

11—64.6(8A) Deferred compensation.

64.6(1) Definitions. The following definitions shall apply when used in this rule:

“*Account*” means any fixed annuity contract, variable annuity contract, life insurance contract, documents evidencing mutual funds, variable or guaranteed investments, or combination thereof provided for in the plan.

“*Beneficiary*” means the person or estate entitled to receive benefits under the plan following the death of the participant.

“*Director*” means the director of the Iowa department of administrative services.

“*Employee*” means a nontemporary (permanent full-time or permanent part-time) employee of the employer, including full-time elected officials and members of the general assembly, except employees of the board of regents. For the purposes of enrollment, elected officials-elect and members-elect of the general assembly shall be considered employees. Persons in a joint employee relationship with the employer shall not be considered employees eligible to participate in the plan.

“*Employer*” means the state of Iowa and any other governmental employer that participates in the plan. Effective July 1, 2003, “employer” shall also include any governmental entity located within the state of Iowa that enters into an agreement to allow its employees to participate in the plan.

“*Fiduciary*” means a person or company that manages money or property for another and that must exercise the standard of care imposed by law or contract. For the purpose of these rules, “fiduciary” means the trustee, the plan administrator, investment providers, and the persons they designate to carry out or help carry out their duties or responsibilities as fiduciaries under the plan.

“*Governing body*” means the executive council of the state of Iowa.

“*Group*” means one or more employees.

“*Investment provider*” means a company authorized under this rule to issue an account or administer the records of such an account or accounts under the deferred compensation plan authorized by Iowa Code section 509A.12 and 2003 Iowa Code Supplement section 8A.402.

“*Normal retirement age*” means 65 years of age, unless an employee declares a different age pursuant to the plan’s catch-up provision. The age cannot be earlier than a year in which the employee is eligible to receive retirement benefits without an age reduction penalty from the employer-sponsored retirement plan.

“*Participating employee*” or “*participant*” means any employee or former employee of the employer who is currently deferring or who has previously deferred compensation under the plan and who retains the right to benefits under the plan.

“*Plan*” means the state of Iowa employee contribution plan for deferred compensation as authorized by Internal Revenue Code Section 457, Iowa Code section 509A.12, and 2003 Iowa Code Supplement section 8A.434.

“*Plan administrator*” means the designee of the director who is authorized to administer the plan.

“*Plan year*” means a calendar year.

“*Retirement investors’ club*” means the voluntary retirement savings program for employees designed to increase personal long-term savings. The program contains two plans, the 457 employee contributions plan and the 401(a) employer contribution plan.

“*Trust*” means the Iowa state employee deferred compensation trust fund created in the state treasury and under the control of the department.

“*Trustee*” means the director of the Iowa department of administrative services.

64.6(2) Plan administration.

a. Director’s authorization. The director is authorized by the governing body to administer a deferred compensation program for eligible employees and to enter into contracts and service agreements with deferred compensation investment providers for the benefit of eligible employees and on behalf of the state of Iowa and other eligible employers. This rule shall govern all investment options and participant activity for the funds placed in the program.

b. Plan modification. The trustee may at any time amend, modify, or terminate the plan without the consent of the participant (or any beneficiary thereof). The plan administrator shall provide to participating employees and investment providers sufficient notice of all amendments to the plan. No

amendment shall deprive participants of any of the benefits to which they are entitled under the plan with respect to deferred amounts credited to their accounts before the effective date of the amendment. If the plan is curtailed or terminated, or the acceptance of additional deferred amounts is suspended permanently, the plan administrator shall nonetheless be responsible for the supervision of the payment of benefits resulting from amounts deferred before the amendment, modification, or termination. Payment of benefits will be deferred until the participant would otherwise have been entitled to a distribution pursuant to the provisions of the plan.

c. Location of account documentation. The investment providers shall send the original annuity policies, contracts or account forms to the plan administrator. Failure to do so may result in termination of an investment provider's contract or service agreement. The plan administrator shall keep all such original documents. Participating employees may review their own documentation during normal work hours at the department, but may not under any circumstances remove the documentation from the premises.

d. Not an employment contract. Participation in this plan by an employee shall not be construed to give a contract of employment to the participant or to alter or amend an existing employment contract of the participant, nor shall participation in this plan be construed as affording to the participant any representation or guarantee regarding the participant's continued employment.

