

THE UNIVERSITY OF TEXAS SYSTEM

Office of Employee Benefits

POLICY AND PROCEDURES MEMORANDUM

DATE: January 1, 2007

TO: System Administration Officials
Institutional Chief Business Officers
Institutional Chief Human Resources Officers

FROM: Office of Employee Benefits

SUBJECT: UTSaver Tax-Sheltered Annuity Program

1. PURPOSE

This policy is the governing document for The University of Texas System UTSaver Tax-Sheltered Annuity (TSA) Program along with applicable federal and state laws, and policies consistent with the *Rules and Regulations* of the U.T. System Board of Regents. It is to be interpreted in a manner that is consistent with the *Internal Revenue Code of 1986*, as amended, (Code) and its regulations thereunder, including, but not limited to, Sections 403(b), 402A, and 415 and Article 6228a-5, V.T.C.S. This policy will not in any manner reduce, restrict, or make forfeitable any participant's vested rights or accrued TSA program benefits. This policy was restated effective January 1, 2007.

2. POLICY

Employee salary reduction policies and procedures must be in effect at all U.T. System institutions to provide for the administration of the UTSaver TSA Program in accordance with existing federal and state laws and regulations of the Board of Regents of The University of Texas System. Policies and procedures will also be in place to comply with federal limits concerning the maximum amount of income which can be contributed on a pre-tax and post-tax basis during any given tax year including the preparation of TSA contribution limit formula (CLF) calculations.

2.1 Eligibility

The UTSaver TSA Program is a voluntary, supplemental retirement plan and all employees of the U.T. System who have payroll appointments are eligible to participate in the UTSaver TSA Program. Eligibility is not dependent upon the number of hours appointed or whether or not the employee is otherwise eligible for benefits. Employees may not, however, participate in

the program if there is not sufficient salary available to cover mandatory deductions from gross pay for other benefits.

2.2 Participation

Initial enrollment in the UTSaver TSA Program may begin at any time during the period of employment. Election to participate is contingent upon the completion and submission of appropriate enrollment materials either through utilization of the UT Retirement Manager, or with paper documents to the U.T. System institution benefits office. An employee electing to participate in the UTSaver TSA Program must designate the TSA provider to which monthly contributions will be sent. No election to participate is considered to have taken place until this selection is made.

2.3 Effective Date

Before an agreement to begin monthly TSA deferrals is considered final, all necessary enrollment materials must be completed and accepted by the U.T. System institution benefits office or other office responsible for receipt of TSA applications. Each U.T. System institution will determine the effective date for applications based on institutional payroll procedures and the deadline for receipt of TSA applications at each U.T. System institution.

2.4 TSA Contributions

2.4.1 TSA on a Pre-Tax Basis. All employee contributions to the Traditional UTSaver TSA Program accounts are made on a tax-deferred (before tax) basis and are deducted from a participant's salary. There are no state matching contributions associated with this program.

2.4.2 TSA on a Post-Tax Basis. As of January 1, 2007, the UTSaver TSA Program will accept Roth elective deferrals made on behalf of employees. All employee contributions to the Roth UTSaver TSA Program accounts are made on an after tax basis and are deducted from a participant's salary. There are no state matching contributions associated with this program.

2.4.3 Separate Accounts for Roth Elective Deferrals. A participant's Roth elective deferrals will be allocated to a separate account maintained for such deferrals apart from Traditional deferral accounts for such participant. Contributions and withdrawals of Roth elective deferrals will be credited and debited to the Roth UTSaver TSA Program account maintained for each participant. The TSA provider will maintain a record of the amount of Roth elective deferrals in each participant's account. Gains, losses and other credits or charges must be separately allocated on a reasonable and consistent basis to each

participant's Roth UTSAver TSA Program account and the participant's other accounts under the UTSAver TSA Program. No contributions other than Roth elective deferrals and properly attributable earnings will be credited to each participant's Roth UTSAver TSA Program account.

