

Department of Human Resources Development
Amendment and Compilation of Chapters 14-41 to 14-44
Hawaii Administrative Rules

(Date of Adoption)

1. Chapter 14-41, Hawaii Administrative Rules, entitled "General Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF [~~PERSONNEL SERVICES~~] HUMAN RESOURCES
DEVELOPMENT

SUBTITLE 4

STATE OF HAWAII DEFERRED COMPENSATION PLAN

CHAPTER 41

GENERAL PROVISIONS

§14-41-1	Purpose
§14-41-2	Definitions
§14-41-3	Office of the board
§14-41-4	Appearances before the board
§14-41-5	Government records and information

§14-41-1 Purpose. Chapter 88E, Hawaii Revised Statutes, authorizes the board of trustees of the State of Hawaii deferred compensation plan to establish the State of Hawaii deferred compensation plan. Chapters 41 to 44 of Title 14, Administrative Rules, are adopted by the board to implement

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administration of the plan. [Eff 5/12/83;
comp] (Auth: HRS §88E-3) (Imp: HRS
§§88E-2, 88E-3)

§14-41-2 Definitions. As used in this chapter:

"Administrator" means the company or persons engaged by the board to administer and maintain the plan under the direction of the board.

"Amounts deferred" means a portion of compensation withheld that is deferred or contributed into the plan, as either a pre-tax or a Roth contribution, subject to the limits prescribed under the Code.

"Beneficiary" means a person designated by a participant, a participant's estate, or any person, whose rights under the plan are derived as a result of the participant's death.

"Board" means the board of trustees of the State of Hawaii deferred compensation plan created pursuant to section 88E-3, Hawaii Revised Statutes.

"CARES Act" means the Coronavirus Aid, Relief, and Economic Security Act of 2020, as amended.

"Code" means the United States Internal Revenue Code, as amended.

"Designated Roth account" means a Roth 457(b) account and is a separate account established within a participant's plan account that holds the designated Roth contributions made by the participant.

"Designated Roth contribution" is a type of elective deferral, unless specifically stated otherwise, that a participant designates as an irrevocable Roth contribution which is included in gross income and deposited into a designated Roth account within the same plan. The deferral is treated as an elective deferral subject to the combined maximum annual deferral limits for normal deferrals, age-based deferrals, or traditional catch-up deferrals.

"Direct rollover" or trustee-to-trustee transfer means a direct transfer of assets out of the plan to

another eligible, qualified plan or an individual retirement account, and is not includible in the gross income of a participant or designated beneficiary, pursuant to a permissible distributable event under the Code.

"Employee" means any person who is eligible to participate in the employees' retirement system of the State of Hawaii as defined in section 88-21, Hawaii Revised Statutes.

"Employer" means the State of Hawaii or any county of the State of Hawaii which enters into an agreement with the State of Hawaii to extend the plan to the employees of the county.

"HEART Act" means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended.

"Includible compensation" means compensation which is includable in gross income for federal and state tax purposes, taking into account the provisions of, and adjustments specified in, section 457 of the Code.

"In-plan Roth rollover" is an eligible distribution from the participant's plan account, other than a designated Roth account, that is directly rolled over to the participant's designated Roth account within the same plan.

"Participant" means an employee who enters into a written agreement with the respective employer to defer compensation under the plan.

"Participant account" means the accounts and subaccounts established on behalf of a participant or beneficiary within the plan, as applicable, for 457(b) contributions, rollover contributions, in-plan rollovers, and for all other rollover sources.

"Participation agreement" means the written agreement between an employee and employer to have compensation withheld each pay period and invested by the board.

"Plan" means the State of Hawaii deferred compensation plan established in accordance with chapter 88E, Hawaii Revised Statutes, and section 457 of the Internal Revenue Code, 26 U.S.C. §457.

"Pre-tax contribution" means a participant's

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elective deferral that is not includible in the participant's gross income at the time of the deferral.

"Qualified distribution" is a distribution made after a five-taxable-year period of participation and is either: 1) made on or after the date the participant attains 59 1/2 years; 2) made after a participant's death; or 3) attributable to the participant being disabled.

"Roth contribution" means a participant's elective Roth 457(b) deferral that is includible in the participant's gross income at the time of the deferral and has been irrevocably designated as a Roth contribution by the participant.

"Severance from employment" means the date that an employee has terminated employment with the State or participating county.

"Unforeseeable emergency" means severe financial hardship to a participant resulting from a sudden and unexpected illness or accident of the participant or of the participant's dependent, as defined in section 152(a) of the Internal Revenue Code, loss of the participant's property due to casualty, or similar extraordinary and unforeseeable circumstances beyond the participant's control. [Eff 5/12/83; am and comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-1 to 88E-3)

§14-41-3 Office of the board. (a) The office of the board is located at [~~830 Punchbowl~~] 235 South Beretania Street, [Room 421,] 14th floor, Honolulu, Hawaii 96813.

(b) The office of the board shall be open from 7:45 a.m. to 4:30 p.m. of each weekday unless otherwise provided by statute or executive order. [Eff 5/12/83; am and comp] (Auth: HRS §88E-3) (Imp: HRS §§80-1, 88E-3)

§14-41-4 Appearances before the board. A party to a proceeding before the board may appear in person

or may be represented by or with counsel or other person chosen as a representative. The board at any time may require evidence of authority and qualification to act in a representative capacity. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-41-5 [Public] Government records and information. (a) The term "[public] government record," as used in this chapter, shall be as defined in section ~~[92-50,]~~ 92F-3, Hawaii Revised Statutes.

(b) All [public] government records shall be available for inspection in the office of the board during established office hours, in accordance with ~~[section 92-51 and]~~ chapter ~~[92E,]~~ 92F, Hawaii Revised Statutes.

(c) [Public] Government records printed or reproduced by the board shall be made available to any person ~~[in accordance]~~ with the cost of printing or reproducing a government record as specified in section 92-21, Hawaii Revised Statutes. [Eff 5/12/83; am and comp] (Auth: HRS §88E-3) (Imp: HRS §§91-2, 92-21, 92-50, 92-51, 92F)

2. Chapter 14-42, Hawaii Administrative Rules, entitled "Adoption, Amendment, or Repeal of Rules", is compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF [~~PERSONNEL SERVICES~~] HUMAN RESOURCES
DEVELOPMENT

SUBTITLE 4

STATE OF HAWAII DEFERRED COMPENSATION PLAN

CHAPTER 42

ADOPTION, AMENDMENT, OR REPEAL OF RULES

§14-42-1	Petition
§14-42-2	Form of petition
§14-42-3	Disposition of petition
§14-42-4	Rulemaking

§14-42-1 Petition. An interested person may petition the board for the adoption, amendment, or repeal of any rule of the board. The petition shall be submitted in duplicate and filed with the board. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 91-6)

§14-42-2 Form of petition. (a) The petition need not be in any special form but shall contain:

- (1) The petitioner's name, address, zip code, and telephone number;
- (2) A statement of the nature of the petitioner's interest;

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- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal;
- (4) A draft of the substance of the proposed rule, amendment, or repeal and the designation of any existing rules affected by the petition; and
- (5) The signature of the petitioner.

(b) A petition which does not conform to the foregoing requirements may be rejected by the board. The petitioner shall be notified in writing of the rejection. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 91-6)

§14-42-3 Disposition of petition. Upon submission of the petition, the board, within thirty days, shall either deny the petition in writing, stating its reasons for the denial, or initiate proceedings for the adoption, amendment, or repeal of the rule. Upon disposition of the petition, the board shall promptly notify the petitioner of the board's ruling. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 91-6)

§14-42-4 Rulemaking. The board at any time, on its own initiative, may institute proceedings in accordance with chapter 91, Hawaii Revised Statutes, for the adoption, amendment, or repeal of rules." (Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 91-3, 91-4 to 91-4.2, 91-5)

3. Chapter 14-43, Hawaii Administrative Rules, entitled "Declaratory Ruling", is compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF [~~PERSONNEL SERVICES~~] HUMAN RESOURCES
DEVELOPMENT

SUBTITLE 4

STATE OF HAWAII DEFERRED COMPENSATION PLAN

CHAPTER 43

DECLARATORY RULING

§14-43-1	Petition
§14-43-2	Form of petition
§14-43-3	Non-issuance of declaratory order
§14-43-4	Disposition of petition
§14-43-5	Applicability of orders

§14-43-1 Petition. An interested person may petition the board for a declaratory order as to the applicability of any statutory provision administered by the board or any rule or order of the board. The petition shall be submitted in duplicate and filed with the board. [Eff 5/12/83; comp]
(Auth: HRS §88E-3) (Imp: HRS §§88E-3, 91-8)

§14-43-2 Form of petition. (a) The petition need not be in any special form but shall contain:
(1) The petitioner's name, address, zip code, and telephone number;

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- (2) A statement of the nature of the petitioner's interest;
- (3) A designation of the specific statutory provision, rule, or order in question;
- (4) A complete statement of the relevant facts;
- (5) A statement of the interpretation given the statutory provision, rule, or order by the petitioner;
- (6) A memorandum containing the reasons, including any legal authorities, in support of the interpretation of the petitioner; and
- (7) The petitioner's signature.

(b) A petition which does not conform to the foregoing requirements may be rejected by the board. The petitioner shall be notified in writing of the rejection. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 91-8)

§14-43-3 Non-issuance of declaratory order. The board, for good cause, may refuse to issue a declaratory order. Without limiting the generality of the foregoing, the board may so refuse where:

- (1) The question is speculative or purely hypothetical and does not involve an existing situation or a situation which may reasonably be expected to occur in the near future;
- (2) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law;
- (3) The issuance of the declaratory order may adversely affect the interest of the State, the board, or any officer or employee of the State involved in pending litigation or litigation which may reasonably be expected to arise; or
- (4) The petition requests a ruling on a statutory provision not administered by the board or the matter is not otherwise within the jurisdiction of the board. [Eff

5/12/83; comp] (Auth: HRS
§88E-3) (Imp: HRS §88E-3)

§14-43-4 Disposition of petition. Within a reasonable time after the submission of the petition, the board shall either deny the petition in writing, stating its reasons for the denial, or issue a declaratory ruling on the matters contained in the petition. Upon disposition of the petition, the board shall promptly notify the petitioner of the board's ruling. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 91-8)

