

Attachment 1

**Nevada System of Higher Education  
Procedures Applicable to Participant Loans  
Amended March 8, 2011**

The intent of these Procedures is to provide Eligible Borrowers in the retirement plan(s) below of the Nevada System of Higher Education ("NSHE" or "Plan Sponsor") with detailed loan information. This Procedure supersedes all prior Procedures dated January 1, 2009 and July 10, 2010.

NSHE, the Loan Administrator and the Recordkeeper are not responsible for providing financial or tax advice to Eligible Borrowers regarding the impact that a loan or a defaulted loan may have on the Eligible Borrower's accounts. Borrowers may wish to discuss borrowing money from their retirement plans with their financial and tax advisors.

**1. Definitions:**

- Accounts:** *Loan funding and availability will be calculated from Account balances consisting of pre-tax salary deferrals or pre-tax mandatory employee contributions, as applicable, and investment returns thereon (hereinafter "Account" or "Accounts"). Any other account balances, consisting of any employer contributions (i.e., employer matching contributions) and investment return thereon, are not available for a loan. Any other such account balances are not to be considered as an Account under these Procedures, except for purposes of calculating the possible amount of a loan under Section 6b.*
- Borrower:** *A Participant who has an outstanding loan balance under the Plan(s).*
- Eligible Borrower:** *A Participant, as the term is defined under the Plan(s), who is an active employee of a participating employer of the Plan(s). An individual ceases to be an Eligible Borrower while in loan default under Section 12 or when he/she is no longer an active employee of a participating employer for any reason (e.g., termination, retirement, disability, etc.). Beneficiaries, Survivors and Alternate Payees are not to be considered as Eligible Borrowers under these Procedures.*
- Home Purchase Loan:** *A loan used to acquire a dwelling unit which will within a reasonable time be used as the principal residence (as defined under Treasury Regulation §1.121-1(b)) of the Eligible Borrower.*
- Loan Administrator:** *The person or persons responsible for administering and approving plan loans, as defined and appointed by the Plan Sponsor.*
- Plan(s):** *-NSHE Defined Contribution Retirement Plan Alternative ("RPA")  
-Voluntary Tax Sheltered Annuity Plan ("TSA")*
- Personal Loan:** *A loan that is not a Home Purchase Loan.*

*Recordkeepers:*        -*Fidelity Investments*  
                              -*TIAA-CREF*  
                              -*VALIC*

**2. Rules and Procedures.** The Loan Administrator and each Recordkeeper shall provide such rules and procedures as it deems necessary to carry out the availability of loans from the Plan(s) named above. All such rules and procedures shall be deemed a part of the terms of the Plan(s). These Procedures may be changed at any time at the discretion of the Loan Administrator. If there is any conflict between these Procedures and the loan procedures of the Recordkeeper, the loan procedures reflected herein shall control, unless otherwise agreed to between the Plan Sponsor and the Recordkeeper and reflected as a written exception to these procedures.

**3. General.** Upon request of an Eligible Borrower in a manner acceptable to the Recordkeeper, and subject to the conditions of these Procedures, the Loan Administrator shall direct the Recordkeeper to make a loan from the Plan to the Eligible Borrower. The Eligible Borrower may request a loan from any Plan under which he or she has an Account balance for any reason.

**4. Manner in Which the Eligible Borrower May Request a Loan.**

1) The Eligible Borrower must:

a) contact a Recordkeeper via telephone or by other means acceptable to the Recordkeeper to request a Recordkeeper's Loan Application, and

b) submit the completed Loan Application, along with an application processing fee in the amount of \$50, to the Benefits Department, plus any fee imposed by the Recordkeeper.

2) Upon receipt of the Loan Application, the Recordkeeper must:

a) determine whether the requested loan satisfies the rules set forth in these Procedures based on the Eligible Borrowers Account balance and loan history with the Recordkeeper, and

b) forward a qualifying Loan Application to the Loan Administrator for further review. If the loan does not satisfy these loan Procedures, the Recordkeeper should reject the application.

3) Upon receipt of the Loan Application, the Loan Administrator must take the following steps:

a) review the records to determine if the Eligible Borrower also has an account balance with the Recordkeeper from which the Eligible Borrower is not requesting a loan (regardless of whether the Eligible Borrower is currently making contributions to that Recordkeeper),

b) in the event that the Eligible Borrower has an Account with more than one Recordkeeper, contact the designated representative(s) of the other Recordkeeper(s) or access the Eligible Borrower's information with respect to the Recordkeeper(s) on-line to secure the following information from each Recordkeeper:

i) Does the Eligible Borrower have an outstanding loan from a Recordkeeper? If so, what is the nature of the loan (Personal Loan or Home Purchase Loan) and what is the outstanding balance on the loan?

ii) What is the highest outstanding loan balance from the Recordkeeper's contract to the Eligible Borrower during the immediately preceding 12-month period?

iii) What is the Eligible Borrower's Account balance?

iv) Has the Eligible Borrower defaulted on a loan and not fully repaid the loan?

c) determine whether the requested loan satisfies the rules set forth in these Procedures, taking into account the Eligible Borrower's Account balances and loan histories with respect to all Recordkeepers.

d) if the loan satisfies these Procedures, then direct the Recordkeeper to issue the loan, or if the loan does not satisfy these Procedures, reject the Loan Application.

**5. Spousal Consent.** The Eligible Borrower is not required to secure spousal consent to apply for a loan.

**6. Maximum Amount of Loan.** The following limitations apply in determining the amount of any loan to an Eligible Borrower. The amount of the loan, together with any other outstanding indebtedness of the Eligible Borrower under all the Plans (regardless of Recordkeeper) maintained by the Plan Sponsor, shall not exceed the lesser of:

a) \$50,000 reduced by all other outstanding indebtedness of the Eligible Borrower under the Plans (regardless of Recordkeeper) maintained by the Plan Sponsor, and further reduced by the excess (if any) of (i) the highest outstanding loan balance of the Eligible Borrower in the aggregate from all Plans during the one-year period ending on the day prior to the date on which the loan is made (not taking into account any payments made during such one-year period), over (ii) the Eligible Borrower's outstanding loan balance from all Plans on the date on which the loan is approved (a defaulted loan that has not been offset or repaid will be included in this balance); and

b) 50% of the Eligible Borrower's vested interest in his or her Accounts (as of the valuation date immediately preceding the date on which such loan is approved).

*Example: An Eligible Borrower with a vested Account balance of \$10,000 borrowed \$20,000 from Recordkeeper A ("Loan A") and \$10,000 from Recordkeeper B ("Loan B") on January 1, 2010. On November 1, 2010, the Eligible Borrower seeks another plan loan ("Loan C"). At that*

time the outstanding balance on Loan A has been paid down to \$10,000 and Loan B to \$5,000. The maximum amount the Eligible Borrower may borrow from any Recordkeeper for Plan C is \$20,000 as computed below:

\$50,000
- \$15,000 [outstanding indebtedness on day of Loan C]
- \$15,000 [excess of \$30,000 (highest combined loan balance during prior year) over \$15,000 (outstanding balance of Loan A plus Loan B on day of Loan C)].
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\$20,000

Because \$20,000 is less than one-half of the vested account balance (\$55,000), \$20,000 is the maximum loan amount the Eligible Borrower may borrow from any Recordkeeper.

In addition to the above maximums, individual Recordkeepers may impose additional limitations. For example, amounts invested in a TIAA-CREF Group Supplemental Retirement Annuity have certain specific caps. Contact the Recordkeeper you are interested in borrowing from to determine if any special limits apply to you.

**7. Minimum Amount of Loans.** The minimum loan for any single loan under the Plan is \$1,000.

**8. Number of Loans.** The Eligible Borrower may have outstanding at any time up to one (1) Home Purchase Loan and two (2) Personal Loans.

**9. Note; Security; Interest.** Each loan shall be evidenced by an enforceable written agreement specifying the amount of the loan, the date of the loan, and the repayment schedule, set forth in a written paper document (i.e., promissory note) or in a document that is delivered through an electronic medium under an electronic system that satisfies Treasury Regulations §1.401(a)-21. Subject to any additional collateralization requirements imposed by the Recordkeeper's loan procedures, the loan shall be secured by the Eligible Borrower's vested interest in all his or her Accounts on the date the loan is issued. A Borrower cannot transfer, take a cash withdrawal or begin receiving benefits from any portion of his or her Plan Account balance that serves as collateral for a loan. As the Borrower repays the loan, the amount reserved for collateral for the Borrower's loan shall decrease.

**10. Loan Interest Rate.** The loan interest rate and the method of interest accrual on the outstanding loan balance shall be governed by the terms of the loan procedures, policies, or annuity contracts of the Recordkeeper issuing the loan. Notwithstanding the preceding sentence, a Borrower who qualifies under the relevant provisions of the Servicemembers Civil Relief Act may request a reduction in the interest rate to be applied during the period of military service to a rate no greater than 6%, so long as the Borrower makes the request of the Loan Administrator or the Recordkeeper in writing and attaches to the request a copy of the military orders calling the Borrower to military service and any orders further extending military service, not later than one hundred and eighty (180) days after the date of the Borrower's termination or release from military service.

**11. Repayment.** Loans shall be repaid as described below in the format required by the Recordkeeper, and will be invested as defined by the Recordkeeper. The documents

evidencing a loan shall provide that payments shall be made not less frequently than quarterly and over a specified term as determined by the Loan Administrator. Such documents shall also require that the loan be amortized with level/monthly payments of principal and interest. A loan may be repaid in full at any time. Loan repayments will be deposited directly into the Borrower's Plan account according to the Borrower's current investment elections in effect for the account.

a) **Payment Method.** Payment may be made by: (1) Automatic Clearing House ("ACH") debit from the Eligible Borrower's checking account or savings account for all non Annuity Policy Loans, (2) by coupon (check) for Annuity Policy Loans, (3) payroll deductions from salary, if permitted, by the Plan Sponsor.

b) **Payment Period of Loan.** Personal Loans shall be amortized over a period of up to sixty (60) months and Home Purchase Loans shall be amortized over a period of up to one hundred and twenty (120) months. Other payment terms (*e.g.*, grace periods, specific payment dates, late payment charges) will be governed by the loan agreement but under no circumstance will a loan term exceed the maximum periods specified herein, except as provided in Section 11(c).

c) **Suspension of Repayment Schedule under Leave of Absence.** Loan payments shall not be suspended on account of a leave of absence, except in the case of a leave of absence for a period of service in the uniformed services (as defined under 38 U.S.C. Chapter 43) ("military service"). If the Borrower is on a leave of absence for a period of military service:

- 1) The loan payment schedule will be suspended;
- 2) The Borrower must begin making loan payments once the period of military service ends;
- 3) The loan must be repaid in full by the end of the period equal to the original term of the loan plus the period of time Borrower is on military leave;
- 4) When the Borrower returns from military service, the Borrower's loan will be reamortized to increase the amount of the payments to the end of the adjusted repayment term; and
- 5) The amount the Borrower is required to pay upon return will not be less than the original loan payment and will be no less frequent.

**12. Repayment Upon Separation from Service or 100% Distribution.** At the time benefits are to be distributed or the Borrower incurs a severance from employment, the Borrower will be allowed to continue loan payments by ACH (Non-Annuity Policy Loans) or by check (coupon) (Annuity Policy Loans). However, the Borrower who has an outstanding loan balance will not be able to take a withdrawal or begin receiving benefits from any portion of the Borrower's Accounts held as collateral for the loan.

**13. Repayments Upon Death.** If a Borrower dies before repaying his or her loan in full, the outstanding loan balance may be:

- (a) paid as soon as administratively feasible from the portion of the Borrower's Account held as collateral for the loan. The Borrower's designated beneficiary(ies) or the

Borrower's estate (as applicable) will then receive the remaining balance in the Borrower's accounts pursuant to the Plan terms, or

- (b) continued to be paid pursuant to the Plan terms, in which case the Borrower's designated beneficiary(ies) or the Borrower's estate (as applicable) shall continue paying the loan pursuant to the Plan terms and shall not be able to receive a distribution of any portion of the Eligible Borrower's Accounts held as collateral for the loan, until the loan is fully repaid.

**14. Default.** The Loan Administrator shall treat a loan in default if a Recordkeeper determines that:

- (a) any scheduled repayment remains unpaid at the end of the calendar quarter following the calendar quarter in which the scheduled repayment was due (unless payment is not required due to a participant who is on a leave of absence for a period of military service), or
- (b) there is an outstanding balance existing on a loan after the last scheduled repayment date.

The Recordkeeper will notify the Borrower of the loan default. Upon default, the entire outstanding principal and accrued interest (including surrender charges, as applicable) shall be immediately due and payable. If a distributable event (as defined by the Plan and Internal Revenue Code) has occurred, the Loan Administrator shall direct the Recordkeeper to foreclose on the promissory note and offset the Borrower's vested interest in his Account serving as collateral for the loan by the outstanding balance of the loan. If a distributable event has not occurred, the Loan Administrator shall direct the Recordkeeper to foreclose on the promissory note and offset the Borrower's vested interest in his or her Account as soon as a distributable event occurs.

A Borrower who has defaulted on a loan may not apply for additional loans. Subject to the Recordkeeper's ability to cure a loan, a defaulted loan may be cured by repaying the loan via the method(s) allowed by the Recordkeeper. Such payment will be treated as an increase in the Borrower's cost basis under the Plan. Curing a loan will not make the Borrower eligible for future loans.

**15. Tax Reporting of Defaulted Loans.** A defaulted loan will result in taxable income to the Borrower. If the Borrower is under age 59 ½ on the date of the default, a 10% early distribution tax penalty may apply. Income taxes and the penalty do not apply to any defaulted value that relates to after-tax contributions. If the borrower does not have a distributable event on the date of the default, the IRS treats the default as a "deemed distribution" and the amount of the default is not eligible for to be rolled over to an IRA or another eligible retirement plan. In January of the calendar year following the default, the Recordkeeper will issue an IRS Form 1099-R to report the amount of taxable income and the IRS will be provided this information.

**16. Note as Plan Asset.** The note evidencing a loan to an Eligible Borrower under this document shall be an asset of the Plan which is allocated to the Accounts of such Eligible Borrower, and shall for purposes of the Plan be deemed to have a value at any given time equal to the unpaid principal balance of the note plus the amount of any accrued but unpaid interest.

**17. Nondiscrimination.** Loans shall be made available under these procedures to all Eligible Borrowers on a reasonably equivalent basis, except that the Loan Administrator may make reasonable distinctions based on creditworthiness.

**18. Fees.**

a) **NSHE Loan Application Fee:** An application processing fee in the amount of \$50.00 must accompany all loan applications. This fee is assessed in order to cover the additional administrative costs associated with complying with IRS regulations concerning Retirement Plan Loans. Payment may be made by credit card, debit card with a VISA logo, or money order.

b) **Recordkeeper Specific Fees.** Any fee assessed by a Recordkeeper, made payable to the Recordkeeper, must also accompany the Loan Application sent to the Recordkeeper. The applicable fees will be published in Recordkeeper loan procedures and in "fact sheets" published and updated by NSHE from time to time.

NSHE hereby adopts this Procedure, effective March 8, 2011.

By:

  
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(Name)

Vice Chancellor Administrative & Legal Affairs