

Oregon Retirement Savings Plan Proposed Rules as of October 11, 2016

Overview of Changes to Prior Drafts.

This draft contains changes based on discussion of the ORSP Rulemaking Advisory Committee during its meetings, and taking into account public comment during those meetings, held on August 11 and September 16 of 2016.

This preamble outlines more significant changes by section. Current Proposed Rules follow, starting on page 4.

All Divisions / Across Divisions

Meeting participants commented that it would be beneficial to rearrange certain Employer and Employee content for clarity. These and other updates led to some division renumbering. All references below are based new division numbers.

Division 5: Administration

Several definitions were added to this section, including Distributions, Employment, and Number of Employees.

Division 10: Employer Registration and Enrollment

In general, updated language clarifies employer responsibilities and timelines.

Registry. Significant discussion has focused on how Number of Employees will be determined, taking into account a wide variety of employer and employment circumstances, and with confirmation that Form OQ provides information Employers can readily access and use. An employer's most recently filed quarterly Form OQ is now identified as the source in this Rule. Registry timelines have been excluded from this Rulemaking and will be identified more specifically once the Plan Administrator has been retained. This should include language addressing whether Registry dates are defined for employers as 'not later than', which would allow employers to register as early in the process as they would like.

Enrollment. Data elements have been cross-checked against the latest States and Payroll Providers Best Practices guidance with language added to allow for changes in future as needed.

Division 15: Employer Exemptions

September public comment included concern that employers offering plans and certifying exemption would be subject to undue reporting burdens and required to compute answers not reported in existing formats, such as Form 5500. Certification information has been updated so

that it can be reported from existing sources, including Form 5500 where that is an employer's current requirement, and, for Oregon figures, answered using an approach that does not require computation. (This section was previously Division 40).

Division 20: Employee Eligibility

This section was not updated following the August and September discussions; however, the definition of Employment has been updated in Division 5. The revised definition now relies on ORS 657 but adds back in several workforce populations excluded by this statute, including certain agricultural, government, and commissioned workers. (This section was previously Division 10).

Division 25: Employee Standard Elections; Changing Elections; Opting Out

Based on comments, this section was rearranged to flow more effectively, and to clearly state Standard Elections (previously called Choices) and timing, followed by other available employee elections. Elections related to contributions are written to be processed by employers. All other elections are written to be processed by the Plan Administrator. Document retention periods have been established at seven years. (This section was previously Division 20)

Division 30: Contributions

Meeting participants commented that employer requirements around payroll deduction and remittance activity and timing could be stated more clearly. Updated language reflects inclusion of auto-escalated rates in the employer deduction requirements. Remittance timing is also more clearly articulated. For purposes of these Rules, the initiation of auto-escalation for the Plan at large is not specified.

Division 35: Distributions

The Rulemaking Advisory Committee has actively discussed distributions, including whether the Plan should include restrictions on distributions, or include charges for 'excessive' numbers of distribution requests. Either circumstance requires further discussion and direction by the ORSP Board; for purposes of these Rules, this draft includes no changes to the concepts around distribution.

Division 45: Fees and Expenses

This section has been updated to state that fees will be charged to accounts, in response to comments that it might appear that employers or others would be responsible for fees.

Division 50: Distribution of Materials to Employees

This section has been edited for clarity and to add information on timing.

Division 55: Technical Assistance to Employers

This section has been newly added to the Rules. For the time being a section addressing Enforcement is being held for future consideration.

Division 65: Confidentiality

Based on comments by the RAC, this section has been updated to include more extensive language on confidentiality, including under circumstances common to other equivalent Plans.

Division 1
Notice Rule for Rulemaking and Model Rules of Procedure

Notice Rule for Rulemaking. Before adopting, amending or repealing any permanent rule, the Board will give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;
- (2) By e-mailing a copy of the notice to persons on the Board's mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule;
- (3) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and
- (4) By mailing or furnishing a copy of the notice to the list of interested parties compiled and maintained by the State Treasurer.

Stat. Auth.: ORS 183.335

Stats. Implemented: ORS 183.341, HB 2960 (2015) [ORS 178.220 to 178.245]

Hist.:

Model Rules of Procedure. The Attorney General's Model Rules of Procedure, effective January 1, 2014, as set forth in OAR 137, Divisions 1 through 4, are adopted as rules of procedure for administrative rulemaking and other administrative law functions of the Board and the Plan.

Stat. Auth.: ORS Chapter 183.341

Stats. Implemented:

Hist.:

ADR Related Model Rules. The Attorney General's ADR Related Model Rules, effective January 1, 2014, as set forth in OAR 137, Division 5, are adopted by the Board as its rules for collaborative dispute resolution.

