

Proposed Rules for Oregon Retirement Savings Plan

Notice Rule for Rulemaking and Model Rules of Procedure

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

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

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

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

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

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

Administration

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

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

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

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

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

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

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

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

“Employment” means any employment subject to ORS Chapter 657 provided that, notwithstanding the exemptions from the definition of Employment contained in Chapter 657, for the purposes of the Plan, Employment includes: 1) Agricultural labor (defined in ORS 657.045), and 2) Commissioned positions (defined in ORS 657.085, 657.087(1) and (2), and 657.09).

“Enrollment Date” means the date by which a Participating Employer must enroll its Participating Employees, which shall be (a) the Initial Enrollment Date, for Participating Employees hired on or before the Participating Employer’s required Registration Date, and (b) a date not less than 45 days following start of employment, for Participating Employees hired after the Participating Employer’s required Registration Date.

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

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

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

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

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

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

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

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

“Registration Date” means, for each Employer, the date by which the Employer is required to register with the Plan or file a Certificate of Exemption.

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

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

Employer Registration and Enrollment

Registration.

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

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

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

Employer Exemptions

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

Employee Eligibility

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

Employee Standard Elections; Changing Elections; Opting Out

- (1) A Participating Employee who has not provided notice as specified in this section shall be enrolled using the following Standard Elections:
 - a. Contribution to the Plan at an initial rate of 5% of Wages;
 - b. Auto-escalation at the rate of an additional 1% of Wages each year until 10% is reached, beginning on a date to be specified by the Board; and
 - c. Investment of contributions in a "target date fund" (a professionally-managed fund containing a mix of investments that changes asset allocation and risk based on the employee's age and/or projected retirement date).

- (2) An Employee who does not wish to enroll using the Standard Elections shall notify the Participating Employer, on a form provided by the Plan and within 30 days of receipt of the informational materials provided by the Participating Employer, that:
 - a. The Employee wishes to participate in the plan:
 - i. at an initial contribution rate different from the Standard Elections, which shall be a percentage of Wages expressed as any whole number (i.e. 3% or 6%, but not 4.5%); or
 - ii. at an initial contribution rate consistent with the Standard Elections but without auto-escalation; or
 - iii. at an initial contribution rate different from the Standard Elections and without auto-escalation.
 - b. The Employee does not wish to participate and is opting out of the Plan.
- (3) An Employee who wishes to select an investment option other than that provided by the Standard Elections shall notify the Plan Administrator, in a manner to be specified by the Plan Administrator.
- (4) A Participating Employee may change the Participating Employee's elections at any time by:
 - a. notifying the Employer of a requested change in contribution elections, using a standard form as provided by the Plan, to be effected on the Employee's payroll following notification or as soon as administratively possible, not to exceed 30 days; and
 - b. notifying the Plan Administrator of a requested change in investment elections or other elections, in a manner to be specified by the Plan Administrator, to be effected as soon as administratively possible.
- (5) An Employee of a Participating Employer who initially opted out of participation in the Plan may become a Participating Employee by requesting participation through their Employer using a standard form as provided by the Plan, to be effected on the Employee's payroll following notification or as soon as administratively possible, not to exceed 30 days.
- (6) If the Participating Employer receives a notice from an Employee pursuant to subsection (2), (4) or (5) of this section, the Participating Employer shall:
 - a. Retain the notice in its personnel files for not less than seven (7) years, and
 - b. For any Participating Employee, record the Participating Employee's elections in its payroll system in a manner that will enable the Participating Employer to make accurate deductions from the Participating Employee's paycheck.

Contributions

- (1) On each payroll date following the Enrollment Date, the Participating Employer shall deduct from the Participating Employee's Wages, consistent with the Employee's elections:
 - a. 5% of Wages; or
 - b. if the Participating Employee has elected an initial contribution rate different from the Standard Elections, the percentage of Wages specified by the Participating Employer; or
 - c. the auto-escalated percentage of Wages for that Employee.

- (2) Amounts deducted by the Participating Employer pursuant to this section shall be transmitted to the Plan Administrator in a format and with such identifying information as shall be specified by the Plan as swiftly as possible, not to exceed five (5) calendar days from the date of deduction. Failure to transmit the amount as required constitutes an unlawful deduction.
- (3) When the Board has specified a date for the commencement of auto-escalation, then on a schedule to be determined by the Plan, for each Participating Employee who has not opted out of auto-escalation, the Participating Employer shall increase the deduction specified in subsection (1) of this section by an additional 1% of Wages per year until the total deduction has reached 10% of Wages.

Distributions

Distribution Request.

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

Fees and Expenses

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

Distribution of Materials to Employees

- (1) At least 60 days before the Initial Enrollment Date, the Plan will provide to a Participating Employer a set of informational materials about the Plan. The Plan will provide the materials to the Participating Employer by supplying the internet location where such materials may be downloaded or, upon request of the Employer, will provide the materials in hard copy.
- (2) The informational materials will include at least the following information:
 - a. The benefits and risks associated with making contributions to the Plan;
 - b. Instructions for making contributions to the Plan, including the Standard Elections applicable if the Participating Employee does not opt for other elections;
 - c. How to opt out of the Plan;
 - d. How to participate in the Plan with a level of contributions other than the Standard Elections;
 - e. The process for withdrawal of retirement savings;
 - f. How to obtain additional information about the Plan, including the account fees charged by the Plan;
 - g. That employees seeking financial advice should contact financial advisers, that Participating Employers are not in a position to provide financial advice and that

Participating Employers are not liable for decisions Employees make regarding the Plan;

- h. That the Plan is not an employer-sponsored retirement plan; and
 - i. That the Plan accounts and rate of return are not guaranteed by the state, the Employer, or anyone else.
- (3) At least 30 days before the Initial Enrollment Date, the Participating Employer will provide each of its Employees with the informational materials provided by the Plan. At least 30 days before the Enrollment Date applicable to any subsequently hired Employees, the Participating Employer will provide such subsequently hired Employees with the informational materials.
- (4) Participating Employers will provide such informational materials either directly, or by supplying the Employee with the internet location where the information may be found, along with instructions about how to obtain the information if the Employee does not have internet access.
- (5) The Employer shall document that the informational materials were given to the Employee, which may consist of a notation in the Employer's records identifying the Employee and the date the materials were distributed. The Employer may request that the Employee acknowledge receipt of the informational materials but shall not request or require that the Employee take any additional steps, including returning any forms to the Employer.

Technical Assistance to Employers

- (1) Participating Employers shall advise the Plan if they require technical assistance in completing Plan requirements.

Confidentiality

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

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

Subpoena. Unless otherwise required by the Oregon Public Records Law in ORS Chapter 192, a subpoena for information available from the Plan must be made out to the State of Oregon, Oregon Retirement Savings Plan. The Plan reserves the right to object to any subpoena on the grounds that the subpoena fails to provide a reasonable time for preparation and travel, is

otherwise unreasonable or oppressive, or that service was improper, in addition to any other basis legally available. To facilitate prompt processing, copies of subpoenas should be served at the Office of the Oregon Treasurer. Faxed subpoenas are not acceptable.