

DEPARTMENT OF THE TREASURY

Colorado Secure Savings Program

RULES GOVERNING THE COLORADO SECURE SAVINGS PROGRAM

8 CCR 1508-3

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

1508-3.1 Authority

This regulation is adopted by the Board of the Colorado Secure Savings Program pursuant to its powers described in paragraphs (b), (f), and (i) in C.R.S. 24-54.3-103.5(1) and C.R.S. 24-54.3-107. Pursuant to paragraphs (a), (b), (g), (h), (k), and (L) of C.R.S. 24-54.3-104(2), this regulation reflects the obligation of the Board to design the Program to promote greater retirement savings for private sector employees in a convenient, low-cost, and portable manner. Furthermore, the regulation is intended to be consistent with the requirements of the State Administrative Procedures Act 24-4-101 et seq. (the "APA"), C.R.S., the Colorado Secure Savings Program Act, and ERISA.

1508-3.2 Scope and Purpose

This regulation governs Employers defined in C.R.S. 24-54.3-102(3), Employees defined in C.R.S. 24-54.3-102(2), Voluntary Participants, Treasury Staff, Colorado Department of Labor and Employment, the Board, and the Program Administrator with respect to the Colorado Secure Savings Program. Pursuant to C.R.S. 24-54.3-104(6) the regulations establish Participation requirements for Employers defined in 24-54.3-102(3). Furthermore, these regulations intend to satisfy the rulemaking obligations of the Board outlined in C.R.S. 24-54.3-107.

1508-3.3 Reserved

1508-3.4 Definitions

The following definitions shall apply for purposes of the Program unless otherwise indicated in these rules:

"Acceptable Submission Method" means one or more modes of document submission detailed on the Program website.

"Account" means, individually or collectively as the context may require, each Roth IRA and Traditional IRA that has been established under the Program.

"Account Holder" means an individual for whom an Account is held under the Program. Account Holders include Onboarded Employees after the Opt-Out Period and Voluntary Participants for whom an Account is established.

"Act" means SB20-200 and the C.R.S. 24-54.3 Colorado Secure Savings Program Act.

"Automatic Escalation" means an additional 1% annual increase in an Account Holder's Contributions at the beginning of each subsequent calendar year following the Account Holder's Onboarding.

"Beneficiary" means the individual(s), person(s), or entity(ies) entitled to receive the proceeds of an Account upon the death of an Account Holder.

“Board” means the Colorado Secure Savings Program Board defined in C.R.S. 24-54.3-102(1).

“Capital Preservation Investment” means a Money Market account selected by the Board where Payroll Deductions are held during the Opt-Out period.

“CDLE” means the Colorado Department of Labor and Employment.

“Certificate of Exemption” means a record provided by the Program Administrator to a business entity that acknowledges said entity’s Exemption.

“Code” means the Internal Revenue Code of 1986, as amended, and any U.S. Department of Treasury regulations, rulings, announcements or other guidance issued thereunder.

“Coemployer” means, in accordance with C.R.S. 8-70-114, either an Employee Leasing Company or a Work-Site Employer.

“Confirmation Notice” means a document sent by the Program Administrator to Participating Employers, Account Holders, and Voluntary Account Holders after Onboarding Information is provided.

“Contribution” means monies contributed to an Account.

“Contribution Rate” means the whole-integer percentage of Wages contributed to an Account by an Account Holder.

“Custom Contribution Rate” means any Contribution Rate elected by the Account Holder as made available by the Program Administrator.

“Custom Investment” means any of the asset classes chosen by the Board besides the Default Investment Option

“Default Contribution Rate” means five percent of Account Holder’s Wages.

“Default Investment Option” means the Target Date fund chosen by the Board, which correlates to the Account Holder’s birth year.

“Employee” means Employee as defined in C.R.S. 24-54.3-102(2).

“Employee Leasing Company” means any person, business, or other entity that provides services to a Work-Site Employer pursuant to an Employee Leasing Company Contract, as defined in paragraph (2)(a) of C.R.S. 8-70-114.

“Employee Leasing Company Contract” means any written staff leasing contract, extended employee staffing or supply contract, or other contract under which an Employee Leasing Company procures or receives from a Work-Site Employer specified Coemployer responsibilities for specified employees, designating itself as employer of such employees, and retaining the right of direction and control of such employees with regard to those employer responsibilities, including the rights and responsibilities set forth in paragraph (b) of subsection (2) of C.R.S. 8-70-114.

“Employer” means Employer as defined in C.R.S. 24-54.3-102(3).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Exempt” means not required to Onboard or Participate in the Program.

“Exemption” means the certification by a business entity to the Program Administrator online through the Program website affirming that said entity does not meet the definition of Employer and therefore is neither required to Onboard nor Participate in the Program.

“Fee” means Fee as defined in C.R.S. 24-54.3-102(4).

“FEIN” means Federal Employment Identification Number provided by the IRS.

“Form 5500 Filing” means the Annual Return/Report of Employee Benefit Plan that is required to be filed for certain employee benefit plans under sections 104 and 4065 of ERISA and sections 6057(b) and 6058(a) of the Code.

“Grant” means a sum of money given by the Program to Participating Employers with between five and twenty-five Employees, as mandated in C.R.S. 24-54.3-103.5(f), for the purpose of incentivizing compliance with the Program and defraying costs incurred by this category of Employers.

“Hold and Sweep Period” means the 30 day period after the Opt-Out Period, during which time Contributions are held in a Capital Preservation Investment on behalf of Participating Employees.

“In Business” means (i) (ii) (ii) or (iv), the date which occurred closest to the present day: (i) the date of the IRS Form SS-4 or (ii) the date as of which the Colorado Secretary of State recorded the business formation document or (iii) the issue date of the Colorado Sales Tax License or (iv) the month and year when the business became liable for wage withholding with the CDLE.

“Inactive” means an Account to which no funds have been deposited for at least 12 months; or from which all funds have been withdrawn, rolled-over (out), or transferred.

“IRA” means, individually or collectively as the context may require, a Roth Individual Retirement Account or a Traditional Individual Retirement Account.

“IRS” means the Internal Revenue Service.

“Launch Date” means the date when the Program is open to the public.

“Non-Compliant Employer” means Employers that have neither certified Exemption nor are Participating Employers.

“Non-Payroll Contribution” means any amount, greater than or equal to five dollars, elected by an Account Holder that Account Holder remits outside of a Payroll Deduction Contribution.

“Onboard” means to furnish information to the Program Administrator in order to Participate in the Program.

“Onboarding” means the process by which Employers and Employees and Self-Employed Individuals furnish information to the Program Administrator in order to participate in the Program.

“Onboarding Information” means the information detailed in 1508-3.5.4 and required to be provided by an Employer, an Employee, or a Voluntary Participant to the Program Administrator to enable participation in the Program.

“Opt-Out Period” means the 30 day account revocation period following completion of Onboarding with the Program Administrator.

“Participate” means to remit either Employee Payroll Deduction Contributions or Contributions of Voluntary Participants to the Program Administrator.

“Participating Employer” means an Employer that is remitting Payroll Deduction Contributions to the Program Administrator.

“Participation” means the remittance of either Employee Payroll Deduction Contributions or Contributions of Voluntary Participants to the Program Administrator.

“Participating Individual” means either a Self-Employed Individual or a Voluntary Participant whose Onboarding Information has been received by the Program Administrator and who is remitting Contributions to an Account.

“Payroll Deduction Contributions” means Contributions made by an Onboarded Employee via a payroll deduction through a Participating Employer.

“Program” means the Colorado Secure Savings Program, which has been created by the Board pursuant to C.R.S. 24.54.3-103

“Program Administrator” means the third-party entity procured by the Board to assist in carrying out the requirements of the Act.

“Program Information” means a document provided by the Program Administrator after onboarding to both Employees and to Voluntary Participants, which outlines the program features including, but not limited to the items listed in C.R.S. 24-54.3-107.

“Registration Date” means a date established by the Board on which Employers are required to complete Onboarding into the Program.

