

Draft Rule I: Work and Save General Provisions

- I. Issuing Agency:** New Mexico Work and Save Board, administratively attached to the Office of the State Treasurer.
- II. Scope:** This rule applies to the New Mexico Work and Save Board and its employees and contractors, including the program administrator and financial service providers; employers that participate in the IRA Program or that purchase plans from the marketplace; and current and former program participants.
- III. Statutory Authority:** This rule is authorized by NMSA 1978, Sections 58-33-3 and 58-33-4, as amended.
- IV. Duration:** Permanent
- V. Effective Date:** TBD
- VI. Objective:** The objective of this rule is to set forth the general provisions that apply to all of Title __ Chapter __, and to all persons affected or regulated by Title __ Chapter __.
- VII. Board Operations:**
- A. Elections.** At its first meeting of the calendar year, the board shall elect a chair and vice chair.
 - B. Duties of officers.** All board officers shall exercise authority subject to the act, board regulations, and specific directions of the board.
 - 1) The chair shall preside at board meetings unless another presiding officer is named by the board. The chair shall appoint board members to committees, and provide direction to the executive director on routine matters to facilitate the efficient operation of board functions between meetings.
 - 2) The vice chair shall preside at board meetings in the absence of the chair. If the office of chair becomes vacant, the vice chair shall serve as chair until a new chair is elected.
 - C. Vacancy.** If the office of board chair becomes vacant, the board shall elect a chair at a subsequent meeting. If the office of vice chair becomes vacant, the board may hold elections as it deems necessary and advisable.
 - D. Duties of executive director.** The executive director shall at all times perform those tasks directed by the board pursuant to and those duties prescribed by the Work & Save Act, board regulations, and other applicable state laws. In addition, the executive director shall supervise other personnel, ensure the responsiveness and efficiency of board operations, and assume the role of, or designate a, custodian of records.
 - E. Board office.** The board office is located in Santa Fe, New Mexico.

- F. Board meetings.** The board shall conduct meetings in accordance with the Open Meetings Act (OMA), Sections 10-15-1 thru 10-15-4 NMSA 1978.
- G. Conduct of meetings.** The board shall conduct its meetings in an orderly fashion, with due regard for each board member and the public. The board may refer to Robert's Rules of Order, Revised, when necessary and advisable.
- H. Agenda.** The executive director shall prepare the meeting agenda in accordance with the OMA and board regulations, except that the board may change the order of agenda items during the meeting.
- I. Quorum.** The board shall transact official business only at a legally constituted meeting with a quorum present. A quorum shall consist of a majority of currently serving members.
- J. Addressing the board.** Except for proceedings to adopt, amend, or repeal regulations in accordance with the State Rules Act, the board, at its sole discretion, may provide a reasonable opportunity for persons attending an open meeting to address the board on an agenda item. The request to speak shall be timely made and shall not delay or disrupt the board's meeting. No person shall be permitted to address the board on any pending or concluded application, complaint, investigation, adjudicatory proceeding, or matter in litigation, except to confer for the purpose of settlement or simplification of the issues. Any public comment to the board shall be brief, concise, and relevant to the agenda item. The board may limit the total time allotted for comments and the time allotted to any person. The board is in no way bound by any opinion, statement, or action of any board member, the board administrator, or other staff except when such action is pursuant to a lawful instruction or direction of the board.
- K. Telephonic or videoconference attendance.** Generally, as contemplated by Section 15-10-1 (C) of the Open Meetings Act, a board member may participate in a meeting of the board by means of a conference telephone, videoconference, or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person and shall give advance notice to the board administrator in ample time to arrange such accommodation. In addition, conditions necessitating the declaration of a public health emergency may make unrestricted in-person meetings "difficult or impossible" for purposes of the Open Meetings Act. As such, during the pendency of any public health emergency, the board may conduct its meetings virtually by means of a conference telephone, videoconference, livestream or other similar technologies, provided the public is afforded some form of access to the meeting to substitute for the access it would have had during any normally scheduled public meeting subject to OMA.
- L. Conflict of interest, recusal.** No board member shall participate in any matter in which the board member may have or has a real or potential conflict of interest. A board

member with a personal, social, family, financial, business, or pecuniary interest in a matter shall recuse himself or herself and shall not participate in consideration, deliberation, or vote on the matter, except as provided by law.