§14-43-5 Applicability of orders. An order disposing of a petition shall be applicable only to the fact situation alleged in the petition or as set forth in the order. The order shall not be applicable to different fact situations or to situations where additional facts not considered in the order exist." [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

4. Chapter 14-44, Hawaii Administrative Rules, entitled "Plan Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF [~~PERSONNEL SERVICES~~] HUMAN RESOURCES
DEVELOPMENT

SUBTITLE 4

STATE OF HAWAII DEFERRED COMPENSATION PLAN

CHAPTER 44

PLAN PROVISIONS

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§14-44-2	Application for enrollment
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- §14-44-34 Transfers between employers under the plan
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SUBCHAPTER 1

ENROLLMENT

§14-44-1 Eligibility requirements. A person shall be eligible to enroll in the plan only if the person is:

- (1) Eligible to participate in the employees' retirement system of the State of Hawaii; and

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- (2) Employed by the State of Hawaii or a county which has an agreement with the State of Hawaii to extend the plan to employees of the county. [Eff 5/12/83; comp
] (Auth: HRS §88E-3) (Imp:
HRS §§88E-2, 88E-3)

§14-44-2 Application for enrollment. (a) An application for enrollment shall be made on the participation agreement form prescribed by the board and shall be filed with the administrator.

(b) An applicant for enrollment shall enter on the participation agreement form the following:

- (1) Identifying information, including name, social security number, date of birth, home address, and home telephone number;
- (2) Employment information, including employer, department, division, business telephone number, and annual salary;
- (3) Designations allowed under the plan, including investment preference, amount of compensation to be deferred per pay period per investment product, normal retirement age, and beneficiary; and
- (4) Signature to indicate that the applicant:
 - (A) Agrees to the provisions of the plan, which are incorporated by reference;
 - (B) Authorizes disclosure of any information necessary for the administration of the plan; and
 - (C) Certifies that the information furnished on the form is true and correct to the best of the applicant's knowledge and belief. [Eff 5/12/83; comp
] (Auth: HRS §88E-3) (Imp: HRS §§88E-2, 88E-3)

§14-44-3 Acceptance; effective date. (a) The participation agreement shall be effective upon acceptance by the administrator on behalf of the board and shall remain in effect unless it is modified by the participant or otherwise rendered ineffective by the plan or this chapter.

(b) The administrator shall give each participant a copy of the participation agreement which has been accepted by the board. [Eff 5/12/83; am and comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-2, 88E-3)

§14-44-4 Rejection; notification. (a) A participation agreement shall be rejected if:

- (1) The participation agreement is incomplete;
- (2) An entry in the participation agreement is inconsistent with the plan or this chapter; or
- (3) The applicant does not meet the eligibility requirements.

(b) If a participation agreement is rejected, the administrator shall promptly notify the applicant in writing of the rejection and the reason for the rejection. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-2, 88E-3)

§14-44-5 Changes in participation agreement.

(a) It shall be the responsibility of a participant to notify the administrator in writing of any change in an entry on the participation agreement.

(b) Upon receipt of a notification of change, the administrator shall promptly inform the participant whether the change requires:

- (1) An amended participation agreement to be filed and accepted by the board; or
- (2) Proof or documentation to substantiate the change.

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(c) The administrator shall make the change as soon as practicable following the receipt of a notification of change and any additional material required.

(d) If a change would be inconsistent with the plan or this chapter, the administrator shall promptly notify the participant in writing that the change cannot be made and the reason why it cannot be made.

[Eff 5/12/83; comp] (Auth: HRS §88E-3)
3) (Imp: HRS §§88E-2, 88E-3)

§14-44-6 Re-enrollment. A former participant may again apply for enrollment in the plan by filing a participation agreement with the administrator. [Eff 5/12/83; comp] (Auth: HRS §88E-3)
(Imp: HRS §§88E-2, 88E-3)

SUBCHAPTER 2

DEFERRALS

§14-44-7 Deferrals allowed; authorization; commencement. (a) Only compensation from an employer which has not yet been paid shall be deferred under the plan.

(b) Upon receipt of a payroll authorization form signed by the participant, which designates the amount of compensation to be deferred, compensation shall be deferred each payroll date by the employer, provided there are sufficient funds to make the designated deferral[-], or the deferred amount is in accordance with section 414(u) of the Code and as provided those amounts represent compensation prescribed under the Code. The authorization form shall be transmitted by the administrator to the state comptroller or county director of finance, as applicable.

(c) The participant shall designate the amount to be deferred as either a pre-tax or Roth contribution, as allowable under section 457 of the Code.

(d) An amount designated to be deferred as a Roth contribution shall be treated as a designated Roth contribution, and in accordance with sections 14-44-39 to 14-44-43.

(e) Deferrals shall commence as soon as practicable, but not earlier than the first day of the next calendar month following the date on which the board accepts the participation agreement. [Eff 5/12/83; am and comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-8 Limitations on deferral amounts. (a) The minimum deferral amount per pay period shall be \$10 per investment product.

(b) The maximum deferral amount, for both pre-tax and Roth contributions, per taxable year, including a taxable year under section 14-44-9, shall be identical to the limits established under section 457 of the Code. [Eff 5/12/83; am 1/5/98; am and comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-9 Catch-up provision. (a) A participant who will attain age fifty or more before the end of the calendar year shall be eligible to elect an additional amount of elective deferrals as established under the Code; provided that the additional amount is not made in the same year as elected under subsection (b).

