamation No. JBE 2020-25). In addition, on March 13, 2020, President Donald J. Trump declared a national emergency. In Louisiana, Governor Edwards ordered all gatherings larger than ten (10) people be postponed until May 15, 2020 (Proclamation Nos. JBE 2020-30, 33, 41, and 52). Governor Edwards additionally ordered the closing of many businesses, including malls, bars, restaurants, casinos, etc. As of June 16, 2020, 47,706 cases of COVID-19 have been confirmed in Louisiana, resulting in 2,930 deaths. The economic impact to individuals in Louisiana, including plan participants has also been devastating. Many businesses and governmental entities have been forced to furlough or lay off employees, resulting in even greater financial hardship. The COVID-19 pandemic has caused an immediate threat to the public health, safety, and welfare of many participants in the Louisiana Deferred Compensation Plan.

In order to provide relief to those plan participants who have been adversely affected by the COVID-19 pandemic, the following emergency rule is necessary so that qualifying plan participants may take advantage of the relief provided in the SECURE Act and CARES Act.

This Emergency Rule was adopted on June 16, 2020, and shall be effective on June 16, 2020. This Emergency Rule shall remain in effect 120 days, unless renewed by the Louisiana Deferred Compensation Commission, or until permanent rules are promulgated in accordance with the law.

Title 32

EMPLOYEE BENEFITS

Part VII. Public Employee Deferred Compensation

Subpart 1. Deferred Compensation Plan

Chapter 1. Administration

§101. Definitions

Coronavirus-Related Distribution—shall have the same meaning as provided in Sec. 2202(a) of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). The

CARES Act defines a coronavirus-related distribution as a distribution made on or after January 1, 2020, and before December 31, 2020, to a participant who meets one of the following criteria:

1. the participant 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;

2. the participant’s *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

3. the participant 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 U.S. Treasury.

AUTHORITY NOTE: Promulgated in accordance with IRC §457 and R.S. 42:1301-1308.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1962 (October 1998), amended LR 28:1494 (June 2002), LR 32:118 (January 2006), LR 37:1617 (June 2011), LR 40:2281 (November 2014), LR 46:

Chapter 7. Distributions

§701. Conditions for Distributions

A. Payments from the participants §457 Deferred Compensation Plan account to the participant or beneficiary shall not be made, or made available, earlier than:

1. - 4. ...

5. the participant makes a qualified birth or adoption distribution pursuant to Section 113 of the Setting Every Community Up for Retirement Act of 2019. Any such qualified birth or adoption distribution shall not exceed \$5,000 per birth or adoption. The commission or plan administrator may rely upon a participant’s birth or adoption certificate for purposes of determining eligibility; or

6. the participant makes a *coronavirus-related distribution*, as defined in LAC 32:VII.101. The aggregate amount of any participant’s coronavirus-related distributions shall not exceed \$100,000. The commission or plan administrator may rely upon a participant’s certification that the distribution is an eligible coronavirus-related distribution.

7. the calendar year in which an in-service participant attains age 59 1/2, but only if such participant revokes all deferrals of compensation into the plan prior to beginning distributions.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 24:1967 (October 1998), amended LR 28:1497 (June 2002), LR 32:121 (January 2006), LR 46:

Chapter 11. Participant Loans

§1103. Maximum Loan Amount

A. In no event shall any loan made to a participant, other than a loan made pursuant to LAC 32:VII.1103.B, be in an amount which shall cause the outstanding aggregate balance of all loans made to such participant under this plan exceed the lesser of:

1. - 2. ...

B. For a period of 180 days, commencing March 27, 2020, no loan made to a participant shall be in an amount which shall cause the outstanding aggregate balance of all loans made to such participant under this plan exceed the lesser of:

1. \$100,000, reduced by the excess (if any) of:
 - a. the highest outstanding balance of loans from the plan to the participant during the one-year period ending on the day before the date on which the loan is made;
 - b. over the outstanding balance of loans from the plan to the participant or the beneficiary on the date on which the loan is made; or
2. The participant's account balance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:1500 (June 2002), amended LR 32:123 (January 2006), LR 46:

§1105. Repayment of Loan

A. Each loan shall mature and be payable, in full and with interest, within five years from the date such loan is made, unless:

1. the loan is used to acquire any dwelling unit that within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the participant; or
2. loan repayments are, at the employer's election, suspended as permitted by IRC §414(u)(4) (with respect to qualified military service); or
3. the loan is made to a qualified participant, is outstanding on or after March 27, 2020, and is due during the period beginning March 27, 2020, and ending December 31, 2020. The due date for any such loan shall be delayed for a period of one year, and any subsequent repayments pursuant to that loan shall be appropriately adjusted to reflect the delayed due date.

a. For purposes of LAC 32:VII.1105.A.3, the term *qualified participant* shall mean the same as *qualified individual* under Sec. 2202(a) of the CARES Act, which defines a qualified individual as an individual:

- i. 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;
- ii. 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
- iii. 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 U.S. Treasury.

AUTHORITY NOTE: Promulgated in accordance with R.S. §42:1301-1308 and IRC §457.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Deferred Compensation Commission, LR 28:1500 (June 2002), amended LR 46:

Whit Kling
Chairman