

**120-RICR-00-00-6**

## **TITLE 120 – TREASURY DEPARTMENT**

### **CHAPTER 00 – N/A**

#### **SUBCHAPTER 00 – N/A**

#### **PART 6 – RULES AND REGULATIONS PERTAINING TO THE RISAVERS RETIREMENT SAVINGS PROGRAM**

### **6.1 Introduction**

- A. This Regulation, pertaining to the RISavers Retirement Savings Program, is promulgated pursuant to R.I. Gen. Laws §§ 35-23-6 and 35-23-16.

### **6.2 Purpose**

- A. This Regulation is established for the purpose of effectuating the provisions and overall purpose of the Rhode Island Secure Choice Retirement Savings Program Act as established by R.I. Gen. Laws § 35-23-1, et. seq.

### **6.3 Intent**

- A. It shall be the intent of this Regulation to, inter alia, define the roles and responsibilities of Employers in a manner to keep the Program from being classified as an employee benefit plan subject to the federal Employee Retirement Income Security Act.

### **6.4 Definitions**

- A. Unless otherwise defined herein, capitalized terms shall have the same meaning as defined by R.I. Gen. Laws § 35-23-2.
- B. As used in this Regulation:
  - 1. "Account" means a Roth IRA for an Eligible Employee established under the Program.
  - 2. "Account Holder" means an individual who maintains an Account with the Program.
  - 3. "Automatic Escalation" means an automatic increase in an Eligible Employee's Contribution Rate pursuant to § 6.11 of this Part.
  - 4. "Beneficiary" means an individual, person, or entity entitled to receive the proceeds of an Account upon the death of an Account Holder.

5. "Code" means the Internal Revenue Code of 1986, as amended, and any United States Department of Treasury regulations, rulings, announcements, or other guidance issued thereunder.
6. "Compensation" has the same meaning as defined in Sections 1.415(c) - 2(d)(4) of the Code. In the case of a sole proprietor, a partner in a partnership, a member of a limited liability company treated as a sole proprietor or partner, or another self-employed individual, compensation means such individual's Earned Income.
7. "Contribution Rate" means the percent of an Eligible Employee's Compensation to be withheld and contributed to their Account via payroll deduction under the Program.
8. "Earned Income" shall mean an individual's net earnings from self-employment or from an Eligible or Optional Employer, as determined under Section 401(c)(2)(A) of the Code.
9. "Employee Information Packet" means information concerning Program participation provided to Eligible Employees and information that Eligible and Optional Employers are required to provide to Eligible Employees.
10. "Employee Leasing Company" means a professional employment organization, an employer of record service, or any similar entity that provides employee-related services or workers by contract and for a fee to an Eligible or Optional Employer.
11. "Employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in the State of Rhode Island, whether for-profit or not-for-profit, excluding the federal government, the state, any municipal corporation, or any of the state's units or instrumentalities.
12. "Employer Certification" means a certification submitted by an Employer to the Program Administrator certifying that it maintains an Employer-Sponsored Retirement Plan and is exempt from Program participation.
13. "Employer-Sponsored Retirement Plan" means an employee benefit plan that is a defined benefit plan, a plan qualified under Section 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b) of the Code, a simplified employee pension (SEP) plan, a savings incentive match plan for employees (SIMPLE) plan, or an automatic enrollment payroll deduction, if the plan or Individual Retirement Account qualifies for favorable federal income tax treatment under the Code.
14. "Exempt Employer" means an employer that offers an Employer-Sponsored Retirement Plan.

15. "Program Administrator" means the third-party entity procured by the Office of the General Treasurer to provide recordkeeping, administrative, and other related services for the Program.
16. "Registration Date" means the registration window established by the Office of the General Treasurer for an Eligible Employer to either register for the Program or submit an employer certification.
17. "Work-site Employee" means an Eligible Employee contracted through an Employee Leasing Company.
18. "Work-site Employer" means any person, business, or other entity that procures the services of an Employee Leasing Company under a contract, and which retains direction and control of any Employee as specified in the contract.

## **6.5 Notice of Registration and Exemption Process**

- A. As directed by the Office of the General Treasurer, the Program Administrator shall send the Employee Information Packet to Employers. 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.
- B. If an Employer receives an Employee Information Packet and believes it is exempt from Program participation because it ~~offers~~ maintains an Employer-Sponsored Retirement Plan, an authorized representative of the Employer may complete and submit an Employer Certification to the Program Administrator attesting that the Employer is so exempt.
- C. Employers that offer an Employer-Sponsored Retirement Plan and do not receive an Employee Information Packet from the Program Administrator may, but need not, inform the Program Administrator of their exemption.
- D. Upon receipt of the Employee Information Packet, all Eligible Employers shall submit the following information to the Program Administrator:
  1. Employer name and assumed business name, if any;
  2. Federal Employer Identification Number;
  3. Employer mailing address;
  4. Name, title, telephone number and email address of an individual designated by the Employer to serve as the point of contact;
  5. Number of employees; and

6. Any other necessary information reasonably requested by the Program Administrator to administer the program.

## **6.6 Eligible Employers.**

- A. To determine whether an Employer is an Eligible Employer for a calendar year, the number of employees shall be the average number of Eligible Employees during the previous calendar year, as reported to the Department of Labor and Training on a Form TX-17, "Quarterly Contribution Return and Report of Wages," for the quarter ending December 31 and the preceding three quarters.
  1. Employers that have not submitted a Form TX-17, "Quarterly Contribution Return and Report of Wages", for a full calendar year are Eligible Employers if they have submitted at least one Form TX-17, "Quarterly Contribution Return and Report of Wages", in the preceding quarter and otherwise meet the definition of Eligible Employer.
- B. An Employer shall cease to be an Eligible Employer either upon the effective date of an ~~an Tax-Qualified-Employer-Sponsored~~ Retirement Plan adopted by the Employer or if it ceases to employ five (5) or more employees as determined by the process described in Section 6.6(a).~~any employees~~. Employers that cease to be an Eligible Employer shall notify the Program Administrator within 30 days of the Employer's change in status.
- C. No later than 30 days following the Registration Date, a new Eligible Employee's 120th day of employment by an Eligible Employer, or upon indication of an Employee's intent to participate through an Optional Employer, the Employer shall provide the following information to the Program Administrator for each Employee:
  1. Full legal name;
  2. Social security number or taxpayer ID number;
  3. Date of birth;
  4. Mailing address;
  5. Employee's designated email address, if available;
  6. Employee's phone number, if available; and
  7. Any other information reasonably requested by the Program Administrator that is necessary to administer the Program.
- D. After initial registration, Eligible Employers and Optional Employers with Employees participating in the Program shall have a continuing obligation to:

1. Promptly provide the Program Administrator with any new or updated Employer information;
2. Promptly register new or otherwise unregistered Eligible Employees who have been employed for at least 120 days or, in the case of Optional Employers, provide new or otherwise unregistered employee with the Employer Information Packet;
3. Promptly provide the Program Administrator with new or updated Employee information; and
4. Promptly provide any other information reasonably requested by the Program Administrator that is necessary to administer the Program.

## **6.7 Multi-Party Employment Relationships**

- A. If a business utilizes an Employee Leasing Company, the entity that pays unemployment insurance premiums for Eligible Employees, as indicated by the Federal Employee Identification Number that appears in the Department of Labor and Training's records, shall be the entity that is treated as the Employer of a Work-site Employee under the Program.
- B. Any wages paid to a Work-site Employee by an Employee Leasing Company shall be treated as wages received from the Work-site Employer.
- C. Nothing in this regulation shall be construed as to prohibit an Employee Leasing Company from assisting a Work-site Employer with the performance of their responsibilities under the Program.

## **6.8 Optional Employers**

- A. Employees employed by Optional Employers may elect to participate in the Program.
- B. Optional Employers shall provide Employees with an Employee Information Packet and, if an Employee elects to participate, shall facilitate an Employee's participation in the Program as if they were an Eligible Employer.

## **6.9 Employer Restrictions**

Eligible and Optional Employers shall not:

- A. Prohibit, restrict, or discourage Employee participation in the Program;
- B. Provide Account Holders or Beneficiaries of deceased Account Holders advice or direction regarding investment choices, Contribution Rates, Automatic Escalation, or any other decision about the Program;

- C. Remit any payroll deduction Contributions for any Eligible Employee who opted out of the Program;
- D. Exercise any authority, control, or responsibility regarding the Program, other than those duties specified under R.I. Gen. Laws § 35-23-1, et seq.; or
- E. Contribute to an Eligible Employee's Account.

## **6.10 Eligible Employees**

- A. Eligible Employees shall have one account, regardless of whether an Eligible Employee makes Contributions from a single Employer, or from multiple Employers (simultaneously or separately throughout the Eligible Employee's lifetime).

## **6.11 Contribution Rate**

- A. Upon enrollment, Eligible Employees shall have a default Contribution Rate of 5% of Compensation per pay period. Eligible Employees may elect to have an alternative Contribution Rate of no less than 1% of Compensation per pay period. Eligible Employees may change their Contribution Rate at any time with thirty (30) days' notice provided to the Program Administrator.
- B. An Eligible Employee's Contribution Rate shall be subject to Automatic Escalation, whereby the Contribution Rate shall increase by an additional 1% of Compensation on each January 1 following enrollment, up to a maximum Contribution Rate of 10%. Eligible Employees may opt out of Automatic Escalation or elect an alternative Automatic Escalation percentage at any time with thirty (30) days' notice provided to the Program Administrator.
- C. Nothing in this Section shall prohibit an Eligible Employee from selecting a Contribution Rate that is greater than 10%.
- D. An Eligible Employee's annual contribution amount as calculated by the applicable Contribution Rate shall not exceed the maximum limit under the Code and applicable state law.

## **6.12 Investment Options**

- A. Upon Enrollment, Eligible Employees shall have their Contributions invested in a default investment option to be selected by the Program Administrator.
- B. Eligible Employees may make an alternative election from the investment options offered through the Program. Eligible Employees may change their investment choice at any time.

### 6.13 Rollovers and Transfers

- A. An Eligible Employee may receive rollovers and transfers from other retirement savings vehicles as permissible under the Code and applicable state law.
- B. The Program Administrator shall determine the process through which an Account Holder ~~Eligible Employee~~ or ~~lawful~~ ~~bB~~ 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.

### 6.14 Withdrawals

- A. An Account Holder ~~Eligible Employee~~ 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.
- B. The Program shall not assess any penalty for withdrawals. Withdrawals shall be subject to any applicable state and federal income tax obligations and may be subject to penalties under the Code.

### 6.1~~5~~4 Severability

- A. If any portion of the Regulation is found to be invalid, the remaining portion shall remain in full force and effect.