(b) During one or more of a participant's last three taxable years ending before the participant attains normal retirement age, as defined in [~~§14-44-23,~~] section 14-44-23, a participant may be eligible

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to defer compensation in excess of the limitation under ~~§14-44-8(b)~~ section 14-44-8(b) as follows:

- (1) The maximum amount of deferral for each taxable year of the catch-up period shall be the sum of the underutilized limitation under ~~§14-44-9(a)(2)~~, subsection (b)(2), but not more than ~~§15,000~~ the limits established under section 457 of the Code;
 - (2) The underutilized limitation shall be computed by adding:
 - (A) The maximum amount of deferral under ~~§14-44-8(b)~~ section 14-44-8(b) for the taxable year; and
 - (B) The amount which a participant could have deferred but did not defer (which is the maximum amount under ~~§14-44-8(b)~~ section 14-44-8(b) less any amount previously deferred) in prior taxable years which the participant was eligible to participate in the plan or another eligible plan (within the meaning of section 457 of the Internal Revenue Code, 26 U.S.C. §457); and
 - (3) A participant shall only be eligible to utilize the catch-up provision once, regardless of whether the participant fully utilizes the provision or rejoins the plan.
- ~~(b)~~ (c) A participant shall not be eligible to utilize the catch-up provision under the plan if the participant has utilized a catch-up provision under another eligible plan. [Eff 5/12/83; am and comp
] (Auth: HRS §88E-3) (Imp: HRS

§88E-3)

§14-44-10 Reduction in maximum amounts

allowable. The maximum amounts allowable under ~~§§14-44-8(b)~~ sections 14-44-8(b) and 14-44-9 shall be reduced in accordance with regulations governing section 457 of the Internal Revenue Code, 26 U.S.C. §457, if a participant is deferring or has deferred

compensation under another eligible plan or annuity plan under section 403(b) of the Internal Revenue Code, 26 U.S.C. §403(b). [Eff 5/12/83; am and comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-11 Responsibilities regarding maximum amounts. (a) It shall be the responsibility of a participant to furnish the administrator with all necessary information so that deferrals under the plan do not exceed the maximum amounts allowable under [~~§§14-44-8(b)~~] sections 14-44-8(b), 14-44-9, and 14-44-10.

(b) A participant shall be responsible for any tax consequences which may arise as a result of deferrals under the plan which exceed the maximum amounts allowable under [~~§§14-44-8(b)~~] sections 14-44-8(b), 14-44-9, and 14-44-10. [Eff 5/12/83; am and comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-12 Insufficient funds; suspension; reinstatement. (a) Whenever there are insufficient funds available to make the deferral designated in the participation agreement, the deferral shall not be made.

(b) Deferrals shall automatically be suspended if there are insufficient funds available to make the designated deferral for six consecutive pay periods.

(c) A participant whose deferrals have been suspended shall file a written request with the administrator to have deferrals reinstated on the same terms contained in the participation agreement prior to the suspension. However, if the desired reinstatement is to be on terms other than those contained in the participation agreement, a participant shall file an amended participation agreement, which shall be subject to acceptance by the

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board. [Eff 5/12/83; comp] (Auth:
HRS §88E-3) (Imp: HRS §§88E-2, 88E-3)

§14-44-13 Deferrals remain as employer's assets.

(a) The amounts deferred under the plan by a participant, including income attributable to the investment of the amounts deferred, shall remain an asset of the participant's employer.

(b) When a participant changes employment from one employer to another employer under the plan, the amounts deferred by the participant, including income attributable to the investment of the amounts deferred, shall become an asset of the new employer.

(c) A participant's rights to the amounts deferred shall be limited to those provided in the plan and this chapter. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 88E-8)

SUBCHAPTER 3

INVESTMENTS

§14-44-14 Investment of deferred amounts. (a)

The amounts deferred under the plan shall be invested by the board in [~~fixed~~] annuities, [~~variable annuities,~~] life insurance, savings accounts, [~~or~~] mutual funds, or [~~any combination of the foregoing.~~] other investment products that are commonly offered in the securities industry or other deferred compensation plans and are determined by the board to be reasonably prudent investment products.

(b) Contracts entered into between the board and the companies selected by the board to offer the investment products for the plan shall be binding upon the participants. [Eff 5/12/83; am and comp

] (Auth: HRS §88E-3) (Imp: HRS
§§88E-3, 88E-9)

§14-44-15 Designation of investment preference.

(a) A participant shall designate a preference for the investment of amounts deferred from among the available investment products under the plan in the participation agreement.

(b) A participant may change a designation of an investment preference with respect to prospective deferrals by filing an amended participation agreement, which shall be subject to acceptance by the board.

(c) Investment of deferred amounts shall be made in accordance with the participants' designated preferences unless otherwise directed by the board for good cause, such as, circumstances which necessitate an immediate safeguarding of deferred amounts. Whenever deferred amounts are not invested in accordance with the participants' designated preferences, all affected participants shall be advised by the administrator in writing of the action taken by the board and the reason for the action.