Stat. Auth.: ORS 183.502

Stats. Implemented: ORS 183.502

Hist.:

Confidentiality and Inadmissibility of Mediation Communication. The policies and procedures of the Oregon State Treasurer set forth in OAR 170 in regard to confidentiality and inadmissibility of mediation communication, to the extent not inconsistent with the Act or the Code, are adopted as the policies and procedures of the Board.

Stat. Authority: ORS 36.224

Stat. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.:

Division 2
Inspection, Certification or Copying Public Records

Public Records. The policies and procedures of the Oregon State Treasurer set forth in OAR 170 in regard to inspection, certification or copying of public records, to the extent not inconsistent with the Act or Chapter 178, are adopted as the policies and procedures of the Board.

Stat. Auth.: 178.050

Stats. Implemented: ORS 183, ORS 192.410 to 192.505

Hist.:

Division 5 Administration

Definitions. All terms are used in these rules as defined in the Act. Where a conflict is found to exist between a definition stated in these rules and the corresponding definition in the Act, the statutory definition shall apply. As used in these rules, unless the context indicates otherwise:

“Act” means ORS 178.200 to 178.245, as amended from time to time.

“Board” means the Oregon Retirement Savings Board established in ORS 178.200(1).

“Certificate of Exemption” means a truthful statement by an Employer meeting the requirements of Division 15 below.

“Code” means the Internal Revenue Code and any regulations, rulings, announcements or other guidance issued thereunder.

“Distributions” means any distribution of funds from an IRA account, in satisfaction of a withdrawal request or for other reasons.

“Employee” means any person 18 years of age and older in an employment subject to ORS Chapter 657. “Employee” does not include a person who volunteers or donates services performed for no remuneration or without expectation or contemplation of remuneration as the adequate consideration for the services performed for a religious or charitable institution or a governmental entity.

“Employer” means any employing unit which employs one or more individuals in an employment subject to ORS Chapter 657 in each of 18 separate weeks during any calendar year, or in which the employing unit’s total payroll during any calendar quarter amounts to \$1,000 or more.

“Employment” means any employment subject to ORS Chapter 657, and additionally includes this employment: Agricultural labor for a small farm (defined in ORS 657.045(1)), Government service (defined in ORS 657.065), Railroad (defined in ORS 657.075), Sports officiants (defined in ORS 657.088), and Commissioned positions (defined in ORS 657.085, 657.087(1) and (2), and 657.09).

“Enrollment Date” means the date by which a Participating Employer must enroll its Participating Employees, not less than 60 days after the Participating Employer’s required Registration Date.

“Number of Employees” means the number of employees as submitted on the Employer’s most recently filed Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance (UI).

“Participating Employee” means any Employee who has not opted out of the Plan as specified in Division 25 below.

“Participating Employer” means an Employer whose Registration Date has passed and who is not an Exempt Employer.

“Exempt Employer” means an employer who has filed a valid and current certificate of exemption with the Plan or its Plan Administrator.

“Plan” means the Oregon Retirement Savings Plan established in ORS 178.205(1).

“Plan Administrator” means a third party administrator chosen by the Board to assist in carrying out the requirements of the Act.

“Qualified Plan” means a retirement plan qualified under the Internal Revenue Code, including but not limited to section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p) or section 457(b).

“Registration Date” means, for each Employer, the date by which the Employer is required to register with the Plan.

“Standard Elections” means the Plan elections applicable to a Participating Employee who has not opted for different elections, as specified in Division 25.

“Wages” means all cash compensation for performance of service by an employee for an employer, whether paid by the employer or another person.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245; HB 2960 (2015) [ORS 178.220 to 178.245]

Hist.:

Division 10

Employer Registration and Enrollment

Registration.

- (1) On or before the Registration Date, each Employer shall register with the Plan or file a Certificate of Exemption. The Registration Date for each Employer shall be phased in, with phasing to be articulated by the Plan not later than April 30, 2016.
- (2) To register with the Plan, a Participating Employer shall utilize a secure web portal established by the Plan to provide information including, but not limited to:
 - a. Employer name and assumed business name, if any
 - b. Employer Identification Numbers (FEIN and BIN)
 - c. Employer physical address
 - d. Employer mailing address
 - e. Name, title, telephone number and email address of an individual designated by the Employer as the Plan’s point of contact
 - f. Number of Employees
 - g. Any other information requested by the Plan for the purposes of administering the Plan.
- (3) In determining the number of Employees for purposes of this section, Employers shall use data as submitted on the most recently filed Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance (UI).
- (4) New Employers: The Registration Date for an Employer who first employs Employees after July 1, 2017, shall be the later of:
 - a. the date specified by the process identified in subsection (1) above, or
 - b. 90 days after the Employer first employs an Employee.
- (5) The Plan will provide each Participating Employer with an Enrollment Date which shall be not less than 60 days after its required Registration Date.

