FINANCIAL SERVICES INSTITUTE
VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

February 22, 2017

Kimberly Olsen
Rules Coordinator
Oregon State Treasury
350 Winter St. NE, Suite 100
Salem, OR 97301

Re: Create new rules for the Oregon Retirement Savings Plan

Dear Ms. Olsen:

On February 12, 2017, the Oregon State Treasury (Treasury) published its request for public comment on proposed rules for the Oregon Retirement Savings Plan (Proposed ORSP Rules).[1] The Proposed ORSP Rules establish the requirements of a payroll deduction retirement plan for persons employed in Oregon to allow contributions to the Plan to begin no later than June 16, 2017. The Treasury has requested public comment on whether other options should be considered for achieving the Proposed ORSP Rules substantive goals while reducing negative economic impact on business.

The Financial Services Institute[2] (FSI) appreciates the opportunity to comment on this important proposal. FSI and its member firms are committed to encouraging employers to adopt workplace retirement plans and increasing voluntary worker participation. However, FSI is concerned that because the Proposed ORSP Rules are exempt from the Employee Retirement Income Security Act of 1974 (ERISA) and its protections, the Rules will have unintended, negative consequences for consumers and employers. We offer more detailed, constructive comments below.

<u>Background on FSI Members</u>

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all

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[1] Oregon Retirement Savings Plan Proposed Rules, Draft for ORSP Board Review (January 12, 2017) *available at* http://www.oregon.gov/treasury/ORSP/Documents/CLEAN%20ORSP%20Proposed%20Rules%20-%20Draft%20for%202017.1.12.pdf

[2] The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

producing registered representatives.[3] These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners with strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate $48.3 billion of economic activity. This activity, in turn, supports 482,100 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. FSI members created 6,925 jobs in the state of Oregon. In addition, FSI members contribute nearly $6.8 billion annually to federal, state, and local government taxes. FSI members account for approximately 8.4% of the total financial services industry contribution to U.S. economic activity.[4]

Discussion

FSI appreciates the opportunity to comment on the Proposed ORSP Rules. FSI is concerned that the Proposed ORSP Rules lack the high-level protections of other private employer-sponsored plans that are subject to ERISA. In 2015, the Oregon Legislative Assembly created the Oregon Retirement Savings Board in the office of the State Treasurer and the Oregon Retirement Savings Plan (the Plan), a defined contribution retirement plan for persons employed for compensation in the state.[5] The Plan is intended to facilitate retirement savings by employees while not creating a fiduciary burden for employers, and specifically exempts employers under the Plan from liability under ERISA.[6] The Proposed ORSP Rules require employers who do not offer a private retirement plan qualified under the Internal Revenue Code to participate in the Plan, but neither the employer or the State of Oregon are liable for the insolvency of the Plan. Thus, the Proposed ORSP Rules mandate employer participation in what are traditionally voluntary retirement savings plans, while limiting the protections for workers in the Plan. In addition, many states have mismanaged their public employee retirement systems, and ERISA's high level consumer protections are an important safeguard to ensure that the assets of small private sector savers are protected.

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[3] The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

[4] Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2016).

[5] House Bill 2960, 78th Oregon Legislative Assembly (June 25, 2015) available at: https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2960.

[6] *Id.* at §3(p).

FSI is also concerned that the Proposed ORSP Rules will result in fewer employer-sponsored plans and their accompanying ERISA protections, especially among small businesses. As a result of the mandatory state-run plan, some employers will decide to avoid taking on the work of offering their own plans and let the state shoulder the burden instead, resulting in the loss of significant retirement savings opportunities, employer matching contributions, the ability to take loans using their 401(k) assets as collateral, and other ERISA protections that are part of existing plans. Further, the auto-enrollment mandate will impose financial obligations and liabilities on employers of all sizes in Oregon. Potential employer costs include the cost of auto-enrolling and selecting default investments for their full- and part-time, temporary and seasonal workers. The enabling law also requires the Plan to disclose that participating employers are not able to provide financial advice and employees seeking financial advice should contact financial advisers.[7] FSI and its members believe that all individuals, regardless of their level of wealth, should have access to competent and affordable financial advice. However, the Proposed ORSP Rules would neither incentivize employers to provide access to a qualified retirement plan, nor would it incentivize employees to seek out retirement advice because they are automatically enrolled in the Plan.

In light of these concerns, FSI suggests considering other options to reduce the negative impact of the Proposed ORSP Rules on workers and employers, while achieving the rule's goal of facilitating retirement savings. To avoid the Proposed ORSP Rules' unintended consequences, FSI recommends establishing a marketplace-style plan like the Plan already instituted in Washington State, along with actively promoted financial literacy programs. Under this approach, a designated third-party would assume responsibility for administrative and asset management functions, rather than requiring the state or municipality to assume that role and the resulting liability. Such an approach was put forward during the Legislature's consideration of the bills creating the Oregon Savings Retirement Board and Plan as an amendment creating the Oregon State of Savers Act.[8] This alternative option would address the retirement savings challenge while engaging the collective resources of financial services providers, employers and the State of Oregon to expand access and increase retirement savings. Further, having the same type of plan as the one already in place in Washington State would ease the burden on workers who live in one state and work in the other and on workers who move between the states. The attached position paper explains the benefits of this alternative approach and how it can be used to promote existing retirement solutions.

<u>Conclusion</u>

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with the Treasury and ORSP Board on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

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[7] Proposed ORSP Rules *supra.* at Division 50(2)(g).
[8] Letter from Coalition Opposing HB 2960 and SB 615 (March 2015), *available at:* https://olis.leg.state.or.us/liz/2015R1/Downloads/CommitteeMeetingDocument/55339

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