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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 170
OREGON STATE TREASURY

FILED
08/31/2018 11:31 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Creates new rules and modifies existing rules for the Oregon Retirement Savings Program

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/21/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Kevin Willingham
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 09/18/2018

TIME: 9:00 AM - 11:00 AM

OFFICER: Kimberly Olson

ADDRESS: Oregon State Treasury -
Tigard Office
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Tigard, OR 97224

NEED FOR THE RULE(S):

NOTICE: This is an amended Notice filing to more fully explain the Cost of Compliance, and to change the rule title of OAR 170-080-0036. Both the original filing and this filing appear in the Oregon Bulletin. You may disregard the other filing.

These revisions are necessary to make certain adjustments and additions to the existing rules. The rules add new program features, including Traditional IRA accounts, expedited automatic enrollment, and an "opt-in" mechanism for the program. They also provide needed clarity on definitions, the distribution of materials to employees, account withdrawals, rollovers and transfers, closures, abandonment, and terminating program participation by becoming an exempt employer.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- 1) Rulemaking advisory committee materials, available here: <http://www.oregon.gov/retire/Pages/Rules.aspx>
- 2) Oregon Market Research Report, Center for Retirement Research at Boston College, July 2016. <http://www.oregon.gov/treasury/ORSP/Documents/ORSP%20Market%20Analysis%2013JULY2016.pdf>
- 3) Oregon Retirement Savings Plan website. <https://www.oregonsaves.com/>
- 4) Oregon Retirement Savings Board website. <http://www.oregon.gov/retire/Pages/index.aspx>

FISCAL AND ECONOMIC IMPACT:

The Program convened a rulemaking advisory committee to discuss the fiscal impacts of the proposed rules. The committee agreed that the current structure of the Program minimizes costs to small businesses. In several cases, the committee agreed that the rule revisions could reduce costs to small businesses by adding flexibility to the program (for example, permitting the Program Administrator to allow employers to register at a later date due to a business-related concern, or allowing the employer and employee to expedite enrollment into the program).

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The Program will have no impact on most state agencies; however, there is a financial impact to OST to administer the Program. These costs have been addressed through legislative appropriations in 2015 and 2017. The Program is authorized to collect a fee on Program assets to pay for administrative costs.

(2) (a) There are approximately 53,000 small businesses in Oregon that will be subject to the rules.

(2) (b) Every Oregon employer will either register and enroll its employees, or file a Certificate of Exemption, if applicable. Oregon employers are estimated to spend an aggregate 4-5 hours on these activities at the outset, plus a small number of minutes per employee. On an ongoing basis, it is estimated that employers will spend about 30 minutes per pay period including the Program deduction in their payroll activity, and about an hour per month on records retention and any other potential activities related to the Program.

2 (c) Additional equipment or supplies are not necessary to comply with this statute or rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The proposed rules were drafted with the assistance of a rulemaking advisory committee comprised of small business owners and owners of businesses directly affected by the rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

170-080-0010, 170-080-0015, 170-080-0025, 170-080-0030, 170-080-0035, 170-080-0036, 170-080-0040, 170-080-0045, 170-080-0050, 170-080-0055, 170-080-0056, 170-080-0057, 170-080-0058, 170-080-0061, 170-080-0062, 170-080-0065

AMEND: 170-080-0010

RULE SUMMARY: Creates new definitions for "Automatic Investment Plan," "Participating Individual," and "Traditional IRA." Clarifies elements of other definitions, including the definition of "Qualified Plan."

CHANGES TO RULE:

170-080-0010

Administration ¶

(1) Policy. The Board intends that, consistent with ORS Section 178.210(1)(p), the Program be operated, and these rules be construed, in a manner consistent with applicable guidance provided by the U.S. Department of Labor relating to payroll deduction IRA programs that are not pension plans under Title I of the Employee Retirement Income Security Act (ERISA) including, but not limited to, 29 CFR Sections 2509.99-1, 2510.3-2(d). ¶

(2) Definitions. All capitalized terms used in these rules shall be 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: ¶

(a) "Act" means ORS 178.200 to 178.245, as amended from time to time. ¶

(b) "Automatic Investment Plan" means a program by which a Participating Individual contributes funds to a Program Roth or Traditional IRA at regular intervals through electronic transmission. ¶

(c) "Beneficiary" means the individual(s), person(s), or entity(ies) entitled to receive the proceeds of an ~~individual retirement account~~ (Program IRA). ¶

(d) "Board" means the Oregon Retirement Savings Board established in ORS 178.200(1). ¶

(e) "Certificate of Exemption" means a truthful statement by an authorized representative of an Employer that it offers a Qualified Plan to some or all of its Employees. ¶