Enrollment. On or before its Enrollment Date, a Participating Employer shall enroll its Participating Employees using a secure web portal or other means of data transmittal specified by the Plan. For each Participating Employee, the Participating Employer shall provide information including:

- (1) Full legal name;
- (2) Social security number or taxpayer ID number;
- (3) Date of birth;
- (4) Mailing address;
- (5) Work email address, if the Participating Employee has an individual employer-provided and password-protected email account; and
- (6) Any other information requested by the Plan for the purposes of administering the Plan.

Division 15

Employer Exemptions

- (1) An Employer may file a Certificate of Exemption with the Plan by certifying, in a form and manner specified by the Plan, that the Employer offers a Qualified Plan to all of its Employees.
- (2) An Employer may file a conditional Certificate of Exemption by certifying, in a form and manner specified by the Plan, that the Employer offers a Qualified Plan to some but not all of its Employees. An Employer with a conditional Certificate of Exemption may be required to register with the Plan at a later time.
- (3) The Certificate of Exemption will identify:
 - a. the type of Qualified Plan/s offered by the Employer;
 - b. the date the Qualified Plan/s was or were established;
 - c. the number of Employees employed by the Employer in Oregon;
 - d. if filing a Certificate of Exemption, a statement that all Employees in Oregon are eligible for the Qualified Plan;
 - e. if filing a conditional Certificate of Exemption, a statement that some Employees in Oregon are not eligible for the Qualified Plan due to one or more of the following:
 - i. they do not meet the Plan's eligibility requirements based on hours worked (e.g. part time status); or
 - ii. they do not meet the Plan's eligibility requirements based on minimum age and service requirements (e.g. hire date); or
 - iii. they do not meet the Plan's eligibility requirements for other reasons.
- (4) A Certificate of Exemption is valid so long as the Employer continues to offer a Qualified Plan, or for three years, whichever comes later. A Certificate of Exemption may be renewed by following a process of recertification as established by the Plan not later than December 31, 2019.

Division 20

Employee Eligibility

Participant Eligibility. Any Employee, as defined above, who meets federal and state legal requirements governing the Plan, is eligible to establish an account.

Stat. Auth.: ORS 178.210(1)(a)

Division 25
Employee Standard Elections; Changing Elections; Opting Out

- (1) A Participating Employee who has not provided notice as specified in this section shall be enrolled using the following Standard Elections:
 - a. Contribution to the Plan at an initial rate of 5% of Wages;
 - b. Auto-escalation at the rate of an additional 1% of Wages each year until 10% is reached, beginning on a date to be specified by the Board; and
 - c. Investment of contributions in a “target date fund” (a professionally-managed fund containing a mix of investments that changes asset allocation and risk based on the employee’s age and/or projected retirement date).
- (2) An Employee who does not wish to enroll using the Standard Elections shall notify the Participating Employer, on a form provided by the Plan and within 30 days of receipt of the informational materials provided by the Participating Employer, that:
 - a. The Employee wishes to participate in the plan:
 - i. at an initial contribution rate different from the Standard Elections, which shall be a percentage of Wages expressed as any whole number (i.e. 3% or 6%, but not 4.5%); or
 - ii. at an initial contribution rate consistent with the Standard Elections but without auto-escalation; or
 - iii. at an initial contribution rate different from the Standard Elections and without auto-escalation.
 - b. That the Employee does not wish to participate and is opting out of the Plan.
- (3) An Employee who wishes to select an investment option other than that provided by the Standard Elections shall notify the Plan Administrator, in a manner to be specified by the Plan Administrator.
- (4) A Participating Employee may change the Participating Employee’s elections at any time by:
 - a. notifying the Employer of a requested change in contribution elections, using a standard form as provided by the Plan; and
 - b. notifying the Plan Administrator of a requested change in investment elections or other elections, in a manner to be specified by the Plan Administrator.
- (5) An Employee of a Participating Employer who initially opted out of participation in the Plan may become a Participating Employee by requesting participation through their Employer using a standard form as provided by the Plan.
- (6) If the Participating Employer receives a notice from an Employee pursuant to subsection (2), (4) or (5) of this section, the Participating Employer shall:
 - a. Retain the notice in its personnel files for not less than seven (7) years, and
 - b. For any Participating Employee, record the Participating Employee’s elections in its payroll system in a manner that will enable the Participating Employer to make accurate deductions from the Participating Employee’s paycheck.