e. Tax relief not guaranteed. The employer, trustee, and the investment providers do not represent or guarantee that any particular federal or state of Iowa income, payroll, personal property or other tax consequences will result because of the participant's participation in the plan. The participant is obligated to consult with the participant's own tax representative regarding all questions of federal or state of Iowa income, payroll, personal property or other tax consequences arising from participation in the plan.

f. Investment agents. The investment providers shall, subject to the trustee's consent, have the power to appoint agents to act for the investment providers in the administration of accounts according to the terms, conditions, and provisions of their contracts or service agreements with the plan. Investment providers are responsible for the conduct of their agents, including their adherence to the plan document and administrative rules. The plan administrator may require an investment provider to remove the authority of any agent to provide services to the plan or plan participants when cause has been shown that the agent has violated these rules or state or federal law or regulation related to the governance of the plan or agent conduct.

g. Plan expenses. Expenses incurred by the plan administrator while administering the plan, including fees and expenses approved by the plan trustee for investment advisory, custodial, record-keeping, and other plan administration and communication services, and any other reasonable and necessary expenses or charges allocable to the plan that have been incurred for the exclusive benefit of plan participants and that have been approved by the plan trustee may be charged to the short-term interest that has accrued in the deferred compensation trust fund created by Iowa Code section 19A.12C prior to the allocation of funds to a participant's chosen investment provider. Such expenses may also be funded from fees assessed to eligible employers who choose to offer the plan to their employees.

h. Advisory committee. There shall be appointed by the plan trustee an advisory committee. The advisory committee shall consist of representatives of the legislative, judicial, and executive branches of government, public sector employees through their authorized collective bargaining representatives, and the private sector. Such representatives shall convene in regularly scheduled meetings, in a manner, time and place chosen by the plan trustee or designee, to advise in the administration of the plan and the plan investment options.

i. Time periods. As necessary or desirable to facilitate the proper administration of the plan and consistent with the requirements of Section 457 of the Internal Revenue Code (IRC), the plan administrator may modify the time periods during which a participating employee or beneficiary is required to make any election under the plan, and the time periods for processing these elections by the plan administrator, including the making or amending of a deferral agreement, the making or amending of investment provider selections, the election of distribution commencement dates or distribution methods.

j. Supplementary information and procedures. Any explanatory brochures, pamphlets, or notices distributed by the plan shall be distributed for information purposes only and shall not override any provision of the plan or give any person any claim or right not provided for under the plan. In the event any form or other document used in administering the plan, including but not limited to enrollment forms and marketing materials, conflicts with the terms of the plan, the terms of the plan shall prevail.

k. Binding plan. The plan, and any properly adopted amendments, shall be binding on the parties and their respective heirs, administrators, trustees, successors and assignees and on all beneficiaries of the participant.

64.6(3) Rights of participating employees.

a. Exclusive benefit. The trustee shall hold the assets and income of the plan for the exclusive benefit of the participating employee or the participating employee's beneficiary.

b. Creditors. The accounts of a participating employee under the plan shall not be subject to creditors of the participating employee or the participant's beneficiary and shall be exempt from execution, attachment, prior assignment, or any other judicial relief, or order for the benefit of creditors or other third persons.

c. Designation of beneficiary. Upon enrollment, a participating employee must designate a beneficiary or beneficiaries. An employee who has an open account with an investment provider that is no longer able to open new accounts may change the employee's designated beneficiary or beneficiaries at any time thereafter by providing the plan administrator with written notice of the change on the form prescribed by the plan administrator. An employee who has an open account with an investment provider that is able to open new accounts may change the employee's designated beneficiary or beneficiaries at any time thereafter by completing the investment provider's beneficiary change form.

d. Assignment. Neither a participating employee, nor the participating employee's beneficiary, nor any other designee shall have the right to commute, sell, assign, transfer, borrow, alienate, use as collateral or otherwise convey the right to receive any payments.