“Roth IRA” means an individual retirement account within the meaning of section 408A of the Code.

“Self-Employed Individual” means an individual who either (i) carries on a trade or business as a sole proprietor or an independent contractor, or (ii) is a member of a partnership that carries on a trade or business, or (iii) is otherwise in business for himself or herself (including a part-time business or a “gig worker”) and who meets the qualifications to open an IRA.

“Tax-Qualified Retirement Plan” means, for purposes of the Program, an employee benefit plan that is qualified under section 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b) of the Code.

“Traditional IRA” means an individual retirement account within the meaning of section 408 of the Code.

“Treasury Staff” means one or more of the employees of the State of Colorado Department of Treasury.

“Voluntary Participant” means an individual who meets the qualifications to open an IRA but who does not meet the definition of Employee as defined in C.R.S. 24-54.3-102(2) and who are willing and able to provide Onboarding Information to the Program Administrator.

“Wages” means Wages as defined in C.R.S. 24-54.3-102(7).

“Work-Site Employee” means an individual who is in an employment relationship with both an Employee Leasing Company and a Work-Site Employer and has received written notice of coemployment with the Employee Leasing Company.

“Work-Site Employer” means any person, business, or other entity that procures the services of an Employee Leasing Company under an Employee Leasing Company Contract and otherwise retains direction and control of the employees specified in the contract regarding responsibilities not specified in the contract pertaining to the business of the work-site employer.

1508-3.5 Employers

1508-3.5.1. Multi-Party Employment Relationships.

- A. Pursuant to C.R.S. 24-54.3-107(g)(2), existing state forms and state compliance structures are to be used for exemption reporting; therefore, the Employer or business entity whose EIN appears in CDLE's records of payment unemployment insurance premiums per C.R.S.8-70-114 (2)(b)(VII) determines which employing unit is responsible for either certifying Exemption, or both Onboarding with the Program and Onboarding Employees.
- B. Any Wages paid to the Work-Site Employee by the Employee Leasing Company with respect to services provided under the Employee Leasing Company Contract, shall be treated as Wages received from the Work-Site Employer.
- C. Nothing in these rules prohibits an Employee Leasing Company and its Work-Site Employer from entering into an Employee Leasing Company Contract or other agreement under which the Employee Leasing Company agrees to assist the Work-Site Employer with the performance of some or all of the Work-Site Employer's responsibilities under this section.

1508-3.5.2 Incentive Grants

- A. Participating Employers with between five and twenty-five Employees may apply for a Grant via the Colorado Treasury website after remitting at least one Payroll Deduction Contribution to the Program Administrator.
- B. Treasury Staff will cross-check Grant applications with the monthly Payroll Deduction Contribution reports provided by the Program Administrator and will process Grant payments via U.S. Mail as soon as administratively possible.

1508-3.5.3 Employer Exemption

- A. Treasury Staff or Program Administrator may send Employers that are identified as not having a current Form 5500 on file with the U.S. Department of Labor written notice(s) directing the business entity to either Onboard with the Program or certify Exemption per process detailed in the ensuing section.
- B. Process for certain business entities to certify Exemption
 - 1. An authorized representative of a business entity shall certify, through the Program website that said entity either presently offers a Tax Qualified Retirement Plan, or has fewer than five Employees, or has been In Business for less than two years.
 - a. The business entity may reference the following state forms and compliance structures when determining its eligibility for Exemption
 - i. business formation document(s) from Colorado Secretary of State
 - ii. Sales Tax License from Colorado Department of Revenue, if applicable; and
 - iii. CDLE's Form UITR or other CDLE form that determines when the business became liable for wage withholding.

2. Upon receipt of the employer's online certification of its reason for Exemption, the Program Administrator shall provide a Certificate of Exemption that will remain in effect so long as the business entity continues to offer a Tax Qualified Retirement Plan to some or all of its Employees or maintains fewer than five Employees.

