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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 050 – DEFERRED COMPENSATION**

1 **459-050-0090**

2 **Direct Rollover**

3 The purpose of this rule is to establish the criteria and process for a direct rollover (a
4 transfer made from trustee to trustee) by the Deferred Compensation Program to an
5 eligible retirement plan and to establish the criteria and process for the Deferred
6 Compensation Program to accept an eligible rollover distribution from another eligible
7 retirement plan. This rule shall apply to any direct rollover distribution received by the
8 Deferred Compensation Program on behalf of a participant and any request for
9 distribution from a Deferred Compensation Program account processed on or after
10 January 1, ~~2002~~2008.

11 (1) Definitions. The following definitions apply for the purpose of this rule:

12 (a) "Code" means the Internal Revenue Code of 1986, as amended.

13 (b) "Direct Rollover" means:

14 (A) The payment of an eligible rollover distribution by the Deferred Compensation
15 Plan to an eligible retirement plan specified by the distributee; or

16 (B) The payment of an eligible rollover distribution by an eligible retirement plan to
17 the Deferred Compensation Program.

18 (c) "Distributee" means:

19 (A) A Deferred Compensation Plan participant who has a severance of employment;

20 (B) A Deferred Compensation Plan participant who is approved for a de minimis
21 distribution under OAR 459-050-0075(1);

22 (C) The surviving spouse of a deceased participant;

1 (D) The spouse or former spouse who is the alternate payee under a domestic
2 relations order that satisfies the requirements of ORS 243.507 and OAR 459-050-0200 to
3 459-050-0250; or

4 (E) The non-spouse beneficiary of a deceased participant who is a designated
5 beneficiary under Code Section 402(c)(11).

6 (d) "Distributing Plan" means an eligible retirement plan that is designated to
7 distribute a direct rollover to another eligible plan (recipient plan).

8 (e) "Eligible Retirement Plan" means any one of the following that accepts the
9 distributee's eligible rollover distribution:

10 (A) An individual retirement account or annuity described in Code Section 408(a) or
11 (b), *[but shall not include]* including a Roth IRA as described in Code Section 408(A);

12 (B) An annuity plan described in Code Section 403(a);

13 (C) An annuity contract described in Code Section 403(b);

14 (D) A qualified trust described in Code Section 401(a);

15 (E) An eligible deferred compensation plan described in Code Section 457(b) that is
16 maintained by a state, political subdivision of a state, or any agency or instrumentality of
17 a state or political subdivision of a state; or

18 (F) A plan described in Code Section 401(k).

19 (f) "Eligible Rollover Distribution" means a distribution of all or a portion of a
20 distributee's Deferred Compensation account. An eligible rollover distribution shall not
21 include:

22 (A) A distribution that is one of a series of substantially equal periodic payments
23 made no less frequently than annually for the life (or life expectancy) of the distributee or

1 the joint lives (or life expectancies) of the distributee and the distributee's designated
2 beneficiary, or for a specified period of ten years or more;

3 (B) A distribution that is a required or minimum distribution under Code Section
4 401(a)(9);

5 (C) An amount that is distributed due to an unforeseen emergency under OAR 459-
6 050-0075(2).

7 (g) "Recipient Plan" means an eligible retirement plan that is designated by a
8 distributee to receive a direct rollover.

9 (2) Direct rollover to an eligible retirement plan. The direct rollover of an eligible
10 rollover distribution by the Deferred Compensation Program to an eligible retirement
11 plan shall be interpreted and administered in accordance with Code Section 457(d)(1)(C)
12 and all applicable regulations. A distributee may elect to have an eligible rollover
13 distribution paid by the Deferred Compensation Program directly to an eligible retirement
14 plan specified by the distributee.

15 (a) The Deferred Compensation Program staff shall provide each distributee with a
16 written explanation of the direct rollover rules for an eligible distribution, as required by
17 the Code.

18 (b) A distributee's right to elect a direct rollover is subject to the following
19 limitations:

20 (A) A distributee may elect to have an eligible rollover distribution paid as a direct
21 rollover to only one eligible retirement plan.