[Eff 5/12/83; comp] (Auth: HRS §88E-3)
3) (Imp: HRS §§88E-3, 88E-9)

§14-44-16 Transfer of amounts previously deferred. A participant may submit a written request to the administrator to transfer amounts previously deferred under the plan from one investment product to another investment product available under the plan. However, the transfer shall only be allowed in accordance with the provisions of the contracts pertaining to the applicable investment products.

[Eff 5/12/83; comp] (Auth: HRS §88E-3)
3) (Imp: HRS §§88E-3, 88E-9)

SUBCHAPTER 4

ACCOUNTS AND REPORTS

§14-44-17 Individual accounts. Individual deferred compensation accounts shall be established and maintained for each participant as necessary for record-keeping and reporting purposes. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-18 Adjustments to accounts. Each individual account shall be credited with the amount of compensation deferred and shall be further adjusted by any increase or decrease resulting from investments, any direct charge authorized in the applicable investment product contract, and any withdrawal or payment of benefits authorized by the board. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-3, 88E-13)

§14-44-19 Reports on accounts. Each participant shall be provided semi-annually with a written report of any account maintained on behalf of the participant. The report shall be mailed to the participant's last home address on file with the administrator, unless otherwise requested in writing. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-20 Disclosure of information. Information about a participant shall only be disclosed to the participant or a person authorized in writing by the participant, unless otherwise

authorized by law. [Eff 5/12/83; comp]
(Auth: HRS §88E-3) (Imp: HRS §88E-3)

SUBCHAPTER 5

DISTRIBUTION OF BENEFITS

§14-44-21 When payable; earliest and latest dates~~[-]~~; suspension of benefits. (a) Benefits under the plan shall be paid or made available to the participant no earlier than:

- (1) Separation from service when an employee is no longer employed by an employer under the plan due to termination, retirement, or death; ~~[or]~~
- (2) The occurrence of an unforeseeable emergency as provided in sections 14-44-30 to 14-44-33~~[-]~~; or
- (3) The occurrence of a public health emergency or pandemic during which federal tax relief assistance is made available, and as provided in sections 14-44-44 to 14-44-45.

(b) In the event of a qualified domestic relations order, the administrator may commence the payment of benefits pursuant to the terms of the qualified domestic relations order.

(c) Payment of benefits shall commence no later than sixty days after the close of the calendar year in which the participant separates from service or the participant attains or would have attained normal retirement age as defined in section 14-44-23, whichever is later.

(d) In the event a participant has begun receiving benefits under the plan after retiring, and subsequently becomes reemployed by an employer, payment of benefits shall be automatically suspended, and benefits shall commence when the employee is no longer employed by the employer.

~~[(e)]~~ (e) Notwithstanding section 14-44-21(a), a participant may elect to receive, or the board may direct the administrator to distribute without the participant's consent, the total amount payable to a participant under the plan if:

- (1) The total amount payable to a participant does not exceed the dollar limit specified in section 411(a)(11)(A) of the Code;
- (2) The participant has not deferred any compensation under the plan during the two-year period immediately prior to the date of distribution; and
- (3) The participant has not previously received a distribution under the plan as allowed in this subsection.

An election by a participant shall be made on a distribution request form, which shall be filed with the administrator and subject to the administrator's approval. Any distribution approved or directed under this subsection shall supersede all prior conflicting elections made by a participant. [Eff 5/12/83; am 1/5/98; am and comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-22 Distribution request form; filing requirements. (a) A completed distribution request form prescribed by the board shall be filed with the administrator upon separation from service. Additional information may be required by the board prior to approval of the request.

- (b) The following shall be entered on the form:
- (1) Identifying information, including name, social security number, date of birth, home address, and home telephone number;
 - (2) Date of and reason for separation from service;
 - (3) Whether the catch-up provision has been utilized;
 - (4) Normal retirement age;
 - (5) Payment option;

- (6) Commencement date of payments; and
- (7) Signature authorizing proper withholding of taxes and certifying the information is true and correct to the best of the person's knowledge and belief.

(c) The form shall be filed no later than thirty days after the close of the calendar year in which the separation from service occurs.

(d) In the event a distribution request form is not filed within the prescribed time or is otherwise rendered ineffective by the plan or this chapter, benefits shall be paid in accordance with [~~§14-44-26.~~] section 14-44-26. [Eff 5/12/83; am and comp

] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-23 Normal retirement age defined;

designation. (a) Normal retirement age means any age, at the option of the participant, that is within the range of ages:

- (1) Beginning no earlier than the earliest age at which the participant has the right to retire under the employees' retirement system and to receive immediate benefits without reduction; and
- (2) Ending not later than age 70 1/2.

However, if a participant continues to work beyond the specified ages, normal retirement age shall not be later than the mandatory retirement age applicable to the participant or the date the participant separates from service with the employer.

(b) The participant shall designate a normal retirement age on the participation agreement or distribution request forms. In the absence of a designation, normal retirement age shall be age sixty-five. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-24 Election to commence benefits. (a)

Upon separation from service, but not later than thirty days after the close of the calendar year in which the participant separates from service, a participant may elect to have benefits commence at a fixed future time within limits allowed under section ~~[14-44-21(b)].~~ 14-44-21(c). The election shall be made on a distribution request form, which shall be filed with the administrator and subject to the administrator's approval.

