

## **Hidalgo County Affiliated Departments Retirement Plan LOAN POLICY**

Pursuant to the terms of Hidalgo County Affiliated Departments Retirement Plan ("the Plan") the Plan Administrator has adopted a participant loan program as part of such Plan and Trust. All loans granted or renewed on or after the 1st day of January, 2016 shall be made in accordance with the provisions specified in the Plan and under this Loan Policy. The Plan intends this loan program to comply with all applicable requirements under the Internal Revenue Code and by the Department of Labor. Violating the terms of this Policy may cause a loan to be treated as a taxable distribution from the Plan.

### **Administration of Program.**

The following person ("the Loan Administrator") is responsible for the administration of this loan program. All loan requests and other inquiries should be delivered to:

Teresa Flores, Diana R. Serna or Jaime Longoria  
100 East Cano, 2nd Floor  
EDINBURG, TX 78539  
(956) 318-2619

### **Application Procedure.**

The Loan Administrator will make loan applications available to any individual who has a vested interest under the Plan.

An eligible individual defined within this Policy may apply for a loan from the Plan by returning a completed loan application to the Loan Administrator.

The Loan Administrator will review the loan application for completeness. Incomplete applications will be returned and must be resubmitted for consideration. All loan applicants must meet the requirement of this Policy for consideration and approval. If the loan applicant fails to meet the requirement of this Policy and receives a loan disbursement, the loan will be treated as a "deemed distribution" and reported as taxable to the IRS.

### **Basis for Approvals.**

Loans are available to all actively employed participants and, in the event of a participant's death, his or her beneficiaries without regard to any individual's race, color, religion, sex, age or national origin.

Each application is reviewed on a nondiscriminatory basis, however its approval will depend on the participant's creditworthiness, financial need, and the purpose and terms of the loan.

If a participant defaulted on a previous loan, their loan application may be denied. In addition, if a participant submits a loan application at a time when a decision concerning a domestic relations order is pending or the Plan Administrator is on notice that divorce is in progress, the loan request will be placed on hold until the order is finalized or the determination period expires.

Once the loan is approved, a Promissory Note will be generated and issued to the participant. The participant must sign the Promissory Note to acknowledge and document the participant's receipt of the loan disbursement from the Plan and to affirm his obligation to make the required repayments.

Approved loan applications will be processed As soon as administratively possible

### **Spousal Consent.**

If a married participant submits a loan application, they must obtain the consent of his or her spouse. The spouse must consent no earlier than 90 days before the date on which the loan is process and secured. The consent must be in writing and properly executed on the loan application and Promissory Note. The participant's spouse is required to acknowledge their consent:

- \* to the participant's pledge and assignment of 50% of vested interest in the Plan; and
- \* to the effect such consent will have on the benefit that would otherwise be paid under the Plan, in the event of a default.

The spouse must sign the consent in the presence of a Notary Public or the Plan Administrator who can attest to the spouse's willingness to consent and endorse the loan documents.

A new consent must be obtained whenever the amount of the loan is increased or if the loan is renegotiated, extended, renewed or otherwise revised.

### **Terms of the Loan.**

Subject to the limitations on the amount of any loan, a participant may request a loan

\* One or any combination of the following purposes: (1) the purchase, construction or improvement of a residence or other real estate; (2) the purchase of a vehicle (including an automobile, van, truck or recreational vehicle); (3) tuition and other educational expenses; (4) medical and dental expenses; or (5) funeral expenses of a family member.

### **Loan Amounts.**

The Loan Administrator will determine the available loan amount at the time the loan request is approved. The maximum amount of any loan is the lesser of \$50,000 or 50% of the vested interest of the participant in the Plan; reduced by the participant's highest outstanding loan balance in the previous twelve months and the existing loan balance; even if all or a portion of this amount has been repaid.

To calculate the maximum loan amount, the participant's vested interest in all plans established or maintained by the Employer or a Related Employer of the Employer will be considered. Notwithstanding, the Plan limits the minimum amount of any loan to \$1,000, the maximum amount of any loan to \$50,000 and the balance for all outstanding loans, to a single participant, may not exceed \$1.

An individual may have no more than one loan outstanding at any one time. Refinancing of an existing loan is not permitted.

### **Sources for a Loan - Accounts and Investment Options.**

The Loan Administrator shall select the accounts and investment fund or funds from which the amount necessary to grant the loan shall be taken in a non-discriminatory manner.

Loan will be prorated across all available accounts and investment funds. However, a loan will not be taken from any insurance policies.

The loan shall be established as a participant directed investment in the Plan. During the term of the loan, each scheduled principal and interest repayment shall be made to this loan account until the entire loan is paid in full.

