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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

THE ERISA INDUSTRY COMMITTEE, Plaintiff, v. TOBIAS READ, in his official capacity as Chair of the Oregon Retirement Savings Board, Defendant.	Case No. _____ COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
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Plaintiff The ERISA Industry Committee (“ERIC”), on behalf of its members, hereby files this complaint against Tobias Read, in his official capacity as the Chair of the Oregon Retirement Savings Board (“Board”), and alleges as follows:

NATURE OF THE ACTION

1.

ERIC seeks a declaration that the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. (“ERISA”), expressly preempts a recently-enacted Oregon law and regulations promulgated thereunder requiring Oregon employers sponsoring ERISA-governed retirement plans to report to the State of Oregon on ERISA plan activities. Reporting on plan activities is a core ERISA function governed exclusively by federal law.

JURISDICTION AND VENUE

2.

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this case raises questions arising under federal law.

3.

This Court has personal jurisdiction over Defendant because Defendant resides within the District of Oregon.

4.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events giving rise to these claims occurred in this district and Defendant resides in Oregon. Divisional venue is proper in the Portland Division of this Court because the Board adopted the administrative rules challenged herein at meetings held in Washington County, Oregon, and because the challenged state statutes and administrative rules apply statewide, including within the Portland Division.

PARTIES

5.

ERIC is a nonprofit trade association that represents the interests of large employers (10,000 or more employees) that sponsor health, retirement, and compensation benefit plans governed by ERISA. ERIC is the only national association that advocates exclusively for large employer plan sponsors on health, retirement and compensation public policies on the federal, state and local levels. ERIC's mission includes lobbying and litigation advocacy for nationally-uniform laws regarding employee benefits (as contemplated by ERISA), so that ERIC's members do not have to comply with a patchwork of different and conflicting state regulatory requirements in addition to federal law.

6.

ERIC's principal place of business is in Washington, D.C.

7.

Defendant Tobias Read is Oregon State Treasurer and the Chair of the Board. Under ORS 178.205(2)(a), the Board is responsible for "implement[ing]" and "maintain[ing]," *inter alia*, the statute and regulations challenged in this case. Defendant is a resident of Oregon and is sued solely in his official capacity.

8.

Defendant, directly and through the supervision, direction, and/or control of others, is responsible for the administration and enforcement of the statute and regulations challenged in this case.

BACKGROUND

A. ERIC's Members Operating in Oregon Sponsor National ERISA Plans

9.

Many of ERIC's members operate in Oregon and thus employ people in Oregon, including some ERIC members that employ one hundred (100) or more persons in Oregon. ERIC's members operating in Oregon sponsor ERISA-governed national retirement plans for some or all of their Oregon employees.

B. Oregon's Reporting Requirement for ERISA Plan Sponsors

10.

ORS 178.215(8) and Oregon Administration Rules ("OAR") 170-080-0015(1)(a) and 170-080-0020¹ regulate ERISA retirement plan sponsors, including ERIC's members operating in Oregon, by requiring plan sponsors to file a "certificate of exemption" with the state. In lieu of filing such a certificate of exemption, Oregon employers sponsoring ERISA retirement plans must register with the state to administer a defined contribution retirement plan established by the state, the Oregon Retirement Savings Plan. *See* OAR 170-080-0015(1)(a), (2)(a); ORS 178.210(1)(b).

11.

An ERISA retirement plan sponsor's certificate of exemption is valid for three years. A plan sponsor must continue to report to Oregon so long as it offers an ERISA-governed retirement plan to some or all of its Oregon employees. OAR 170-080-0020(2). The certificate is to be renewed under a recertification process to be developed by the Board. *Id.*

¹ A copy of the text of ORS 178.215(8) is attached as **Exhibit A**. A copy of the text of the Board's adopted rules, including OAR 170-080-0015(1)(a) and 170-080-0020, is attached as **Exhibit B**.

12.

ORS 178.215(8) and OAR 170-080-0015(1)(a) and 170-080-0020 take effect on a rolling basis over the next three years tied to the number of Oregon employees of ERISA retirement plan sponsors. For ERISA retirement plan sponsors with (A) one hundred (100) or more Oregon employees, the law takes effect on November 15, 2017; (B) at least fifty (50) but no more than ninety-nine (99) Oregon employees, the law takes effect on May 15, 2018; (C) at least twenty (20) but no more than forty-nine (49) Oregon employees, the law takes effect on December 15, 2018; (D) at least ten (10) but no more than nineteen (19) Oregon employees, the law takes effect on May 15, 2019; (E) at least five (5) but no more than nine (9) Oregon employees, the law takes effect on November 15, 2019; and (F) four (4) or fewer Oregon employees, the law takes effect on May 15, 2020. *See* OAR 170-080-0015(1)(b). Consequently, a national employer with employees in Oregon must monitor how many employees it has in Oregon to comply with these laws.

