
From: Lynn Dudley <LDudley@abcstaff.org>
Sent: Friday, October 3, 2025 10:39 PM
To: Treasury Rules
Subject: [EXTERNAL]Rules and Regulations Pertaining to the RISavers Retirement Savings Program (120-RICR-00-00-6)
Attachments: retirement_state_ri-savings100325.pdf

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Dear Mr. Craven:

It is our understanding that, unless formal objection is received, the RISavers program will finalize and adopt the RISavers Retirement Savings Program's Rules and Regulations (Rules). The attached letter is not intended to be a formal objection to the Rules. Rather, the American Benefits Council is writing to offer our comments and suggestions for the RISavers program to consider as it moves forward with developing and launching the RISavers program, such as in connection with any future rulemakings or the issuance of other guidance. In this regard, although the Council supports a number of aspects of the Rules, we are writing primarily to address certain considerations related to the employer exemption process. Our comments are intended to help ensure the RISavers program operates in a manner that complements the existing employer-based retirement system without adversely affecting those employers that already offer a retirement plan to their employees (referred to herein as "plan sponsors"). In addition, we believe our suggestions would help reduce the risk that the RISavers program could be challenged as preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA).

The Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans. The great majority of the Council's members have operations in multiple states, including Rhode Island.

Please let us know if you have any questions.

Lynn Dudley
Senior Vice President Global Retirement and Compensation Policy
American Benefits Council



AMERICAN BENEFITS COUNCIL

October 3, 2025

Delivered via email to Treasury-Rules@treasury.ri.gov

Robert E. Craven, Jr., Esq.
Rhode Island Treasury Department
82 Smith Street
Room 102
Providence, RI 02903

**RE: Rules and Regulations Pertaining to the RISavers Retirement Savings Program
(120-RICR-00-00-6)**

Dear Mr. Craven:

The American Benefits Council (the "Council") is writing regarding the RISavers Retirement Savings Program's Direct Final Adoption of Rules and Regulations ("Rules").¹

The Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans. The great majority of the Council's members have operations in multiple states, including Rhode Island.

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¹ See Rules and Regulations Pertaining to the RISavers Retirement Savings Program (Sept. 5, 2025), https://risos-apa-production-public.s3.amazonaws.com/GT/REG_13383_20250905125510972.pdf.

intended to help ensure the RISavers program operates in a manner that complements the existing employer-based retirement system without adversely affecting those employers that already offer a retirement plan to their employees (referred to herein as “plan sponsors”). In addition, we believe our suggestions would help reduce the risk that the RISavers program could be challenged as preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA).

THE COUNCIL’S ENGAGEMENT WITH STATE-RUN AUTO-IRA PROGRAMS

The Council and its members have long supported both public and private efforts to expand access to retirement savings opportunities for workers. Because the United States’ employment-based retirement system is voluntary for employers, the Council has worked closely with Congress and the federal agencies over the years to reduce the administrative burdens and costs of sponsoring a retirement plan. As more states enact state-run retirement programs requiring the participation of certain private-sector employers, the Council has also been working with the states in recent years to share our experiences in how to achieve savings success and to ensure that these state programs do not adversely affect employers that already voluntarily offer a retirement savings opportunity to their workers.

Our goal in working with states that implement auto-IRA programs, such as Rhode Island, is to ensure that the programs do not undermine the incentives for employers to adopt and maintain an employer-based, federally regulated retirement plan with employer contributions, higher contribution limits, and more participant protections. We strongly believe that state auto-IRA programs, including RISavers, will be more successful, more widely supported, and better able to help achieve positive retirement savings outcomes for all workers if they are designed in a way that complements, rather than interferes with, the existing private-sector retirement plan system and avoids imposing unnecessary burdens on plan sponsors.

OVERVIEW OF ERISA PREEMPTION

Designing and administering the RISavers program in a manner that does not adversely affect plan sponsors is not only in the interests of employers and employees in Rhode Island, but it also has very important implications for reducing the risk that the RISavers program could be challenged on ERISA preemption grounds. ERISA is a comprehensive federal statute regulating employer-sponsored retirement and welfare benefit plans. One of the fundamental reasons why Congress passed ERISA was to ensure that employers who voluntarily sponsor a retirement plan are not subject to a multitude of regimes under state laws that would inevitably vary from state to state. To achieve this goal, Congress included an explicit and far-reaching preemption provision in the statute. According to that provision, and except as otherwise provided by law,

Title I and Title IV of ERISA “*shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan*” (emphasis added).² The U.S. Supreme Court has held that this provision is “deliberately expansive.”³

The RISavers program’s implementing statute and the Rules explicitly recognize the importance and implications of ERISA preemption. The statute tasks the General Treasurer with structuring the RISavers program in a manner to keep it “from being classified as an employee benefit plan subject to” ERISA.⁴ The Rules echo this goal, noting that the intent of the Rules is to “define the roles and responsibilities of Employers in a manner to keep the RISavers program from being classified” as an ERISA plan.⁵ Several of our comments below are offered with ERISA’s preemption provision in mind, together with decreasing the likelihood that the RISavers program is found to be subject to ERISA.

COMMENTS RELATING TO THE EXEMPTION OF PLAN SPONSORS

The Council offers the following comments on the RISavers program’s process for identifying “Exempt Employers,” who are exempt from the requirements of the RISavers program:

- **Support for the definition of Exempt Employer:** The Rules define an “Exempt Employer” as an employer that “offers” an employer-sponsored retirement plan. We read this definition to mean that an employer is exempt if it offers an employer-sponsored retirement plan at all, regardless of whether the plan covers some or all employees. To the extent our reading is correct, the Council strongly supports this definition because it significantly reduces the risk that the RISavers program will be preempted by ERISA by ensuring that employers already sponsoring ERISA-covered retirement plans are exempt from the RISavers program.
- **Use of Form 5500 data to identify Exempt Employers:** Section 6.5 of the Rules describes the RISavers program’s employer exemption process. Specifically, the Rules provide that the RISavers program Administrator “shall make reasonable efforts” to identify Exempt Employers and “shall limit the number of Employee Information Packets sent to Exempt Employers.”⁶

² ERISA § 514(a).

³ *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45-46 (1987) (internal citations omitted).

⁴ R.I. Gen. Laws § 35-23-13(b)(1).

⁵ Rules § 6.3(A).

⁶ Rules § 6.5(A).

The Council strongly supports the Rules' approach to require the Program Administrator to make reasonable efforts to identify Exempt Employers and to limit Employee Information Packets that are sent to Exempt Employers. In this regard, we recommend that, as part of the process to identify Exempt Employers, the RISavers program review federal Form 5500 ("Annual Return/Report of Employee Benefit Plan") data. The presence of a Form 5500 indicates that an employer already offers an employer-sponsored retirement plan and is therefore an Exempt Employer. Taking such action is a relatively simple – but important – step in reducing the administrative burdens that the RISavers program imposes on plan sponsors, and many other state retirement programs have successfully used the Form 5500 database as part of screening for plan sponsors.

- **Clarifying language regarding Employee Information Packets:** To provide further clarity on the RISavers program's process for identifying and contacting Exempt Employers, the Council suggests that the RISavers program consider making the minor changes described below to the second sentence of Section 6.5(A) of the Rules. These changes would make clear that the RISavers program will limit the number of Exempt Employers to whom Employee Information Packets are sent, rather than limiting the number of Employee Information Packets that Exempt Employers would receive.

A. . . . *The Program Administrator shall make reasonable efforts to identify Exempt Employers and shall limit the number of ~~Employee Information Packets sent to Exempt Employers to whom the~~ Program Administrator sends Employee Information Packets.*

COMMENTS RELATING TO THE EMPLOYER EXEMPTION PROCESS

As described above, ERISA's preemption provision is expansive and has been applied to state laws that simply impose a new or different employer reporting requirement that "relates" to an employee benefit plan. A 2016 Supreme Court decision reaffirmed this point when it struck down a state reporting requirement imposed on ERISA-covered health plans because the new reporting requirements interfered with a national and uniform system of plan administration.⁷ In this regard, Section 6.5(B) of the Rules provides that if a plan sponsor receives an Employee Information Packet but believes it is exempt from the RISavers program, the plan sponsor "may" complete and submit an Employer Certification attesting that it is exempt. It is not clear to us from the Rules how the RISavers program will treat an Exempt Employer that receives an Employee Information Packet yet chooses not to submit an Employer Certification. Absent a certification, will the RISavers program treat them as covered employers, in which case the Rules would effectively require Exempt Employers to submit an

⁷ *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 319-20 (2016).