- M. Confidentiality.** Board members shall not disclose to any non-member any information deemed confidential by the Act, the content of any executive session discussion, or any other confidential matters that may be the subject of an executive session or attorney-client privileged communications except as ordered by a court of competent jurisdiction or where the board knowingly and intentionally permits disclosure. Nothing herein shall preclude the board from including in executive session discussions the executive director or other persons the board deems necessary to assist the board in carrying out its operations. Such other persons shall be bound by the same rules of executive session as board members.
- N. Code of conduct.** Board members shall adhere to the standards set forth in the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978, and shall sign a code of conduct agreement as provided by the Office of the State Treasurer or its designee adopting provisions in the GCA.

VIII. Public Education and Outreach

- A. Prior to launching the marketplace, the board shall provide public notice regarding how financial service providers may submit a plan for approval to be offered on the marketplace.
- B. Information regarding how financial service providers may submit a plan for approval, and how to purchase a plan from the marketplace shall be available to the public on the New Mexico work and save platform and may be distributed via other methods prescribed by the board.
- C. The marketplace shall offer a financial literacy module for covered employers and covered employees.
- D. Informational materials regarding the IRA program shall be available to the public on the New Mexico work and save platform and may be distributed via other methods prescribed by the board. The informational materials shall, at a minimum, include:
 - 1) the disclosures to program participants specified in Section IX of this rule; and
 - 2) additional information regarding:
 - a. the benefits associated with tax-favored retirement saving;

- b. the potential advantages and disadvantages associated with contributing to individual retirement accounts through the New Mexico work and save IRA program;
 - c. tools designed to promote financial literacy and capability, which may take the form of links to or explanations of how to obtain such information; and
- 3) instructions explaining how to obtain additional information about the IRA program.

IX. Disclosures to Program Participants

- A. The board shall ensure that the program administrator develops informational materials describing the details of the IRA program and that the informational materials developed by the program administrator shall be provided to each participating employer registered in the IRA program, and to each covered employee and program participant enrolled in the IRA program.
- B. The informational materials shall, at a minimum, include the following information:
- 1) the eligibility rules for individual retirement accounts;
 - 2) the benefits and risks associated with making contributions to an individual retirement account;
 - 3) the penalty for excess contributions to individual retirement accounts and the steps required to correct excess contributions;
 - 4) instructions for opting into the program if the employee's participating employer chooses not to automatically enroll its employees;
 - 5) instructions for opting out of the program if the employee's participating employer chooses to automatically enroll its employees;
 - 6) the default elections applicable if a program participant does not make other elections, and a description of other elections available;
 - 7) instructions for making contributions to a Work and Save IRA, including how to select and change elections regarding contribution rates, contribution escalation rates, types of individual retirement accounts and investments;
 - 8) the fees associated with the IRA program;
 - 9) the process for requesting a distribution of retirement savings from the program;
 - 10) the potential availability of a program participant's tax credit, including eligibility conditions for a credit and instructions on how to claim the credit;
 - 11) statements explaining that:
 - a. participation in the program is voluntary;
 - b. the program is not an employer-sponsored retirement plan;
 - c. tax, investment or financial advice shall not be provided to a program participant by the IRA program, the board, board members, or board employees, a participating employer or the state. A program participant should contact appropriate professional advisors for such advice;

- d. information regarding individual retirement accounts available outside of the IRA program is available from sources including but not limited to the retirement marketplace on the New Mexico work and save platform;
- e. a program participant is solely responsible for decisions the program participant makes regarding the IRA program, and a program participant's individual retirement account and rates of return are not guaranteed by the IRA program, the board, individual board members, board employees, registered employers, or the state or any of its officers or employees;
- f. a program participant is solely responsible for determining whether and how much the program participant is eligible to contribute on a tax-favored basis to an individual retirement account;
- g. holding account balances in the IRA program may have implications for certain public assistance programs with asset limits; and
- h. how to obtain additional information regarding the IRA program.

X. Dispute Resolution Procedures

Once any dispute-resolution procedure specified by a program administrator or in an agreement with a marketplace provider has been exhausted, disputes related to accounts or program operation may be resolved, at the election of the parties, through voluntary arbitration conducted in accordance with the New Mexico Uniform Arbitration Act, NMSA 1978 Sections 44-7A-1 et seq. (2001, as amended), or through voluntary mediation conducted in accordance with the New Mexico Mediation Procedures Act, NMSA 1978, Sections 44-7B-1 et seq. (2007, as amended).