(b) In the absence of an election within the prescribed time under subsection (a), benefits shall commence at the latest time provided under section ~~[14-44-21(b)].~~ 14-44-21(c), or as prescribed under the Code, as amended.

(c) Before commencement of distributions under ~~[subsections]~~ subsection (a) or (b), as applicable, a participant may elect to further delay commencement of the distributions. The participant may make such an election only once and delayed distributions shall not commence later than the required beginning date specified in section 401(a)(9) of the Code. The election to delay shall be made on a distribution request form, which shall be filed with the administrator and subject to the administrator's approval.

(d) A required minimum distribution shall commence no later than April 1 of the year following the calendar year in which the participant attains the age of 70 1/2 years by December 31, 2019, or the age of seventy-two years, provided the participant attains the age of 70 1/2 years after calendar year 2019; or by April 1 of the year following the year in which the participant retires or has otherwise separated from service, and as prescribed under the Code.

(e) A participant or a participant's beneficiary who would have satisfied the required minimum distribution for the calendar year 2020 by receiving a required minimum distribution that is:

- (1) A single sum equal to the 2020 required minimum distribution will be waived; or

(2) If paid in a series of substantially equal periodic payments made at least annually and expected to last for the life expectancy of the participant, the joint life expectancies of the participant and the participant's designated beneficiary, or for a period of at least ten years, periodic payments will continue as scheduled.

(f) A participant or a participant's beneficiary may otherwise choose to elect to receive a single sum equal to the 2020 required minimum distribution that was waived or may choose to waive and not receive any periodic payment that is the required distribution for the calendar year 2020 effective April 24, 2020 and pursuant to section 2203 of the CARES Act.

(g) A repayment of a required minimum distribution that a participant received in calendar year 2020 shall be treated as an eligible rollover distribution. [Eff 5/12/83; am 1/5/98; am and comp

] (Auth: HRS §88E-3) (Imp: HRS

§88E-3)

§14-44-25 Selection of payment options. (a)

The payment of benefits under the plan shall be made primarily for the benefit of the participant.

(b) A method for payment of benefits shall be designated on the distribution request form from among the options available under the applicable investment product contracts, which may include:

- (1) Fixed payments over a period of time;
- (2) Annuity payments; and
- (3) Lump sum payment.

(c) The designation of the method for payment of benefits is irrevocable, unless modified at least thirty days prior to the date benefits are to commence.

(d) In the absence of a designation within the prescribed time, benefits shall be paid in accordance with ~~[§14-44-26.]~~ section 14-44-26. [Eff 5/12/83; am

§14-44-25

and comp] (Auth: HRS §88E-3) (Imp:
HRS §88E-3)

§14-44-26 Failure to select distribution

options. (a) In the event a distribution request form is not filed or an election to commence payments is not made in accordance with these rules, benefits shall be paid when the participant attains or would have attained normal retirement age, except as specified in [~~§14-44-26(b)(1)~~] subsection (b)(1).

(b) In the event a method for payment of benefits is not designated in accordance with this chapter, benefits shall be paid as follows:

- (1) For an account valued at less than \$5,000, immediately and in a lump sum; and
- (2) For an account valued at \$5,000 or greater, in five equal annual installments. [Eff 5/12/83; am and comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-27 Beneficiaries; designation; rights.

(a) A participant shall designate on the participation agreement form a beneficiary or beneficiaries, who shall receive the participant's benefits in the event of the participant's death. In the event a beneficiary has not been designated or the designation is ineffective, the participant's estate shall become the beneficiary.

(b) Effective for a participant's death after December 31, 2021, benefits payable to the participant's designated beneficiary shall be distributed within ten years after the death of the participant, except with respect to eligible designated beneficiaries as defined under the Code, including surviving spouses, minor children, disabled or chronically ill beneficiaries, and an individual who is not more than ten years younger than the participant.

(c) Upon the participant's death, a beneficiary shall have all the rights of the participant, except as limited by regulations governing section 457 of the Internal Revenue Code, 26 U.S.C. §457. [Eff 5/12/83; am and comp] (Auth: HRS §88E-3)
(Imp: HRS §88E-3)

§14-44-28 Withholding of taxes. All payments under the plan shall be subject to applicable tax withholding requirements. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-29 Mailing of payments. Payments shall be mailed to the last home address on file with the administrator, unless otherwise requested in writing. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

SUBCHAPTER 6

UNFORESEEABLE EMERGENCY

§14-44-30 Request for emergency withdrawal; form. (a) If a participant incurs an unforeseeable emergency as defined in [~~§14-44-31,~~ section 14-44-31, the participant may apply for an emergency withdrawal by filing with the administrator a completed emergency withdrawal request form prescribed by the board, attaching evidence in support of the request. Additional evidence may be required by the board as necessary to dispose of the request.

(b) A participant requesting an emergency withdrawal shall enter on the form the following:

- (1) Identifying information, including name, home address, employing department, and work telephone number;
- (2) List of participant's assets;
- (3) Specification of unforeseeable emergency;
- (4) Detail of costs incurred or to be incurred;
- (5) Whether the withdrawal results from an emergency affecting someone other than participant and, if so, whether that person is the participant's dependent;
- (6) Amounts not payable by other sources;
- (7) Amounts necessary to satisfy the emergency; and
- (8) Signature authorizing proper withholding of taxes and certifying the information is true and correct to the best of the participant's knowledge and belief. [Eff 5/12/83; am and comp] (Auth: HRS §88E-3)
(Imp: HRS §88E-3)

§14-44-31 Unforeseeable emergency defined. An unforeseeable emergency means severe financial hardship to a participant resulting from a sudden and unexpected illness or accident of the participant or of the participant's dependent (as defined in section 152(a) of the Internal Revenue Code, 26 U.S.C. §152(a)), loss of the participant's property due to casualty, or similar extraordinary circumstances beyond the participant's control. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-32 Limitations on withdrawals. An emergency withdrawal shall only be approved by the board to the extent that:

- (1) It is reasonably needed to satisfy the emergency; and

- (2) Severe financial hardship cannot be relieved by:
- (A) Reimbursement or compensation from sources other than an emergency withdrawal under the plan;
 - (B) Cessation of deferrals under the plan; and
 - (C) Liquidation of the participant's assets, to the extent that the liquidation of assets would not in itself cause severe financial hardship.
- [Eff 5/12/83; comp]
(Auth: HRS §88E-3) (Imp: HRS §88E-3)

**§14-44-33 Payment; board approval[-];
distributions from designated Roth account.** (a) Only emergency withdrawals which have been approved by the board shall be made under the plan.

(b) Payments shall be made as directed by the board and shall include amounts which are required to be withheld for income tax purposes.

(c) If an emergency withdrawal is not approved by the board, the administrator shall promptly notify the participant in writing of the disapproval and the reason for the disapproval.

(d) A distribution to satisfy an approved emergency withdrawal shall not be permitted from the designated Roth account. [Eff 5/12/83; am and comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

SUBCHAPTER 7

TRANSFERS BETWEEN EMPLOYERS

§14-44-34 Transfers between employers under the plan. (a) When a participant changes employment from

one employer to another employer under the plan, benefits shall not be payable under the plan. The participant's deferred compensation account with respect to previously deferred amounts shall continue in full force and effect.

(b) The amounts deferred in the participant's deferred compensation account, including income attributable to the investment of the amounts deferred, shall be transferred to the new employer. The participant's rights under the plan shall be maintained by the new employer.

(c) A participant shall file an amended participation agreement and other forms as may be required to have compensation deferred by the new employer. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-2, 88E-3)

§14-44-35 Transfers to another eligible plan.

(a) Regardless of any other provision of the plan or these rules, when a participant separates from service under the plan, benefits shall not be payable under the plan if the following conditions exist:

- (1) The participant separates from service to accept employment with an entity which has an eligible plan and is located within the State of Hawaii;
- (2) The participant has become a participant in the eligible plan of that entity; and
- (3) The eligible plan of that entity accepts the transfer of previously deferred amounts from another eligible plan.

(b) Participants shall furnish the administrator with information to determine if the conditions under [~~§14-44-35(a)~~] subsection (a) exist.

(c) If the conditions listed in [~~§14-44-35(a)~~] subsection (a) exist, the amounts deferred in the participant's deferred compensation account, including income attributable to the amounts deferred, shall automatically be transferred to the other eligible

plan. The transfer shall be made as soon as practicable.

(d) If the conditions listed in [~~§14-44-35(a)~~] subsection (a) do not exist, benefits shall become payable in accordance with the provisions of the plan and this chapter. [Eff 5/12/83; am and comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-36 Transfers from another eligible plan.

(a) If a participant has previously deferred compensation under another eligible plan which has a plan-to-plan transfer provision in accordance with regulations governing section 457 of the Internal Revenue Code, 26 U.S.C. §457, the transfer of previously deferred amounts from the other eligible plan shall be accepted under the plan.

(b) The participant shall designate in writing from among the investment products available under the plan a preference for the investment of the amount transferred from the other eligible plan. [Eff 5/12/83; comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-36.1 Purchase of service credits under a defined benefit plan. A participant may use funds in the plan to purchase service credits under a defined benefit plan under chapter 88, Hawaii Revised Statutes, and the Code. [Eff and comp] (Auth: HRS §88E-3) (Imp: HRS §§88E-2, 88E-3)

SUBCHAPTER 8

BOARD REVIEW OF ADMINISTRATOR'S ACTIONS

§14-44-37

§14-44-37 Request for board review. (a) A board review may be requested by an employee regarding an action taken by the administrator, as it applies to the employee, which the employee believes is inconsistent with the plan or this chapter. The employee shall make reasonable efforts to resolve the disagreement with the administrator prior to requesting a board review.

(b) All requests for board review shall be in writing and shall state the efforts taken to resolve the disagreement with the administrator, the specific reason why the action taken by the administrator is inconsistent with the plan or this chapter, the action requested, and the reason why the requested action is proper.

(c) Requests for board review shall be filed within thirty calendar days of the date of the action taken by the administrator. [Eff 5/12/83; comp

] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-38 Disposition of request. An employee's request for a board review may be disposed of with or without an appearance before the board. The employee shall be promptly notified by the board in writing of the results of its review. [Eff 5/12/83; comp

] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

SUBCHAPTER 9

DESIGNATED ROTH CONTRIBUTIONS

§14-44-39 Designated Roth contributions. (a) Designated Roth contributions shall apply to contributions after December 31, 2023.

