

## **RESOLUTION #2019-04 RULES REGARDING EMPLOYEE RETIREMENT PARTICIPATION ELECTIONS**

April 11, 2019 (Amended on March 12, 2020)

**WHEREAS**, Utah Code Annotated § 49-11-406 allows certain state government officials and staff to “elect to be exempt from coverage under a defined benefit system and to have their defined benefit balance transferred from the defined benefit system or plan to a defined contribution plan in the member’s own name;”

**WHEREAS**, Utah Code Annotated §§ 49-12-203(4) and 49-13-203(4) allow certain student-related public employees, and state and local government officials and staff to file a written request for exemption from coverage in the Public Employees’ Contributory System or Public Employees’ Noncontributory System, respectively;

**WHEREAS**, Utah Code Annotated §§ 49-14-203(1), 49-15-203(1), and 49-16-203(1) allow certain public safety service employees or firefighter service employees to file a written request for exemption from coverage in the Public Safety Contributory Retirement System, Public Safety Noncontributory Retirement System, or Firefighters’ Retirement System, respectively;

**WHEREAS**, Utah Code Annotated § 49-19-403 allows a governor or legislator to “elect to forfeit the allowance provided by this chapter” and instead participate “in a defined contribution plan administered by the office;”

**WHEREAS**, Utah Code Annotated § 49-22-205 allows certain state and local government officials and staff to elect to be exempt from participation in the Tier 2 Public Employees’ Contributory Retirement System;

**WHEREAS**, Utah Code Annotated § 49-23-203 allows certain public safety service employees to elect to be exempt from participation in the Tier 2 Public Safety and Firefighter Contributory Retirement System;

**WHEREAS**, the above referenced sections contain provisions authorizing or requiring the Utah State Retirement Board (Board) or Utah State Retirement Office (Retirement Office) to make or adopt rules to implement those sections;

**WHEREAS**, the Board desires to make and adopt rules regarding employee participation elections to promote the uniform administration of the systems, to protect the qualified tax status of the systems, and to protect the actuarial and financial soundness of the systems;

**WHEREAS**, the Internal Revenue Service (IRS) enforces the Internal Revenue Code (IRC) and has promulgated regulations and published determinations, rulings, and other guidance affecting qualified governmental retirement plans under IRC § 401(a), including guidance regarding participation, one-time irrevocable elections, and what constitutes a qualified cash or deferred arrangement (CODA);

**WHEREAS**, the retirement systems and plans administered by URS are intended to be administered as qualified governmental retirement plans under IRC § 401(a) and must therefore comply with requirements applicable to such plans in order to maintain their qualified status that protects the resulting tax advantages of provided benefits;

**WHEREAS**, Utah Code Annotated § 49-11-203(1)(c) and (g) require the Board to “ensure that the systems, plans, programs, and funds are administered according to law” and to “maintain, in conjunction with participating employers and members, the systems, plans, and programs on an actuarially sound basis;”

**WHEREAS**, Utah Code Annotated § 49-11-203(1)(k) requires the Board to “develop broad policy for the long-term operation of the various systems, plans, and programs under broad discretion and power to perform the board’s policymaking functions, including the specific authority to interpret and define any provision or term under this title when the board or office provides written documentation which demonstrates that the interpretation or definition promotes uniformity in the administration of the systems or maintains the actuarial soundness of the systems, plans, or programs;”

**WHEREAS**, Utah Code Annotated § 49-11-406(2) allows certain exemptions from URS participation “subject to federal law;”

**WHEREAS**, Utah Code Annotated § 49-11-801(5) authorizes, “The board or office may take actions necessary to protect the tax qualified status of the systems, plans, and programs under its control . . . ;”

**WHEREAS**, the Board has determined that the following rules regarding employee participation elections, including one-time irrevocable elections, will help ensure that the administration of the systems and plans is safely within the provisions of Title 49 and the guidance provided by the IRS surrounding employee participation, one-time irrevocable elections and their timing, and CODAs;

**WHEREAS**, the Board has determined that the following rules regarding employee participation elections will promote the actuarial and financial soundness of the systems by limiting employee participation elections and thereby reducing the occurrence and effects of participant adverse selection;

**WHEREAS**, under Utah Code Annotated § 49-11-613(1)(a), it is the participating employer’s and member’s obligation to inform themselves of their rights and obligations under Title 49.

**NOW, THEREFORE, BE IT RESOLVED** that the following rules apply to those employee participation elections specified herein, and any similar elections which may be enacted in the future, available to employees of participating employers to participate in the retirement systems and plans administered by URS in accordance with Utah Code Title 49.

## Employee Retirement Participation Rules

### I. Participation and Elections

#### **General Rules**

1. An employee of a participating employer is subject to all applicable participation rules found in Title 49, including mandatory participation requirements. However, employees in qualifying positions at certain times may be eligible to elect exemption from participation or coverage in a system or plan in accordance with these rules.
2. For purposes of these rules:
  - a. Participating employer means an applicable URS participating employer defined under Utah Code Annotated § 49-11-102.
  - b. Different departments, divisions, agencies, offices, or other administrative units of a participating employer shall collectively be considered components of that employer and constitute a single participating employer with URS.
  - c. Actual participation in a defined benefit system or plan constitutes a participation election regardless of whether such participation commenced by default, affirmative employee election, employer enrollment, or otherwise.
  - d. The duration of an employee's employment with an employer is a comprehensive term that includes all periods of employment with that employer.
    - i. The duration of employment is not affected or reset by a position change or promotion, even if the employee's new position is one that would otherwise qualify for an election.
    - ii. The duration of employment resumes if the employee is rehired with that employer after a termination of employment, and employee elections limited to those initially beginning employment with an employer are unavailable after being rehired with a previous employer.
3. Elections may be required to be made and submitted on forms provided by the Retirement Office.
4. URS has no discretion to make exceptions to these rules based on lack of knowledge, hardship, or other extenuating personal circumstances or situations. Since these rules are based on statutory provisions under Utah Code Title 49 and federal law, the Retirement Office, URS Executive Director, and Board must follow the law, and appeals to override such administration must be denied as a matter of law.

#### **Tier 1 Rules**

5. A member initially beginning employment with a participating employer who, pursuant to statute, is eligible to elect non-participation with a Tier 1 defined benefit system or plan, may make a one-time irrevocable election to exempt from coverage in the system or plan.
  - a. This election to exempt from coverage may only be made when the employee initially begins employment with that employer and before the employee participates with the defined benefit system or plan while an employee of that employer.
  - b. Once a member has participated with a defined benefit system or plan while an employee of a participating employer, the one-time irrevocable election to exempt

from coverage is unavailable for the duration of the employee's employment with that employer.

6. Once a Tier 1 member has exempted from coverage in the defined benefit system or plan and instead participated with a defined contribution plan while an employee of a participating employer, whether the defined contribution plan is administered by URS or another plan of the employer, the member may not elect to revoke or cancel the exemption and participate in the Tier 1 defined benefit system or plan for the duration of the employee's employment with that employer.
7. If an employee who has elected to exempt from coverage has a change in a position with the same employer, the following rules shall apply:
  - a. If the new position is not eligible for an exemption, the employee will automatically move to participation in the applicable defined benefit system or plan.
  - b. If the new position is eligible for an exemption, the employee will remain exempt from participation in the applicable defined benefit system or plan.
  - c. In no event may an employee who has a change in position with the same employer be allowed a participation election.
8. Except in cases of rehire with a previous employer, an employee's participation election with a previous employer does not apply to retirement participation in employment with a different participating employer.
9. For elections under Utah Code Annotated § 49-11-406, which allows members in certain positions to elect to be exempt from coverage and have the member's defined benefit balance transferred from the applicable defined benefit system or plan to a defined contribution plan, this election may also be made at the time of bona fide termination of employment while in a qualifying position with the participating employer as an irrevocable alternative distribution of the defined benefit.
  - a. This election results in a forfeiture of service credit under the Tier 1 defined benefit system or plan that has accrued at the time of the transfer.
  - b. In the future, if the member becomes employed in a position covered by URS retirement benefits, the member would only be eligible to be a member of a Tier 2 or later-enacted system or plan, as applicable at the time of their future employment date.

#### **Tier 2 Rules**

10. For a member initially entering Tier 2 retirement covered employment, no election is final and the member does not participate in a system or plan until completion of the one-year election period described in §§ 49-22-201(2) or 49-23-201(2).
11. At the conclusion of the one-year period, the participation election, whether by affirmative election or default, for the Tier 2 Hybrid Retirement System or Tier 2 Defined Contribution Plan is irrevocable for the member's career.
12. A member of the Tier 2 Defined Contribution Plan:
  - a. May never change the member's irrevocable election and elect to participate with the Tier 2 Hybrid Retirement System.
  - b. Who qualifies for and timely makes the election to be exempt pursuant to Utah Code Annotated §§ 49-22-205 or 49-23-203 continues to receive the same employer nonelective contribution, except that the contribution is exempt from the vesting requirements of Utah Code Annotated §§ 49-22-401 or 49-23-401.

- c. Who no longer qualifies for an exemption from coverage, including by no longer being employed in a qualifying position or a change in employment to a different employer, the member shall continue participation with the Tier 2 Defined Contribution Plan, but shall become subject to the vesting requirements of Utah Code Annotated §§ 49-22-401 or 49-23-401. However, revoking or changing an exemption from coverage may not be made at the member's option or election.
13. A member of the Tier 2 Hybrid Retirement System:
- a. May never change the member's irrevocable election and elect to participate with the Tier 2 Defined Contribution Plan.
  - b. Who qualifies for and timely makes the election to be exempt pursuant to Utah Code Annotated §§ 49-22-205 or 49-23-203, such as for subsequent employment in a qualifying position with a different employer, will then receive the same employer nonelective contribution as a member of the Tier 2 Defined Contribution Plan, except that the contribution is exempt from the vesting requirements of Utah Code Annotated §§ 49-22-401 or 49-23-401.
    - i. This election to exempt from coverage may only be made when the employee initially begins employment with that employer and before the employee participates with the Tier 2 Hybrid Retirement System while an employee of that employer.
    - ii. Once a member has participated with the Tier 2 Hybrid Retirement System or received defined contribution benefits pursuant to an exemption from coverage while an employee of a participating employer, the member's option to change the election is unavailable for the duration of the employee's employment with that employer.
    - iii. If a member no longer qualifies for an exemption from coverage, including by no longer being employed in a qualifying position or a change in employment to a different employer in a position that is not eligible for exemption, the member shall be returned to participation with the Tier 2 Hybrid Retirement System. However, revoking or changing an exemption from coverage may not be made at the member's option or election.
  - c. Who is eligible to and makes an election under Utah Code Annotated § 49-11-406, which allows members in certain positions to elect to be exempt from coverage and have the member's defined benefit balance transferred from the applicable defined benefit system or plan to a defined contribution plan, may also make the election at the time of bona fide termination of employment while in a qualifying position with the participating employer as an irrevocable alternative distribution of the defined benefit. This election results in a forfeiture of service credit under the Tier 2 Hybrid Retirement System that has accrued at the time of the transfer.
14. For a member initially entering Tier 2 retirement covered employment who qualifies for and submits the election to be exempt during the one-year election period described in §§ 49-22-201(2) or 49-23-201(2):
- a. The election may be changed until it takes effect at the conclusion of the one-year period.
  - b. This election results in an irrevocable career election to participate in either the Tier 2 Defined Contribution Plan or the Tier 2 Hybrid Retirement System.

- c. While in a position qualifying to be exempt pursuant to Utah Code Annotated §§ 49-22-205 or 49-23-203, the member shall receive the same employer nonelective contribution as a member of the Tier 2 Hybrid Retirement System, except that the contribution is exempt from the vesting requirements of Utah Code Annotated §§ 49-22-401 or 49-23-401.
- d. If a member no longer qualifies for an exemption from coverage, including by no longer being employed in a qualifying position or a change in employment to a different employer in a position that is not eligible for exemption, the member shall continue to participate with either the Tier 2 Hybrid Retirement System or the Tier 2 Defined Contribution Plan, and shall become subject to the vesting requirements of Utah Code Annotated §§ 49-22-401 or 49-23-401. However, revoking or changing an exemption from coverage may not be made at the member's option or election.
- e. Once a member has participated with a defined benefit system or plan while an employee of a participating employer, the one-time irrevocable election to exempt from coverage is unavailable for the duration of the employee's employment with that employer.

## **II. URS Responsibilities**

1. The Retirement Office shall help educate participating employers on their rights and responsibilities in administering these rules and clarify URS policies and procedures, including providing guidance in the online URS Employer's Guide. This responsibility shall not override an employer's or member's statutory duty to inform themselves of their rights and obligations under Utah Code Title 49.
2. The Retirement Office regularly audits participating employers to ensure compliance with state retirement laws. Compliance audit testing for participating employers shall include requirements relating to retirement participation, one-time irrevocable elections, and CODAs.
3. The Retirement Office may not assist or allow an employer to change an employee's retirement participation or an employee to make a participation election if either would violate law or these rules.
4. Subject to law and these rules, the Retirement Office shall assist participating employers in correcting errors with respect to any unlawful participation elections that are discovered through employer compliance audits, self-reporting, or other ways.

## **III. Employer Responsibilities**

1. Participating employers shall inform themselves of their rights and obligations under Utah Code Title 49.
2. As provided by statute, participating employers shall designate those positions eligible for exemption and maintain a list of eligible positions and employee exemptions, which the Retirement Office may review during employer audits or at other times.
3. Hiring, promotion, and onboarding processes are within the employment relationship between the employer and employee.
4. A participating employer shall, during the employee onboarding process for new hires:
  - a. provide information to its new employees on retirement options available;

- b. ascertain whether the employee has prior URS service credit or prior employment with that employer and, if applicable, educate the employee regarding the eligibility for and timing of any participation elections with URS;
  - c. enroll the employee in a system or plan and with eligible elections so that the employee's retirement participation will be in compliance with these rules and applicable law.
5. A participating employer may not change an employee's retirement participation or elections in violation of law or these rules.
6. In order to ensure compliance with these rules as well as the Postretirement Reemployment Restrictions provided in Utah Code Title 49, Chapter 11, Part 12, each participating employer shall certify to URS both its eligible and ineligible employees, upon their initially and subsequently entering employment with that employer.
7. A participating employer shall contact URS if it has questions about these rules or their application to specific situations.

#### **IV. Employee Responsibilities**

1. Members shall inform themselves of their rights and obligations under Utah Code Title 49, including ensuring they are timely and correctly enrolled and participating in a URS retirement system or plan or properly making an election to exempt from participation.
2. If an employee may lawfully make a retirement participation election as allowed by these rules, that employee is individually responsible for making that election and should consult their own tax or legal advisor to determine the effect of laws and the election on their particular situation.
3. An employee may not change a retirement participation election in violation of these rules.
4. A member should not make requests to URS for an exception to these rules based on lack of knowledge, hardship, or other extenuating personal circumstances or situations. Since these rules are based on statutory provisions under Utah Code Title 49 and federal law, the Retirement Office, URS Executive Director, and Board must follow the law, and appeals to override such administration must be denied as a matter of law.
5. If there are claims relating to hiring, promotion, or onboarding processes, such disputes are within the employment relationship between the employer and employee and appeals relating to such disputes should be directed to the participating employer.

This Resolution takes effect on April 11, 2019. The amendments to Tier 2 Rules, Section 14, take effect on March 12, 2020.

URS shall notify participating employers about this Resolution.