64.6(4) Trust provisions.

a. Investment options. The trustee shall adopt various investment options for the investment of deferred amounts by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

b. Designation of fiduciaries. The trustee, the plan administrator, and the persons they designate to carry out or help carry out their duties or responsibilities are fiduciaries under the plan. Each fiduciary has only those duties or responsibilities specifically assigned to fiduciaries under the plan, contractual relationship, trust, or as delegated to fiduciaries by another fiduciary. Each fiduciary may assume that any direction, information, or action of another fiduciary is proper and need not inquire into the propriety of any such action, direction, or information. No fiduciary will be responsible for the malfeasance, misfeasance, or nonfeasance of any other fiduciary, except where the fiduciary participated in such conduct, or knew or should have known of such conduct in the discharge of the fiduciary's duties under the plan and did not take reasonable steps to compel the cofiduciary to redress the wrong.

c. Fiduciary standards.

(1) All fiduciaries shall discharge their duties with respect to the plan and trust solely in the interest of the participating employees and their beneficiaries and in accordance with Iowa Code section 633.123. Such duties shall be discharged for the exclusive purpose of providing benefits to the participating employees and beneficiaries and, if determined applicable, defraying expenses of the plan.

(2) The investment providers shall discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and as defined by applicable Iowa law.

d. Trustee powers and duties. The trustee may exercise all rights or privileges granted by the provisions of the plan and trust and may agree to any alteration, modification or amendment of the plan. The trustee may take any action respecting the plan or the benefits provided under the plan that the trustee deems necessary or advisable. Persons dealing with the trustee shall not be required to inquire into the authority of the trustee with regard to any dealing in connection with the plan. The

trustee may employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the trustee, to advise or assist, and may act without independent investigation upon their recommendations. Instead of acting personally, the trustee may employ one or more agents to perform any act of administration, whether or not discretionary.

e. Trust exemption. This trust is intended to be exempt from taxation under IRC Section 501(a) and is intended to comply with IRC Section 457(g). The trustee shall be empowered to submit or designate appropriate agents to submit the plan and trust to the IRS for a determination of the eligibility of the plan under IRC Section 457, and the exempt status of the trust under IRC Section 501(a), if the trustee concludes that such a determination is desirable.

f. Held in trust. Notwithstanding any contrary provision of the plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the plan. Any trust under the plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the state of Iowa. All plan assets shall be held under one or more of the following methods:

(1) Compensation deferred under the plan shall be transferred to a trust established under the plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, compensation deferred under the plan shall be transferred to a trust established under the plan not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(2) Notwithstanding any contrary provision of the plan, including any annuity contract issued under the plan, in accordance with IRC Section 457(g), compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more annuity contracts, as defined in IRC Section 401(g), issued by an insurance company qualified to do business in the state where the contract was issued, for the exclusive benefit of participants and beneficiaries under the plan or held in a custodial account as described in subparagraph (3) below. For this purpose, the term “annuity contract” does not include a life, health or accident, property, casualty, or liability insurance contract. Amounts of compensation deferred under the plan shall be transferred to an annuity contract described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a contract described in IRC Section 401(f) not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(3) Notwithstanding any contrary provision of the plan, in accordance with IRC Section 457(g), compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more custodial accounts for the exclusive benefit of participants and beneficiaries under the plan or held in an annuity contract as described in subparagraph (2) above. For purposes of this subparagraph, the custodian of any custodial account created pursuant to the plan must be a bank, as described in IRC Section 408(n), or a person who meets the nonbank trustee requirements of Treasury Regulations Section 1.408-2(e)(2) to (6) relating to the use of nonbank trustees.

Amounts of compensation deferred under the plan shall be transferred to a custodial account described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a custodial account described in IRC Section 401(f) not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

64.6(5) Absolute safeguards of the employer, trustee, their employees, and agents.

a. Questions of fact. The trustee and the plan administrator are authorized to resolve any questions of fact necessary to decide the participating employee’s rights under the plan. An appeal of a decision of the plan administrator shall be made to the trustee, who shall render a final decision on behalf of the plan.

b. Plan construction. The trustee and the plan administrator are authorized to construe the plan and to resolve any ambiguity in the plan and to apply reasonable and fair procedures for the administration of the plan. An appeal of a decision of the plan administrator shall be made to the trustee, who shall render a final decision on behalf of the plan.

c. No liability for loss. The participating employee specifically agrees that the employer, the plan, the trustee, the plan administrator, or any other employee or agent of the employer shall not be liable for any loss sustained by the participating employee or the participating employee's beneficiary for the nonperformance of duties, negligence, or any other misconduct of the above-named persons except that this paragraph shall not excuse malicious or wanton misconduct.

d. Payments suspended. The trustee, plan administrator, investment providers, their employees and agents, if in doubt concerning the correctness of their actions in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the identity of the person to receive the payment, or until the filing of an administrative appeal under Iowa Code chapter 17A, and thereafter in any state court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them.

e. Court costs. The employer, the plan, the trustee, the plan administrator, their employees and agents are hereby held harmless from all court costs and all claims for the attorneys' fees arising from any action brought by the participating employee, or any beneficiary thereof, under the plan or to enforce their rights under the plan, including any amendments of the plan.

64.6(6) Eligibility. Except employees of the board of regents, any nontemporary executive, judicial or legislative branch employee, or employee of a governmental employer that enters into an agreement to join the plan, who is regularly scheduled for 20 or more hours of work per week or who has a fixed annual salary is eligible to defer compensation under this rule. An elected official-elect and elected members-elect of the general assembly are also eligible provided that deductions meet the requirements set forth in the plan. Final determination on eligibility shall rest with the plan administrator.

64.6(7) Communications.

a. Forms. All enrollments, elections, designations, applications and other communications by or from an employee, participant, beneficiary, or legal representative of any such person regarding that person's rights under the plan shall be made in the form and manner established by the plan administrator and shall be deemed to have been made and delivered only upon actual receipt by the person designated to receive such communication. The employer or the plan shall not be required to give effect to any such communication that is not made on the prescribed form and in the prescribed manner and that does not contain all information called for on the prescribed form.

b. Notices mailed. All notices, statements, reports, and other communications from the plan to any employee, participant, beneficiary, or legal representative of any such person shall be deemed to have been duly given when delivered to, or when mailed by first-class mail to, such person at that person's last mailing address appearing on the plan records.

64.6(8) Disposition of funds while employed.

a. Unforeseeable emergency. A participating employee may request that the plan administrator allow the withdrawal of some or all of the funds held in the participating employee's account based on an unforeseeable emergency. Forms must be completed and returned to the plan administrator for review in order to consider a withdrawal request. The plan administrator shall determine whether the participating employee's request meets the definition of an unforeseeable emergency as provided for in federal regulations. In addition to being extraordinary and unforeseeable, an unforeseeable emergency must not be reimbursable:

- (1) By insurance or otherwise;
- (2) By liquidation of the participating employee's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- (3) By cessation of deferrals under the plan.

Upon the plan administrator's approval of an unforeseeable emergency distribution, the participating employee will be required to stop current deferrals for a period of no less than six months.

A participating employee who disagrees with the initial denial of a request to withdraw funds on the basis of an unforeseeable emergency may request that the trustee reconsider the request by submitting additional written evidence of qualification or reasons why the request for withdrawal of funds from the plan should be approved.

b. Voluntary in-service distribution. A participant who is an active employee of an eligible employer shall receive a distribution of the total amount payable to the participant under the plan if the following requirements are met:

- (1) The total amount payable to the participant under the plan does not exceed \$5,000 (or the dollar limit under IRC Section 411(a)(11), if greater);
- (2) The participant has not previously received an in-service distribution of the total amount payable to the participant under the plan;
- (3) No amount has been deferred under the plan with respect to the participant during the two-year period ending on the date of the in-service distribution; and
- (4) The participant elects to receive the distribution.

The plan administrator may also elect to distribute the accumulated account value of a participant's account without consent, if the above criteria are met.

This provision is available only once in the lifetime of the participating employee. If funds are distributed under this provision, the participating employee is not eligible under the plan to utilize this provision at any other time in the future.

c. Transfers under domestic relations orders.

(1) To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a participating employee's account may be paid or set aside for payment to a spouse, former spouse, or child of the participating employee. The plan will determine whether the judgment, decree, or order is valid and binding on the plan and whether it is issued by a court or agency with jurisdiction over the plan. The judgment, decree or order must specify which of the participating employee's accounts are to be paid or set aside, the valuation date of the accounts and, to the extent possible, the exact value of the accounts. Where necessary to carry out the terms of such an order, a separate account shall be established with respect to the spouse, former spouse, or child who shall be entitled to choose investment providers in the same manner as the participating employee. Unless otherwise subsequently suspended or altered by federal law, all applicable taxes shall be withheld and paid from this lump sum distribution. The provisions of this subparagraph shall not be construed to authorize any amount to be distributed under the plan at a time or in a form that is not permitted under IRC Section 457.

(2) A right to receive benefits under the plan shall be reduced to the extent that any portion of a participating employee's account has been paid or set aside for payment to a spouse, former spouse, or child pursuant to these rules or to the extent that the employer or the plan is otherwise subject to a binding judgment, decree, or order for the attachment, garnishment, or execution of any portion of any account or of any distributions therefrom. The participating employee shall be deemed to have released the employer and the plan from any claim with respect to such amounts in any case in which:

1. The department, the retirement investors' club, or the plan has been served with legal process or otherwise joined in a proceeding relating to such amounts,
2. The participating employee has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process or by mail from the employer or a plan representative to the participating employee's last-known mailing address, and
3. The participating employee fails to obtain an order of the court in the proceeding relieving the employer and the plan from the obligation to comply with the judgment, decree, or order.

(3) The department, the retirement investors' club or the plan shall not be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of the participating employee's account or of any distribution therefrom.

64.6(9) Investment providers.

a. Participation. The investment providers under the plan are authorized to offer new accounts and investment products to employees only if awarded a contract or service agreement through a competitive bid process. A list of active investment providers shall be provided, upon request, to any employee or other interested party. Inactive investment providers shall participate to the extent necessary to fully discharge their duties under the applicable federal and state laws and regulations, the plan, their service agreements or contracts with the employer, and their investment accounts or contracts with participating employees.

b. Investment products. Investment products shall be limited to those that have been approved by the plan administrator. No new accounts shall be available to employees for life insurance under the plan.

c. Reports and consolidated statements. The investment providers will provide various reports to the plan administrator as well as consolidated statements, newsletters, and performance reports to participants as specified in the service agreements or contracts with investment providers.

d. Dividends and interest. The only dividend or interest options available on policies or funds are those where the dividend or interest remains within the account to increase the value of the account.

e. Quality standards. An investment provider that issues individual or group annuity contracts, or that has issued life insurance policies, must have:

(1) A minimum credit rating of at least "A-" from the A.M. Best Company financial strength rating system or equivalent ratings from two other major, recognized ratings services, and

(2) A minimum number of years in existence greater than 12.

In lieu of (1) and (2) above, an investment provider that provides mutual funds shall be selected by the plan administrator using a selection process that includes quality standard requirements as set forth in a competitive bid process and in the investment provider's service agreement or contract.

f. Minimum contract requirements. In addition to meeting selection requirements, an investment provider must meet and maintain the requirements set forth in its contract or service agreement with the state of Iowa.

g. Removal from participation. Failure to comply with the provisions of these rules, the investment provider contract or service agreement with the employer, or the terms and conditions of the investment provider account with the participating employee may result in termination of an investment provider contract or service agreement, and all rights therein shall be exercised by the employer.

64.6(10) Marketing and education.

a. Orientation and information meetings. Employers may hold orientation and information meetings for the benefit of their employees during normal work hours using materials developed and approved by the plan administrator. Active investment providers may make authorized presentations upon approval of individual agency or department authorities during nonwork hours. There shall be no solicitation of employees by investment providers at an employee's workplace during the employee's working hours, except as authorized in writing by the plan administrator.

b. General requirements for solicitation.

(1) An active investment provider may solicit business from participants and employees through representatives, the mail, or direct presentations.

(2) Active investment providers and representatives may solicit business at an employer's work site only with the prior permission of the agency director or other appropriate authority.

(3) Investment providers or representatives may not conduct any activity with respect to a registered investment option unless the appropriate license has been obtained.

(4) An investment provider or representative may not make a representation about an investment option that is contrary to any attribute of the option or that is misleading with respect to the option.

(5) An investment provider or representative may not state, represent, or imply that its investment options are endorsed or recommended by the plan administrator, the employing agency, the state of Iowa, or an employee of the foregoing.

(6) An investment provider or representative may not state, represent, or imply that its investment option is the only option available under the plan.

c. Disclosure.

(1) Enrollment. When soliciting business for an investment product, an active investment provider or representative shall provide each participating employee or eligible employee with a copy of the approved disclosure for that option. If a variable annuity product has several alternative investment choices, the participant must receive disclosures concerning all investment choices. An active investment provider shall notify the plan administrator in writing if the investment provider will be marketing its investment options through representatives. The notification must contain a complete identification of the representatives who will be marketing the options. Every representative and agent who enrolls eligible employees in the plan and is authorized by the investment provider to sign plan forms must be included on this notification.