Employer Certification? To best reduce the RISavers program's risk of ERISA preemption with respect to the exemption process and improve the clarity of the Rules, **we recommend that the Rules invite, rather than require, all plan sponsors to certify their exemption.**

If the RISavers program does not provide for a voluntary employer exemption process, then we offer the following comments on the employer exemption process as described in the Rules:

- **Support for not requiring Exempt Employers that do not receive an Employee Information Packet to submit an Employer Certification:** Section 6.5(C) of the Rules states that Exempt Employers that do not receive an Employee Information Packet "may, but need not," inform the Program Administrator of their exemption. The Council strongly supports this approach, as it lessens the administrative burdens on plan sponsors.
- **Confirmation that recertification of exemption is not required:** We read the Rules as helpfully inferring that the Employer Certification described in Section 6.5(B) will remain in place as long as the plan sponsor who submits the certification continues to offer a plan. However, clarification on this point would be helpful. We believe recertification is unnecessary because, in the relatively rare case where an employer completely eliminates its plan, this information will be available through a Form 5500 search.

COMMENTS RELATING TO THE SMALL EMPLOYER EXEMPTION

Under the RISavers statute, "Eligible Employers" are required to facilitate the RISavers program for their "Eligible Employees." An "Eligible Employer" is generally defined in the statute as a for-profit or non-profit, nongovernmental person or entity engaged in a business or other enterprise in Rhode Island that "*has five (5) or more employees* and that satisfies the requirements to establish or participate in a payroll deposit retirement savings arrangement" (emphasis added).⁸ As such, employers with fewer than five employees are *not* included in the RISavers program's mandate. The Rules incorporate the statute's definition of "Eligible Employer" and further provide a process for determining whether an employer is an Eligible Employer with respect to its number of employees. Specifically, the Rules provide that the number of employees is generally "the average number of Eligible Employees during the previous calendar year, as reported" on Rhode Island Form TX-17 ("Quarterly Contribution Return and Report of Wages").⁹

⁸ R.I. Gen. Laws § 35-23-2(2).

⁹ Rules § 6.6(A).

We assume that the RISavers program will operate in a manner that applies the statutory exclusion for employees with fewer than five employees. In this regard, we offer the following comments for your consideration on the status of employers that do not meet the five-employee threshold:

- **Rules for an employer ceasing to be an Eligible Employer:** Section 6.6(B) of the Rules provides that an employer “shall cease to be an Eligible Employer either upon the effective date of a Tax-Qualified Retirement Plan adopted by the Employer *or if it ceases to employ any employees*” (emphasis added). This statement could be read to imply that employers with five or fewer employees may still be considered Eligible Employers for purposes of the RISavers program’s mandate as long as they employ “any” employees at all. Because this reading is not consistent with the statute, the Council recommends the following minor amendments to section 6.6(B) to clarify that employers who do not meet the five-employee threshold are not required to facilitate the RISavers program:

“An Employer shall cease to be an Eligible Employer either upon the effective date of a Tax-Qualified Retirement Plan adopted by the Employer or if it ceases to employ any employees ceases to employ five or more employees as determined by the process described in Section 6.6(A).”

- **Exemption process for small employers:** Section 6.5 of the Rules, which describes the RISavers program’s registration and exemption process, does not address what steps employers with fewer than five employees may or must take to inform the Program Administrator that they are exempt from the RISavers program. It may be helpful for the RISavers program to address the exemption process for small employers in the future.

OTHER COMMENTS

In addition to our comments above regarding the RISavers program’s exemption process, we offer the following comments for your consideration:

- **Traditional IRA option for Saver’s Match compatibility:** The RISavers statute provides that the RISavers program “shall include, as determined by the [General Treasurer], one or more payroll deduction IRA arrangements,” which the statute defines to include a traditional IRA or a Roth IRA.¹⁰ The Rules provide that an “Account” for purposes of the RISavers program will be a Roth IRA. However, the Rules are silent on whether a traditional IRA is also permitted.

¹⁰ R.I. Gen. Laws §§ 35-23-5; 35-23-2(3).

As enacted by the SECURE 2.0 Act of 2022,¹¹ beginning in 2027, a government matching program called the “Saver’s Match” will go into effect. Under the Saver’s Match, eligible taxpayers who make qualified retirement savings contributions of up to \$2,000 for the taxable year are generally eligible to receive a government matching contribution of up to \$1,000. The Saver’s Match may be received by, among other retirement savings vehicles, a traditional IRA. Roth IRAs, however, are ineligible to receive the Saver’s Match.

In light of this restriction on the types of accounts that may receive a Saver’s Match, several state-run retirement programs have taken steps to add an option for their participants to open a traditional IRA so that, if eligible, their traditional IRA could accept a Saver’s Match contribution. For instance, Connecticut enacted legislation earlier this year to require the MyCTSavings program to provide an “applicable retirement savings vehicle” (i.e., a traditional IRA) for each participant who receives a Saver’s Match.¹² Illinois and Vermont have also enacted similar amendments to the laws creating their state-run programs.¹³ Currently, the vast majority of the state-run retirement programs that have already launched offer both traditional and Roth IRA options for participants (with the Roth IRA serving as the default vehicle). Other programs that are currently under development and whose statute authorizes the program’s governing board to determine the appropriate savings vehicle are actively considering offering both a Roth and traditional IRA to facilitate the Saver’s Match. We raise this topic because, in the future, it may be beneficial to RISavers participants for the RISavers program to consider adding a traditional IRA option, which we believe is explicitly permitted by the RISavers statute.

- **Payroll deduction IRA programs:** Consistent with the RISavers statute, the Rules provide that an employer who offers an “Employer-Sponsored Retirement Plan” – the definition of which includes an “automatic enrollment payroll deduction [IRA]”¹⁴ – is exempt from the RISavers program.¹⁵ The Council suggests that the RISavers program consider expanding the exemption to include employers that offer any type of payroll deduction IRA, regardless of whether it has automatic enrollment. In such cases, it makes little sense to require the employer to participate in the RISavers program when employees may already readily contribute to an IRA through payroll deduction.

¹¹ Internal Revenue Code § 6433.

¹² Pub. Act No. 25-30 (June 9, 2025).

¹³ Pub. Act. No. 104-0100 (Aug. 1, 2025), and Pub. Act No. 27 (May 21, 2025), respectively.

¹⁴ We assume the term “IRA” should appear in the definition as indicated in the text above.

¹⁵ R.I. Gen Laws § 35-23-9(g)(1); Rules § 6.4(B)(13) and (14).

- **Miscellaneous provisions:** The Council suggests that the RISavers program consider the following amendments to various other provisions in the Rules, with the aim of ensuring clarity and uniformity throughout the Rules:
 - *Section 6.5*
 - To be consistent with the definition of an “Exempt Employer” as described in Section 6.4(B)(14), in Section 6.5(B) we suggest replacing the term “*maintains* an Employer-Sponsored Retirement Plan ...” with “*offers* an Employer Sponsored Retirement Plan”
 - *Section 6.6*
 - To be consistent with the Definitions described in Section 6.4, we suggest replacing the term “*Tax-Qualified Retirement Plan*” in Section 6.6(B) with “*Employer-Sponsored Retirement Plan.*”
 - *Section 6.13*
 - We suggest the following addition to Section 6.13(A): “An Eligible Employee may receive *in their Account* rollovers and transfers from other retirement savings vehicles as permissible under the Code and applicable state law” (emphasis on suggested addition).
 - We suggest the following two changes to Section 6.13(B): “The Program Administrator shall determine the process through which an *Eligible Employee Account Holder* or *lawful beneficiary Beneficiary* may roll over or transfer all or a portion of an Account to a different retirement savings vehicle as permissible under the Code and applicable state law” (emphasis on suggested changes).
 - *Section 6.14 (Withdrawals)*
 - We suggest the following change to Section 6.14(A): “An *Eligible Employee Account Holder* may withdraw all or a portion of funds from their Account upon request, transmitted to the Program Administrator in a form or format established by the Program Administrator and as permitted by the Code and applicable state law” (emphasis on suggested change).
 - *Section 6.14 (Severability)*
 - Because Section 6.14 appears twice in the Rules, we suggest renumbering “Severability” to be *Section 6.15*.

* * * * *

Thank you for considering the Council's comments on the RISavers Rules.

Sincerely,

A handwritten signature in cursive script that reads "Lynn D. Dudley". The signature is fluid and elegant, with the first name "Lynn" and last name "Dudley" clearly distinguishable.

Lynn D. Dudley
Senior Vice President, Global Retirement and Compensation Policy