

Chapter 365-65 WAC
SMALL BUSINESS RETIREMENT MARKETPLACE

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WAC 365-65-010 Authority. These rules are adopted under the authority of RCW 43.330.750.

[Statutory Authority: RCW 43.330.750 and 43.330.040 (2)(g). WSR 16-12-029, § 365-65-010, filed 5/23/16, effective 6/23/16.]

WAC 365-65-020 Purpose. The purpose of this chapter is to define terms, establish eligibility guidelines, and make other provisions for the effective operation of the Washington Small Business Retirement Marketplace.

[Statutory Authority: RCW 43.330.750 and 43.330.040 (2)(g). WSR 16-12-029, § 365-65-020, filed 5/23/16, effective 6/23/16.]

WAC 365-65-030 Definitions. The following words and terms have the following meanings for the purposes of this chapter unless otherwise indicated:

- (1) "Approved plan" means:
 - (a) The myRA retirement program, or
 - (b) A verified plan offered by a verified financial services firm that has been approved for listing in the marketplace by the department pursuant to this chapter.
- (2) "Balanced fund" means a mutual fund that has an investment mandate to balance its portfolio holdings. A balanced fund generally includes a mix of stocks and bonds in varying proportions according to the fund's investment outlook.
- (3) "Department" means the Washington state department of commerce.
- (4) "Director" means the director of the Washington state department of commerce, or his or her designee.
- (5) "Eligible employer" means a self-employed individual, sole proprietor, or an employer with fewer than one hundred qualified employees at the time that its first employee enrolls in an approved plan through the marketplace.
- (6) "Enrollee" means any employee, self-employed individual, or sole proprietor, who is voluntarily enrolled in an approved plan offered on the marketplace.
- (7) "Marketplace" means the Washington small business retirement marketplace.
- (8) "Marketplace operator" or "operator" means a private sector entity with which the director has contracted to operate the marketplace pursuant to chapter 43.330 RCW.

(9) "myRA retirement program" or "myRA" means the myRA retirement program administered by the United States department of the treasury.

(10) "Participating employer" means:

(a) A self-employed individual or sole proprietor who voluntarily enrolls in an approved plan, or

(b) An eligible employer or sole proprietor, that offers one or more approved plans to its employees for voluntary enrollment.

(11) "Qualified employee" or "employee" means a worker who is eligible to participate in a retirement plan, consistent with RCW 43.330.732(8).

(12) "Retirement plan" or "plan" means an arrangement that is designed for retirement purposes and that receives favorable federal tax treatment pursuant to the Internal Revenue Code.

(13) "Target date fund" means a hybrid investment fund that automatically adjusts the asset mix according to a selected time frame that is appropriate for a particular investor, based on the investor's age.

(14) "Verified financial services firm" means a person or entity that has been verified as currently meeting the requirements of RCW 43.330.732(7) by, as applicable:

(a) The department of financial institutions pursuant to its verification process under chapter 208-710 WAC, and/or

(b) The office of the insurance commissioner pursuant to its plan approval process under section K and other relevant provisions of the Washington state system for electronic rate filing (SERFF) Life and Disability Form filing instructions, including but not limited to any certifications required by the office of insurance commissioner.

(15) "Verified plan" means a retirement plan that has been verified as meeting the requirements of RCW 43.330.735 for inclusion in the marketplace by, as applicable:

(a) The department of financial institutions pursuant to its verification process under chapter 208-710 WAC, and/or

(b) The office of the insurance commissioner pursuant to its approval process under section K and other relevant provisions of the Washington state system for electronic rate filing (SERFF) Life and Disability Form filing instructions, including but not limited to any certifications required by the office of insurance commissioner.

(16) "Voluntary," in regard to an employee's enrollment or participation in an approved plan, means enrollment or participation wherein the amount of any contribution of the employee's wages to the plan is:

(a) Affirmatively chosen by the employee, or

(b) Established by default by the employer in accordance with applicable federal laws, provided that the employee receives any required notice of the default contribution amount and may affirmatively choose to contribute a different amount or to entirely opt out of contributing.

(17) "Washington small business retirement marketplace" means the retirement savings program created to connect eligible employers and their employees with approved plans to increase retirement savings.

[Statutory Authority: RCW 43.330.750 and 43.330.040 (2)(g). WSR 16-12-029, § 365-65-030, filed 5/23/16, effective 6/23/16.]

WAC 365-65-040 Eligibility. (1) Verified financial services firms, eligible employers, and qualified employees are eligible to participate in the marketplace.

(2) Participation in the marketplace, and enrollment in an approved plan, is voluntary.

(3) Enrollment in an approved plan is not an entitlement.

[Statutory Authority: RCW 43.330.750 and 43.330.040 (2)(g). WSR 16-12-029, § 365-65-040, filed 5/23/16, effective 6/23/16.]

WAC 365-65-050 Approval of verified financial services firms.

(1) A verified financial services firm seeking approval for a verified plan to be offered on the marketplace must submit a complete application in a form prescribed by the department.

(2) A verified financial services firm must offer a minimum of two investment product options in the marketplace: A target date fund or other similar fund, and a balanced fund.

(3) A verified financial services firm must provide information about the historical performance of any investment products offered in the marketplace, consistent with applicable federal laws.

