WEST VIRGINIA CODE: §7-14D-23

§7-14D-23. Loans to members.

(a) A member who is not yet receiving disability or retirement income benefits from the plan may borrow from the plan no more than one time in any year an amount up to one half of his or her accumulated contributions, but not less than $500 nor more than $8,000: Provided, That the maximum amount of any loan shall not exceed the lesser of the following: (1) $8,000; or (2) fifty percent of his or her accumulated contributions. No member is eligible for more than one outstanding loan at any time. No loan may be made from the plan if the board determines that the loans constitute more than fifteen percent of the amortized cost value of the assets of the plan as of the last day of the preceding plan year. The board may discontinue the loans any time it determines that cash flow problems might develop as a result of the loans. Each loan shall be repaid through monthly installments over periods of six through sixty months and carry interest on the unpaid balance and an annual effective interest rate that is two hundred basis points higher than the most recent rate of interest used by the board for determining actuarial contributions levels: Provided, however, That interest charged shall be commercially reasonable in accordance with the provisions of Section 72(p)(2) of the Internal Revenue Code and federal regulations issued thereunder. Monthly loan payments shall be calculated to be as nearly equal as possible with all but the final payment being an equal amount. An eligible member may make additional loan payments or pay off the entire loan balance at any time without incurring any interest penalty. Upon full payment of the loan, a member may apply for a subsequent loan after sixty days beginning the first day of the month following receipt of final payment.

(b) If a withdrawal of accumulated contributions is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the loan balance due with interest to date shall be deducted from the withdrawal.

(c) A member with an unpaid loan balance who wishes to retire or who becomes eligible to receive disability benefits under any provisions 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: Provided, That if payment of the member's monthly retirement income or disability income is suspended or terminated for any reason, upon recommencement of the payments, the actuarial reduction in benefit may be recalculated for additional interest accruals, to the extent determined necessary and appropriate by the board.

(d) 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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(e) 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: (1) Any payment of principal and accrued interest on a loan remains unpaid after they become due and payable under the terms of the loan or after the grace period established in the discretion of the retirement board; (2) the borrowing member attempts to make an assignment for the benefit of creditors of his or her benefit under the retirement system; or (3) any other event of default set forth in rules promulgated by the board pursuant to the authority granted in section one, article ten-d, chapter five of this code: Provided, That any offset of an unpaid loan balance shall be made only at such time as the member is entitled to receive a distribution under the plan.

(f) 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 may determine.

(g) Notwithstanding anything in this section 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. The board may: (1) 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 Sections 72(p)(2) and Section 401 of the Internal Revenue Code; (2) adopt plan loan policies or procedures consistent with these federal law provisions; and (3) take any actions it considers necessary or appropriate to administer the plan loan program created under this section in accordance with these federal law provisions. The 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, notwithstanding any provision in this article to the contrary.

(h) Notwithstanding anything in this article to the contrary, the loan program authorized by this section shall not be available to any deputy sheriff who becomes a member of the Deputy Sheriff Retirement System on or after July 1, 2005.

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