C. A Justiciable Controversy Now Exists Between ERIC and Defendant

13.

As ORS 178.215(8) and OAR 170-080-0015(1)(a) and 170-080-0020 take effect in just a few weeks—on November 15, 2017, for plan sponsors with one hundred (100) or more employees in Oregon—the claims raised by ERIC in this complaint are fit for judicial decision today, and are not speculative or contingent.

14.

ERIC has standing to sue on behalf of its members, which comprise many of America's largest employers that sponsor ERISA retirement plans. ERIC's purposes include advocating the

common interests of large employers that sponsor ERISA retirement plans. ERIC fulfills that purpose in part by bringing suit against governmental authorities to challenge state laws and regulations that interfere with national uniformity in ERISA plan administration.

15.

ERIC's claims—which attack ORS 178.215(8) and OAR 170-080-0015(1)(a) and 170-080-0020 on legal, not factual grounds—and the declaratory relief requested herein do not require the participation of ERIC's members.

CLAIM FOR RELIEF

ERISA “Connection With” Express Preemption **(29 U.S.C. § 1144(a))**

16.

ERIC repeats and realleges each and every allegation contained in paragraphs 1 through 15 as if fully set forth herein.

17.

ERISA's express preemption provision states in relevant part that ERISA “shall supersede any and all State laws insofar as they may now or hereafter relate to any” ERISA plan. 29 U.S.C. § 1144(a).

18.

For purposes of ERISA's express preemption provision, a state law “relates to” ERISA plans if, *inter alia*, that law has a “connection with” ERISA plans.

19.

ORS 178.215(8) and OAR 170-080-0015(1)(a) and 170-080-0020 have a “connection with” ERISA plans because they impose reporting requirements on multi-state plan sponsors operating in Oregon by requiring the filing of a certificate of exemption to avoid the obligation to

register to administer the Oregon Retirement Savings Plan. The relative burden of this reporting obligation does not matter for preemption purposes, because ERISA's preemption provision seeks to protect ERISA plan sponsors from the burdens of complying with a multiplicity of varying state regulatory requirements.

20.

ORS 178.215(8) and OAR 170-080-0015(1)(a) and 170-080-0020 interfere with nationally uniform ERISA plan administration by requiring plan sponsors to report to Defendant on the sponsors' ERISA activity of providing ERISA-governed retirement benefits.

21.

ORS 178.215(8) and OAR 170-080-0015(1)(a) and 170-080-0020 are therefore expressly preempted by ERISA insofar as they require ERISA plan sponsors operating in Oregon to file certificates of exemption to avoid having to register to administer the Oregon Retirement Savings Plan.

REQUEST FOR RELIEF

WHEREFORE, ERIC respectfully requests that this Court:

- (1) Declare that ERISA expressly preempts ORS 178.215(8) and OAR 170-080-0015(1)(a) and 170-080-0020 insofar as they require ERISA plan sponsors operating in Oregon to file certificates of exemption to avoid having to register to administer the Oregon Retirement Savings Plan;
- (2) Enjoin Defendant from enforcing ORS 178.215(8) and OAR 170-080-0015(1)(a) and 170-080-0020 to require ERISA plan sponsors operating in Oregon to file certificates of exemption to avoid having to register to administer the Oregon Retirement Savings Plan; and

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- (3) Grant ERIC such additional or different relief as it deems just and proper with regard to the reporting obligations imposed by ORS 178.215(8) and OAR 170-080-0015(1)(a) and 170-080-0020.

DATED this October 12, 2017.

HARRANG LONG GARY RUDNICK P.C.

By: /s/ C. Robert Steringer
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178.215 Rules for Oregon Retirement Savings Plan. The Oregon Retirement Savings Board shall adopt rules that:

(1) Establish the process for voluntary enrollment in the plan developed under ORS 178.205, including procedures for automatic enrollment of employees and for employees to opt out of the plan.

(2) Establish the process for participants to make the default contributions to plan accounts and to adjust the contribution levels.

(3) Establish the process for employers to withhold employee contributions to plan accounts from employees' wages and send the contributions to the investment administrator for the plan.

(4) Establish the process for allowing employees to opt out of enrollment in the plan.

(5) Establish the process for participants to make nonpayroll contributions to plan accounts.

(6) Set minimum, maximum and default contribution levels in accordance with limits established by the Internal Revenue Code.

(7) Establish the process for withdrawals from plan accounts.

(8) Establish the process and requirements for an employer to obtain an exemption from offering the plan if the employer offers a qualified retirement plan, including but not limited to a plan qualified under section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p) or section 457(b) of the Internal Revenue Code.

