

## CHAPTER 25. DEFERRED COMPENSATION

### SUBCHAPTER 3. ELECTION TO DEFER COMPENSATION

#### 590:25-3-5. Over Age 50 Catch-up Limits

~~(a)~~ In addition to the maximum limits under 590:25-3-1, the Plan provides for a special catch-up for all ~~employees~~ Participants who have attained age 50 before the close of the plan year. Such additional contributions shall be in accordance with, and subject to the limitations of Section 414(v) of the Internal Revenue Code. Effective January 1, 2025, the adjusted dollar amount under Section 414(v)(2)(E) of the Internal Revenue Code shall apply to Participants who will attain age 60 but will not attain age 64 by the end of the calendar year. The applicable dollar amount and the adjusted dollar amount under this paragraph (a) shall be increased by cost-of-living to the extent provided under Section 414(v) of the Internal Revenue Code for such calendar year. Such catch-up contributions shall not be ~~taken into account~~ considered for purposes of the provisions of the plan implementing the required limitations of section 457 of the Internal Revenue Code. This catch-up may not be used in the same years the ~~employee~~ Participant is using the election under 590:25-3-2.

(b) Effective January 1, 2026, or such later effective date determined by the Secretary of the Treasury through guidance, with respect to a Participant whose wages within the meaning of Section 3121(a) of the Internal Revenue Code from the Employer for the preceding calendar year exceed the limitation under Section 414(v)(7)(A) of the Internal Revenue Code, paragraph (a) of this section shall apply only if the Participant elects, or is deemed to have elected, the additional amount of Elective Deferrals to be made as Roth Elective Deferrals. The wage limitation under this paragraph (b) shall be increased by cost-of-living to the extent provided under Section 414(v) of the Internal Revenue Code for such calendar year.

### SUBCHAPTER 9. BENEFITS

#### 590:25-9-9. Designated beneficiary

The Participant shall have the right to file with the ~~Board~~ Recordkeeper, a beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the Participant's death. Following the death of the Participant, the beneficiary shall also have the right to file with the ~~Board~~ Recordkeeper, a beneficiary or change of beneficiary form designating the person or persons who shall receive the benefits payable under the Plan in the event of the beneficiary's death.

(1) The form for this purpose shall be provided by the ~~Board~~ Recordkeeper and will have no effect until it is signed, filed with the ~~Board~~ Recordkeeper by the Participant or the beneficiary, and accepted by the ~~Board~~ Recordkeeper.

(2) The Participant and the beneficiary shall have the burden for executing and filing, with the Recordkeeper, a proper beneficiary designation form.

(3) ~~The Participant and the beneficiary accepts and acknowledges that he has the burden for executing and filing, with the Board, a proper beneficiary designation form.~~ If the Participant or beneficiary dies without having a beneficiary form on file, the payments shall be made to the properly appointed fiduciary of the Participant's probate estate. ~~Provided that if~~ If a fiduciary has not been appointed by a Court and qualified within one hundred twenty (120) days after the death, the payment may be ~~made paid to the first; of the following:~~

- (a) Participant's estate;
- (b) to a surviving spouse;
- (c) second, to a surviving child or children in equal shares;
- (d) surviving grandchildren in equal shares;
- (e) third, to a surviving parent or parents in equal shares; or
- (f) surviving siblings in equal shares.

#### 590:25-9-16. Rollover contributions to the plan Rollovers and In-Plan Roth Conversions

(a) Eligible Rollover Contributions. A Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan as eligible rollover contributions unless the distributing eligible retirement plan includes funds previously transferred or rolled-over which require tax accounting or distribution rules that are different from those contained in this Plan.

(b) Notwithstanding any other provisions in the Plan to the contrary, effective June 1, 2023, the Plan shall accept Roth Rollover Contributions from a Roth account under an applicable retirement plan in accordance with Code Section 402A(e)(1) only if it is a direct rollover and only to the extent the rollover is permitted under the rules of Code Section 402(c).

(c) Separate Accounts. The Plan shall establish and maintain for the Participant separate accounts for any:

- (1) Eligible rollover contributions or Roth Rollover Contributions paid to the Plan;
- (2) Eligible Roth rollover contributions paid to the Plan from any eligible retirement plan including an eligible governmental plan under Code Section 457(b); and
- (3) Eligible rollover contributions paid to the Plan from an eligible governmental plan under Code Section 457(b).