(2) Disbursement methods and account values. When discussing distribution methods for an investment option, investment providers or representatives shall disclose to each participating employee or eligible employee all potential distribution methods and the potential income derived from each method for that option.

d. Approval of a disclosure form.

(1) An investment provider shall complete and submit to the plan administrator a disclosure form for each approved investment product. If a variable annuity product has several investment choices, the plan administrator must receive all disclosures related to those investment choices. An investment provider shall complete a disclosure form on each investment product that has participating employee funds (including those no longer offered).

(2) If changes occur during the plan year, any changes must be submitted to the plan administrator for approval prior to their implementation. Disclosure forms will be updated quarterly. Even if no changes occur, an investment provider shall resubmit its disclosure form to the plan administrator for approval every year.

(3) If an investment provider or representative materially misstates a required disclosure or fails to provide disclosure, the plan administrator may sanction the investment provider or bind the investment provider to the disclosure as stated on the form.

e. Confidentiality. The plan administrator may provide to all active investment providers any information that can be made available under the department's rules. Notwithstanding any rule of the department to the contrary, the plan administrator shall make available to all active investment providers the names and home addresses of all state employees. The plan administrator may assess reasonable costs to the active investment providers to defray the expense of producing any requested information. All information obtained under the plan shall be confidential and used exclusively for purposes relating to the plan and as expressly contemplated by the service agreement or contract entered into by the investment provider.

f. Number of investment providers. Only investment providers that are selected through a competitive bid process, that are subsequently awarded a contract or service agreement, and that are authorized to do business in the state of Iowa may sell annuities, mutual funds or other approved products under the plan, and then only if the investment providers agree to the terms, conditions, and provisions of the contract or service agreement.

64.6(11) Investment option removal/replacement. The plan administrator may determine that an investment option offered under the plan is no longer acceptable for inclusion in the plan. If the plan administrator decides to remove an investment option from the plan as the result of the option's failure to meet the established evaluation criteria and according to the recommendations of consultants or advisors, the option shall be removed or phased out of the plan. Employees newly enrolling in the plan shall be informed in writing that investment options that do not meet the evaluation criteria are not open to new enrollments.

a. Notice to participant. Any participating employees already deferring to the investment option being phased out shall be informed in writing that they need to redirect future deferrals from this option to an alternative investment option offered under the plan by notifying the investment provider, unless otherwise directed, of their new investment choice.

b. Automatic transfer. If any participating employee has failed to move a remaining account balance from the investment option being phased out, the plan administrator shall instruct an investment provider to automatically move that participating employee's account balance into another designated alternative investment option offered under the plan.

c. Reexamination. At any time during this process, the plan administrator may reexamine the performance of the investment option being phased out and the recommendations of consultants and advisors to determine if continued inclusion of the investment option in the plan is justified.

64.6(12) Demutualization of investment providers.

a. Ballots. An investment provider that is a mutual company and that provides any annuity product or life insurance product held under the plan shall provide the plan administrator with a ballot(s) for official vote registration. The ballot(s) shall be completed and returned to the company according to the specified deadline in the instructions. The ballot(s) shall include the owner's name, policy numbers of affected contracts, name of annuitant or insured, number of shares anticipated, and the control number for the group of shares.

b. Policyholder booklet. The company shall provide the plan administrator with a policyholder booklet, as well as instructions and guide information, prior to or in conjunction with the delivery of the ballot(s). Notices of progress, time frames and meetings will also be provided to the plan administrator as such information becomes available.

c. Method of compensation. Compensation will be provided in cash according to the terms of the demutualization plan. In the event that stocks are issued in lieu of cash, the company shall provide a listing which includes participants' names, social security numbers, policy numbers, and number of shares pro rata.

d. Liquidation of stock. An arrangement will be entered into between the plan administrator and a stockbroker as soon as administratively possible in order to liquidate the stock for cash. The broker shall retain commission fees according to the arrangement entered into from the value obtained at the time of sale. The employer will not realize a tax liability nor will the participating employees.

e. Deposit of proceeds. The proceeds of the sale of the stock, less the broker commission, and any dividends issued prior to the sale of the stock, shall be made payable to the plan. Cash shall be deposited into the plan's trust fund until payment instructions are received from the participant or the participant's beneficiary.