
Oregon Retirement Savings Plan - Rulemaking Advisory Committee
MEETING MINUTES
September 16, 2016

Rulemaking Advisory Committee (RAC) members present:

Representatives of Workers:

Dick Schwarz – Retired, Former Executive Director of AFT-Oregon
Matt Swanson – SEIU
Janet Byrd – Neighborhood Partnerships
Greg Warner – Hines Warner Wealth Management

Rulemaking Expertise:

Mary Williams – Former Deputy Attorney General

State-Sponsored Plan Expertise:

Yvette Elledge-Rhodes – Chief Operations Officer, Oregon Public Employees Retirement System

Board Liaison (Non-voting Member) present:

Cory Streisinger – ORSP Board, Former NEDCO affiliate & DCBS Head

OST Staff present:

Lisa Massena – OST, ORSP Executive Director
Jen Peet – OST, Director of Legal Affairs
James Sinks – OST, Communications Director
Alex Nelson – OST, ORSP Project Manager

Public present:

David Genz – Employment Department
Joel Metlen – Department of Consumer & Business Services (DCBS)
Jenny Dressler – Oregon Farm Bureau
Tom Simpson – Standard Insurance Company
Denise Coderre – Standard Insurance Company
Kevin Christiansen – Oregon Bankers Association
Elise Brown – SIFMA
Rasica Selvarajah – SIFMA (*attending on behalf of Marin Gibson*)

Rulemaking Advisory Committee (RAC) members absent:

Business Owners:

Annette Joly – Capers Café and Joly Restaurant Group
Bruce Polvi – Electronics Superstore
Dave Richardson – Baker & Spice
Saleem Noorani – Cork & Bottle Shoppe

Pension Attorney:

Vincent Cacciottoli – Garvey Schubert Barer

*The Rulemaking Advisory Committee (RAC) meeting was called to order at 9:05am
by Lisa Massena, Executive Director for the ORSP.*

Agenda Item 1 – ORSP Progress & Status

Lisa Massena kicked off the meeting by thanking everyone for attending the second Rulemaking Advisory Committee (RAC) meeting for the Oregon Retirement Savings Plan (ORSP) and facilitated introductions. Following introductions, Lisa Massena quickly walked the attendees through the meeting agenda and mentioned that the next RAC meeting is scheduled for October 11, 2016.

Agenda Item 2 – U.S. DOL Final Rule Update

Jen Peet directed the attendees to the copy of the U.S. Department of Labor's Final Rule that provides a safe harbor for state administered retirement plans and mentioned that it was released following the first RAC meeting. Jen Peet mentioned that one surprise in the final published Rule was that it allows for cities to offer their own retirement plans, if the state does not. Other than this one surprising element, the rest of the Rule was as expected and provides some guidance for how to draft the ORSP Rule to ensure that the ORSP is not subject to ERISA. Jen Peet mentioned that the draft of the ORSP Rule had already taken the proposed U.S. DOL Rule into account, so without substantial changes from the proposed Rule to the Final Rule by the U.S. DOL, there will not be much editing required in the ORSP Rule.

Lisa Massena added that the Final Rule is outlined starting on page 49 of the U.S. DOL Final Rule document (<https://www.dol.gov/sites/default/files/ebsa/temporary-postings/savings-arrangements-final-rule.pdf>) with Section 3 (h). Lisa Massena mentioned that all of the items listed under Section 3 (h) are amendments to ERISA providing safe harbor for state administered payroll deduction savings programs, provided that the program complies with all of the elements listed under Section 3 (h). Lisa Massena noted that one of the bigger changes from page 11 of the U.S. DOL Final Rule document is the ability for the state to choose investments and control leakage (in the original Rule, the account type for the Program needed to be an IRA subject to IRS regulations). Lisa Massena mentioned that one of the things that ORSP staff asked for, whether the investment vehicle is a Roth or Traditional IRA, is the ability for participants to access their money at any point in time. As an extension of this, Lisa Massena commented that the Final Rule removed the condition that prohibits states from imposing restrictions on withdrawals.

Greg Warner (Hines Warner Wealth Management) asked whether the safe harbor excludes the ORSP from the typical disclosures required from Employers to Employees that are required by plans subject to ERISA (noting the heavy burden this places on Employers). Lisa Massena responded that the safe harbor does exclude the ORSP from the typical disclosures required, but that House Bill 2960 is fairly prescriptive with the disclosures required and the parties responsible for facilitating these disclosures.

Matt Swanson (SEIU) asked about the analysis of the portion of legislation that discusses multiple employer plans and what the implications might be for the ORSP. Lisa Massena mentioned that the U.S. DOL has provided separate guidance on state sponsored multiple employer plans (subject to ERISA) and that these programs fall outside the scope of the ORSP.

Agenda Item 3 – Rules – Detailed Review

Lisa Massena opened the discussion of the draft Rules by mentioning that there have not been any significant changes to the draft Rules since the first RAC meeting on August 11, 2016 and that one of the

open items to be addressed is outreach and communication with the Oregon Farm Bureau regarding their input on the draft Rules. Lisa Massena noted that the goal is to have enough commentary from today's RAC meeting to do a redraft of the Rules for the upcoming October 11, 2016 RAC meeting.

Rules Discussion:
Division 10 (Eligibility)

Lisa Massena started the discussion of Division 10 (Eligibility) by reading the current proposed definition of "Eligibility" as "any person who is employed for wages in this state, and who meets federal and state legal requirements governing the Plan, is eligible to establish an account" and further provided the proposed definition of "wages" as "all cash compensation for performance of service by an employee for an employer, whether paid by the employer or another person". As a reference, Lisa Massena mentioned to the attendees that the previous RAC meeting on August 11, 2016 focused on the definitions of Employer, Employee, and Employment using the Unemployment Insurance definition, with the open item being the decision of whether to keep the definition as-is or whether there should be additional exclusions considered.

Yvette Elledge-Rhodes (Oregon Public Employees Retirement System) asked whether the definition of Employer would include all of the public employers currently covered under PERS (Public Employees Retirement System). Lisa Massena answered that public employers and their employees would be included, unless they are part of the Unemployment Insurance list of exclusions and would therefore be exempt. Yvette Elledge-Rhodes asked a follow-on question about whether these employers would then be getting a notification of some kind to go through the process just like any other employer mandated to facilitate the program. Lisa Massena responded that yes, they would need to go through similar steps, and highlighted two populations of Employers and Employees:

- Individuals who work for an employer that does not offer a retirement plan (auto-enrolled)
- Individuals who work for an employer that offers a retirement plan, but not to them (would need to proceed through an exemption/decertification step(s))

Rules Discussion:
Division 15 (Registration and Enrollment)

To set the stage for Division 15 (Registration and Enrollment), Lisa Massena reiterated the three populations of individuals:

- Approximately 600,000 individuals who work for an employer that does not offer a retirement plan (opt-out participants)
- Approximately 200,000 individuals who work for an employer that offers a retirement plan, but not to them (opt-in participants – *as currently viewed*)
- Approximately 200,000 self-employed or independent contract workers (opt-in participants)

Lisa Massena noted that there would be an Employer Registry so that by phase, as the Program is being rolled out, Employers would come to the Employer Registry (online) and certify either that they fit this criteria, that they are exempt from facilitating the Plan, or that they do not fit the criteria but will be facilitating the Plan (and need to be placed into the queue of Employers).

Matt Swanson asked about the concept of the phased rollout of Employers based on size (number of Employees) and what the standard is for Employers to determine the threshold on the number of Employees in consideration of seasonal and temporary Employees. Lisa Massena responded that this concept would need to be discussed at greater length and would be side-barred for a more focused conversation. Cory Streisinger (ORSP Board) added commentary that under **Section (4) of Division 15**, the explanation is incomplete in the draft Rules and intentionally left open for input.

Lisa Massena pointed the attendees to **Section (2) of Division 15** and commented that the blank spaces will require the input of the Plan Services Provider to help inform the phased rollout populations and thresholds of number of Employees.

Yvette Elledge-Rhodes asked whether there has been demographic analysis of any of the populations. Lisa Massena responded that this analysis was done as part of the Market Analysis Report provided by Boston College's Center for Retirement Research which shows the estimated number of Employers by group as well as the estimated number of Employees in each of these groups that are currently offering retirement plans to their Employees.

Lisa Massena asked David Genz (Employment) whether there is a filing that Employers are required to submit that would provide, by Employer, the number of Employees covered by Unemployment Insurance. David Genz commented that the Employment Department does have this data via the Oregon Quarterly Tax Report (Form OQ) that is filed on a quarterly basis by Employers. Dick Schwarz (Former Executive Director of AFT-Oregon) commented that he is familiar with this data being included on Form OQ as well, and that the form calls for the employer to indicate the number of employees at a specific date in time. Matt Swanson asked a follow-up question regarding the data collected from this form for industries that see large seasonal shifts in the number of workers, such as forestry and agriculture, and how those employers would be phased in if the phases are split by the size of the employers (number of employees), acknowledging their fluctuation in number of employees based on the reporting quarter. Lisa Massena clarified that this would be addressed when the phasing groups are identified for rollout and would likely use quarterly data submitted on a report that is submitted nearest to that date in time, acknowledging that these phasing groups would ideally be identified and communicated with early in 2017.

Dick Schwarz offered that Form OQ is filed at the end of the month following the previous quarter so in order to capture the most representative employment figures with seasonal workers, it may be beneficial to use the Q3 2016 filings (submitted by October 31, 2016). Lisa Massena responded that it would likely either be data from the Q3 or Q4 2016 filings that would be used. David Genz commented that there will always be some discrepancies on the phased groupings of certain employers when the data is pulled from one individual quarterly filing due to the seasonal workers (extending off of Matt Swanson's comments). David Genz also asked for Lisa Massena to confirm that the current vision is for employers to land on the Employer Registry (online portal), enter their required employer background information as requested, and then be informed whether they are exempt (or not) and be supplied with their phasing timeline. Lisa Massena responded that this is the current process that has been envisioned. David Genz responded that it might be more effective to ask employers to provide the highest number of employees employed by them throughout the year. Yvette Elledge-Rhodes added that if this was annual event, this could be done via a tax form. Dick Schwarz commented that in Form OQ, there is an included form (Form 132) that has employers list all of their employees by month for that respective quarter. Cory Streisinger provided some clarity by mentioning that using data from a quarterly report that may exclude some seasonal workers may actually be a more appropriate approach given that the intent of the phased rollout is to organize an initial wave with a manageable number of employers (and employees) to onboard (acknowledging that everyone would be included eventually).

Mary Williams (Former Deputy Attorney General) posed the question of whether employers would be counting all employees or only employees that are eligible for the Program (specifically looking at the group of employers that offer a retirement plan to some employees, but not to all). Lisa Massena

responded that employers would count all employees, regardless of whether they're eligible or ineligible for the Program, for the purposes of informing the phasing groups.

Yvette Elledge-Rhodes and Dick Schwarz weighed in that if the goal is to have an annualized process, employer data could be provided via annual employer tax filings that would be inclusive of the number of employees employed throughout the year. Yvette Elledge-Rhodes added that it might be helpful to know the timeline envisioned for the full rollout. Cory Streisinger responded that the current thought is that each wave would be onboarded every six months, but that there is a need for further understanding of what is doable on this end.

Dick Schwarz commented that he would recommend flipping the order of "Employer shall file a certificate of Exemption with the Plan or register with the Plan" in **Section (1) of Division 15** so that "register with the Plan" comes before "file a certificate of Exemption" (because the goal is for each employer to register). Dick Schwarz also asked whether an employer could skip ahead in the queue (phasing waves) if they had the desire to be onboarded (for their employees) sooner than their phasing wave. Lisa Massena responded that this is an outstanding question for the RAC that will require more thought (for potential inclusion in the Rule). Dick Schwarz commented that one of the primary reasons for the development of the ORSP was the ability to help small employers provide access to retirement plans for their employees, because of the time and financial burden barrier that may prevent them from providing their own retirement plan to their employees. Greg Warner seconded that notion and asked about the overall rollout timeline. Lisa Massena responded that currently, employers with less than 5 employees might not be onboarded until around year 4 of the Program. Greg Warner commented that with this timeline in mind, it would be beneficial to have an opportunity for interested employers to skip the queue in some way or another. Matt Swanson offered that to accommodate this employer interest, the best place to solicit the ask might be as a component of the Employer Registry portal and process.

Moving on, Lisa Massena directed the attendees to **Section (3) of Division 15** and noted that there is a draft document of best practices and standards that has been produced by a consortium of states (Illinois, California, and Oregon) and regional/national payroll service providers that provides an overview of the minimum required data to get accounts setup in a state administered retirement plan. Lisa Massena added that this document of best practices and standards and the minimum required data should help inform this section of the Rules.

From here, Lisa Massena directed the attendees to several open items in **Section (5) of Division 15**. Lisa Massena opened by mentioning that there will need to be a decision made on the date in the first blank space in the section regarding the registration date for a new employer based on the first employee's hire date (noting July 1, 2017 as a potential date) and the second blank space in the section regarding the number of days after the employer first hires an employee. Mary Williams asked whether it might be easier to put new employers into the next phased wave of employers, depending on the wave that falls directly after the new employer hires their first employee, instead of determining a specific date at the outset. Yvette Elledge-Rhodes added that it will also be necessary to think about, after rollout when all employers are in, what happens when a new employer comes on board. Dick Schwarz recommended changing the word "hire" in this section to something more appropriate because the hire date for an employee isn't aligned with the payroll date and could potentially create issues. There also might be an issue using "hire date" as it pertains to unique employment scenarios, such as with seasonal workers. Lisa Massena responded that it may be good to look at further and if "hire" is kept, ensure that it is included in the definitions. Lisa Massena concluded that **Section (5)** probably deserves more thought and would be good for the RAC to revisit.

To finish Division 15, Lisa Massena directed the attendees to **Section (6) of Division 15**. Yvette Elledge-Rhodes commented that under the subheading “Enrollment”, item (2) asks for a taxpayer ID number and a recent article she read mentioned that if taxes aren’t paid, taxpayer ID numbers are supposed to expire (beginning in the near future). Yvette Elledge-Rhodes added that her worry here would be that if a taxpayer’s ID number expires that the ID number could be assumed by somebody else and cause confusion in the system (mentioning that individuals without social security numbers causes issues for their system at PERS). Lisa Massena responded that it may be beneficial to provide the RAC the draft of the best practices and standards document in advance of the next RAC meeting to review the minimum data requirements because it will help provide more specific information relevant to Section (6).

Rules Discussion:

Division 20 (Standard Choices; Changing Choices; Opting Out)

To set the state for Division 20 (Standard Choices; Changing Choices; Opting Out), Lisa Massena highlighted that this portion looks at delivering all of the features but still giving employees the ability to choose to participate in the Program and make elections. As part of this, employees would receive a notification of their eligibility in the Program and would have a certain time window with which they could choose to opt-out. After this time window has passed, if the employee has not taken any action to opt-out, they will be automatically enrolled in the Program at the standard savings rate through a standard investment vehicle.

Yvette Elledge-Rhodes commented that in Division 20, it might be beneficial to rearrange the sections so that **Section (4) of Division 20** is the first section (because it refers to the actions that would follow if the employee does not take action to opt-out and would appear to be the most pertinent).

Lisa Massena noted that the open item in **Section (1) of Division 20** is the decision on the optimal number of days provided to eligible participants to opt-out before auto-enrollment occurs. Lisa Massena then walked the attendees through the rest of the section, outlining that employees electing to participate in the Plan but not enrolling with the Standard Choices would have several participation options:

- At an initial contribution rate different from the Standard Choices
- At an initial contribution rate consistent with the Standard Choices but without auto escalation
- At an initial contribution rate different from the Standard Choices and without auto escalation
- At the Standard Choices contribution rate but different investment option

Alternatively, this section also provides language around the option for eligible participants to opt-out altogether.

Lisa Massena then walked the attendees through **Section (2) of Division 20** which defines the responsibilities of the employer if the employee submits a notice pursuant to **Section (1)**, including the number of years that the notice would be retained in personnel files (noting that the number of years is an open item) and the appropriate payroll deductions to match the employee’s elections.

Yvette Elledge-Rhodes asked whether the concept is that when a new employee starts at an employer, they would be given the information by the employer and have the opportunity to make elections within the pre-determined number of days. If this is the case, Yvette Elledge-Rhodes asked whether the issue of using the “hire” date versus the actual start date could present a problem with alignment on payroll deductions between the employer and Plan Services Provider. Lisa Massena responded that the aforementioned concept was correct and that the standard time window would be 30 days for these

elections to be made. Cory Streisinger added that the distribution of materials by the employer to the employee is covered in greater detail in Division 55.

Jenny Dressler commented that in the agriculture industry, farmers that move from employer to employer, often times working for employers for a matter of days, would be auto-enrolled at each employer because their employment timeframe is shorter than the conceptual 30 day time window. For this reason, Jenny Dressler commented that there may need to be a consideration for this. Cory Streisinger responded that these employees would never be enrolled because they wouldn't be enrolled until the opt-out window has elapsed, and their employment wouldn't be longer than the conceptual opt-out window (which could apply to workers in the aforementioned scenario, employees terminated a few weeks into employment, etc.).

Greg Warner asked whether the funds withheld from the employee by the employer as payroll deductions and transferred to the Plan Services Provider have a standard "turnaround" time window that is part of the fund transfer process. Greg Warner mentioned that he believes the Department of Labor has a 10 day rule on this transference. As a follow-on, Greg Warner asked whether this time window would need to be identified in the Rules and communicated with employers as part of their fiduciary obligations. Lisa Massena responded that this turnaround time window has not been captured in the Rules yet and there would need to be more research done on this topic. Cory Streisinger commented that it would likely go in Division 25 and that in the current draft Rules, it is left blank because of the need for input from the Plan Services Provider. Matt Swanson asked who, between the Plan Services Provider and the state, has the responsibility of determining this time window and communicating it with employers. Lisa Massena responded that it appears that if there is a standard time window and it aligns with the capabilities of the Plan Services Provider, it should be included in Division 25 of the Rules. Yvette Elledge-Rhodes commented that for the OSGP, contributions are received per payroll period but even if payroll contributions are provided weekly, they are often only reported by employers to PERS monthly and there is a 5 day turnaround time window in this process. Jen Peet asked whether this arrangement was identified in the Rules for the OSGP and Yvette Elledge-Rhodes confirmed that it is.

Dick Schwarz commented on the personnel record retention time window for notices submitted by employees, explaining that the IRS has specific time windows for certain financial documents that would probably need to be referenced. Yvette Elledge-Rhodes commented that she could send the standards for non-profits, but also noted that her recollection is that these kinds of records would need to be permanently retained.

Lisa Massena directed attendees to **Section (3) of Division 20** and highlighted that the concept that needs thought in this section is whether the employee can determine investment options with the Plan Services Provider prior to any funds being contributed towards a new account. Cory Streisinger added that one of the thoughts here is that by handling the investment options with this approach, the employee (or participant) would have the opportunity to change their investment options pre-investment because of the time window before the initial contributions begin. Greg Warner recommended keeping the investment options simple, particularly because the majority of potential participants would not have the background and understanding to be able to make informed decisions on different investment options (noting that even using Target Date Funds, there would potentially be 15 options).

Going down the list, Lisa Massena mentioned that **Section (4) of Division 20** had already been covered and discussed. Moving to **Section (5) of Division 20**, Lisa Massena noted that this section discusses what actions will need to be taken by the employee so that they can change any of their elections at any time and commented that the thought here will need to be around the responsibilities that the employer will have and the responsibilities the Plan Services Provider will have based on those actions taken by the employee. Lisa Massena added that this concept has been included in the Plan Services Provider RFP to try and determine how much the Plan Services Provider can facilitate in this area so that the employer has to take minimal action (there are several workflow models that have been discussed and are yet to be determined in this space at this point in time).

In reference to the above, Mary Williams asked whether it would make sense to arrange the Rules so that there are sections that are specific to the responsibilities the employer and the employee each have. There was general consensus that arranging the document by employer and employee might make it easier to follow.

Moving on to **Section (6) of Division 20**, Lisa Massena highlighted that this section deals with the concept of what actions would need to be taken for an employee who initially opted out to opt-in to the Program. Lisa Massena asked whether there would be any reason not to have this structured so that an employee could opt-in at any moment in time. Greg Warner responded that it seems to fall in-line with the eligibility requirements that they would be able to opt-in at any time. Yvette Elledge-Rhodes asked whether the maximum contribution limit (currently identified as 10%) needs to be called out in this section. Cory Streisinger responded that the information provided in the Rule will be different than the information provided in the materials provided to employers and employees which will be much more linear and coherent to thoughtfully inform key components of the Program (such as this) to the employers and employees.

Rules Discussion:

Division 25 (Contributions)

On the concept of contributions in Division 25 (Contributions), Dick Schwarz and Matt Swanson commented on the idea of auto-escalation and how the responsibilities for this process would be distributed between the employer, the employee, and the Plan Services Provider. Lisa Massena responded that there are currently three concepts being discussed on this topic:

- The auto-escalation feature is communicated to employees at the outset of the Plan as a primary feature and that participants will be automatically enrolled in this feature unless they opt-out
- The auto-escalation feature will kick in and there will be actions that the employers and Plan Services Provider will be responsible for (to be determined). Participants will be enrolled in auto-escalation according to individual anniversary dates connected to their enrollment date (potentially with a reminder notice from the Plan Services Provider to the employer)
- The auto-escalation feature will kick in for all participants on a specific date in time (not based on individual enrollment anniversary dates)

Greg Warner commented that from an employer perspective, it would be difficult to remember individual enrollment anniversary dates for employees and facilitate the appropriate actions (unless there is an alert provided by the Plan Services Provider). Yvette Elledge-Rhodes agreed and commented that a pre-identified date for auto-escalation to kick in for all participants would be easier for the employer (and employees) to remember. Greg Warner responded that there would likely be hesitation to go this route on the Plan Services Provider's part because of the high volume of accounts to process the changes for as well as the high volume of calls from participants, but added that he would

recommend pushing the Plan Services Provider to be able to accommodate auto-escalation in this manner. Matt Swanson agreed, stating that in either instance, the Plan Services Provider should be sophisticated enough to carry the majority of the responsibility in accommodating auto-escalation. Lisa Massena responded that the auto-escalation feature has been included in the Plan Services Provider RFP as part of the “what” (with emphasis on reducing employer burden) and the responses by Plan Services Providers will be about the “how”, so that ultimately, the responses will help determine how this feature is facilitated.

Dick Schwarz commented that one issue that will need to be addressed is how to handle situations, for example, where an employee is hired on December 1st and then has their contribution rate increased (via auto-escalation) on January 1st (if January 1st was the annual date for auto-escalation to kick in each year).

Rules Discussion:

***Division 30 (Distributions)
& Division 35 (Withdrawals)***

Moving forward, Lisa Massena directed the attendees to Division 30 (Distributions) and Division 30 (Withdrawals) and referencing the earlier conversation regarding the withdrawal restriction capabilities that came out of the U.S. DOL’s Final Rule, Lisa Massena mentioned that there will need to be some thought on how to handle the inclusion (or exclusion) of withdrawal restrictions (balancing the effects either stance could have on overall Program participation).

Regarding withdrawals, Greg Warner commented that there are certain industry standards around exceptions for withdrawals that may need to be considered and the penalties that may be a part of that discussion. Cory Streisinger commented that for Roth IRAs, there are no penalties for withdrawing contributed funds at any time but there are penalties for withdrawing earnings early. Dick Schwarz added that there is a distinction between the concept of restricting withdrawals and the financial consequences of early withdrawals. Lisa Massena agreed and offered that there are concepts around both withdrawals before retirement and withdrawals after retirement. In the event of termination, Lisa Massena added that because the accounts are IRAs, there is no required withdrawal action on the part of the employee (unless they elect to withdraw funds) and they could carry forward with their IRA (potentially with contributions from a new employer in the future). Matt Swanson commented that the Rule on withdrawals would need to fit within State and Federal guidelines and it would be helpful to know limitations of authority on selecting withdrawal restrictions.

Cory Streisinger stressed that this decision isn’t easy because on one hand it’s beneficial both to the Program and to individuals for the inclusion of stricter withdrawal restrictions resulting in participants leaving their money in their retirement accounts, but on the other hand, a large number of potential participants could be low income and would need access to these funds in case of emergencies. To reinforce this point, Cory Streisinger referenced some of the Market Analysis work that has been done for the ORSP that showed that one of the key factors in people choosing to participate is the concept of whether if they want to have access to their money, they have access to their money. Cory Streisinger added that one thought here that has been discussed is that if a participant wishes to withdraw their money, they would go to the Plan Services Provider website (portal) to request the withdrawal and they would be shown the financial impact this will have on their retirement (referencing the British NEST program which has shown that a large percentage of people that have initiated a withdrawal actually stop the withdrawal after seeing this impact statement). Greg Warner commented that he really liked

this concept and would be interested in seeing how a Plan Services Provider would help provide this messaging.

As an extension of the withdrawal topic, Lisa Massena commented that there has also been discussion of imposing withdrawal restrictions for frivolous withdrawals (limiting the number of withdrawals that can be made by a participant over a specified period of time) in order to reduce the cost that is passed on for this service to all Plan participants. Another area that has been discussed is the annuitization of Target Date Funds so that certain portions of early funds are locked away for retirement. Greg Warner commented on the annuitization concept, stating his curiosity about the amount of money that would be annuitized based on the scale of funds being contributed into the Program as well as idea that it may not be a term participants would fully understand.

Janet Byrd (Neighborhood Partnerships) commented that there is a lot of evidence that incomes for people in the middle income brackets (particularly the \$30,000 - \$70,000 salary range) are increasingly volatile so subsequently, there is a higher need for emergency withdrawals which makes this ability to withdraw funds so important. Janet Byrd added that it would be good to look at some of the more sophisticated ways that financial education is happening as well as the viable, non-predatory short-term loan programs that are available as alternatives to retirement fund withdrawals.

Rules Discussion:

Division 40 (Employer Exemptions)

To start Division 40 (Employer Exemptions), Lisa Massena mentioned that House Bill 2960 is very specific about the types of programs that fit this criteria. Following this highlight, Lisa walked the attendees through the basic points in Division 40 and provided the high level overview which is that an employer is fully exempt if they are offering a retirement plan to all, or conditionally exempt if they are offering a retirement plan to some. For employers that meet the full exemption criteria, Lisa Massena highlighted what would be included in the Certificate of Exemption. On **Section (4) of Division 40**, the outstanding question is the number of years the Certificate of Exemption would be valid for, and whether there is a cycle for renewal (and what the time frame on that cycle would be). Lisa Massena added that in the future, the ideal scenario would be for this information to be provided on an existing tax form as a check box for employers to remove the step for employers to have to go through an Employer Registry portal to perform the steps if they are exempt. Dick Schwarz offered that not all corporations are in the Business Registry (mentioning non-profits and unincorporated associations) so some employers might get missed.

Yvette Elledge-Rhodes asked whether information gathered via W2's submitted by employers for employees could provide the necessary data. Lisa Massena responded that unfortunately this information provides good data for the employees, but not for the employer.

Yvette Elledge-Rhodes asked whether the employer registration process is separate from the certification of exemption process. Lisa Massena clarified that it would be part of the same process.

Agenda Item 4 – Public Comment

Tom Simpson (Standard Insurance Company) commented that one of his concerns is that the current concepts would place the burden on the employers to prove something (e.g. that they offer a retirement plan). Tom Simpson offered that one of the main tenets of the ORSP is to engage and work with the population of employers that are not offering retirement plans to their employees, not to engage and place burden on employers that are doing so to provide additional information on the plan,

their company, etc. Matt Swanson asked Tom Simpson how, alternatively, the Program (ORSP staff and Plan Services Provider) would get the necessary information from employers to facilitate and enforce the Program effectively without using the concept of the Employer Registry. Tom Simpson responded that if a letter was sent out to all employers in the state of Oregon, and you are an employer that offers a retirement plan to your employees, you wouldn't be required to register or perform any action to verify exemption. Matt Swanson asked Tom Simpson what the Program would do then if certain employers just decided they didn't want to respond (either exempt or non-exempt employers). Tom Simpson responded that it would be a similar scenario to that of individuals not paying their taxes as they are supposed to (it would rely auditing and enforcement). Lisa Massena responded that the goal is to make things simpler and reduce as much burden as possible from employers, so this will be looked at and discussed to figure out the best option.

As an extension of this discussion, Kevin Christiansen (Oregon Bankers Association) commented that he agrees with Tom Simpson's points regarding the unnecessary burden of proof on the employer and would only see it necessary for that employer to have to take any action (proving exemption) if something changes (e.g. they initially offered a retirement plan to employees but no longer do). Kevin Christiansen also commented that he disagreed with House Bill 2960 (specifically Section 3, Subsection B) in that does not provide an exclusive list of the plans that could be offered in order to fit the criteria for exemption. Lisa Massena asked whether the specific plans that would qualify an employer for exemption are included in the Rule. Cory Streisinger commented that these qualified plans are listed in the definitions section of the Rule under the definition of "Qualified Plan". Kevin Christiansen added that he would just caution the Board to consider that the list as defined in House Bill 2960 may not be completely inclusive of all plans that would be "qualified plans" since it appears to be left open by saying "includes, but not limited to" and that his understanding is that the Bill trumps the Rule. Matt Swanson responded that the intent of the Bill was to list all "qualified plans" as interpreted by the IRS, and the intent should drive the legal interpretation here. Lisa Massena and Cory Streisinger clarified that the Board, as identified in the Bill, is given explicit power to create the Rule and the Rule would trump the Bill (or clarify points of the Bill and add to it). Matt Swanson added that if new plans are developed over time, this list of "qualified plans" could be modified to include these new plans.

Denise Coderre (Standard Insurance Company) commented that one of her concerns is that employers offering retirement plans (subject to ERISA) currently fill out Federal Form 5500 but that Form 5500 does not accurately capture employee information based on the states they are employed in for that employer (identifying that an employer could employ workers in all 50 states potentially). If this information needed to be pared down to determine which employees were employed in the state of Oregon (for example), this wouldn't be possible.

Rules Discussion:

Division 50 (Fees)

Lisa Massena highlighted that Division 50 (Fees) deals with the idea that the Program is self-supporting with an all-in fee that covers the cost to operate the Program. Yvette Elledge-Rhodes asked for clarification on whether the fee would be charged to employees (participants) or employers. Lisa Massena clarified that the fee would be charged to participants. Lisa Massena commented that the discussion is that this will be an asset-based fee and that there is also an idea that there may be service-based fees.

Rules Discussion:

Division 55 (Distribution of Materials to Employees)

Lisa Massena directed the attendees to Division 55 (Distribution of Materials to Employees) and highlighted that this section deals with the “what and how” of the information provided to employees. Cory Streisinger directed the attendees to **Section (3) of Division 55** to look at the responsibility of employers in this capacity.

Rules Discussion:

Division 65 (Confidentiality)

Lisa Massena highlighted that the concept in Division 65 (Confidentiality) is that nothing will be disclosed without the written consent of the person who owns the account. Mary Williams asked whether there are exceptions, such as power of attorney, that should be included in this portion (particularly to address situations where the owner of the account dies). It was agreed that this should be included in Division 65 and Yvette Elledge-Rhodes mentioned that she would provide their fiduciary rules on confidentiality from the OSGP for review.

Agenda Item 5 – Recap & Next Steps

To conclude the meeting, Lisa Massena reminded everyone that the next RAC meeting is scheduled for October 11, 2016 at 1:00pm. Lisa Massena commented that it may not be possible, at this stage, to do a revised draft based on the comments. Jen Peet agreed and mentioned that doing a repackaging of the draft Rule with sections for employers and employees could be an easy fix in advance of the next meeting. Dick Schwarz responded that the repackaged draft would be very helpful. Jen Peet added that the hope is to have a draft of the Fiscal Impact Statement prepared for review at the next RAC meeting as well.

To close, Lisa Massena asked that if there are any offline suggestions, comments, or feedback to please send them to Lisa Massena and/or Jen Peet.

The Rulemaking Advisory Committee (RAC) meeting ADJOURNED at 10:57am.