(f) "Client Employer" means a client of a Worker Leasing Company that obtains services of Leased Workers as defined in OAR 436-050-0005. ¶

(g) "Code" means the Internal Revenue Code and any regulations, rulings, announcements, or other guidance issued thereunder, as amended. ¶

(h) "Compensation" means W-2 wages, as defined in 26 CFR 1.415(c)-2(d)(4). ¶

(i) "Distribution" means any distribution of funds from an ~~individual retirement account~~ (IRA) established pursuant to the Program. ¶

(j) "Employee" means any person 18 years of age and older working in an Employment, as defined herein. ¶

(k) "Employer" means any employing unit which employs one or more individuals in an Employment 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. ¶

(l) "Employer of Record" means the business associated with the Business Identification Number (BIN), or if unavailable, the Federal Employer Identification Number (FEIN), listed on an Employee's or Participating Employee's W-2. ¶

(m) "Employment" means any employment subject to ORS Chapter 657 provided that, notwithstanding the exemptions from the definition of Employment contained in Chapter 657, for the purposes of the Program, Employment includes: ¶

(A) Agricultural labor, as defined in ORS 657.045; and ¶

(B) Commissioned positions, as defined in ORS 657.085, 657.087(1) and (2), and 657.090. ¶

(n) "Enrollment Date" means either: ¶

(A) ~~the~~ Initial Enrollment Date, for Participating Employees hired on or before the Facilitating Employer's required Registration Date; or ¶

(B) A date not more than 60 days following start of employment, for Participating Employees hired after the Facilitating Employer's required Registration Date. ¶

(o) "Executive Director" means the Executive Director of the Oregon ~~Retirement Savings Program~~ Program Network. ¶

(p) "Exempt Employer" means an Employer who has filed a valid and current Certificate of Exemption pursuant to procedures established by the Board. ¶

(q) "Facilitating Employer" means an Employer whose Registration Date has passed and who is not an Exempt Employer. ¶

(r) "Initial Enrollment Date" means the date not more than 60 days after the Facilitating Employer's required Registration Date, by which a Facilitating Employer must initially enroll its Participating Employees. ¶

(s) "~~Individual Retirement Account~~ or "IRA" means the individual retirement account established by a

Participating Individual or for a Participating Employee under the Program.¶

(~~st~~) "IRS" means the Internal Revenue Service of the United States Treasury Department.¶

(~~tu~~) "Non-Payroll Contributions" means contributions other than Payroll Deduction Contributions, rollover contributions, or transfer contributions.¶

(~~uv~~) "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, in accordance with OAR 170-080-0015.¶

(~~vw~~) "Participating Employee" means any ~~person~~ Employee who has established (or has had established on their behalf) and maintains a Program IRA.¶

(~~wx~~) "Participating Individual" means an individual who is enrolled in the Program independent of a Facilitating Employer, in accordance with OAR 170-080-0056.¶

(~~y~~) "Payroll Date" means the date that an Employee's Compensation is paid to the Employee by the Employer through the payment of cash, issuance of a check, electronic funds transfer or other method.¶

(~~xz~~) "Payroll Deduction Contributions"-means contributions made by a Participating Employee or Participating Individual pursuant to a payroll deduction. ¶

(~~yaa~~) "Program" means the Oregon Retirement Savings Program established by the Board pursuant to ORS 178.205(1).¶

(~~zbb~~) "Program Administrator" means a third party administrator chosen by the Board to assist in carrying out the requirements of the Act.¶

(~~aacc~~) "Qualified Plan" means a retirement plan ~~tax~~-qualified under the Code, section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p), ~~section 413(c), section 414(f),~~ or a governmental plan qualified under section 457(b) of the Code. For purposes of this rule, a payroll deduction IRA program as defined in 29 CFR 2510.3-2(d) is not a Qualified Plan.¶

(~~bddd~~) "Registration Date" means, for each Employer, the date by which the Employer is required to register with the Program or file a Certificate of Exemption, in accordance with ~~Rule~~ OAR 170-080-0015.¶

(~~eeee~~) "Roth IRA" means-an individual retirement account as defined in ~~the~~ Code section 408A.¶

(~~edff~~) "Standard Elections" means the default Program elections applicable to a Participating Employee who has not opted for different elections, as specified in ~~Rule~~ OAR 170-080-0030.¶

(~~eegg~~) "Target Date Fund" means a professionally-managed fund containing a mix of investments that invests based on the employee's age and/or projected retirement date.¶

(~~ffhh~~) "Traditional IRA" means an individual retirement account as defined in Code section 408.¶

(~~ii~~) "Worker Leasing Company" (also known as a Professional Employer Organization or PEO) means a person who provides workers, by contract and for a fee, to work for a client and is licensed as a Worker Leasing Company by the Oregon Department of Consumer and Business Services.

Statutory/Other Authority: ORS 178.200-178.245

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0015

RULE SUMMARY: Provides flexibility for the Program Administrator to allow exceptions to the Employer Registration Date for the Program. Clarifies which Oregon Quarterly Tax Report Employers will use to determine their Registration Date for the Program and provides flexibility for the Program Administrator to allow exceptions for valid business reasons. Removes language on the Initial Enrollment Date from (1)(f) and inserts language in (2)(a). Removes statement that a Facilitating Employer without access to the internet may only register with the Program within 30 days of their required Registration Date. Allows Employee and Facilitating Employer to agree to expedited automatic enrollment in the Program.

CHANGES TO RULE:

170-080-0015

Employer Registration and Employee Enrollment

(1) Registration

(a) On or before the Registration Date, each Employer shall register with the Program or file a Certificate of Exemption.

(b) Unless otherwise permitted by the Program Administrator, the Registration Date for an Employer shall be as follows:

(A) An Employer employing one hundred (100) or more Employees: November 15, 2017

(B) An Employer employing at least fifty (50) but no more than ninety-nine (99) Employees: May 15, 2018

(C) An Employer employing at least twenty (20) but no more than forty-nine (49) Employees: December 15, 2018

(D) An Employer employing at least ten (10) but no more than nineteen (19) Employees: May 15, 2019

(E) An Employer employing at least five (5) but no more than nine (9) Employees: November 15, 2019

(F) Client Employers, as defined in 170-080-0010: November 15, 2019

(G) An Employer employing four (4) or fewer Employees: May 15, 2020

(c) In determining the Number of Employees for the purposes of this section, Employers shall use data as submitted on the ~~most recently filed~~ 2016 4th quarter Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance, except under the following circumstances:

(A) An Employers with no Employees reported on Form OQ: Number of covered workho first meets the definition of Employer after January 1, 2017 will use the number of employees submitted on the Employer's for Unemployment Insurance will have a Registration Date of May 15, 2020: most recently filed Form OQ;

(B) An Employer with no Employees reported on Form OQ will have a Registration Date of May 15, 2020; or

(C) At the Program Administrator's discretion, an Employer with a valid business reason may use data from a more recent Form OQ.

(d) To register with the Program, a Facilitating Employer shall use the internet portal established by the Program Administrator to provide the following information:

(A) Employer name and assumed business name, if any;

(B) Employer Identification Numbers (Federal Employer Identification Number and Business Identification Number);

(C) Employer mailing address;

(D) Name, title, telephone number and email address of an individual designated by the Employer as the Program's point of contact;

(E) Number of Employees; and

(F) Any other information reasonably required by the Program for the purposes of administering the Program.

(e) New Employers: the Registration Date for an Employer who first meets the definition of Employer after July 1, 2017, shall be the later of:

(A) The date specified in subsection ~~(21)~~(b) above, or

(B) 90 days after the Employer first meets the definition of Employer.

~~(f) The Initial Enrollment Date for each Facilitating Employer shall be a date that is not more than 60 days after the Employer's required Registration Date.~~

~~(g) A Facilitating Employer who lacks access to the internet may register with the Program by alternate means established by the Program Administrator, but no earlier than 30 days in advance of the Facilitating Employer's required Registration Date.~~

~~(2) Enrollment.~~

(2) Employee Enrollment through a Facilitating Employer

(a) On or before the Initial Enrollment Date, and on or before the Enrollment Date for each subsequently hired Employee, a Facilitating Employer shall enroll its Employees using the Program Administrator's internet portal or other means of data transmittal specified and validated by the Program Administrator. For each Employee, the Facilitating Employer shall provide the following information no more than 30 days after the Registration Date or no more than 30 days following the start of employment for subsequent hires:

(A) Full legal name;

(B) Social security number or taxpayer ID number;

(C) Date of birth;

(D) Mailing address;

(E) Employee's designated email address; and

(F) Any other information reasonably required by the Program for the purposes of administering the Program.

(b) In order to allow for Employees to establish an IRA through an automatic enrollment process, the Board shall establish procedures with the ~~Plan~~Program Administrator for the execution or adoption of such documents as are necessary or appropriate to establish an IRA for such Employee. If the Employee has not opted out after notice ~~and an~~of the opportunity to opt out ~~has been sent to the Employee using the contact information on file with the Program, and the opt-out period has lapsed, then~~ an IRA will be established for such Employee pursuant to directives and procedures established by the Board.

(c) Automatic Employee enrollment occurs 30 days after the Facilitating Employer provides the information in OAR 170-080-0015(2)(a), unless the Employee and Facilitating Employer agree to an earlier date.

Statutory/Other Authority: ORS 178.200-178.245

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0025

RULE SUMMARY: Added punctuation.

CHANGES TO RULE:

170-080-0025

Responsibilities in Joint or Co-employment Circumstances ¶¶

(1) With respect to any Employee or Participating Employee in a joint or co-employment relationship, except as provided in subsection 2, the terms "Employer" and "Facilitating Employer" shall mean the Employer of Record. ¶¶

(2) With respect to any Employee or Participating Employee provided by a Worker Leasing Company, who is not provided on a temporary basis, as described in OAR 436-050-0420, the term "Employer" and "Facilitating Employer" shall mean the Client Employer. ¶¶

(3) Notwithstanding the foregoing, with respect to any Employee or Participating Employee of a Worker Leasing Company who is not a Leased Worker as defined in OAR 436-050-0005, the terms "Employer" and "Facilitating Employer" shall mean the Worker Leasing Company. ¶¶

(4) Nothing in this rule shall prohibit a Worker Leasing Company and a Client Employer from entering into an agreement under which the Worker Leasing Company may assist the Client Employer in the performance of some or all of the Client Employer's responsibilities under these rules.

Statutory/Other Authority: ORS 178.200 to 178.245

Statutes/Other Implemented: ORS 178.200 to 178.245

AMEND: 170-080-0030

RULE SUMMARY: Adds a Traditional IRA as an alternate election in the Program and explains that the Facilitating Employer will process Traditional IRA contributions on a post-tax basis.

CHANGES TO RULE:

170-080-0030

Standard and Alternate Elections for Contributions; Automatic Increases; Ceasing Contributions; Requesting Participation ¶

(1) Standard Elections:¶

(a) An Employee who has not provided notice as specified in this section shall participate using the following Standard Elections:¶

(aA) Contribution to the Program at an initial rate of 5% of Compensation;¶

(aB) Auto-escalation at the rate of an additional 1% of Compensation each year until a maximum of 10% is reached;¶

(aC) Investments:¶

(A) The first \$1,000 in contributions to be invested in a capital preservation investment as selected by the Board;¶

(B) All subsequent contributions to be invested in a Target Date Fund; and¶

(D) The Program account will be a Roth IRA and contributions will occur on a post-tax basis.¶

(2) Alternate Elections¶

(a) An Employee who does not wish to participate using the Standard Elections shall notify the Facilitating Employer, in a form or format established by the Program, and within the 30 days of enrollment in the Program prior to their Enrollment Date, that:¶

(A) The Employee wishes to participate in the Program:¶

(i) At an initial contribution rate different from the Standard Elections, which shall be a percentage of available Compensation expressed as any whole number (i.e. three (3) percent but not three and one-half (3.5) percent). The minimum contribution rate is 1% and the maximum contribution rate is 100% of available Compensation, up to the IRS annual contribution limits; or¶

(ii) At an initial contribution rate different from the Standard Elections, expressed as a specific whole dollar amount. The minimum contribution rate is \$1.00 and maximum contribution rate is 100% of available Compensation, up to the IRS annual contribution limits; or ¶

(iii) At an initial contribution rate consistent with the Standard Elections but without auto-escalation; or ¶

(iv) At an initial contribution rate different from the Standard Elections and without auto-escalation.¶

(B) The Employee ~~does not wish to participate and~~ is opting out of the Program.¶

(b) A Participating Employee may change contribution elections by notifying the Facilitating Employer of the change request, in a form or format established by the Program. This change shall be effected on the Participating Employee's payroll as soon as administratively practicable, but within 30 days of receipt of a notice of change. Employers may limit the processing of contribution election changes to one change per month per Participating Employee.¶

(c) An Employee who wishes to select an investment option other than that provided by the Standard Elections shall notify the Program Administrator, in a form or format established by the Program, that the Employee wishes to participate in the Program by investing future contributions directly into another fund or funds offered by the Program, which selection shall be effected as soon as administratively practicable.¶

(d) A Participating Employee may change investment elections for any portion of the balance of the Program by notifying the Program Administrator of a requested change in investment elections, either in writing, electronically, or in any other form permitted by the IRS, to be effected as soon as administratively possible.¶

(e) An Employee who wishes to select a Traditional IRA shall notify the Program Administrator, in a form or format established by the Program, that the Employee wishes to participate using a Program Traditional IRA. ¶

(f) The Facilitating Employer will process Program Traditional IRA contributions on a post-tax basis.

(3) Ceasing Contributions or Requesting Participation

(a) A Participating Employee may cease contributions to the Program by notifying the Facilitating Employer of intent to cease making contributions and revoking the authorization of the Facilitating Employer to make contributions on their behalf. The Participating Employee will give notice of this revocation, in a form or format established by the Program, to the Facilitating Employer at least 30 days before the effective date.

(b) An Employee of a Facilitating Employer who initially opted out of participation in the Program may become a Participating Employee by completing and delivering, in a form or format established by the Program, instructions to initiate participation to the Facilitating Employer. The request shall be effective on the Employee's payroll following notification as soon as administratively practicable, not to exceed 30 days.

Statutory/Other Authority: ORS 178.200 to 178.245

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0035

RULE SUMMARY: Added rule number for clarity.

CHANGES TO RULE:

170-080-0035

Contributions ¶¶

(1) Beginning 30 days following the Enrollment Date, and in accordance with a Participating Employee's election under OAR 170-080-0030, the Facilitating Employer shall, on each Payroll Date, transfer from the Participating Employee's Compensation for contribution to the Participating Employee's IRA:¶¶

(a) 5% of Compensation; or¶¶

(b) The Participating Employee's elected contribution rate, if different from the Standard Elections; or¶¶

(c) The auto-escalated percentage of Compensation for that Participating Employee.¶¶

(2) Notwithstanding subsection (1), amounts deducted by the Facilitating Employer pursuant to this Rule shall not exceed the amount of the Participating Employee's Compensation remaining after any payroll deductions required by law to have higher precedence, including a court order, are made by the Facilitating Employer.¶¶

(3) Amounts deducted by the Facilitating Employer pursuant to this rule shall be transmitted to the Program Administrator as specified by the Program, as soon as administratively possible, not to exceed seven (7) business days from the date of deduction. Failure to transmit the amount as required constitutes an unlawful deduction under ORS 652.610(4).¶¶

(4) Beginning January 1, 2019, the Facilitating Employer shall increase the deduction specified in subsection (1) of this Rule for each Participating Employee who has not opted out of auto-escalation:¶¶

(a) For a Participating Employee who elected a percentage of available Compensation, the Facilitating Employer shall increase the amount by an additional 1% of Compensation per year until the total deduction has reached 10% of Compensation. ¶¶

(b) For a Participating Employee who elected an initial contribution rate expressed as a specific dollar amount, the Facilitating Employer shall increase the amount using a schedule or rate established by the Board. ¶¶

(5) Auto-escalation will occur on January 1 each year for Participating Employees who:¶¶

(a) Are contributing less than 10% of Compensation; and¶¶

(b) Have been enrolled in the Program for a period greater than 180 calendar days.

Statutory/Other Authority: ORS 178.200 to 178.245

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0036

RULE SUMMARY: Added reference to Participating Individual.

CHANGES TO RULE:

170-080-0036

~~Non-Payroll Contributions for Participating Employees~~

Any Participating Employee or Participating Individual may choose to make Non-Payroll Contributions to the Program. Such contributions must not exceed, in combination with Payroll Deduction Contributions, the annual IRA contribution limit as determined by the ~~Internal Revenue Code~~ and related rules promulgated by the IRS, and must be delivered to the OregonSaves IRA trustee in accordance with procedures determined by the Board and approved by the ~~Plan~~Program Administrator.

Statutory/Other Authority: ORS 178.200 to 178.245

Statutes/Other Implemented: ORS 178.200 to 178.245

AMEND: 170-080-0040

RULE SUMMARY: Added references to Participating Individuals, Beneficiaries, and Traditional IRAs. Added that Program IRA Distributions may be subject to penalties under the Internal Revenue Code.

CHANGES TO RULE:

170-080-0040

Distributions and Distribution Requests ¶

(1) A Participating Employee, Participating Individual, or Beneficiary may request a Distribution of funds from an IRA Program Roth or Traditional IRA at any time by submitting a completed distribution request to the Program Administrator, in a form or format established by the Program. ¶

(2) An Program IRA Distribution shall be subject to any applicable state and federal income tax obligations and may be subject to penalties under the Code.

Statutory/Other Authority: ORS 178.215(7)

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0045

RULE SUMMARY: Added reference to Participating Individual.

CHANGES TO RULE:

170-080-0045

Program Administration Fees and Expenses ¶

(1) The Board will charge each IRA a Program administrative fee not to exceed the rate of 1.05% per annum, to defray the costs of operating the Program, including internal and external administration, and operational and investment costs, including for professional investment management services. ¶

(2) The Board will from time to time review, adjust, and notify Participating Employees and Participating Individuals of changes to Program Administration fees.

Statutory/Other Authority: ORS 178.225

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0050

RULE SUMMARY: Added rule numbers for clarity.

CHANGES TO RULE:

170-080-0050

Employer Guidelines ¶

(1) Facilitating Employers shall: ¶

(a) Collect contributions and remit those amounts promptly to the Program Administrator or its designee; ¶

(b) Provide information to the Program Administrator, as described in ~~Rules 0015,~~ OARs 170-080-0015, 170-080-0020, and 170-080-0030; ¶

(c) Retain the notice of any Employee elections or election changes pursuant to any action defined in ~~Rule OAR~~ 170-080-0030 for a period not less than three (3) years from the date of the notice. Facilitating Employers may choose to comply with this requirement by allowing the Program Administrator to maintain such documentation on their behalf, either electronically, or in any other medium allowable under applicable law; ¶

(d) Record the Participating Employee's elections and election changes in its payroll system in a manner that enables the Facilitating Employer to make accurate deductions from the Participating Employee's paycheck; and ¶

(e) Make clear that the Facilitating Employer's involvement in the Program is limited to collecting contributions and remitting them to the Program Administrator or its designee, and that the Facilitating Employer does not provide any additional benefit or promise any particular investment return on Employee savings. ¶

(2) Facilitating Employers shall not: ¶

(a) Contribute to the Program; ¶

(b) Endorse or disparage the Program; and ¶

(c) Execute any discretionary authority, control, or responsibility with respect to the Program. ¶

(3) Facilitating Employers may, if they choose: ¶

(a) Provide additional general information and other educational materials that explain the advisability of retirement savings, including the advantages of contributing to an IRA; and ¶

(b) Answer Employee inquiries about the mechanics of the IRA payroll deduction. ¶

(4) Facilitating Employers should refer other inquiries to the Program Administrator or as otherwise directed by the Board.

Statutory/Other Authority: ORS 178.200-178.245

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0055

RULE SUMMARY: Eliminated language requiring the Facilitating Employer to provide and document the provision of informational materials to Employees on behalf of the Program Administrator. Added language that the Program Administrator will distribute informational materials directly to Employees after the Facilitating Employer submits Employee information to the Program Administrator. Added language that the Facilitating Employer will provide the Employee a set of hard copy materials or supply the internet address where the materials may be accessed, upon the request of the Employee. Adds that information about the Traditional IRA will be included in the informational materials distributed by the Program Administrator.

CHANGES TO RULE:

170-080-0055

Distribution of Materials to Employees ¶¶

~~(1) After the Facilitating Employer submits the Employee information in accordance with OAR 170-080-0015(2)(a), the Program Administrator will distribute informational materials directly to Employees. The Program Administrator will provide a Facilitating Employer a set of informational materials about the Program upon completion of the Facilitating Employer's registration in the online portal. The Program Administrator will provide the materials to the Facilitating Employer by supplying the internet location address where such materials may be downloaded accessed or, upon request of the Facilitating Employer, will provide the materials in hard copy form.¶¶~~

~~(2) Upon request of the Employee, the Facilitating Employer will provide the Employee a set of hard copy materials or supply the internet address where such materials may be accessed. The Facilitating Employer will provide the materials in the manner requested by the Employee.¶¶~~

~~(3) The informational materials will include the following information:¶¶~~

~~(a) The benefits and risks associated with making contributions to a Program IRA;¶¶~~

~~(b) Instructions describing how to make contributions to the Program, including the Standard Elections applicable if the Participating Employee does not make other elections;¶¶~~

~~(c) A description of the other elections available under the Program, including how to opt out of the Program;¶¶~~

~~(d) Investment alternatives available under the Program and instructions describing how to make or change an investment election;¶¶~~

~~(e) The process for requesting a Distribution of retirement savings from the Program;¶¶~~

~~(f) How to obtain additional information about the Program, including the fees associated with the Program;¶¶~~

~~(g) That the Facilitating Employer does not endorse or recommend the Program;¶¶~~

~~(h) That Employees and Participating Employees seeking financial advice should contact financial advisers, that Facilitating Employers are not in a position to provide financial advice, and that Facilitating Employers are not liable for decisions Employees and Participating Employees make regarding the Program;¶¶~~

~~(i) That the Program is not an employer-sponsored retirement plan;¶¶~~

~~(j) That Employee participation in the Program is completely voluntary;¶¶~~

~~(k) That information on IRAs outside of the Program is available from other sources;¶¶~~

~~(l) That neither the value of a Program IRA, nor the rate of return are guaranteed by the state, the Facilitating Employer, or anyone else; and¶¶~~

~~(m) That by sStandard eElection, contributions under the Program are made to a Roth IRA, and that a Roth IRA may not be appropriate for all individuals.¶¶~~

~~(3) At least 30 days before the Initial Enrollment Date, the Facilitating Employer will provide each of its Employees with the informational materials provided by the Program Administrator.¶¶~~

~~(4) For subsequently hired Employees, within 30 days of hire, the Facilitating Employer shall provide the informational materials provided by the Program Administrator.¶¶~~

~~(5) Facilitating Employers shall provide informational materials either directly, or by supplying the Employee with the internet location where the information may be found, along with Board-provided instructions about how to~~

obtain the information if the Employee does not have internet access.¶¶

(6) The Facilitating Employer shall document that the informational materials were given to the Employee. Documentation may consist of a notation in the Facilitating Employer's records identifying the Employee and the date the materials were distributed. Facilitating Employers may choose to comply with the requirement to document the delivery of informational materials to Employees if the Program Administrator maintains such documentation on their behalf, either electronically or in any other medium allowable under applicable law. The Facilitating 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 Facilitating Employer.¶¶

(7) Notwithstanding anything in this Rule to the contrary, where the Facilitating Employer timely provides the Program Administrator with the contact information (e.g., designated email address(es)) of Participating Employees, the Facilitating Employer may choose to satisfy its obligations to provide the informational materials to Participating Employees by allowing the Program Administrator to do so on its behalf. Delivery by the Program Administrator must be at such time and in such manner as is otherwise specified in this Rule; and ¶¶

(n) That the Program has a Traditional IRA option and summarizing the tax implications, withdrawal penalties, conversion details, and enrollment process for a Traditional IRA.

Statutory/Other Authority: ORS 178.200-178.245

Statutes/Other Implemented: ORS 178.200-178.245

ADOPT: 170-080-0056

RULE SUMMARY: Creates an "opt-in" mechanism for the Program and describes how individuals who do not work for a Facilitating Employer may participate in the Program. Requires Participating Individuals to establish an Automatic Investment Plan or make a minimum initial contribution. Describes role of the Program Administrator in establishing the minimum contribution rate. States that the Board will establish a default set of elections for Participating Individuals.

CHANGES TO RULE:

170-080-0056

Individual Participation

- (1) An individual who is 18 years of age and older and is eligible to contribute to an IRA under the Code may choose to participate in the Program as a Participating Individual.¶
- (2) An individual may become a Participating Individual by completing and delivering, in a form or format established by the Program, instructions to initiate participation to the Program Administrator. ¶
- (3) A Participating Individual who works for an Exempt Employer will make Non-Payroll Contributions unless the Exempt Employer agrees to process Payroll Deduction Contributions. ¶
- (4) Participating Individuals are required to establish an Automatic Investment Plan using either Non-Payroll Contributions or Payroll Deduction Contributions, or to make a minimum initial contribution as required by the Program Administrator. ¶
- (5) The Program Administrator will establish the minimum contribution rate for a Participating Individual through an Automatic Investment Plan.¶
- (6) A Participating Individual with an Automatic Investment Plan may make additional Non-Payroll Contributions to a Program IRA.¶
- (7) The Program Administrator may require a higher minimum contribution amount for single contributions not made through an Automatic Investment Plan.¶
- (8) The Participating Individual is responsible for ensuring that annual contributions do not exceed the annual IRA contribution limit as determined by the Code and related rules promulgated by the IRS. Contributions must be delivered to the OregonSaves IRA trustee in accordance with procedures determined by the Board and approved by the Program Administrator. ¶
- (9) The Board will establish a default election for Participating Individuals.

Statutory/Other Authority: ORS 178.200-178-245

Statutes/Other Implemented: ORS 178.200-178-245

ADOPT: 170-080-0057

RULE SUMMARY: Describes how a Participating Employee, Participating Individual, or Beneficiary may roll over or transfer a Program IRA to a different retirement savings vehicle.

CHANGES TO RULE:

170-080-0057

Rollovers and Transfers

The Board shall establish procedures with the Program Administrator through which a Participating Employee, Participating Individual, or Beneficiary may roll over or transfer a Program IRA account to a different retirement savings vehicle in accordance with the Code. The Program may receive rollovers and transfers from other retirement savings vehicles in accordance with the Code.

Statutory/Other Authority: ORS 178.200-178.245

Statutes/Other Implemented: ORS 178.200-178.245

ADOPT: 170-080-0058

RULE SUMMARY: Describes how a Facilitating Employer who begins offering a Qualified Plan may terminate Facilitating Employer status and become an Exempt Employer. Creates requirements for the Facilitating Employer to notify the Program Administrator. Creates requirements for the Facilitating Employer and Program Administrator for the notification of Participating Employees.

CHANGES TO RULE:

170-080-0058

Termination of Facilitating Employer Status through Program Exemption

(1) A Facilitating Employer who begins offering a Qualified Plan must notify the Program Administrator at least 60 days prior to the cessation of Payroll Deduction Contributions.¶

(2) Accounts will remain in the Program after the Facilitating Employer certifies its exemption and Participating Employees may continue to make Contributions as Participating Individuals pursuant to OAR 170-080-0056.¶

(3) The Program Administrator will notify Participating Employees of the Facilitating Employer's termination of participation in the Program and provide further instructions for future interaction with their Program IRAs.¶

(4) The Facilitating Employer must inform Participating Employees of their intention to terminate participation in the Program at least 30 days prior to cessation of Payroll Deduction Contributions. The Program Administrator will provide hard copy informational materials to the Facilitating Employer for distribution to Participating Employees.

Statutory/Other Authority: ORS 178.200-178.245

Statutes/Other Implemented: ORS 178.200-178.245

ADOPT: 170-080-0061

RULE SUMMARY: Describes when a Program IRA may be closed by the Program Administrator.

CHANGES TO RULE:

170-080-0061

Account Closure

A Program IRA account may be closed by a process established by the Board if:

(1) No funds have been deposited into the account for at least 18 months; and

(2) All funds from the Participating Employee's or Participating Individual's account have been withdrawn pursuant to OAR 170-080-0057; or

(3) All funds from the Participating Employee's or Participating Individual's account have been rolled over or transferred pursuant to OAR 170-080-0058.

Statutory/Other Authority: ORS 178.200-178.245

Statutes/Other Implemented: ORS 178.200-178.245

ADOPT: 170-080-0062

RULE SUMMARY: Describes when a Program IRA will be presumed abandoned and how abandoned accounts will be turned over to unclaimed property.

CHANGES TO RULE:

170-080-0062

Abandoned Accounts

A Program IRA will be presumed abandoned according to the unclaimed property law of the state of the last known address of the Participating Employee or Participating Individual. If the last known address of the Participating Employee or Participating Individual is in Oregon, the provisions of the Uniform Disposition of Unclaimed Property shall apply (ORS 98.302 to 98.436). If there is no last known address of the Participating Employee or Participating Individual in the Program records, federal common law shall determine the state with the first priority claim.

Statutory/Other Authority: ORS 178.200-178.245

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0065

RULE SUMMARY: Added references to Participating Individuals and Beneficiaries.

CHANGES TO RULE:

170-080-0065

Confidentiality ¶¶

(1) Confidentiality. The Board will treat Individual IRA account information as confidential, including without limitation, names, addresses, telephone numbers, personal identification information, contributions, and earnings. ¶¶

(2) Written release. ¶¶

(a) The Board may disclose ~~an individual's Program~~ IRA account information to persons or entities other than those described in subsection (4) of this Rule if it receives a signed release from the Participating Employee or Participating Individual consenting to disclosure of some or all of the ~~individual's Program~~ IRA account information to a specific person or entity. For purposes of this paragraph, ~~"an individual's Program~~ IRA account information" includes information pertaining to: ¶¶

(A) ~~the Participating Employee's or Participating Individual's~~ IRA account; ¶¶

(B) Beneficiary designations; ¶¶

(C) Distributions; or ¶¶

(D) ~~Other~~ information contained in any draft court order. ¶¶

(b) A written authorization to release information is valid indefinitely, unless a specific end date is provided in the written statement. ¶¶

(3) Subpoena. A subpoena for information available from the Program must be made out to the State of Oregon, Oregon Retirement Savings Program. The Program 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 State Treasurer. Faxed subpoenas are not acceptable. ¶¶

(4) Disclosure. The Board may disclose anonymized data which does not include information that is identifiable to an individual Participating Employee, Participating Individual, Beneficiary, or Employer for purposes of research associated with the Program. The Board may disclose information that it is required to disclose under the Oregon Public Records Law. The Board may disclose ~~an individual's Program~~ IRA account information to the ~~Plan~~ Program Administrator, the providers of investments for the Program, regulatory agencies to the extent disclosure is required by law, and to other persons or entities to the extent the Board determines disclosure is necessary to administer the Program.

Statutory/Other Authority: ORS 178.220

Statutes/Other Implemented: ORS 178.200-178.245