(d) In-Plan Roth Conversions. The following transfers are permitted under the Plan:

- (1) Any amount held in a Pre-Tax Elective Deferral Subaccount is eligible for direct transfer to a Roth Elective Deferral Subaccount even if not otherwise distributable.
- (2) Any amount held in a subaccount of the Participant's Transfer Contribution Account holding pre-tax Transfer Contributions or after-tax Transfer Contributions is eligible for direct transfer to a subaccount of the Participant's Transfer Contribution Account holding Roth Transfer Contributions and earnings even if not otherwise distributable.
- (3) Any amount held in a subaccount of the Participant's Rollover Contribution Account holding pre-tax Rollover Contributions and earnings is eligible for direct transfer to a subaccount of the Participant's Rollover Contribution Account holding Roth Rollover Contributions and earnings.
- Any such transfer shall be treated as a qualified rollover contribution, within the meaning of Section 408A(e) of the Internal Revenue Code, to such Account.

(e) Administrative Procedures. A Participant's election under paragraph (d) of this section shall be subject to the reasonable administrative procedures established by the Board, Section 402A(c)(4) of the Internal Revenue Code and the regulations thereunder, and subsequent guidance from the Internal Revenue Service.

(f) Taxable Amounts. The taxable portion of the Participant's Accounts transferred to a Roth Contribution Account or to a subaccount of the Participant's Roth Rollover Contribution Account holding Roth Rollover Contributions and earnings pursuant to paragraph (d) of this section shall be included in the Participant's gross income in the tax year in which the transfer occurs.

### **590:25-9-23. Death after December 31, 2021**

Notwithstanding any contrary provisions, effective for Participant deaths after December 31, 2021, the following distribution provisions shall take effect; provided, however, that such provisions shall be subject to any regulations or other guidance issued under the SECURE Act:

(1) If the Participant dies before the distribution of ~~his or her~~ their entire account (regardless of whether any distributions had begun before the Participant's death) and the Participant has a designated Beneficiary:

(A) The entire Account shall be distributed to the designated Beneficiary by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(B) Notwithstanding paragraph (1)(A), if the designated Beneficiary is an eligible designated Beneficiary, then the eligible designated Beneficiary may elect for the Participant's Account(s) to be distributed:

(i) by December 31 of the calendar year containing the tenth (10th) anniversary of the Participant's death, or

(ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the eligible designated Beneficiary or over a period not exceeding the life expectancy of the eligible designated Beneficiary. If the eligible designated Beneficiary is the surviving spouse, payment under item (ii) is not required until the later of December 31 of the calendar year immediately following the calendar year in which the Participant died or December 31 of the calendar year in which the Participant would have attained the applicable age seventy and one-half (70 ½) (age seventy-two (72) with respect to a Participant who would have attained age seventy and one-half (70 ½) after December 31, 2019) as permitted by the federal Internal Revenue Code Section 401(a)(9)(C)(v). If the eligible designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (ii).

(C) Upon either:

(i) the death of an eligible designated Beneficiary before distribution of the Participant's entire account or

(ii) the attainment of the age of majority for an eligible designated Beneficiary who is a minor child under subsection (4), paragraph (B) shall no longer apply, and the remainder of the account shall be distributed under paragraph (1)(A).

(2) If the Participant dies before distributions of ~~his or her~~ their Account begins and the Participant has no designated Beneficiary, the Participant's Account under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death. If the Participant dies after distribution of ~~his or her~~ their Account begins and the Participant has no designated Beneficiary, any remaining portion of the Account shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(3) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under ~~this section 590:25-9-22 590:25-9-23.~~

(4) For purposes of this section, "Eligible Designated Beneficiary" means a designated Beneficiary who, as of the date of the death of the Participant, is:

(A) the surviving spouse of the Participant;

(B) a child of the Participant who has not reached the age of majority;

(C) disabled within the meaning of Code Section 72(m)(7);

(D) chronically ill within the meaning of Code Section 7702B(c)(2) (except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature); or

(E) any other individual who is not more than ten (10) years younger than the Participant. Notwithstanding the preceding, a child described in (4)(B) above shall cease to be an eligible designated Beneficiary as of the date ~~he~~ ~~or she reaches~~ they reach the age of majority.