(b) Designated Roth contributions shall be treated as includible in the participant's gross income at the time the participant would have received that amount in cash if the participant had not made a deferred election.

(c) A designated Roth contribution shall be treated as an elective deferral and subject to the combined maximum annual deferral limits for normal deferrals, age based deferrals, or traditional catch-up deferrals. [Eff and comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-40 Designated Roth account. (a) The amount to be deferred as a designated Roth contribution shall be deposited into a designated Roth account in the plan.

(b) Contributions, withdrawals, gains, losses, and other credits or charges shall be separately accounted for in the designated Roth account for the purposes of 1099-R, tax reporting, and separate tracking, and are subject to the requirements set forth by the board. [Eff and comp] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-41 Rollover contributions. (a) Rollovers may be permitted, including transfers from a Roth elective deferral account under an eligible retirement plan to a Roth elective deferral account under the plan; or from a Roth elective deferral account under the plan to a Roth elective deferral account under an eligible retirement plan, for the benefit of the participant or the designated beneficiary, subject to any restrictions under the Code.

(b) In-plan Roth rollovers to a designated Roth account are treated as rollovers for the purposes of 1099-R, tax reporting, and separate tracking, and are subject to the requirements set forth by the board.

(c) If a participant elects an in-plan rollover from the plan's non-Roth account to a designated Roth account within the plan, a rollover shall be permitted; provided that:

- (1) The rollover amount satisfies the rules for distribution under the Code.
- (2) The rollover amount is an eligible rollover distribution, as defined in section 402A(c)(4) of the Code.
- (3) The rollover amount is directed into the same investment options as the pre-tax 457(b) account.
- (4) The rollover amount may include, with the exception of traditional individual retirement accounts, the following:
 - (A) Pre-tax 457(b) elective deferrals;
 - (B) Outside 457(b) rollover monies; and
 - (C) Non-457(b) rollover monies from qualified plans, section 403(b) plans.

(d) Any amount that a participant elects to rollover to a designated Roth account shall be irrevocable and irreversible and shall be treated as includible in the participant's gross income in the taxable year of the rollover.

(e) The amount that a participant elects for a direct rollover to a designated Roth account may include the applicable federal and state tax withholding amount. [Eff and comp]
(Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-42 Rollovers into the plan; rollovers out of the plan. (a) A participant may elect a direct rollover into the designated Roth account under the plan from another Roth elective deferral account, provided that the amount satisfies the rules for distribution under the Code.

(b) A participant may elect a direct rollover out of the plan to another Roth elective deferral account, provided that the amount satisfies the rules for distribution under the Code. [Eff and comp

] (Auth: HRS §88E-3) (Imp: HRS
§88E-3)

§14-44-43 Distributions from the designated Roth account. (a) A distribution from the designated Roth account is a qualified distribution if the distribution occurs at least five years after the year of the participant's first designated Roth and is made:

- (1) On or after attainment of age 59 1/2 years;
- (2) On account of the employee's disability; or
- (3) On or after the employee's death.

(b) A qualified distribution may be rolled over to another designated Roth account only in a direct rollover.

(c) A distribution request shall be filed in accordance with section 14-44-22. [Eff and comp

]
] (Auth: HRS §88E-3) (Imp: HRS
§88E-3)

SUBCHAPTER 10

IN-SERVICE CORONAVIRUS RELATED DISTRIBUTION OPTIONS

§14-44-44 Request for an in-service coronavirus related distribution under the CARES Act. (a) A participant may request an in-service withdrawal for coronavirus related distributions under the CARES Act, provided that the withdrawal is a single or lump sum or partial lump sum distribution from the account up to a maximum aggregate limit of \$100,000 on or after January 1, 2020 and before December 31, 2020.

(b) The participant must:

- (1) Be diagnosed with the virus SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control and Prevention;

- (2) Have a spouse or dependent who is diagnosed similarly with the virus or disease; or
- (3) Be experiencing adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to the virus, being unable to work due to a lack of child care due to the virus, the closing or reducing hours of a business owned or operated by the individual due to the virus; or other eligibility factors as determined by the Internal Revenue Service.

A self-certification form that satisfies the eligibility requirements for a coronavirus related distribution must be submitted by the participant.

(c) An election for a withdrawal by a participant shall be filed with the administrator and subject to the administrator's approval. A participant shall certify whether the withdrawal satisfies the eligibility requirements for a coronavirus related distribution.

(d) A distribution to satisfy an approved coronavirus related withdrawal shall not be permitted from the designated Roth account. [Eff and comp
] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

§14-44-45 Repayment of a coronavirus related distribution under the CARES Act. A participant may repay all or part of the amount of a coronavirus related distribution to the plan within three years after the date of the distribution was received, and as prescribed under the Code." [Eff and comp
] (Auth: HRS §88E-3) (Imp: HRS §88E-3)

5. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material, except source notes and other notes, is underscored.

6. Additions to update source notes and other notes to reflect amendments to sections are not bracketed, struck through, or underscored.

7. These amendments to and compilation of chapters 14-41, 14-42, 14-43, and 14-44, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

Director
Department of Human Resources Development

APPROVED AS TO FORM:

Randall S. Aishiyama
Deputy Attorney General

