

February 21, 2017

Ms. Kim Olson  
Rule Coordinator  
Oregon State Treasury  
350 Winter Street NE, Suite 100  
Salem OR 97301  
Filed Electronically at Kim.Olson@ost.state.or.us

**Re: Comment on the Proposed Rules to Implement the Oregon Retirement Savings Plan**

Dear Ms. Olson:

The American Retirement Association (“ARA”) is writing to comment on the proposed rules to implement the Oregon Retirement Savings Plan (“ORSP”), otherwise known as OregonSaves.<sup>1</sup> ARA is a national organization of more than 20,000 members, including over 290 members who reside in Oregon. ARA members provide consulting and administrative services to American workers, savers and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys. ARA is the coordinating entity for its four underlying affiliate organizations, the American Society of Pension Professionals and Actuaries (“ASPPA”), the National Association of Plan Advisors (“NAPA”), the National Tax-deferred Savings Association (“NTSA”) and the ASPPA College of Pension Actuaries (“ACOPA”). ARA members are diverse but united in a common dedication to America’s private retirement system.

ARA thanks the Oregon State Treasury and the Oregon Retirement Savings Board for the thought, time, and effort put into the development of the proposed rules to implement OregonSaves. ARA has consistently and actively supported state proposals to expand retirement plan coverage in the private workforce. We believe state initiatives should include automatic enrollment, continue to encourage sponsorship of traditional retirement savings arrangements and offer private sector provided alternatives. ARA has two specific concerns and recommendations with regard to the proposed rule.

Our first concern relates to the exemption for Oregon employers who offer a “qualified plan” to their employees. It appears that under Division 15(2) of the proposed rules, employers who offer a qualified plan would nevertheless be required to enroll their employees in the OregonSaves program if their plan has a waiting period in excess of 90 days. In a statement posted on the OregonSaves webpage, however, it is noted that this was not intended and that the final rules will be clarified.<sup>2</sup> This clarification is consistent with a February 10, 2017, email also posted on the Oregon Saves website, which provides, “The language in the [proposed] rules was not intended

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<sup>1</sup>ORS Chapter 178.200-245, Enrolled House Bill 2960 (2015)

<sup>2</sup> See “Important Clarification” at <http://www.oregon.gov/treasury/ORSP/Pages/ORSP-Rulemaking.aspx>

to require businesses with waiting periods of more than 90 days for their employer plans to facilitate the state's plan.”<sup>3</sup>

**ARA recommends** the final rules be clarified in accordance with the statements on the Oregon Saves website to specifically exempt any employer that offers a qualified plan whose waiting period and other eligibility provisions comply with federal law. In addition, the exemption should be valid as long as the employer continues to offer a qualified plan without the need to periodically renew the certificate. In other words, the concept of a “conditional Certificate of Exemption” as contemplated by Division 15(2) of the proposed rule should be eliminated.

Our second concern is that the definition of “qualified plan” in Division 5 of the proposal fails to include alternative payroll deduction IRA programs. Federal regulations permit employers to offer these types of savings programs either as a voluntary savings arrangement or as an employer sponsored plan subject to federal law and regulation.<sup>4</sup> They typically use collective investments and uniform administrative processes to keep fees low. A tangential benefit of including these arrangements within the definition of “qualified plan” is that private sector providers typically encourage employers to “upgrade” the program to a traditional 401(k) plan that provides additional benefits, such as employer matching or non-elective contributions.

**ARA recommends** broadening the definition of a “qualified plan” in the proposed rules to include payroll deduction IRA programs that are made available outside of the OregonSaves program.

ARA appreciates the opportunity to make these comments to improve these proposed rules and we stand ready to work with you to make OregonSaves a success.

Sincerely,



Brian H. Graff, Esq., APM  
Executive Director/CEO  
American Retirement Association

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<sup>3</sup>See February 10, 2017, email from “Retirement Savings” at <http://www.oregon.gov/treasury/ORSP/Documents/Comments%20re%20Proposed%20Rules%20for%20OregonSaves.pdf>

<sup>4</sup>See 29 CFR §2509.99-1 which indicates that payroll deduction IRA arrangements may be subject to the Employee Retirement Income Security Act of 1974 (“ERISA”).