### **Interest Rate and Fees.**

Interest will be charged on each Loan. From time to time, the Loan Administrator will review the interest rate charged for a loan, with the intention of providing the Plan with a return commensurate with the interest rates that a commercial lender would charge for loans made under similar circumstances. The interest rate will take into account your creditworthiness and the terms of the loan.

The interest rate on the loan will be based on the prime rate of interest published by The Wall Street Journal as of plus 2 percent.

Once the interest rate is determined, the amount of the loan will be amortized according to the selected repayment terms. Each repayment will include both principal and interest until the loan is no longer outstanding in the Plan.

To cover the added administrative costs associated with processing and maintaining a loan under the Plan, you will be charged a \$110.00 loan processing fee and quarterly, a loan maintenance fee of \$20.00, until the loan is paid in full. In addition, the loan maintenance fee will be charged for all years in which the loan remains in default.

### **Security for a Loan.**

All loans must be adequately secured with at least fifty percent (50%) of the present value of a participant's vested interest in the Plan. The security interest shall be determined and measured at the time the loan is granted. Each participant must secure each loan with an irrevocable pledge and assignment of at least fifty percent (50%) of their vested account balance under the Plan.

### **Repayment Terms.**

With limited exceptions, the Internal Revenue Code requires a loan to be repaid through level installment payments at least quarterly, over a period not to exceed five (5) years.

Under this Loan Policy, a loan is required to be repaid within five (5) years, starting from the payment date outlined in the Promissory Note.

However, if the loan application is for a residential loan and the Loan Administrator confirms that there is sufficient documentation that the entire proceeds of the loan will be used to acquire a dwelling unit that will be used as their principal residence, within a reasonable time, then this residential loan must be repaid within 10 years of the original date of the loan.

A principal residence is a house, apartment, condominium or mobile home (not used on a transient basis) established and used as the participant's principal dwelling unit.

Loans are to be repaid based on substantially level amortization over the term of the loan with payments made through salary reduction each pay period. These payments may be made by cashier's check or money order.

**Early Payoff:** If the participant notifies the Loan Administrator in writing, they may elect to accelerate their loan payment, by making one or more schedule payments. These payments may be made by cashier's check or money order.

**Special Provisions for Military Service:** The Loan Administrator may temporarily suspend loan repayments, if a participant is not actively employed due to a qualified military leave or because they are performing service in the uniformed services (as defined in chapter 43 of title 38 United States Code). In addition, the period of military suspension will extend the original loan term.

Once the military service has ended, loan repayments must resume. The loan must be repaid in full by the end of its original term plus the period of military service.

For example, if the loan was due in 5 years, and the military leave was for 18 months, then the Loan Administrator would extend the 5 years, by the length of the military leave. The final installment payment would be due within 6 years and 6 months of the date it was originally issued.

In addition, upon receipt of proper notice of active military service, the Loan Administrator will reduce the interest rate on any outstanding Loan to six percent (6%) during a period of military service.

**Repayment upon Termination.**

When a participant no longer works for the Employer sponsoring the Plan, the repayment terms within the Promissory Note, are accelerated. Under these terms, the participant is required to either pay off the outstanding loan balance or have the outstanding loan treated as a taxable distribution. The terminated participant must make arrangements, before a final distribution is processed to pay off the entire outstanding loan balance.

Without this arrangement, when a distributable event occurs for the participant, their final distribution will be reduced ("offset") by the outstanding loan amount (including interest accruing through the distribution date). The offset amount will be reported on IRS Form 1099-R as a taxable distribution.

The Plan may permit a terminated participant, who has elected to defer receipt of a final distribution, to continue making scheduled installment payments on their outstanding loan. The terminated participant must contact the Plan Administrator for repayment options.

**Default.**

A loan is in default when a scheduled installment payment has not been received by the scheduled due date. If the participant fails to arrange for the repayment of the missed payments, in a manner that is reasonably acceptable to the Loan Administrator, the remaining principal and accrued interest on the loan shall be declared due and payable.

The missed payment must be received by the last day of the calendar quarter following the calendar quarter in which the last scheduled installment payment was due. After this date, the Loan Administrator will notify the participant in writing that the loan is in default and that the outstanding loan (including accrued interest) will become taxable and treated as a "deemed distribution".

The defaulted loan (outstanding principal plus accruing interest) will be reported as personal income on Form 1099R. It will be subject to federal and state income taxes, and a 10% penalty tax, if the default occurs before age 59.5.

The participant is still under an obligation to the Plan to repay the loan. Therefore the Promissory Note will remain outstanding. This outstanding loan obligation will not be offset against the participant's vested account balance until he or she severs their employment with Employer sponsoring the loan program, retires, dies, becomes disabled and takes their final distribution; or until he or she reaches the earliest date on which an in-service distribution is permitted under the Plan.