WEST VIRGINIA CODE: §18-7A-34

§18-7A-34. Loans to members.

(a) An actively contributing member of the retirement system upon written application may borrow from his or her individual account in the Teachers Retirement System, subject to these restrictions:

(1) Loans shall be made in multiples of $10, the minimal loan being $100 and the maximum being $8,000: Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans granted under this section shall not exceed the lesser of the following: (A) $8,000 reduced by the excess, if any, of the highest outstanding balance of loans during the one-year period ending on the day before the date on which the loan is made, over the outstanding balance of loans to the member on the date on which the loan is made; or (B) fifty percent of the member's contributions to his or her individual account in the Teachers Retirement System: Provided, however, That if the total amount of loaned money outstanding exceeds $40 million, the maximum shall not exceed $3,000 until the retirement board determines that loans outstanding have been reduced to an extent that additional loan amounts are again authorized: Provided further, That the amount of any loan made pursuant to article seven-d of this chapter is not included for the purposes of determining if the $40 million threshold has been exceeded.

(2) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the board: Provided, That interest charged shall be commercially reasonable in accordance with the provisions of Section 72(p)(2) of the Internal Revenue Code, and the federal regulations issued thereunder. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and the charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.

(3) No member is eligible for more than one outstanding loan at any time: Provided, That the foregoing provision does not apply to any loan made pursuant to article seven-d of this chapter. Upon full payment of a loan, a member may apply for a subsequent loan after sixty days beginning the first day of the month following receipt of final payment.

(4) If a refund of accumulated contributions is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the balance due with interest to date shall be deducted from the refund. A member with an unpaid loan balance who wishes to retire or becomes eligible to receive disability benefits under any provision of this article may have the loan repaid in full by accepting retirement income or disability payments reduced by deducting from the actuarial reserve for the accrued benefit the amount of the unpaid balance plus accrued interest, if any, and then converting the remaining of the reserve to a monthly pension or disability benefit payable in the form of the annuity desired by the member.

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(5) From his or her monthly salary as a teacher or a nonteacher the member shall pay the loan and interest by deductions which will pay the loan and interest in substantially level payments in not more than sixty nor less than six months. Upon notice of loan granted and payment due, the employer is responsible for making the salary deductions and reporting them to the retirement board. At the option of the board, loan deductions may be collected as prescribed herein for the collection of members' contribution, or may be collected through issuance of warrant by employer. If the borrower is no longer employed as a teacher or nonteaching member, the borrower must make monthly loan payments directly to the Consolidated Public Retirement Board and the board must accept the payments.

(6) The entire unpaid balance of any loan, and interest due thereon, shall, at the option of the board, become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (A) Any payment of principal and accrued interest on a loan remains unpaid after it becomes due and payable under the terms of the loan or after the grace period established in the discretion of the board; (B) the borrowing member attempts to make an assignment for the benefit of creditors of his or her refund or benefit under the retirement system; or (C) any other event of default set forth in rules promulgated by the board in accordance with the authority granted pursuant to section one, article ten-d, chapter five of this code: Provided, That any refund or offset of an unpaid loan balance shall be made only at the time the member is entitled to receive a distribution under the retirement system.

(7) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default, prepayment, security, and otherwise as the board determines.

(8) Notwithstanding anything herein to the contrary, the loan program authorized by this section shall comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, and accordingly, the retirement board is authorized to: (A) Apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code and the federal regulations issued thereunder; (B) adopt plan loan policies or procedures consistent with these federal law provisions; and (C) take such actions as it considers necessary or appropriate to administer the plan loan program created hereunder in accordance with these federal law provisions. The retirement board is further authorized in connection with the plan loan program to take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of Section 72(p)(2) or Section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, notwithstanding any provision in this article to the contrary.

(b) Notwithstanding anything in this article to the contrary, the loan program authorized by this section shall not be available to any teacher or nonteacher who becomes a member of the Teachers Retirement System on or after July 1, 2005: Provided, That a member is eligible for a loan under article seven-d of this chapter to pay all or part of the Actuarial Reserve, or if available in accordance with the provisions of subsection (d), section six, article seven-d of

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this chapter, the one and one-half percent contribution for service in the Teachers' Defined Contribution System for the purpose of receiving additional service credit in the state Teachers Retirement System pursuant to section six, article seven-d, of this chapter.

(c) A member who ceases service with an unpaid loan balance will no longer be a member when the unpaid loan balance, plus accrued interest, equals or exceeds the member's accumulated contributions.

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