(9) Mandate the contents and frequency of required disclosures to employees, employers and other plan participants. These disclosures must include, but need not be limited to:

(a) The benefits and risks associated with making contributions to the plan;

(b) Instructions for making contributions to the plan;

(c) How to opt out of the plan;

(d) How to participate in the plan with a level of contributions other than the default rate;

(e) The process for withdrawal of retirement savings;

(f) How to obtain additional information about 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 pursuant to ORS 178.200 to 178.245;

(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. [2015 c.557 §4]

OREGON RETIREMENT SAVINGS PROGRAM

170-080-0001

Notice Rule for Rulemaking, Model Rules of Procedure

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

- (a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;
- (b) By e-mailing a copy of the notice to persons on the Board's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;
- (c) 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
- (d) By mailing or furnishing a copy of the notice to the list of interested parties compiled and maintained by the State Treasurer.

(2) Model Rules of Procedure. The Attorney General's Model Rules of Procedure as set forth in OAR 137, Divisions 1 through 4, are adopted as rules of procedure for administrative rulemaking and other administrative law functions as exercised by the Board in respect to the Program.

(3) Collaborative Dispute Resolution Model Rules. The Attorney General's Collaborative Dispute Resolution Model Rules, as set forth in OAR 137 Division 5, to the extent not inconsistent with the Act or the Code, are adopted by the Board as its rules for dispute resolution.
Stat. Authority: ORS 183.335, 183.341, 183.502
Stat. Implemented: ORS 183.341, 183.502, 178.220 to 178.245
Hist.:

170-080-0002

Confidentiality and Inadmissibility of Mediation Communication

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

Stat. Authority: ORS 36.224, 183.335, 183.341, 183.502

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

Hist.:

170-080-0005

Inspection, Certification or Copying Public Records

The policies and procedures of the Oregon State Treasurer set forth in OAR 170, Division 2 in regard to inspection, certification or copying of public records, to the extent not inconsistent with the Act or ORS Chapter 178, are adopted as the policies and procedures of the Board.

Stat. Auth.: 178.050

Stats. Implemented: ORS Chapter 183, ORS 192.410 to 192.505

Hist.:

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) "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.
- (k) "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.
- (l) "Exempt Employer" means an Employer who has filed a valid and current Certificate of Exemption pursuant to procedures established by the Board.
- (m) "Facilitating Employer" means an Employer whose Registration Date has passed and who is not an Exempt Employer.
- (n) "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.
- (o) "Individual Retirement Account" or "IRA" means the individual retirement account established by or for a Participating Employee under the Program.

- (p) "IRS" means the Internal Revenue Service of the United States Treasury Department.
- "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.
- (q) "Participating Employee" means any person who has established (or has had established on their behalf) and maintains a Program IRA.
- (r) "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.
- (s) "Program" means the Oregon Retirement Savings Program established by the Board pursuant to ORS 178.205(1).
- (t) "Program Administrator" means a third party administrator chosen by the Board to assist in carrying out the requirements of the Act.
- (u) "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.
- (v) "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.
- (w) "Roth IRA" means an individual retirement account as defined in the Code section 408(A).
- (x) "Standard Elections" means the default Program elections applicable to a Participating Employee who has not opted for different elections, as specified in Rule 0030.
- (y) "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.
- 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) 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.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

170-080-0020

Employer Exemptions

(1) An authorized representative of an Employer may file a Certificate of Exemption with the Program by certifying, through the Program Administrator's internet portal or other means of data transmittal specified and validated by the Program Administrator, that the Employer offers a Qualified Plan to some or all of its Employees.

(2) A Certificate of Exemption is valid for three (3) years from the date the Employer files the Certificate with the Program Administrator, so long as the Employer continues to offer a Qualified Plan to some or all of its Employees. A Certificate of Exemption may be renewed by following a process of recertification to be established by the Board not later than December 31, 2019.

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

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, 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.

(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 Program.

(a) 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.

(b) 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.

(c) 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 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. 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.:

170-080-0040

Distributions and Distribution Requests

(1) A Participating Employee may request a Distribution of funds from an IRA by submitting a completed distribution request to the Program Administrator, in a form or format established by the Program.

(2) An IRA Distribution shall be subject to any applicable state and federal income tax obligations.

Stat. Auth.: ORS 178.215(7)

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

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 of changes to Program Administration fees.

Stat. Auth.: ORS 178.225

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

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, 0020, and 0030;

(c) Retain the notice of any Employee elections or election changes pursuant to any action defined in Rule 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.

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. 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 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.:

170-080-0060

Technical Assistance to Employers

The Program Administrator will provide a range of tools and technical assistance for Employer use. Facilitating Employers shall advise the Program Administrator if they desire technical assistance in completing Program requirements.

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 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.: