RESOLUTION #2019-03 RULES REGARDING HIGHER EDUCATION EMPLOYEE RETIREMENT PARTICIPATION ELECTIONS

April 11, 2019

WHEREAS, Utah Code Annotated §§ 49-12-204(2)(b), 49-13-204(2)(b), and 49-22-204(2)(b) require institutions of higher education to make employment classifications so that each classification is assigned to have retirement benefits covered through either the Utah Retirement Systems (URS) or a public or private system, organization, or company (Authorized Plan) designated by the Board of Regents or the Board of Directors of each technical college, as applicable;

WHEREAS, Utah Code Annotated §§ 49-12-204(2)(c) and 49-13-204(2)(c) give an employee of an institution of higher education a "one-time irrevocable election to continue participation" with URS if the employee's classification is with the Authorized Plan but the employee has prior URS service credit;

WHEREAS, Utah Code Annotated § 49-22-204(3) gives an employee of an institution of higher education the right to "elect to continue participation" with URS "upon change to an employment classification" in an Authorized Plan;

WHEREAS, Utah Code Annotated §§ 49-12-204(7) and 49-13-204(7) each requires, "The board shall make rules to implement this section;"

WHEREAS, the Utah State Retirement Board (Board) desires to make such rules regarding higher education retirement participation and one-time irrevocable 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 § 49-11-801(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 one-time irrevocable elections for employees of higher education 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 one-time irrevocable elections for employees of higher education 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 a participation election, including a one-time irrevocable election, available to employees of institutions of higher education to participate in the retirement systems and plans administered by URS in accordance with Utah Code Title 49.

<u>**Higher Education Employee Retirement Participation Rules**</u>

For purposes of these rules, "institution of higher education" means a URS participating employer described in Utah Code Annotated § 53B-1-102 and the University Hospital. A participating employer includes the different departments, divisions, agencies, offices, or other administrative units of each institution of higher education, which collectively shall be considered as a single participating employer with URS.

<u>**I. Participation and Elections**</u>

1. Except as provided under paragraph I.2, an employee initially hired by an institution of higher education may participate only in the retirement plan assigned to the employee's position under the institution's employment classifications.
2. Notwithstanding paragraph I.1, an employee initially beginning employment with an institution of higher education whose position is classified into an Authorized Plan but who has previous service credit with URS may make a one-time irrevocable election to continue participation with URS in accordance with these rules.

3. An employee election to participate with URS or an Authorized Plan must be made when the employee initially begins employment with the employer and is immediately effective when either the employee first makes an election to participate or the employee begins participating with one of those plans.
4. Once an employee has participated with any plan of the employer, the one-time irrevocable election is unavailable.
5. Participation with any plan of the employer, whether by default or otherwise, constitutes an election for purposes of these rules.
6. Once an employee has made an election to participate or has participated with any plan of the employer, that election remains with the employee for the duration of the employee's employment with that employer, regardless of a position change or promotion and regardless of periods of termination.
7. The previous participation election with a participating institution of higher education will apply upon the employee's rehire with that employer after a termination of employment.
8. The previous participation election does not apply to employment with a different participating institution of higher education.
9. 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 Utah State Retirement Office (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.

II. URS Responsibilities

1. The Retirement Office shall help educate institutions of higher education 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 does 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 institutions of higher education shall include requirements relating to retirement participation, one-time irrevocable elections, and CODAs.
3. The Retirement Office may not assist an employer or employee to change an employee's retirement participation between URS or an Authorized Plan or allow an employee to make a non-qualified participation election that would be in violation of law or these rules.
4. Subject to paragraph II.3, the Retirement Office shall assist participating institutions of higher education in resolving correctable 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 institutions of higher education shall inform themselves of their rights and obligations under Utah Code Title 49.

2. As provided by statute, participating institutions of higher education shall maintain an employment classification schedule that assigns each position to participate with either URS or an Authorized Plan, 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 institution of higher education 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 and, if applicable, educate the employee regarding the eligibility for and timing of a one-time irrevocable election to continue participation with URS;
    c. enroll the employee in a plan so that the employee's retirement participation will be in compliance with these rules in accordance with the institution's employment classification or based on a qualifying one-time irrevocable election if the employee has prior URS service credit.
5. A participating institution of higher education may not change an employee's retirement participation between URS or an Authorized Plan or allow an employee to make a non-qualified participation election that would be in violation of 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 institution of higher education shall certify to URS both its eligible and ineligible employees, upon their initially and subsequently entering employment with that employer.
7. A participating institution of higher education shall contact URS if it has questions about these rules or their application to specific situations.

IV. Employee Responsibilities

1. Employees 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 an Authorized Plan.
2. If an employee may lawfully make a retirement participation election at the time of hiring and employment onboarding, 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 one-time irrevocable election for retirement participation once it is made, including once an employee has participated with any plan of the employer.
4. An employee 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 statutes 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 employing institution of higher education.

This Resolution takes effect on April 11, 2019.

URS shall notify participating institution of higher education employers about this Resolution.