22 (B) A distributee may elect to have part of an eligible rollover distribution be paid
23 directly to the distributee, and to have part of the distribution paid as a direct rollover

1 only if the distributee elects to have at least \$500 transferred to the eligible retirement
2 plan.

3 (c) A direct rollover election shall be in writing and must be signed by the distributee
4 or by his or her authorized representative pursuant to a valid power of attorney. The
5 direct rollover election may be on forms furnished by the Deferred Compensation
6 Program, or on forms submitted by recipient plan which must include:

7 (A) The distributee's full name;

8 (B) The distributee's social security number;

9 (C) The distributee's account number with recipient plan, if available;

10 (D) The name and complete mailing address of recipient plan; and

11 (E) If the distributee is a non-spouse beneficiary of the member, the title of the
12 recipient IRA account.

13 (d) The distributee is responsible for determining that the recipient plan's
14 administrator will accept the direct rollover for the benefit of the distributee. Any taxes or
15 penalties that are the result of the distributee's failure to ascertain that the recipient plan
16 will accept the direct rollover shall be the sole liability of the distributee.

17 (3) Direct rollover from an eligible retirement plan. On or after January 1, 2002, the
18 Deferred Compensation Program shall only accept rollover contributions from
19 participants and direct rollovers of distributions from an eligible retirement plan on behalf
20 of a participant. Section (3) of this rule shall be interpreted and administered in
21 accordance with Code Section 402(c) and all applicable regulations.

1 (a) The Deferred Compensation Program shall only accept pre-tax assets. After-tax
2 employee contributions are not eligible for rollover into the Deferred Compensation
3 Program.

4 (A) The Deferred Compensation Program may require that a direct rollover from an
5 eligible deferred compensation plan described in Code Section 457(b) plan include or be
6 accompanied by a statement by the participant's previous employer or the plan
7 administrator that the distribution is eligible for rollover treatment.

8 (B) A direct rollover from an eligible retirement plan other than a Deferred
9 Compensation Plan described in Code Section 457(b) must be an eligible rollover
10 distribution. It is the participant's responsibility to determine that the assets qualify for
11 rollover treatment. Any taxes or penalties that are the result of the participant's failure to
12 ascertain that the distributing plan assets qualify for a direct rollover to a deferred
13 compensation plan described in Code Section 457(b), shall be the sole liability of the
14 distributee.

15 (b) Subject to the requirements of subsections (3)(b)(A) and (B) below, eligible
16 rollover distribution(s) shall be credited to the participant's Deferred Compensation
17 account established pursuant to the Plan and Agreement on file with the Deferred
18 Compensation Program and shall be subject to all the terms and provisions of the Plan
19 and Agreement. Account assets received from the distributing plan will be invested by
20 the Deferred Compensation Plan record keeper in accordance with the terms and
21 conditions of the Deferred Compensation Program according to the asset allocation the
22 participant has established for monthly contributions unless instructed otherwise in
23 writing on forms provided by the Deferred Compensation Program.

1 (A) Assets from an eligible deferred compensation plan account described in Code
2 Section 457(b) will be aggregated with the participant's accumulated Deferred
3 Compensation Plan account.

4 (B) Assets from an eligible retirement plan other than a Deferred Compensation Plan
5 described in Code Section 457(b) will be segregated into a separate account established
6 by the Deferred Compensation Program for tax purposes only, but not for investment
7 purposes. For investment purposes, the participant's assets are treated as a single account.
8 If a participant changes the allocation of existing assets among investment options within
9 the plan, the transfer or reallocation shall apply to and will occur in all accounts
10 automatically.

11 (c) Assets directly rolled over to the Deferred Compensation Program may be
12 subject to the 10 percent penalty on early withdrawal to the extent that the funds directly
13 rolled over are attributable to rollovers from a qualified plan, a 403(b) annuity, or an
14 individual retirement account.

15 Stat. Auth.: ORS 243.470

16 Stats. Implemented: ORS 243.401 - 243.507