(4) A verified financial services firm must comply with all applicable federal laws to offer retirement plans.

(5) The protocol used by the department and/or the marketplace operator for reviewing and approving the qualifications of financial services firms for participation in the marketplace shall be based on objective criteria, and shall not provide unfair advantage to any entity.

[Statutory Authority: RCW 43.330.750 and 43.330.040 (2)(g). WSR 16-12-029, § 365-65-050, filed 5/23/16, effective 6/23/16.]

WAC 365-65-060 Approval of verified plans. (1) The department will approve a diverse array of verified plan options to be offered in the marketplace, including but not limited to:

(a) Life insurance plans or annuities that are designed for retirement purposes;

(b) Plans for eligible employer participation such as a SIMPLE-IRA type of plan that provides for employer contributions to participant accounts; and

(c) A payroll deduction individual retirement account or individual retirement annuity, or a workplace based individual retirement account open to all workers to which the employer does not contribute.

(2) The department will approve the myRA retirement program to be offered in the marketplace.

(3) A verified plan that is proposed to be offered in the marketplace must be submitted to the department for review and approval, including all documentation, in a form prescribed by the department.

(4) A verified plan that is proposed to be offered in the marketplace must comply with applicable laws and rules, including but not limited to federal tax laws.

[Statutory Authority: RCW 43.330.730 through [43.330].750 and 2017 c 69. WSR 17-19-058, § 365-65-060, filed 9/13/17, effective 10/14/17. Statutory Authority: RCW 43.330.750 and 43.330.040 (2)(g). WSR 16-12-029, § 365-65-060, filed 5/23/16, effective 6/23/16.]

WAC 365-65-070 Portability and rollovers. Nothing in this chapter shall be construed to limit rollovers, or the portability of an employee's retirement savings into or out of approved plans. An approved plan must include the option for an enrollee to rollover or transfer amounts into a different retirement arrangement in accordance with federal tax laws providing for tax free rollovers or transfers after ceasing active participation in the approved plan.

[Statutory Authority: RCW 43.330.750 and 43.330.040 (2)(g). WSR 16-12-029, § 365-65-070, filed 5/23/16, effective 6/23/16.]

WAC 365-65-080 Limits on fees. (1) A verified financial services firm that offers approved plans in the marketplace may not charge participating employers an administrative fee, and may not charge enrollees more than one hundred basis points in total annual fees.

(2) As an exception to the aforementioned limit on fees, financial services firms may charge retirement plan enrollees a de minimis fee for new and/or low balance accounts in amounts, and for durations, negotiated and agreed upon by the department and the verified financial services firm, as follows:

(a) A financial services firm that intends to negotiate a de minimis fee for retirement plan enrollees with new and/or low balance accounts must contact the department with a request to enter into negotiations.

(b) A de minimis fee must be negotiated with the department and established as an agreement through a contractual instrument to be specified by the department. Once established, a de minimis fee must be evidenced in the plan agreement provided to enrollees. The agreed upon de minimis fee will be displayed on the product comparison and product detail pages of the marketplace website.

(c) The director must limit plans to those with total fees the director considers reasonable based on all the facts and circumstances, including but not limited to:

(i) The primary mission to increase access to low-cost and low-barrier retirement savings plans for small businesses and their employees;

(ii) The goal of bringing new savers into retirement plans;

(iii) The market conditions faced by financial services firms to establish and service retirement savings plans for enrollees with new and/or low-balance accounts;

(iv) The goal of maintaining and improving fee transparency and simplicity; and/or

(v) Attempts on the part of the financial services firm to arrive at a low cost fee arrangement without charging a de minimis fee.

(d) Once a de minimis fee has been agreed upon by the department and the financial services firm, the financial services firm must supply a copy of the executed agreement to the department of financial institutions.

(e) Any changes to an agreed upon de minimis fee must be negotiated and agreed upon with the department prior to submission of an amended application for verification with the department of financial institutions.

(f) No later than September 2020, the department will evaluate the ongoing need to allow de minimis fees to be charged to enrollees.

[Statutory Authority: RCW 43.330.730 through [43.330].750 and 2017 c 69. WSR 17-19-058, § 365-65-080, filed 9/13/17, effective 10/14/17. Statutory Authority: RCW 43.330.750 and 43.330.040 (2)(g). WSR 16-12-029, § 365-65-080, filed 5/23/16, effective 6/23/16.]

WAC 365-65-090 Removal of plans. An approved plan shall be removed from the marketplace if the plan, or the financial services firm offering the plan, no longer meets the requirements of this chapter, chapter 43.330 RCW, or any other applicable law or rule.

[Statutory Authority: RCW 43.330.750 and 43.330.040 (2)(g). WSR 16-12-029, § 365-65-090, filed 5/23/16, effective 6/23/16.]

WAC 365-65-095 Conflict with other laws. If any part of these rules are found to conflict with federal or state laws, including but not limited to those that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of these rules is inoperative solely to the extent of the conflict, and this finding does not affect the operation of the remainder of these rules.

[Statutory Authority: RCW 43.330.750 and 43.330.040 (2)(g). WSR 16-12-029, § 365-65-095, filed 5/23/16, effective 6/23/16.]