1508-3.5.4 Employer Onboarding

- A. By or before its Registration Date in 2023, Employers shall either Onboard with the Program or obtain a Tax-Qualified Retirement Plan.
- B. Employers shall submit the following Onboarding Information to the Program Administrator via the Program website or an Acceptable Submission Method:
 1. Employer name and assumed business name, if any;
 2. Federal Employer Identification Number;
 3. Employer mailing address
 4. Name, title, telephone number and email address of an individual designated by the employer to serve as the point of contact;
 5. Number of Employees; and
 6. Any additional information necessary to complete Onboarding.
- C. In the event that the Program Administrator finds that any of the information listed in this subsection (b) is not available on the online portal or is inaccurate, employers shall provide the missing or correct information, as applicable

1508-3.5.5 Employer Restrictions

- A. Business entities that offer a Tax-Qualified Retirement Plan are not required to Onboard or Participate in the Program.
- B. Business entities without a Tax Qualified Retirement Plan, that have been In Business for fewer than two years and have five or more Employees are not required to Onboard with the Program until the Employer achieves two years In Business.
 1. Business entities without a Tax Qualified Retirement Plan that have been In Business for fewer than two years and have between two to four Employees will be allowed to Onboard and Participate in the Program by July 1st, 2024.
- C. Business entities with between two to four Employees will be allowed to Onboard and Participate in the Program by July 1st, 2024.
- D. Employers shall not:
 1. Prohibit, restrict, or discourage Employee Participation in the Program.
 2. Provide Account Holders or Beneficiaries of deceased Account Holders advice or direction regarding investment choices, Contribution Rates, Automatic Escalation, or any other decision about the Program.

3. Remit any Payroll Deduction Contributions for any Onboarded Employee who opted out of the Program.
4. Exercise any authority, control, or responsibility regarding the Program, other than those duties specifically described in sections 1508-3.5.6 and 1508-3.5.7.
5. Contribute to Account Holder's Account.

1508-3.5.6 Onboarding of Employees by Participating Employer

- A. No later than 30 days following an individual's 180th day of employment at a Participating Employer, the Employer shall provide the following information to the Program Administrator for each Employee:
 1. Full legal name;
 2. Social security number or taxpayer ID number;
 3. Date of birth;
 4. Mailing address;
 5. Employee's designated email address, if available;
 6. Employee's phone number, if available; and
 7. Any additional information needed to complete the Onboarding when the information submitted for Onboarding is unclear or insufficient, or when further information is required for purposes of administering the Program
- B. Per C.R.S. 24-54.3-104(2)(L), prior to an individual's 180th day of employment by an Employer, an individual may Onboard into the Program as a Voluntary Participant may remit Contributions voluntarily.

1508-3.5.7 Withholding and Remitting of Payroll Deduction Contributions by Participating Employer

- A. Participating Employers shall not remit Payroll Deduction Contributions until after the Opt-Out Period.
- B. During the Hold and Sweep Period, Participating Employers shall remit all Payroll Deduction Contributions to the Program Administrator as soon as administratively practicable, no later than fourteen days of Contribution being withheld from an Account Holder's Wages.
- C. Amounts withheld by the Participating Employer shall not exceed the amount of the Account Holder's Wages remaining after any payroll deductions required by law or employer payroll practice to have higher precedence, including a court order.

1508-3.5.8 Responsibilities of Program Administrator to Participating Employers

- A. Onboarded and Participating Employers may contact the Program Administrator if they desire technical assistance in completing Program requirements.

- B. Upon receiving the Employee's Onboarding Information from the Employer, the Program Administrator shall email a confirmation to the Employer and send the Program Information to each Employee.

1508-3.6. Employees

1508-3.6.1 Right To Opt-Out

- A. An Employee Onboarded into the Program by an Employer may Opt-Out of the Program at any time.
- B. No Account will be established if Employee opts-out during the Opt-Out Period.
- C. Program Administrator shall send Program Information to Employees as soon as administratively possible after Onboarding is completed and shall send other important information including legal or other material information a reasonable investor would want to know before contributing by payroll deduction or directly.
- D. Employees Onboarded by Employers are deemed to have read and understood the Program Information content, which includes instructions about how to Opt Out of the Program, as required by C.R.S. 24-54.3-107(k)3.
- E. Those who opt out of the Program may re-Onboard at any time by providing the required Onboarding Information through the Program Website or an Acceptable Submission Method.

1508.3.7 Voluntary Participants

- A. Self-Employed Individuals and Voluntary Participants may Onboard with the Program as long as they meet the qualifications to open an IRA and provide the Onboarding Information required by the Program Administrator as follows:
 - 1. Full legal name;
 - 2. Social security number or taxpayer ID number;
 - 3. Date of birth;
 - 4. Mailing address;
 - 5. Email address, if available;
 - 6. Phone number, if available; and
 - 7. Any additional information needed to complete the Onboarding when the information submitted for Onboarding is unclear or insufficient, or when further information is required for purposes of administering the Program
- B. Program Administrator shall send Program Information to Voluntary Participants and Self-Employed Individuals as soon as administratively possible after Onboarding is completed and shall send them the mandatory disclosures pursuant to C.R.S. 24-54.3-107(K).
- C. Voluntary Participants and Self-Employed Individuals shall have one Account, regardless of whether the Voluntary Participant also makes Contributions from a single Participating Employer or multiple Participating Employers (simultaneously or separately throughout Account Holder's lifetime).

- D. After the Program Administrator establishes an Account for the Voluntary Participant or Self-Employed Individuals, the individual is considered an Account Holder.

1508-3.8 Accounts

1508-3.8.1 Contributions

A. Minimum and Maximum Contribution Levels

1. It shall be the responsibility of the Account Holder or Voluntary Participant to determine whether he/she/they are eligible per the Code to make Contributions to an Account and whether the amount of their Contributions to an Account complies with the contribution limits established under the Code, and whether or not such Contributions are deductible.

B. Default Investment and Custom Investment options

1. The Program Information provided by Program Administrator shall instruct Account Holders on how to select Custom Investments versus the Default Investment Option.
2. In the Employee portal on the Program website, Account Holders may direct their Contributions to any of the available fund options offered by the Program.
3. During the Hold and Sweep Period, Contributions will be directed into the Capital Preservation Investment.
4. After the Hold and Sweep Period, Program Administrator shall direct Contributions from the Capital Preservation Investment into the Default Investment Option, unless an Account Holder has elected a Custom Investment.
5. Account Holders may change their investment choice at any time after Employer completes Onboarding.

C. Default Contribution Rate and Custom Contribution Rate

1. The Program Information provided by Program Administrator shall instruct Account Holders on how to elect a Custom Contribution Rate distinct from the Default Contribution Rate.
2. In the Employee portal on the Program website, Account Holders may elect any Contribution Rate that is a whole-number percentage and may direct their Contributions to any of the available fund options offered by the Program.
3. During Hold and Sweep Period, Participating Employers will remit the Default Contribution Rate on behalf of Account Holder into the Capital Preservation Investment, unless the Account Holder elected a Custom Contribution Rate during the Opt Out Period.
4. Account Holder Contributions made subsequent to the Hold and Sweep Period will be made at the Default Contribution Rate unless a participant has elected a Custom Contribution Rate.
5. Account Holders may change their Contribution Rate to any whole integer percentage at any time after Employer completes Onboarding of Employees.

1508-3.8.2 Non-Payroll Contributions

- A. Any Account Holder may choose to make Non-Payroll Contributions to the Program.
- B. Such Contributions must not exceed, in combination with Payroll Deduction Contributions, the annual IRA contribution limit as determined by the Code and related rules promulgated by the IRS.
- C. The Program Administrator will establish the minimum contribution for Non-Payroll Contributions and the Program website will be current with this information.
- D. Non-Payroll Contributions may be made electronically or by personal check.

1508-3.8.3 Automatic Escalation

- A. Contributions for Account Holders who have Participated in the Program for at least six months will automatically increase by 1% of an Account Holder's Wages at the beginning of each subsequent calendar year, up to a maximum of 8% of an Account Holder's wages.
- B. On an annual basis, the Program Administrator shall notify all Account Holders in advance of any Contribution increase to allow for Account Holders to opt out of Automatic Escalation or to change their Contribution Rate.
- C. Account Holders may adjust the rate of their Automatic Escalation, or opt in to Automatic Escalation, or opt out of Automatic Escalation at any time through the Program website.

1508-3.8.4 Termination of Participating Employer Status through Program Exemption

- A. Participating Employers who begin offering a Tax Qualified Retirement Plan must notify the Program Administrator at least sixty days prior to the cessation of Payroll Deduction Contributions.
- B. Upon a Participating Employer becoming Exempt, remittance of Payroll Deduction Contributions on behalf of Account Holders is prohibited.
- C. Participating Employers that have become Exempt must notify Account Holders at least thirty days before Payroll Deduction Contributions cease and provide them with information describing how to contact the Program Administrator.
- D. Unless Account Holders elect otherwise, Accounts will remain in the Program after the Participating Employer certifies its Exemption.
- E. Conversion of status of Account Holders
 - 1. If the Participating Employer became Exempt due to its number of Employees falling below five, the status of the remaining Employees of the now-Exempt Employer automatically convert to Voluntary Participants.
 - 2. Exempt Employers with 2-4 Employees are prohibited from remitting Payroll Deduction Contributions for Voluntary Participants.

1508-3.8.5 Portability

- A. Rollovers and Transfers

1. Rollover or Transfer In
 - a. An Account Holder may receive rollovers and transfers from other retirement savings vehicles in accordance with the time limits established under Title 26 of the Code.
2. Rollover or Transfer Out
 - a. The Program Administrator shall determine the process through which an Account Holder or Beneficiary may roll over or transfer all or a portion of a Program IRA to a different retirement savings vehicle in accordance with the Code.

1508-3.8.6 Withdrawals

- A. Account Holder may withdraw all or a portion of funds from their Account at any time by submitting a completed request to the Program Administrator, in a form or format established by the Program and permitted by the IRS.
- B. The Program shall not assess any penalty for withdrawals. Withdrawals shall be subject to any applicable State and federal income tax obligations and may be subject to penalties under the Code.

1508-3.8.7 Account Closure

- A. The Program Administrator and Treasury Staff will agree determine a process for closing Inactive Accounts.

1508-3.8.8 Abandoned Accounts

- A. An Account shall be presumed abandoned according to the unclaimed property law of the state of the last known address of the Participating Employee or Participating Individual. If the last known address of the Participating Employee or Participating Individual is in Colorado, the provisions of the Uniform Disposition of Unclaimed Property shall apply. If there is no last known address of the Account Holder in the Program records, federal common law shall determine the state with the first priority claim.

1508-3.9 Enforcement

- A. The Program will partner with CDLE to enforce compliance with the Act.
- B. CDLE will fine Non-compliant Employers one-hundred dollars for each Employee per year, not to exceed five thousand dollars in a calendar year.
- C. Process
 1. Treasury Staff together with Program Administrator shall determine Registration Dates for Employers based on number of Employees.
 2. Treasury Staff together with Program Administrator will notify Employers via first-class US Mail not only of their respective Registration Dates but also in advance of receiving Final Notice of Penalty Application.

3. After Registration Dates have passed, CDLE will send three Notices of Non-Compliance to Non-Compliant Employers which provide instructions on how either to Onboard with the Program or to certify Exemption.
4. Fines shall commence no earlier than twelve months after the Registration Date or one year after an Employer is scheduled to enter the program, whichever is later. In no event shall a fine be assessed earlier than three months after the first Notice of Non-Compliance is postmarked.
5. Within 30 days of the date listed on the Final Notice of Penalty Application, Non-Compliant Employers shall remit to CDLE annual fines according to section 1508-3.5.9(B)1 above.

1508-3.10 Confidentiality

Program Administration shall comport with C.R.S. 24-54.3-110.

1508-3.11 Severability

If any portion of these rules is found to be invalid, the remaining portion of the rules shall remain in force and effect.

Editor's Notes

History

New rule eff. 12/15/2022.