- 2.4.4 Receipt of Rollovers. A participant who is entitled to receive an eligible rollover distribution (as defined in Code Section 402(c)(4) from another eligible retirement plan (as defined in Code Section 402(c)(8)(B)) may request to have all or a portion of the eligible rollover distribution paid to the UTSAver TSA Program. However, the Roth UTSAver TSA will accept a rollover contribution to a Roth UTSAver TSA elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code Section 402(c).
- 2.4.5 Contribution Limit Formula Calculation (CLF) Required. The monthly amount of both Traditional and Roth UTSAver TSA deferrals is limited to a maximum dollar amount determined by a participant's CLF calculation. A standard CLF calculation, authorized by U.T. System, complies with applicable provisions of Section 415 of the Code and must be utilized for all such calculations. The maximum deferral amount for any participant is provided in this calculation. A completed and signed CLF worksheet is required for employees who wish to initiate a TSA or increase the deferral amount of an existing TSA.
- 2.4.6 Year of Service for Academic Employees. For purposes of calculating the CLF for academic employees, a complete year of service is granted if both spring and fall semesters in the same calendar year are worked, regardless of whether the faculty member is employed in the summer.
- 2.4.7 Minimum Deferral. The minimum amount that may be deferred is \$25 per pay period.
- 2.4.8 Maximum Annual Deferrals. The CLF calculation worksheet has a standard calculation that permits sheltering of the standard annual limit provided it does not exceed the Code Section 415(c) limitation. This standard option contains a formula-driven calculation as well as a percentage and an overall limitation for contributions to the extent provided under the Code. The Traditional and Roth contributions are aggregated when determining the overall limitation for UTSAver TSA contributions.
- 2.4.9 Age 50 and Over Catch-up. An employee age 50 or over by the end of

the calendar year may contribute an additional amount each calendar year to the extent provided under the Code as either Traditional or Roth contributions.

- 2.4.10 15 Years of Service Catch-up. An employee who has 15 or more years of service with UT System may contribute an additional amount each calendar year to the extent provided under the Code as either Traditional or Roth contributions.

2.5 Distributions

- 2.5.1 Distributions in the Traditional Plan Due to Employment Separation. Participants who separate employment with The University of Texas System may elect to receive a distribution of funds or to retain an existing Traditional UTSAver TSA account or roll the account as an eligible rollover distribution (as defined in Code Section 402(c)(4)) directly to an eligible retirement plan (as defined in Code Section 402(c)(8)(B)) as specified by the participant in a direct rollover. Rollovers are subject to the approval of the receiving vendor or plan. Income tax must be paid on any distributed amount from the Traditional UTSAver TSA accounts

- 2.5.2 Distributions in the Traditional Plan While Employed. Participants may take a distribution in the Traditional UTSAver TSA after age 59 ½ and roll funds received into other types of employer sponsored plans, Individual Retirement Accounts, or other eligible options (see section 2.5.1).

2.5.3 Roth Distributions

(a) A qualified distribution of designated Roth contributions is excludable from gross income. A qualified distribution is one that occurs at least 5 years after the year of the participant's first designated Roth contribution (counting such first year as part of the 5) and is made after the first of the following occur.

- On or after attainment of age 59 ½
- On account of the participant's disability, or
- On or after the participant's death.

(b) A non-qualified distribution from a designated Roth UTSAver TSA elective deferral account shall be taxable under Code Section 72 with the after tax designated Roth contribution constituting investment in the contract.

- 2.5.4 Direct Rollover Distributions. A participant or the beneficiary of a deceased participant (or a participant's spouse or former spouse who

is an alternate payee under a domestic relations order, as defined in Section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in Section 402(c)(4) of the Code) from the UTSaver TSA Program paid directly to an eligible retirement plan (as defined in Section 402(c)(8)(B) of the Code) specified by the participant in a direct rollover. An eligible rollover distribution from a Traditional UTSaver TSA account to a Roth IRA applies only to qualified rollover distributions (as defined in Section 408A(e)(2) of the Code) on or after January 1, 2008. In the case of a distribution on or after January 1, 2008, to a beneficiary who at the time of the participant's death was neither the spouse of the participant nor the spouse or former spouse of the participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the beneficiary as an inherited IRA (within the meaning of Section 408(d)(3)(c) of the Code). Each TSA provider shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the participant or beneficiary of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

- 2.5.5 Direct Rollovers of Roth Accounts. A direct rollover of a distribution from a Roth UTSaver TSA elective deferral account will only be made to another Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) or to a Roth IRA described in Code Section 408A, and only to the extent the rollover is permitted under the rules of Code Section 402(c).
- 2.5.6 Minimum Required Distributions. No later than April 1 following the year in which a participant turns 70 ½, unless employed, the participant must take a required minimum distribution. If the required minimum distribution is not taken appropriately, a penalty of 50% of the amount that should have been taken may be assessed by the IRS.
- 2.5.7 Hardship Withdrawals. (a) Hardship withdrawals shall be permitted under the UTSaver TSA Program to the extent permitted by the TSA products controlling the participant's account assets to be withdrawn to satisfy the hardship. The participant's representation may be relied upon that immediate and heavy financial need is not capable of being relieved from other resources reasonably available to the participant in accordance with Treas. Reg. § 1.401(k)-1(d)(3)(iv)(C). If applicable under the TSA product, no elective deferrals shall be allowed under the UTSaver TSA Program during

the six month period beginning on the date the participant receives a distribution on account of hardship.

(b) TSA products shall provide for the exchange of information among the U.T. System or U.T. System institution employer and the TSA providers to the extent necessary to implement the TSA products, including, in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the participant's financial need (pursuant to Treas. Reg. § 1.401(k)-1(d)(3)(iv)(E)), the TSA provider notifying such employer of the withdrawal in order for such employer to implement the resulting six month suspension of the participant's right to make TSA elective deferrals under the UTSaver TSA Program. In addition, in the case of a hardship withdrawal that is not automatically deemed to be necessary to satisfy the financial need (pursuant to Treas. Reg. § 1.401(k)-1(d)(3)(iii)(B)), the TSA provider shall obtain information from such employer or other TSA providers to determine the amount of any loans and rollover accounts that are available to the participant under the UTSaver TSA Program to satisfy the financial need.

2.6 Correction of Excess Elective Contributions

In the case of a distribution of excess contributions, the plan will reverse the contributions in the order in which the deferrals were contributed, up to the amount of the excess deferral.

2.7 Loans

Loans are available to employees subject to availability established by the TSA provider and in compliance with the TSA provider's minimum loan amounts and repayment terms

2.8 Withholding And Reporting Requirements

For an eligible rollover distribution, 20% of the amount must be withheld for federal taxes unless the participant makes a direct rollover to an eligible retirement plan or Individual Retirement Account.

2.9 Authorized UTSaver TSA Providers

2.9.1 Participation Requires Selection of an Authorized TSA Provider. An employee electing to participate in the UTSaver TSA Program may select a vendor from TSA companies that are authorized to provide products to employees of the U.T. System. No election to participate is

considered to have taken place until the participant designates a TSA provider to which monthly deferrals are to be made.

2.9.2 Requirement to Select an Authorized TSA Provider. An employee, choosing to participate in the UTSaver TSA Program, must select a vendor from the list of currently authorized TSA providers.

2.9.3 Transfer of TSA Accounts. A TSA account may only be transferred to a currently authorized TSA provider.

2.10 Changing TSA Providers or Amount of Deferral

2.10.1 Changing Amount of Deferral or Selection of Designated UTSaver TSA Provider. An employee may change the amount of deferral and/or UTSaver TSA provider once per month. A change of TSA provider does not constitute termination of participation. A change of TSA provider will become effective as soon as administratively practicable but not earlier than the first pay period in the following month. Unless an employee specifies a later effective date, a change of deferral amount will become effective as soon as administratively practicable after receipt of the properly executed forms but not earlier than the first pay period in the following month.

2.10.2 Employee TSA Provider Change Options. An employee who requests a TSA provider change has three options regarding the annuity balance in the existing account at the time of the change.

- (1) Leave the account intact for an indefinite period of time until a paid-up annuity or some other form of disbursement is requested.
- (2) Transfer all or a portion of the account balance to the new TSA provider.
- (3) Leave the account balance with the existing TSA provider until some later date and then request a transfer to the new TSA provider. The usual reason for this option is to be able to receive additional scheduled dividends or interest from the TSA provider and/or reduce or avoid withdrawal charges.

2.10.3 Participation with Multiple TSA Providers. A participant may select more than one currently authorized TSA provider to which monthly TSA contributions are sent. TSA providers that offer more than one product or who offer a clearinghouse arrangement may provide concurrent investment opportunities with more than one TSA provider and/or product in which a participant may invest.

2.11 Termination of Participation

A participant may cancel an ongoing TSA agreement with respect to future earnings at any time during a tax year by giving notice to the institution. A participant may enter into another TSA agreement during the tax year in which the cancellation took place. Each U.T. System institution shall determine how many Purchase/Change Agreements it will allow for TSA participants in any given tax year. No more than two changes per year or more than one agreement per month is permitted. A change of TSA providers does not constitute termination of participation.

2.12 Qualified Domestic Relations Orders (QDRO's)

It is the responsibility of each currently authorized TSA provider to qualify and process Qualified Domestic Relations Orders (QDRO's). All TSA participants and alternate payees will be directed to contact the respective TSA provider directly to file the necessary forms to process QDRO's.

2.13 Sales Solicitation

Authorized TSA providers may sell TSA products to participants subject to the following terms and conditions.

2.13.1 Compliance with Regents' Rules and Regulations Required. All TSA providers, participants, and advisors must adhere to the provisions of the Regents' *Rules and Regulations* and other U.T. System and U.T. System institution policies applicable to the UTSaver TSA program.

- (1) The Regents' *Rules and Regulations* prohibit solicitation in any building or structure on the campuses of U.T. System institutions.
- (2) TSA provider representatives may not make un-requested sales presentations of any kind on campus, including in person, promotional cold-calls on employees.
- (3) TSA provider representatives must not interfere with the academic or institutional programs and activities of the U.T. System institution.
- (4) Individual employees may request that information be provided to them by a TSA provider representative during working hours provided that such presentations do not interfere or disturb the normal business of the U.T. System institution.
- (5) Any on-campus meetings to disseminate information about the UTSaver TSA Program must be sponsored by the U.T. System or a U.T. System institution. Activity at such meetings is

limited to the provision of information about the various TSA products. No sales activities may occur at such meetings except in compliance with the following:

- (A) Only At The Employee's Request. Individual employees may request that a TSA provider representative provide information about proposed plans or coverages to them during working hours. However, such presentations must not interfere with or disturb the normal business of the U.T. System institution.
- (B) As A Guest Of The Employee.
- (C) In Compliance With Applicable Policies. All sales activity must be in accordance with the Regents' *Rules and Regulations* related to sales solicitation and any applicable policies and procedures of the U.T. System institution.
- (D) Sales Solicitation Agreement Required. All sales representatives representing a currently authorized TSA provider must have completed and signed a Sales Solicitation Agreement with the U.T. System and a copy of the agreement must be on file with the currently authorized TSA provider and with the U.T. System Office of Employee Benefits.
- (E) Sales And Presentation Activity. All sales, presentation, and related activity must be in conformity with the U.T. System institution's policies and procedures.
- (F) Sponsorship Required. Any meetings to disseminate information about TSA products are to be sponsored by either the U.T. System and/or U.T. System institutions. Activity at such meetings is limited to providing information about various TSA products and services.

2.13.2 Prohibited Gifts. No TSA provider representative shall provide gifts or monetary rewards directly or indirectly to any employee of the U.T. System for information on employees. Any employee providing confidential information to a TSA provider representative without authorization may be subject to disciplinary action up to and including termination from employment. Any TSA provider representative found to have provided gifts or monetary rewards to employees shall be subject to suspension of sales privileges on any U.T. System property for any length of time deemed appropriate by the U.T. System.

2.13.3 Disqualification. All U.T. System institutions shall report violations of these provisions to the TSA provider and to the U.T. System Office of Employee Benefits. TSA provider representatives found to have willfully or repeatedly violated these Regents' *Rules and Regulations* may be disqualified from any sales or related activity at the U.T. System institution or at any U.T. System institution, at the discretion of the U.T. System Office of Employee Benefits. Multiple violations of these provisions by representatives of a TSA provider may result in removal of the TSA provider from the U.T. System currently authorized TSA provider list.

3. PROCEDURES

3.1 Enrollment

To enroll in the UTSaver TSA Program, an employee must select an authorized TSA provider and complete the enrollment materials needed to establish a deferral agreement between the participant and the U. T. System.

The following forms must be completed to effect TSA enrollment:

- 3.1.1 Purchase/Change Agreement that includes provisions for a salary reduction agreement. This may be completed on the UTRetirement Manager.
- 3.1.2 Tax-Sheltered Annuity Contribution Limit Formula and Disclosure Form
- 3.1.3 TSA Provider Application

3.2 Changing Selection of TSA Providers

To change selection of a TSA provider, participants may either utilize the UTRetirement Manager or complete the necessary paperwork and submit the forms provided by the U.T. System to the U.T. System institution benefits office. Employees must complete the Purchase/Change Agreement to effect changing TSA companies. No substitute form will be accepted for use in changing TSA companies.

4. AUTHORITY

U. T. System Regents' *Rules and Regulations*, Series 30202, Section 8
Internal Revenue Code of 1986, as amended, § 403(b) and §415
Vernon's Texas Civil Statutes ann. Article 6228A-5