Division 30

Contributions

- (1) On each payroll date following the Enrollment Date, the Participating Employer shall deduct from the Participating Employee's Wages, consistent with the Employee's Elections:
 - a. 5% of Wages; or
 - b. if the Participating Employee has elected an initial contribution rate different from the Standard Elections, the percentage of Wages specified by the Participating Employee; or
 - c. the auto-escalated level of Wages for that Employee.
- (2) Amounts deducted by the Participating Employer pursuant to this section shall be transmitted to the Plan Administrator in a format and with such identifying information as shall be specified by the Board as swiftly as possible, not to exceed five (5) calendar days from the date of deduction. Failure to transmit the amount as required constitutes an unlawful deduction.
- (3) When the Board has specified a date for the commencement of auto-escalation, then on a schedule to be determined by the Plan, for each Participating Employee who has not opted out of auto-escalation, the Participating Employer shall increase the deduction specified in subsection (1) of this section by an additional 1% of Wages per year until the total deduction has reached 10% of Wages.

Stat. Auth.: ORS 652.610 (4)

Division 35 Distributions

Distribution Request.

- (1) A Participating Employee may request a distribution of funds from an account by submitting to the Plan Administrator a completed distribution request as administratively established by the Plan.
- (2) A distribution from an account shall be subject to any applicable state and federal tax withholdings.

Stat. Auth.: ORS 178.215(7)

Stats. Implemented: ORS 178.200 to 178.245; HB 2960 (2015) [ORS 178.220 to 178.245]

Hist.:

Division 40 Reserved

Division 45 Fees and Expenses

Plan Administration Fees. The Board will charge an account fee in an amount necessary to defray the costs of operating the program. The Board may from time to time review and adjust this fee.

Stat. Auth.: ORS 178.225

Stats. Implemented: ORS 178.200 to 178.245; HB 2960 (2015) [ORS 178.220 to 178.245]
Hist.:

Division 50 Distribution of Materials to Employees

- (1) At least 60 days before the Enrollment Date, the Plan will provide to a Participating Employer a set of informational materials about the Plan. The Plan will provide the materials to the Participating Employer by supplying the web location where such materials may be downloaded or, upon request of the Employer, will provide the materials in hard copy.
- (2) At least 30 days before an Employee's Enrollment Date, the Participating Employer will provide Eligible Employees with informational materials about the Plan as described immediately below.
- (3) The informational materials will include at least the following information, either directly or by supplying the Employee with the web location where the information may be found and instructions about how to obtain the information if the Employee does not have web access:
 - a. The benefits and risks associated with making contributions to the Plan;
 - b. Instructions for making contributions to the Plan, including the Standard Elections applicable if the Participating Employee does not opt for other elections;
 - c. How to opt out of the Plan;
 - d. How to participate in the Plan with a level of contributions other than the Standard Elections;
 - e. The process for withdrawal of retirement savings;
 - f. How to obtain additional information about the Plan, including the account fees charged by the Plan;
 - g. That employees seeking financial advice should contact financial advisers, that Participating Employers are not in a position to provide financial advice and that Participating Employers are not liable for decisions Employees make regarding the Plan;
 - h. That the Plan is not an employer-sponsored retirement plan; and
 - i. That the Plan accounts and rate of return are not guaranteed by the state, the Employer, or anyone else.
- (4) The Employer shall document that the informational materials were given to the Employee, which may consist of a notation in the Employer's records identifying the Employee and the date the materials were distributed. The Employer may request that the Employee acknowledge receipt of the informational materials but shall not request or require that the Employee take any additional steps, including returning any forms to the Employer.

Division 55 Technical Assistance to Employers

- (1) At least 30 days before the Enrollment Date, Participating Employers shall advise the Plan if they require technical assistance in completing Plan requirements.

**Division 60
Reserved**

**Division 65
Confidentiality**

Confidentiality. Individual account information may be disclosed by the Plan if the Participating Employee to whom the information pertains executes and delivers written consent to the Plan on a form provided by the Plan Administrator.

Written release. Unless otherwise required by the Oregon Public Records Law in ORS Chapter 192, the Plan must receive a signed release from the Participating Employee before the Plan may provide information pertaining to the Participating Employee's account(s), beneficiary designations, distributions, or other information contained in any draft or final court order on record to any person other than the parties to the court order. A written authorization to release information is valid indefinitely, unless a specific end date is provided in the written statement. The Plan will specify the form. Disclosure of aggregated data which does not include information identifying individual Participating Employees may be allowed for purposes of research associated with the Plan.

Subpoena. Unless otherwise required by the Oregon Public Records Law in ORS Chapter 192, a subpoena for information available from the Plan must be made out to the State of Oregon, Oregon Retirement Savings Plan. The Plan reserves the right to object to any subpoena on the grounds that the subpoena fails to provide a reasonable time for preparation and travel, is otherwise unreasonable or oppressive, or that service was improper, in addition to any other basis legally available. To facilitate prompt processing, copies of subpoenas should be served at the Office of the Oregon Treasurer. Faxed subpoenas are not acceptable.

Stat. Auth.: ORS 178.220

Stats. Implemented: ORS 178.200 to 178.245; HB 2960 (2015) [ORS 178.220 to 178.245]

Hist.: