

## 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) “Automatic Investment Plan” means a program that allows a Participating Individual to contribute funds to a Program Roth or Traditional individual retirement account (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 (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 Savings 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.
- (t) “IRS” means the Internal Revenue Service of the United States Treasury Department.
- (u) “Non-Payroll Contributions” means contributions other than Payroll Deduction Contributions, rollover contributions, or transfer contributions.
- (v) “Number of Employees” means the number of employees as submitted on the Employer’s Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance, in accordance with 170-080-0015.
- (w) “Participating Employee” means any person who has established (or has had established on their behalf) and maintains a Program IRA.
- (x) “Participating Individual” means an individual who is enrolled in the Program independent of an employment relationship, in accordance with 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.
- (z) “Payroll Deduction Contributions” means contributions made by a Participating Employee or Participating Individual pursuant to a payroll deduction.
- (aa) “Program” means the Oregon Retirement Savings Program established by the Board pursuant to ORS 178.205(1).
- (bb) “Program Administrator” means a third party administrator chosen by the Board to assist in carrying out the requirements of the Act.
- (cc) “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), including multiemployer plans, or multiple employer plans (MEPs). For purposes of this rule, a payroll deduction IRA program as defined in 29 CFR 2510.3-2(d) is not a Qualified Plan.
- (dd) “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 170-080-0015.
- (ee) “Roth IRA” means an individual retirement account as defined in the Code section 408A.

(ff) “Standard Elections” means the default Program elections applicable to a Participating Employee who has not opted for different elections, as specified in 170-080-0030.

(gg) “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.

(hh) “Traditional IRA” means an individual retirement account as defined in the 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.

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 178.200 to 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) 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 2016 4<sup>th</sup> quarter Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance, except under the following circumstances:

- (A) An Employer who first meets the definition of Employer after January 1, 2017 will use the number of employees submitted on the Employer's most recently filed Form OQ.
- (B) An Employer with no Employees reported on Form OQ 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 (1)(b) above, or
  - (B) 90 days after the Employer first meets the definition of Employer.
- (f) The Initial Enrollment Date for Employees of 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.

## **(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 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 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 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) Automatic employee enrollment will occur 30 days after the Facilitating Employer provides the information in 170-080-0015(2)(a). An Employee may request expedited enrollment by notifying the Facilitating Employer in a form or format established by the Program.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **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.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **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:

(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 participate using the Standard Elections shall notify the Facilitating Employer, in a form or format established by the Program, and within 30 days of 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.

(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.

### **(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) Beginning 30 days following the Enrollment Date, and in accordance with a Participating Employee's election, 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.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

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

#### **Non-Payroll Contributions**

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 Program 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) After the Facilitating Employer submits the Employee information in accordance with 170-080-0015(2)(a), the Program Administrator will distribute informational materials directly to Employees on behalf of the Facilitating Employer. 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;
- (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; and
- (n) That the Program has a Traditional IRA option and instructions describing how to enroll in a Traditional IRA.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **170-080-0056**

#### **Individual Participation**

- (1) An individual who is an Oregon resident and 18 years of age and older 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 using the internet portal established by the Program Administrator.
- (3) A Participating Individual who works for an Exempt Employer may be required to make contributions through methods other than Payroll Deduction Contributions.
- (4) Participating Individuals are required to establish an Automatic Investment Plan using either Payroll Deduction Contributions or Non-Payroll Contributions, or make a minimum initial contribution as required by the Program Administrator.
- (5) The minimum contribution rate for a Participating Individual through an Automatic Investment Plan is \$5.00. A contribution must not exceed 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 Program Administrator.
- (6) The Program Administrator may require a higher minimum contribution amount for single contributions not made through an Automatic Investment Plan.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **170-080-0057**

#### **Withdrawals**

- (1) A Participating Employee or Participating Individual may make a withdrawal of funds from a Program Roth or Traditional IRA at any time. Withdrawals shall be subject to any applicable state and federal income tax obligations and may be subject to penalties under the Internal Revenue Code.
- (2) A Participating Employee or Participating Individual may request a withdrawal of funds from a Program Roth or Traditional IRA by submitting a completed withdrawal request to the Program Administrator, in a form or format established by the Program.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **170-080-0058**

#### **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 an account to a different retirement savings vehicle in accordance with the Internal Revenue Code. The Program may receive rollovers and transfers from other retirement savings vehicles in accordance with the Internal Revenue Code.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **170-080-0059 Termination of Participation**

(1) A Facilitating Employer who begins offering a Qualified Plan and becomes exempt from the Program must notify the Program Administrator at least 60 days before the cessation of Payroll Deduction Contributions.

(2) Accounts will remain in the Program and Participating Employees may continue to make Contributions as Participating Individuals pursuant to 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.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **170-080-0060**



#### **Account Closure**

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

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

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

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

### **170-080-0061**

#### **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 participant. If the last known address of the participant is in Oregon, the provisions of ?? shall apply. 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.

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 or Participating Individual 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 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, 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 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.

Stat. Auth.: ORS 178.220

Stats. Implemented: ORS 178.200 to 178.245

Hist.: