

## OREGON RETIREMENT SAVINGS PROGRAM

### 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) “Beneficiary” means the individual(s), person(s), or entity(ies) entitled to receive the proceeds of an individual retirement account (IRA).
- (c) “Board” means the Oregon Retirement Savings Board established in ORS 178.200(1).
- (d) “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.
- (e) “Code” means the Internal Revenue Code and any regulations, rulings, announcements, or other guidance issued thereunder, as amended.
- (f) “Compensation” means W-2 wages, as defined in 26 CFR 1.415(c)-2(d)(4).
- (g) “Distribution” means any distribution of funds from an individual retirement account (IRA) established pursuant to the Program.
- (h) “Employee” means any person 18 years of age and older working in an Employment, as defined herein.
- (i) “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.
- (j) “Employer of Record” means the business associated with the Business Identification Number (BIN) listed on an Employee’s or Participating Employee’s W-2.
- ~~(k)~~ “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.
- ~~(l)~~ “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.
- (m) “Executive Director” means the Executive Director of the Oregon Retirement Savings Program.

~~(n)~~ “Exempt Employer” means an Employer who has filed a valid and current Certificate of Exemption pursuant to procedures established by the Board.

~~(om)~~ “Facilitating Employer” means an Employer whose Registration Date has passed and who is not an Exempt Employer.

~~(pn)~~ “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.

~~(qe)~~ “Individual Retirement Account” or “IRA” means the individual retirement account established by or for a Participating Employee under the Program.

~~(rp)~~ “IRS” means the Internal Revenue Service of the United States Treasury Department.

~~(s)~~ “Non-Payroll Contributions” means contributions other than Payroll Deduction Contributions, rollover contributions, or transfer contributions.

~~(t)~~ “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.

~~(uq)~~ “Participating Employee” means any person who has established (or has had established on their behalf) and maintains a Program IRA.

~~(vf)~~ “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.

~~(w)~~ “Payroll Deduction Contributions” means contributions made at the election of a Participant or pursuant to automatic Payroll Deduction Contribution enrollment, in lieu of cash compensation.

~~(xs)~~ “Program” means the Oregon Retirement Savings Program established by the Board pursuant to ORS 178.205(1).

~~(yf)~~ “Program Administrator” means a third party administrator chosen by the Board to assist in carrying out the requirements of the Act.

~~(zh)~~ “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) or a governmental plan under section 457(b). For purposes of this rule, a payroll deduction IRA program as defined in 29 CFR 2510.3-2(d) is not a Qualified Plan.

~~(aa\*)~~ “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 0015.

~~(bb\*)~~ “Roth IRA” means an individual retirement account as defined in the Code section 408(A).

~~(cc\*)~~ “Standard Elections” means the default Program elections applicable to a Participating Employee who has not opted for different elections, as specified in Rule 0030.

~~(ddy)~~ “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.

~~(ee)~~ “Temporary basis” means providing workers to a client for special situations such as to cover employee absences, employee leaves, professional skill shortages, seasonal workloads and special assignments and projects with the expectation that the position or positions will be terminated upon completion of the special situation. Workers also are

provided on a temporary basis if they are provided as probationary new hires with a reasonable expectation of transitioning to permanent employment with the client and the client uses a pre-established probationary period in its overall employment selection program

(ff) “Temporary Service Provider” means a person who provides workers, by contract and for a fee, to a client on a temporary basis.

(gg) “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 but does not include a person who provides workers to a client on a temporary basis.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **170-080-0011**

#### **Executive Director**

The Executive Director is responsible for the day-to-day operations of the Program and for carrying out such duties and responsibilities as assigned by the Board.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200to 178.245

Hist:

### **170-080-0015**

#### **Employer Registration and Enrollment**

##### **(1) Registration**

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

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

(c) 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. Employers with no Employees reported on Form OQ: Number of covered workers for Unemployment Insurance will have a Registration Date of May 15, 2020.

(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 (2) 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**

- (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:
- (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 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 established an IRA after notice and an opportunity to opt out has been sent to the Employee using the contact information on file with the Program, an IRA will be established for such Employee pursuant to directives and procedures established by the Board.
- (c) An Employee has 30 days from the Enrollment Date to select alternate elections for contributions or opt-out of the Program. Facilitating Employers shall begin Payroll Deduction Contributions for Participating Employees on the first Payroll Date after the 30-day period has expired.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

## 170-080-0025

### ~~Joint Employment, Co-Employment, and Tri-Party Employment Circumstances~~ Responsibilities in Joint or Co-employment Circumstances

With respect to any Employee or Participating Employee in a joint or co-employment relationship including a Worker Leasing Company or Temporary Service Provider, the terms “Employer” and “Facilitating Employer” shall mean the Employer of Record.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

Reserved

## 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 be enrolled using the following Standard Elections:
- (A) Contribution to the Program at an initial rate of 5% of Compensation;
  - (B) Auto-escalation at the rate of an additional 1% of Compensation each year until a maximum of 10% is reached;
  - (C) Investments:
    - (i) The first \$1,000 in contributions to be invested in a capital preservation investment as selected by the Board;
    - (ii) 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 enroll using the Standard Elections shall notify the Facilitating Employer, in a form or format established by the Program, and within 30 days of ~~receipt of the informational materials provided by the Facilitating Employer~~ enrollment in the Program, 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.

(ba) After enrollment, 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.

(cb) 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.

(de) After enrollment, 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.

### **(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.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **170-080-0035**

#### **Contributions**

(1) On each Payroll Date following the Enrollment Date, and in accordance with a Participating Employee's election, the Facilitating Employer shall 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 for each Participating Employee who had not opted out of auto-escalation.

(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.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **170-080-0036**

#### **Non-Payroll Contributions for Participating Employees**

Any Participating Employee may choose to make Non-Payroll Contributions to the Program in any uniform and nondiscriminatory manner determined by the Board and acceptable to the Plan Administrator. 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 Administrator.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **170-080-0055**

#### **Distribution of Materials to Employees**

(1) ~~At least 60 days before the Initial Enrollment Date,~~ 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 where such materials may be downloaded or, upon request of the Facilitating Employer, will provide the materials in hard copy form.

- (2) 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 standard election, 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.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

## **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 Individual 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 consenting to disclosure of some or all of the Individual IRA account information to a specific person or entity. For purposes of this paragraph Individual IRA account information includes information pertaining to:

(A) the Participating Employee'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 ~~aggregated~~ anonymized data which does not include information that is identifiable to an individual Participating Employee 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 Individual IRA account information to the Plan 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.

Stat. Auth.: ORS 178.220

Stats. Implemented: ORS 178.200 to 178.245

Hist.: