

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

**Friday
July 20, 2007
11:30 A.M. & 1:00 P.M.**

**PERS
11410 SW 68th Parkway
Tigard, OR**

	ITEM	PRESENTER
A. Contested Case Hearings – 11:30 A.M.		
1. 2.	Contested Case Hearing for Wayne Logemann Status of Contested Cases	RODEMAN/KUTLER
Break		
B. Administration – 1:00 P.M.		
1. 2.	June 15, 2007 Board Meeting Minutes Director's Report <ul style="list-style-type: none"> a. Forward-Looking Calendar b. OIC Investment Report c. HB2020 Report d. Budget Report 	CLEARY
C. Consent Action and Information Items		
1. 2. 3. 4. 5. 6. 7.	Action on Contested Case Adoption of Direct Rollover Rules Adoption of Judge Member Program Rules Adoption of Document Receipt Date Rules Adoption of OSGP Loan Program Rules Notice of Rulemaking for Crediting Earnings to Employer Lump-Sum Payments Notice of Rulemaking for Lump-Sum Payments by Employers	RODEMAN
D. Action and Discussion Items		
1. 2. 3.	<i>Strunk/Eugene</i> Project Update 2006 Experience Study 2007 Legislative Update	TEAGUE/RODEMAN MERCER DELANEY
E. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225		
1.	Litigation Update	LEGAL COUNSEL

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Note: If you have a disability that requires any special materials, services or assistance, call (503) 603-7575 at least 48 hours before the meeting.

Michael Pittman, Chair * James Dalton * Thomas Grimsley * Eva Kripalani * Brenda Rocklin * Paul R. Cleary, Executive Director

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PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting
1 P.M., June 15, 2007
Tigard, Oregon

DRAFT

MINUTES

Board Members:

Brenda Rocklin, Vice Chair
James Dalton
Eva Kripalani
Thomas Grimsley
Excused: Mike Pittman

Staff:

Paul Cleary
Donna Allen
Steve Rodeman
Steve Delaney
Zue Matchett

Patrick Teague
Joe DeLillo
David Crosley
David Tyler
Helen Bamford
Gay Lynn Bath

Gay Lynn Bath
Susan Riswick
Jeannette Zang
Jason Stanley
Gloria English

Others:

Deborah Tremblay
Molly Butler
Greg Hartman

Keith Kutler
Maria Keltner
Bob Andrews

Bill Hallmark
Steve Manton
Linda Ely

Bruce Adams
Karla Alderman
Chris Warner

Vice Chair Brenda Rocklin called the meeting to order at 1:00 P.M.

Chair Mike Pittman was excused from the meeting due to a prior commitment.

ADMINISTRATION

B.1. BOARD MEETING MINUTES OF MAY 18, 2007

The Board unanimously approved the minutes of the May 18, 2007 Board meeting.

B.2. DIRECTOR'S REPORT

Director Paul Cleary presented the Forward-Looking Calendar and noted that the July 18 meeting will include Mercers' 2006 Experience Study, a *Strunk/Eugene* project update, a final 2007 legislative update. Cleary also noted that an Audit Committee meeting is scheduled immediately following the July Board meeting and there is no meeting scheduled for August. Cleary presented the OIC report ending April 30 showing a 5.94% year-to-date return for the OPERF regular account. Cleary provided an update on the HB2020 Employer Reporting and Accounts Receivable Programs, saying that employer reporting continues to improve, and outreach/education meetings are being well received and will be continued on an annual basis. Cleary reported the biennium budget has a positive variance of \$500K. Cleary said a portion the funds will be used for capital expenditures including building and security improvements. Cleary reported on the success of the pilot retirement application "*turn-in-forms*" session that was held in May and attended by over 50 members. Cleary said that the recently updated PERS-by-the-Numbers report is now available and posted on PERS website.

CONSENT ACTION AND INFORMATION ITEMS

C.1. ACTION ON CONTESTED CASE HEARINGS

Steve Rodeman, Policy, Planning, and Legislative Analysis Division (PPLAD) administrator presented the staff recommendations in the contested case hearings of Marilyn Bowen, Elaine Mahoney and Paul Sundermier.

It was moved by James Dalton and seconded by Eva Kripalani to approve the staff recommendations as presented. The motion passed unanimously.

Under that motion, the Board acted on each contested case item as follows:

ITEM A.1. CONTESTED CASE HEARING FOR MARILYN BOWEN

Adopted the draft final order as presented in the contested case hearing of Marilyn Bowen.

ITEM A.2. CONTESTED CASE HEARING FOR ELAINE MAHONEY

Adopted the draft final order as presented in the contested case hearing of Elaine Mahoney.

ITEM A.2. CONTESTED CASE HEARING FOR PAUL SUNDERMIER

Adopted the draft final order as presented in the contested case hearing of Paul Sundermier.

C.2. FIRST READING OF JUDGE MEMBER RULES

Rodeman presented the first reading of proposed rules to guide and clarify administration of the judge member retirement program benefits. Rodeman said that recent legislative adoption of SB 872 to allow judges to designate former spouses to receive the surviving spouse benefit would require additional modifications to the proposed rules.

Rodeman said that public comment was open through May 22, 2007 and public comments had been received and were considered in modifying the proposed rules.

C.3. FIRST READING OF ADMINISTRATIVE REVIEW AND APPEAL PROCESSES RULES

Rodeman presented the notice of rulemaking for proposed rules that provide alternative processes for resolving employer disputes with PERS over contribution and earnings billings. Rodeman summarized public comments received to date, and reviewed modifications that were made in response to those comments. Rodeman said that a rulemaking hearing was held on May 22, and the public comment period ends on June 22.

Speaking on behalf of PERS Employers Alliance, Maria Keltner reviewed invoice concerns, eligibility issues, and problems with the reporting process. Keltner requested that a single process be used to resolve related employee and employer appeals, and asked for clear processes and procedure timelines to bring closure to disputes.

Greg Hartman spoke for the PERS Coalition, requesting that the PERS Coalition be included in any rulemaking meetings with employers if the rules are going to apply to members and employers alike.

Rocklin and Cleary invited additional employer and member comments. Cleary said that staff would consider all dispute resolution ideas from employers and members. Such proposals may produce additional rule modifications, and that there may be an additional first reading of the rules at the September meeting to highlight those modifications and solicit further stakeholder input.

C.4. FIRST READING OF OAR 459-005-0220, RECEIPT DATE FOR REPORTS, DOCUMENTS AND REMITTANCES

Rodeman presented the notice of rulemaking to switch from using a documents' postmark date to the date the item is actually received and processed as the official receipt date. Rodeman said that a rulemaking hearing was held on May 22, the public comment period ends on June 22 and the rule would be presented for adoption at the July 20, 2007 meeting.

C.5. FIRST READING OF OAR 459-0050-0077, OSGP LOAN PROGRAM

Rodeman presented the notice of rulemaking to clarify administration and federal tax reporting requirements for the recently instituted OSGP loan program. Rodeman said that a rulemaking hearing was held on May 22, the public comment period ends on June 22 and the rule would be presented for adoption at the July 20, 2007 meeting.

ACTION AND DISCUSSION ITEMS

D.1. OSGP ADVISORY COMMITTEE MEMBER APPOINTMENTS

Gay Lynn Bath, Oregon Savings Growth Plan Deferred Compensation Manager, presented staff recommendations for the appointment of two new members and reappointment of one member to the OSGP Advisory Committee. Bath recommended re-appointment of Advisory Committee member Kathleen Beaufait, retiree, and the appointment of Pete Farrelly, who is employed as an environmental engineer by the Department of Human Services in Portland, and Brian Burleigh, who is employed as human resources manager by the Oregon Department of Transportation in Bend. Bath said the new appointments will fill the state agency employee positions currently held by outgoing Advisory Committee members Roman Martushev and Barry Kast whose terms expire on June 30, 2007.

It was moved by Eva Kripalani and seconded by Tom Grimsley to appoint Brian Burleigh and Pete Farrelly as OSGP Advisory Committee members representing state employees for three-year terms beginning July 1, 2007 and re-appoint Kathleen Beaufait to a second three-year term as an OSGP Advisory Committee member representing retirees. The motion passed unanimously.

D.2. 2007 RETIREE HEALTH INSURANCE PLAN CONTRACT RENEWALS

Gloria English, outgoing PERS Retiree Health Insurance Program Manager, introduced Zue Matchett, who will become the new Retiree Health Insurance Program Manager, following English' June 30, 2007 retirement.

English presented the proposed January 1, 2008 contract renewals that include four health plans allowing for a choice of various coverage for participants while maintaining stability for the program. English noted that the retiree advisory committee had reviewed the proposed contract renewals with the program consultants and providers, and concurred with the staff recommendations.

It was moved by Tom Grimsley and seconded by Brenda Rocklin to approve the proposed PERS Retiree Health Insurance Plan contracts, conditions and rate changes for 2008. The motion passed unanimously.

D.3. LEGISLATIVE UPDATE

Deputy Director Steve Delaney provided a PowerPoint presentation of highlights of the 33 bills that have been introduced during the 2007 Legislative session that would directly impact PERS or

PERS Board meeting

6/15/2007

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the Oregon Savings Growth Plan. Delaney noted there was a flurry of activity on bills involving PERS issues in the waning days of the session, some of which further complicated program administration while others helped simplify administrative processes. On balance, PERS staff viewed the session as a success, but noted several issues deserved interim work including the growing list of 1039-hour limit exceptions for re-employment of retirees. The Board concurred with the need for a broad examination of retire/rehire issues during the interim.

Steve Manton, City of Portland, noted a concern over re-employment of retirees in relation to PERS disability benefits, and supported further work on the retire/rehire issues during the interim.

EXECUTIVE SESSION

Pursuant to ORS 192.660 (2) (f), (h), and ORS 40.255, the Board went into executive session at 2:30 P.M.

The Board reconvened to open session.

Vice Chair Rocklin adjourned the meeting at 2:45 P.M.

Respectfully submitted,

A handwritten signature in cursive script that reads "Paul R. Cleary".

Paul R. Cleary
Executive Director

PERS Board Meeting Forward-Looking Calendar

MEETING	7-20-07
DATE	
AGENDA	B.2.a
ITEM	Calendar

August 2007

No Meeting Currently Scheduled

September 2007

1:00 P.M. September 21, 2007

Adoption of Withdrawal Rules

Adoption of Administrative Review and Appeal Processes Rules

First Reading of OAR 459-007-0530, Crediting Earnings to Employer Lump-Sum Payments

First Reading of OAR 459-009-0090, Lump-Sum Payments by Employers

2006 System-wide Valuation Report

2007 Legislation Implementation

October 2007

1:00 P.M. October 19, 2007

Adoption of OAR 459-007-0530, Crediting Earnings to Employer Lump-Sum Payments

Adoption of OAR 459-009-0090, Lump-Sum Payments by Employers

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Returns for periods ending 5/31/07

Oregon Public Employees Retirement Fund

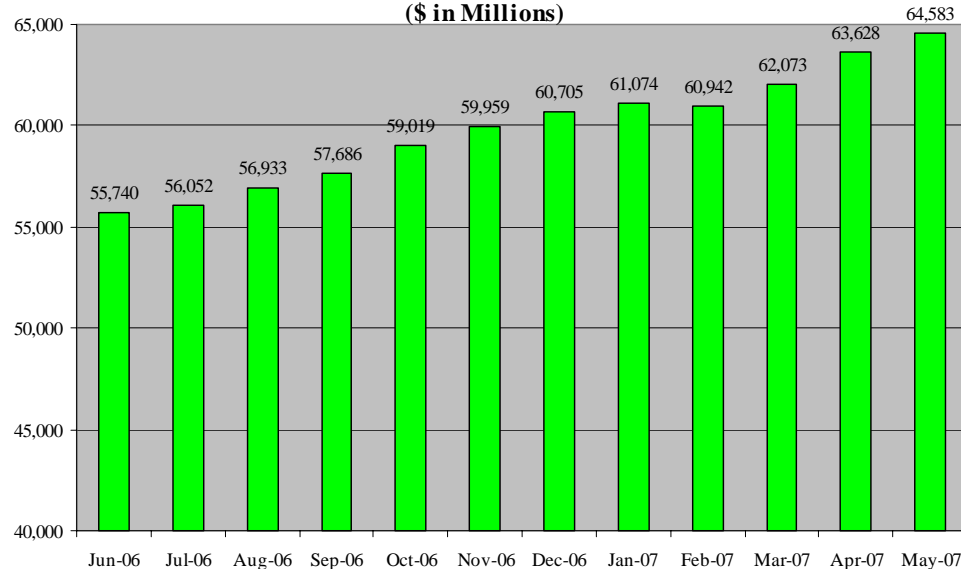
B.2.b. OIC

OPERF	Regular Account				Historical Performance					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Domestic Equity	24-34%	29%	\$ 18,971,818	30.2%	9.76	21.85	16.72	14.26	16.03	10.82
Non-US Equity	11-21%	16%	10,738,714	17.1%	11.93	28.74	30.91	26.26	27.77	19.02
Global Equity	5-11%	8%	4,930,573	7.9%	N/A					
Alternative Equity	9-15%	12%	6,542,444	10.4%	10.33	24.82	25.86	28.24	24.08	17.12
Total Equity	60-70%	65%	41,183,549	65.6%						
Opportunity Portfolio			78,492	0.1%	4.25					
Total Fixed	22-32%	27%	16,898,000	26.9%	1.71	7.83	4.62	5.92	4.92	6.56
Real Estate	5-11%	8%	4,500,857	7.2%	9.96	26.03	30.83	29.15	26.91	22.45
Cash	0-3%	0%	128,502	0.2%	2.20	5.44	4.66	3.81	3.13	2.87
TOTAL OPERF Regular Account		100%	\$ 62,789,400	100.0%	7.75	19.53	17.65	16.31	16.48	12.70
OPERF Policy Benchmark					7.12	18.26	15.38	14.01	15.08	11.31
Value Added					0.63	1.27	2.27	2.30	1.40	1.39

Asset Class Benchmarks:

Russell 3000 Index	9.16	22.58	16.19	13.89	15.32	10.29
MSCI ACWI Free Ex US	11.62	28.92	29.93	25.57	27.45	18.67
Russell 3000 Index + 300 bps--Quarter Lagged	8.52	15.11	14.32	13.78	21.21	12.61
LB Universal--Custom FI Benchmark	1.42	6.95	3.61	4.87	3.70	5.25
NCREIF Property Index--Quarter Lagged	4.51	16.59	18.31	17.02	14.96	13.27
91 Day T-Bill	2.14	5.20	4.51	3.66	3.00	2.71

TOTAL OPERF NAV
(includes variable fund assets)
One year ending May 2007
(\$ in Millions)



¹OIC Policy 4.01.18

²Includes impact of cash overlay management.

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Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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July 20, 2007

TO: Members of the PERS Board
FROM: Paul R. Cleary, Director
SUBJECT: Update on HB2020 Employer Reporting and
Employer Outreach Programs

MEETING	7-20-07
DATE	
AGENDA	
ITEM	B.2.c. HB2020 Update

PERS is working with 871 employer-reporting units to process outstanding 2006 and 2007 employer reports. In addition, PERS implemented an accounts receivable process and revised its employer outreach program in late 2006. Updates on each are provided below.

EMPLOYER REPORTING

The table below shows the status as of July 2, 2007 of employer reports and member records for calendar years 2006 and 2007.

	Calendar Year 2006	Calendar Year 2007
Reports due:		
▪ Number expected	12,979	5,856
▪ Number received	12,897	5,725
▪ Percent received	99.3%	97.7%
▪ Annual Key Performance Measure	99.0%	N/A
Reports fully posted at 100%:		
▪ Number	12,343	4,843
▪ Percent received	95.7 %	84.6%
▪ Key Performance Measure	95.0 %	95.0%
Records due (estimated)	3,135,367	1,595,419
Records not posted:		
▪ Number	2,876	31,966
▪ Percent not posted	≤ .1%	2.0%
▪ Key Performance Measure	≤ .2%	≤ .2%
Contributions posted	\$ 426,862,373	\$211,505,549
Contributions not posted	\$ 82,195	\$1,594,931

As of July 2, 2007, employers submitted 99.3 % of the reports due for 2006. Of the reports submitted, less than .1% of records remain suspended (representing less than .02% of total contributions anticipated for 2006). For 2007, employers have submitted approximately 98% of the reports due. Of those reports submitted, approximately 85% are 100% posted. We are pleased to announce that our year-over-year performance is slightly better than last year's, and that we are well on our way to meeting our 2007 targets.

EMPLOYER OUTREACH PROGRAM

Since the inception of the employer outreach program, PERS has seen a significant improvement in the employers' timely and complete submission of payroll reports and records. However, the accuracy of the reported data needs to be improved. To improve data quality and accuracy, in November 2006 PERS escalated its outreach efforts by scheduling aggressive statewide data quality training sessions. The sessions covered subject-specific training and focused on data quality reporting issues. A total of 19 presentation sessions were completed during the last quarter 2006. Approximately 400 employer staff attended these sessions, representing more than 250 employers.

For 2007 we are continuing to tackle the data quality issues, as well as we are trying to simplify and educate the employers on the new legislative changes and the sticky reporting areas such as plan eligibility. During the spring, PERS conducted 32 employer education sessions to present our new and simplified approach to eligibility. Over 550 attendees (representing 330 employers) met at 19 locations throughout the state. Feedback on the sessions was very positive: 90% of attendees indicated their questions were answered; and 94% of the attendees said they would attend future educational sessions.

In the late summer we will be conducting our annual employer customer satisfaction survey, and in the fall we will be conducting a new suite of employer presentations throughout the state. The employer presentations will cover the legislation adopted during the 2007 legislative session, and the related impact on employers, members and employer reporting. More information on the 2007 customer satisfaction survey and the educational sessions will be included in our future reports.

ACCOUNTS RECEIVABLE PLAN

Besides assisting employers with overdue reports and electronic payments, PERS' accounts receivable department proactively collects receivable balances that are more than 30 days overdue. As of June 28, 2007, we have 356 outstanding invoices with an aggregate balance of less than \$304,000. Our goal is to collect all outstanding invoices that exceed 30 days by following up with these employers by phone and letters each month.



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July 20, 2007

TO: Members of the PERS Board
FROM: Kyle J. Knoll, Budget and Fiscal Operations Manager
SUBJECT: July 2007 Budget Report

MEETING DATE	7/20/07
AGENDA ITEM	B.2.d. Budget

2005-09 BUDGET UPDATES

To-date, operating expenditures for the month of June 2007 have totaled \$3,412,000; and the agency has expended a total of \$72,458,879, or 96.59% of our 2005-07 operating budget. The positive budget variance for the biennium is currently projected at \$306,030, down from \$502,188 on May 31, 2007. Please note that after June 2007 expenditures close in the Statewide Financial Management Application (SFMA) on July 13, 2007, Budget and Fiscal Operations will update the Agency-wide Summary Budget Analysis and Spending Plan, and include copies of those updated documents in the September Budget Report to the Board, along with our first Budget Report for actual and estimated expenditures in 2007-09.

2009-11 BUDGET UPDATE

Initial strategic work on our 2009-11 Budget begins this month, in support of 2009-11 Division and Section-level Business Plans. An overview of that budget development schedule, along with a status report, will be included in the September Budget Report to the Board.

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July 20, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Action on Contested Cases

MEETING DATE	7/20/07
AGENDA ITEM	C.1. Contested Cases

OVERVIEW

Actions: Staff recommends the following action be taken in relation to the case scheduled for deliberation at this meeting:

- Adopt the Draft Final Order as presented in the contested case of Wayne Logemann.

BOARD OPTIONS

The Board may:

1. Adopt the staff recommendation as presented above.
2. Adopt one of the alternative directions specified in the memo related to the contested case.
3. Take no action. The proposed order would become final as the deadline passes.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- If the Board does not adopt: The specific outcome and alternatives vary but are more fully explained in the memo accompanying the case.

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July 20, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption of Direct Rollover Rules
OAR 459-005-0591, *Definitions – Direct Rollovers*
OAR 459-005-0595, *Limitations – Direct Rollovers*
OAR 459-005-0599, *Election Procedures – Direct Rollovers*
OAR 459-050-0090, *Direct Rollover (OSGP)*

MEETING DATE	7/20/07
AGENDA ITEM	C.2. Direct Rollovers

OVERVIEW

- Action: Adopt modifications to Direct Rollover Rules.
- Reason: The recent federal Pension Protection Act of 2006 changed the law on beneficiaries who are eligible to roll over benefit payments. In compliance with our statute's direction to adopt rules to conform the plan to federal tax laws, these rules were developed to implement the changes directed by the new federal law and to conform to state law changes made by the 2007 Oregon legislature.
- Subject: Beneficiaries eligible to roll over PERS benefit payments.
- Policy Issue: None.

BACKGROUND

The federal Pension Protection Act of 2006 included a number of provisions affecting the administration of PERS. One provision, which went into effect January 1, 2007, allows plans to offer non-spouse beneficiaries the option of rolling over lump sum distributions to an individual retirement account or annuity in a trustee-to-trustee transfer. The Oregon legislature recently passed HB 2397 (signed by the Governor on June 20, 2007), which incorporates this new provision into Chapters 238, 238A, and 243. The new provisions apply to non-spouse beneficiaries of PERS members (including OPSRP) and non-spouse beneficiaries of state employees participating in OSGP. The state law will become effective on January 1, 2008.

Two other changes from the federal law, also effective January 1, 2007, are reflected in these rule modifications. One provision extends the effective period of the required federal tax information disclosure from 90 days to 180 days. Another allows distributees to roll after-tax dollars to certain types of plans that will accept and account for the after-tax dollars separately.

POLICY ISSUE

When rulemaking started, staff posed the policy issue of whether PERS should offer non-spouse beneficiaries the option of rolling lump sum benefits to an individual retirement account or annuity. With the passage of HB 2397, this issue has become moot.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on April 24, 2007 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on May 25, 2007 at 5:00 p.m. and no public comment was received.

SUMMARY OF MODIFICATIONS TO RULES SINCE FIRST READING

These rules have not been modified since the Board's last meeting.

LEGAL REVIEW

The attached rules were submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rules as presented for adoption.

IMPACT

Mandatory: Yes, some of these updates are required by federal law. Others are not required but the rule modifications are within the authority granted by statute.

Impact: Extending the effective period of the required federal tax information notice to 180 days eases an administrative burden and procedures already exist for trustee-to-trustee transfers (rollovers).

Cost: There is no substantial cost to stakeholders or the Fund as a result of the adoption of these rules. Members will bear no cost from these rules. Employers will not bear any additional cost from these rules. There was a small administrative cost to implement these rules in the form of system programming and operational form changes. These changes were made and the costs already incurred after these modifications were adopted as temporary rules. There is no direct cost to the Fund other than the administrative expenses associated with incorporating these provisions into PERS operations.

RULEMAKING TIMELINE

February 16, 2007	PERS Board adopted the temporary rules and directed PERS staff to file a Notice of Proposed Rulemaking.
March 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. Notice mailed to employers, legislators, and interested parties. Public comment period began.
April 1, 2007	<i>Oregon Bulletin</i> published the Notice.
April 24, 2007	Rulemaking hearing held at PERS headquarters in Tigard.

Adoption – Direct Rollover Rules

7/20/07

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May 18, 2007	First reading of the proposed rules.
May 25, 2007	Public comment period ended at 5:00 p.m.
July 20, 2007	Board may adopt the amended rules.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt rule modifications to OAR 459-005-0591, 459-005-0595, 459-005-0599, and 459-050-0090, as presented.”
2. Take no action and direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: These rules were developed to implement the changes directed by the Pension Protection Act of 2006 and HB 2397, as adopted by the 20007 Oregon legislature.

If the Board does not adopt: Staff would return with rule modifications that more closely fit the Board’s policy direction if the Board determines that a change is warranted.

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 **459-005-0591**

2 **Definitions -- Direct Rollovers**

3 As used in OAR 459-005-0590 to 459-005-0599 the following words and phrases
4 shall have the following meanings:

5 (1) "Code" means the Internal Revenue Code of 1986, as amended.

6 (2) A "direct rollover" means the payment of an eligible rollover distribution by
7 PERS to an eligible retirement plan specified by the distributee.

8 (3) A "distributee" includes a PERS member, the surviving spouse of a deceased
9 PERS member, **a non-spouse beneficiary of the member that is a designated**
10 **beneficiary under Code Section 402(c)(11)**, and the current or former spouse of a PERS
11 member who is the alternate payee under a domestic relations order that satisfies the
12 requirements of ORS 238.465 and the rules adopted thereunder.

13 (4) An "eligible retirement plan" means any one of the following:

14 (a) An individual retirement account or annuity described in Code Section 408(a) or
15 (b), but shall not include a Roth IRA as described in Code Section 408A;

16 (b) An annuity plan described in Code Section 403(a) that accepts the distributee's
17 eligible rollover distribution;

18 (c) A qualified trust described in Code Section 401(a) that accepts the distributee's
19 eligible rollover distribution;

20 (d) An eligible deferred compensation plan described in Code Section 457(b) which
21 is maintained by an eligible employer described in Code Section 457(e)(1)(A) and
22 accepts the distributee's eligible rollover distribution.

1 (e) An annuity contract described in Code Section 403(b) that accepts the
2 distributee's eligible rollover distribution.

3 (f) For the purposes of ORS 237.650(3), the individual employee account maintained
4 for a member under the Individual Account Program as set forth under ORS
5 238A.350(2); and

6 (g) For the purposes of ORS 237.655(2), the state deferred compensation program.

7 (5) An "eligible rollover distribution" means any distribution of all or any portion of
8 a distributee's PERS benefit, except that an eligible rollover distribution shall not include:

9 (a) Any distribution that is one of a series of substantially equal periodic payment
10 made no less frequently than annually for the life (or life expectancy) of the distributee or
11 the joint lives (or life expectancies) of the distributee and the distributee's designated
12 beneficiary, or for a specified period of ten years or more;

13 (b) Any distribution to the extent that it is a required or minimum distribution under
14 Code Section 401(a)(9).

15 (6) A "recipient plan" means an eligible retirement plan that is designated by a
16 distributee to receive a direct rollover.

17 (7) The provisions of this rule are effective on January 1, [2004] **2007**.

18 Stat. Auth.: ORS 238.650 & 238A.450

19 Stats. Implemented: ORS Chapters 238 and 238A

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 **459-005-0595**

2 **Limitations -- Direct Rollovers**

3 **(1)** Notwithstanding any provision to the contrary in OAR 459-005-0590 to 459-
4 005-0599, a distributee's right to elect a direct rollover is subject to the following
5 limitations:

6 *[(1)]* **(a)** A distributee may elect to have an eligible rollover distribution paid in a
7 direct rollover to only one eligible retirement plan.

8 *[(2)]* **(b)** A distributee may elect a direct rollover only when his or her eligible
9 rollover distribution(s) during a calendar year is reasonably expected to total \$200 or
10 more.

11 *[(3)]* **(c)** A distributee may elect to have part of an eligible rollover distribution be
12 paid directly to the distributee, and to have part of the distribution paid as a direct
13 rollover only if the member elects to have at least \$500 transferred to the eligible
14 retirement plan.

15 *[(4)]* **(2)(a)** The provisions of **subsection (1)(a)** apply to any portion of a
16 distribution, including after-tax employee contributions that are not includible in gross
17 income.

18 **(b)** Any portion of a distribution that consists of after-tax employee contributions
19 that are not includible in gross income may be transferred only to:

20 **(A)** An individual retirement account or annuity described in Code Section 408(a) or
21 (b),*],* or

1 **(B) An annuity contract described in Code Section 403(b) or** [to] a qualified
2 defined contribution **or defined benefit** plan that agrees to separately account for the
3 amounts transferred, including separate accounting for the pre-tax and post-tax amounts.

4 **(c)** The amount transferred shall be treated as consisting first of the portion of the
5 distribution that is includible in gross income, determined without regard to Code Section
6 402(c)(1).

7 [(5)] **(3)** The provisions of this rule are effective on January 1, [2004] **2007**.

8 Stat. Auth.: ORS 238.650 & 238A.450

9 Stats. Implemented: ORS Chapters 238 and 238A

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 **459-005-0599**

2 **Election Procedures -- Direct Rollovers**

3 (1) PERS staff shall provide each distributee with a written explanation of the direct rollover
4 rules for any eligible distribution, as required by Code Section 402(f). In addition to the general
5 explanation required by Code Section 402(f), the written explanation shall include the following
6 information:

7 (a) A statement that the distributee has the right to consider the decision of whether or not to
8 elect a direct rollover for at least 30 days after the notice is provided;

9 (b) An explanation of the default rule set forth in section (5) of this rule;

10 (c) An explanation of the notice and election rules for periodic payments that are eligible
11 rollover distributions.

12 (2) Except as otherwise provided in sections (4) and (6) of this rule, an eligible rollover
13 distribution shall not be paid, either to the distributee or to a recipient plan, less than 30 days or
14 more than [90] **180** days after the distributee has been provided with the written explanation
15 described in section (1) of this rule.

16 (3)(a) Any direct rollover election shall be in writing and must be signed by the distributee
17 or by his or her authorized representative pursuant to a valid power of attorney as described in
18 OAR 459-005-0100 to 459-005-0140. The direct rollover election may be on forms furnished by
19 PERS, or on forms submitted by recipient plan which shall include:

20 (A) [Member's] **Distributee's** full name;

21 (B) [Member's] **Distributee's** social security number;

22 (C) Percentage of amount eligible for transfer (whole percent), or the dollar amount (in
23 whole dollars);

1 (D) The distributee's account number with recipient plan, if available;

2 (E) Name and complete mailing address of recipient plan; **and**

3 **(F) If the distributee is a non-spouse beneficiary of the member, the title of the**
4 **recipient IRA account.**

5 (b) The election shall include or be accompanied by a statement by the recipient plan's plan
6 administrator that the plan will accept the direct rollover for the benefit of the distributee,

7 **including whether or not the recipient plan will accept, and account for separately, after-**
8 **tax dollars.**

9 (4) If a distributee affirmatively elects a distribution after having received the written
10 election described in section (1) of this rule, PERS may make the distribution even if the initial
11 30-day period described in section (2) of this rule has not expired.

12 (5) If a distributee fails to affirmatively elect to make or not to make a direct rollover within
13 at least 30 and no more than [90] **180** days after notice is provided as described in section (1) of
14 this rule, PERS shall pay the eligible rollover distribution directly to the distributee.

15 (6) Any series of payments that are eligible rollover distributions shall be governed by the
16 provisions of sections (1), (2), (3), (4), and (5) of this rule for each payment made.

17 (7) For the purposes of this rule, "effective date of payment" means:

18 (a) The date inscribed on check or warrant; or

19 (b) The date of an electronic transfer/transaction **to the recipient plan.**

20 **(8) The provisions of this rule are effective on January 1, 2007.**

21 Stat. Auth.: ORS 238.650 & 238A.450

22 Stats. Implemented: ORS Chapters 238 and 238A

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 5 – ADMINISTRATION**

1 **459-050-0090**

2 **Direct Rollover**

3 The purpose of this rule is to establish the criteria and process for a direct rollover (a
4 transfer made from trustee to trustee) by the Deferred Compensation Program to an
5 eligible retirement plan and to establish the criteria and process for the Deferred
6 Compensation Program to accept an eligible rollover distribution from another eligible
7 retirement plan. This rule shall apply to any direct rollover distribution received by the
8 Deferred Compensation Program on behalf of a participant and any request for
9 distribution from a Deferred Compensation Program account processed on or after
10 January 1, 2002.

11 (1) Definitions. The following definitions apply for the purpose of this rule:

12 (a) "Code" means the Internal Revenue Code of 1986, as amended.

13 (b) "Direct Rollover" means:

14 (A) The payment of an eligible rollover distribution by the Deferred Compensation
15 Plan to an eligible retirement plan specified by the distributee; or

16 (B) The payment of an eligible rollover distribution by an eligible retirement plan to
17 the Deferred Compensation Program.

18 (c) "Distributee" means:

19 (A) A Deferred Compensation Plan participant who has a severance of employment;

20 (B) A Deferred Compensation Plan participant who is approved for a de minimis
21 distribution under OAR 459-050-0075(1);

22 (C) The surviving spouse of a deceased participant; *[or]*

1 (D) The spouse or former spouse who is the alternate payee under a domestic
2 relations order that satisfies the requirements of ORS 243.507 and OAR 459-050-0200 to
3 459-050-0250; or

4 **(E) The non-spouse beneficiary of a deceased participant who is a designated**
5 **beneficiary under Code Section 402(c)(11).**

6 (d) "Distributing Plan" means an eligible retirement plan that is designated to
7 distribute a direct rollover to another eligible plan (recipient plan).

8 (e) "Eligible Retirement Plan" means any one of the following that accepts the
9 distributee's eligible rollover distribution:

10 (A) An individual retirement account or annuity described in Code Section 408(a) or
11 (b), but shall not include a Roth IRA as described in Code Section 408(A);

12 (B) An annuity plan described in Code Section 403(a);

13 (C) An annuity contract described in Code Section 403(b);

14 (D) A qualified trust described in Code Section 401(a);

15 (E) An eligible deferred compensation plan described in Code Section 457(b) that is
16 maintained by a state, political subdivision of a state, or any agency or instrumentality of
17 a state or political subdivision of a state; or

18 (F) A plan described in Code Section 401(k).

19 (f) "Eligible Rollover Distribution" means a distribution of all or a portion of a
20 distributee's Deferred Compensation account. An eligible rollover distribution shall not
21 include:

22 (A) A distribution that is one of a series of substantially equal periodic payments
23 made no less frequently than annually for the life (or life expectancy) of the distributee or

1 the joint lives (or life expectancies) of the distributee and the distributee's designated
2 beneficiary, or for a specified period of ten years or more;

3 (B) A distribution that is a required or minimum distribution under Code Section
4 401(a)(9);

5 (C) An amount that is distributed due to an unforeseen emergency under OAR 459-
6 050-0075(2).

7 (g) "Recipient Plan" means an eligible retirement plan that is designated by a
8 distributee to receive a direct rollover.

9 (2) Direct rollover to an eligible retirement plan. The direct rollover of an eligible
10 rollover distribution by the Deferred Compensation Program to an eligible retirement
11 plan shall be interpreted and administered in accordance with Code Section 457(d)(1)(C)
12 and all applicable regulations. A distributee may elect to have an eligible rollover
13 distribution paid by the Deferred Compensation Program directly to an eligible retirement
14 plan specified by the distributee.

15 (a) The Deferred Compensation Program staff shall provide each distributee with a
16 written explanation of the direct rollover rules for an eligible distribution, as required by
17 *[Internal Revenue]* the Code.

18 (b) A distributee's right to elect a direct rollover is subject to the following
19 limitations:

20 (A) A distributee may elect to have an eligible rollover distribution paid as a direct
21 rollover to only one eligible retirement plan.

22 (B) A distributee may elect to have part of an eligible rollover distribution be paid
23 directly to the distributee, and to have part of the distribution paid as a direct rollover

1 only if the [member] **distributee** elects to have at least \$500 transferred to the eligible
2 retirement plan.

3 (c) A direct rollover election shall be in writing and must be signed by the distributee
4 or by his or her authorized representative pursuant to a valid power of attorney. The
5 direct rollover election may be on forms furnished by the Deferred Compensation
6 Program, or on forms submitted by recipient plan which must include:

7 (A) The distributee's full name;

8 (B) The distributee's social security number;

9 (C) The distributee's account number with recipient plan, if available; [and]

10 (D) The name and complete mailing address of recipient plan; **and**

11 **(E) If the distributee is a non-spouse beneficiary of the member, the title of the**
12 **recipient IRA account.**

13 (d) The distributee is responsible for determining that the recipient plan's
14 administrator will accept the direct rollover for the benefit of the distributee. Any taxes or
15 penalties that are the result of the distributee's failure to ascertain that the recipient plan
16 will accept the direct rollover shall be the sole liability of the distributee.

17 (3) Direct rollover from an eligible retirement plan. On or after January 1, 2002, the
18 Deferred Compensation Program shall only accept rollover contributions from
19 participants and direct rollovers of distributions from an eligible retirement plan on behalf
20 of a participant. Section (3) of this rule shall be interpreted and administered in
21 accordance with Code Section 402(c) and all applicable regulations.

1 (a) The Deferred Compensation Program shall only accept **pre-tax** assets *[from pre-*
2 *tax accounts. Accounts that contain]*. After-tax employee contributions are not eligible
3 for rollover into the Deferred Compensation Program.

4 (A) The Deferred Compensation Program may require that a direct rollover from an
5 eligible deferred compensation plan described in Code Section 457(b) plan include or be
6 accompanied by a statement by the participant's previous employer or the plan
7 administrator that the distribution is eligible for rollover treatment.

8 (B) A direct rollover from an eligible retirement plan other than a Deferred
9 Compensation Plan described in Code Section 457(b) must be an eligible rollover
10 distribution. It is the participant's responsibility to determine that the assets qualify for
11 rollover treatment. Any taxes or penalties that are the result of the participant's failure to
12 ascertain that the distributing plan assets qualify for a direct rollover to a deferred
13 compensation plan described in Code Section 457(b), shall be the sole liability of the
14 distributee.

15 (b) Subject to the requirements of subsections (3)(b)(A) and (B) below, eligible
16 rollover distribution(s) shall be credited to the participant's Deferred Compensation
17 account established pursuant to the Plan and Agreement on file with the Deferred
18 Compensation Program and shall be subject to all the terms and provisions of the Plan
19 and Agreement. Account assets received from the distributing plan will be invested by
20 the Deferred Compensation Plan record keeper in accordance with the terms and
21 conditions of the Deferred Compensation Program according to the asset allocation the
22 participant has established for monthly contributions unless instructed otherwise in
23 writing on forms provided by the Deferred Compensation Program.

1 (A) Assets from an eligible deferred compensation plan account described in Code
2 Section 457(b) will be aggregated with the participant's accumulated Deferred
3 Compensation Plan account.

4 (B) Assets from an eligible retirement plan other than a Deferred Compensation Plan
5 described in Code Section 457(b) will be segregated into a separate account established
6 by the Deferred Compensation Program for tax purposes only, but not for investment
7 purposes. For investment purposes, the participant's assets are treated as a single account.
8 If a participant changes the allocation of existing assets among investment options within
9 the plan, the transfer or reallocation shall apply to and will occur in all accounts
10 automatically.

11 (c) Assets directly rolled over to the Deferred Compensation Program may be
12 subject to the 10 percent penalty on early withdrawal to the extent that the funds directly
13 rolled over are attributable to rollovers from a qualified plan, a 403(b) annuity, or an
14 individual retirement account.

15 Stat. Auth.: ORS 243.470

16 Stats. Implemented: ORS 243.401 - 243.507



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July 20, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption of Judge Member Program Rules
OAR 459-040-0001, *Definitions*
OAR 459-040-0010, *General Administration*
OAR 459-040-0020, *Judge Member Disability Retirement*
OAR 459-040-0030, *Plan A Service Retirement Allowance*
OAR 459-040-0040, *Plan B Service Retirement Allowance*
OAR 459-040-0050, *Variable Annuity Adjustments for Judge Members*
OAR 459-040-0060, *Judge Member Death Before Retirement*
OAR 459-040-0070, *Judge Member Death After Retirement*
OAR 459-040-0080, *Required Minimum Distribution of Judge Member Death Benefits*

MEETING DATE	7/20/07
AGENDA ITEM	C.3. Judge Mbrs.

OVERVIEW

- Action: Adopt Judge Member Program Rules.
- Reason: To clarify administration of the judge member retirement program under ORS 238.500 to 238.585.
- Subject: Administration of the judge member retirement program.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

Legislation in 1983 (ORS 238.500 to 238.585) created the PERS Judge Member Program and transferred all sitting judges covered under the Judges Retirement Fund to the Judge Member Program. The Judge Member Program now includes any judge of the Oregon Supreme Court, Court of Appeals, Oregon Tax Court, and Circuit Courts. These rules explain the benefit program more completely and inform the program's members of how PERS administers certain provisions.

Effective June 20, 2007, Senate Bill 872 amended ORS 238.565 to provide that a judge member may designate a portion of the pension payable to a surviving spouse to be paid to a former spouse. Modifications in the rules presented for adoption reflect compliance with the recent statutory changes.

POLICY ISSUE

No policy issues have been identified at this time. These rules conform to the long-standing administrative practices that PERS has applied to the Judge Member Program and comply with recent amendments to the governing statute.

SUMMARY OF MODIFICATIONS TO RULES SINCE FIRST READING

The following substantive modifications have been made since first reading and are evidenced by tracked changes in the draft rules:

459-040-0001:

The definition of “former spouse” was added to accommodate the provisions of Senate Bill 872.

Subsection (1)(c) was added to the definition of “life pension” to include a judge member’s former spouse as a possible pension recipient.

459-040-0010:

Section (8) was edited to reference the OAR divisions addressing membership.

459-040-0040:

Section (4) was edited to acknowledge that a judge member retired under Plan B who serves more than the required 35 days of pro tem service in a year may carry the excess days of service over to subsequent years and apply them to the pro tem service obligation in those years.

Section (5) was deleted as unnecessary. Benefits payable upon the death of a judge member are addressed in OARs 459-040-0060 and 459-040-0070.

459-040-0060:

In subsection (1)(d), the word “remainder” was substituted for “difference between these amounts”.

Section (5) was added to accommodate and clarify the impact of Senate Bill 872. It reflects that a judge member may, under ORS 238.565(8), elect to have a portion of the pension otherwise payable to a surviving spouse paid to a former spouse. The surviving spouse, if any, will receive only that portion of the pension not paid to the former spouse. Payments to the surviving spouse and any former spouse(s) for whom the judge has made such an election continue only until the death of the first former spouse designated by such an election. Pension payments to the surviving spouse and former spouse(s) cease at that time. If the total of the payments to the surviving and former spouse(s) is less than the amount credited to the judge member’s account at the date of the judge member’s death, the remainder will be paid to the judge member’s beneficiary.

459-040-0070:

In section (2)(b), the text "The additional benefit for a surviving spouse shall be void upon the death or divorce of the spouse of record." was deleted as unnecessary. The remaining text is sufficient to establish this limitation.

In sections (3) and (4), the word “remainder” was substituted for “difference.”

Section (7) was added to accommodate and clarify the impact of Senate Bill 872. The text is generally parallel to the text added in OAR 459-040-0060(5). However, because this rule deals with post-retirement death, subsection (7)(c) provides that in the determination of any remainder payable to the judge member’s beneficiary, pension payments to the judge member are added to the total amount of payments to the surviving and former spouse(s) and the sum is compared to the amount credited to the judge member’s account at the judge member’s retirement date.

459-040-0080:

Section (2) was edited to acknowledge that a former spouse is a non-spouse beneficiary for the purposes of Required Minimum Distributions.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on May 22, 2007 at 2:00 p.m. at PERS headquarters in Tigard. Debra Tremblay, Benefits Manager, Oregon Judicial Department, provided comment and suggested changes. Ms. Tremblay’s comments were addressed in the memorandum and draft rule presented to the Board at first reading. The public comment period ended on June 22, 2007 at 5:00 p.m. No public comment has been received since first reading.

LEGAL REVIEW

The draft rules were submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rules as presented for adoption.

IMPACT

Mandatory: No, the Board need not adopt the rules.

Impact: Clarification of procedures in administration of judge member retirement will benefit members, employers, and staff.

Cost: There are no discrete costs attributable to the rules.

RULEMAKING TIMELINE

April 13, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2007	<i>Oregon Bulletin</i> published the Notice.
May 18, 2007	PERS Board notified that staff began the rulemaking process.
May 22, 2007	Rulemaking hearing held at 2:00 p.m. in Tigard.
June 15, 2007	First reading of the rules.
June 22, 2007	Public comment period ended at 5:00 p.m.
July 20, 2007	Board may adopt the new rules.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt judge member permanent rules OAR 459-040-0001 to 459-040-0080, as presented.”
2. Take no action and direct staff to make changes to the rules or take other action.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Adopting the new rules will clarify administration of the judge member retirement program under ORS 238.500 to 238.585.

If the Board does not adopt: Staff would return with rules that more closely fit the Board’s policy direction if the Board determines that a change is warranted.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 040 – JUDGE MEMBERS

1 459-040-0001

2 Definitions

3 The words and phrases used in this Division have the same meaning given them
4 in ORS Chapter 238, particularly as defined in ORS 238.500 to 238.585. Additional
5 terms are defined as follows unless context requires otherwise:

6 (1) “Former spouse” means a person whose spousal relationship with the judge
7 member terminated before the date of the judge member’s death.

8 (2) “Life pension” means an allowance paid monthly for:

9 (a) The life of a retired judge member as either a service or disability
10 retirement allowance, as described in ORS 238.535 and 238.555;

11 (b) The life of a surviving spouse of a deceased judge member or a deceased
12 retired judge member as described in ORS 238.565; or

13 (c) The life of a former spouse of a deceased judge member or a deceased
14 retired judge member as described in ORS 238.565.

15 (3) “Plan A” means the service retirement allowance payable under ORS
16 238.535(1)(a).

17 (4) “Plan B” means the service retirement allowance payable under ORS
18 238.535(1)(b).

19 (5) “Pro tem judge” means a retired judge member performing temporary
20 service as a judge without pay as a condition of retirement under the Plan B
21 retirement option.

1 **(6) “Surviving spouse” means the spouse of the judge member at the date of the**
2 **judge member’s death.**

3 **Stat. Auth.: ORS 238.650**

4 **Stats. Implemented: ORS 238.500 - 238.585**

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 040 – JUDGE MEMBERS

1 459-040-0010

2 General Administration

3 (1) A person younger than age 72 becomes a judge member on the date that the
4 person takes office as a judge. A judge member does not serve a waiting period.

5 (2) A judge member may retire under:

6 (a) Plan A, as provided in OAR 459-040-0030; or

7 (b) Plan B, as provided in OAR 459-040-0040.

8 (3) Before attaining age 60, a judge member must elect in writing, on forms
9 furnished by the Judicial Department, whether to retire under Plan A or Plan B. A
10 judge member who fails to make the election must retire under Plan A.

11 (4) A judge member who has service as other than a judge member must elect a
12 retirement option available for service in other classifications for that portion of the
13 benefit.

14 (5) Lump sum options are not available for judge member retirement benefits.

15 (6) For purchases of creditable service, a judge member is subject to the same
16 requirements as a general service member.

17 (7) A judge member’s contributions to PERS must cease at the end of the
18 calendar year that the judge member attains age 75. The judge member shall be
19 retired from judicial office and receive a service retirement allowance effective
20 January 1 of the following calendar year.

21 (8) A person age 72 or older who becomes a judge is not eligible to become a
22 judge member. The judge may establish membership in PERS as a general service

1 **member; see generally OAR Chapter 459, Divisions 10, 75, and 80 for membership**

2 **eligibility guidelines for the PERS Plan.**

3 **Stat. Auth: ORS 238.650**

4 **Stats. Implemented: ORS 238.500 - 238.585**

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 040 – JUDGE MEMBERS

1 **459-040-0020**

2 **Judge Member Disability Retirement**

3 **A judge member who meets the requirements of ORS 238.555 may apply for**
4 **disability retirement. The provisions of OAR chapter 459, Division 15 apply to**
5 **judge member disability retirement with the following exceptions:**

6 **(1) The terms “member” and “employee member” in Division 15 mean a judge**
7 **member as defined in ORS 238.500.**

8 **(2) “Normal retirement age” means the age at which a judge member may**
9 **retire without a reduced benefit as set forth under ORS 238.535.**

10 **(3) “Qualifying position” as defined in OAR 459-015-0001(18) does not apply to**
11 **judge members.**

12 **(4) A judge member’s effective disability retirement date is the first day of the**
13 **month following the month in which the judge member’s disability retirement**
14 **application is approved.**

15 **(5) A judge member must have six years of service as a judge member to be**
16 **eligible for non-duty disability retirement.**

17 **(6) If a judge member meets the eligibility criteria for disability retirement, the**
18 **member’s disability retirement allowance shall be based on creditable service time**
19 **as though the member had continuously worked as a judge pursuant to ORS**
20 **238.555(1) or (2).**

21 **(7) PERS judge membership is terminated by withdrawal of the member**
22 **account balance as provided in ORS 238.545. Former PERS judge members who**

1 **have terminated their membership through withdrawal are not eligible to receive**
2 **PERS disability retirement allowances.**

3 **(8) OAR 459-015-0060 does not apply to judge members.**

4 **Stat. Auth: ORS 238.650**

5 **Stats. Implemented: ORS 238.555**

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 040 – JUDGE MEMBERS

1 **459-040-0030**

2 **Plan A Service Retirement Allowance**

3 **(1) The Plan A service retirement allowance is a life pension calculated in**
4 **accordance with ORS 238.535(1)(a).**

5 **(2) A judge member is not eligible to receive a service retirement allowance**
6 **under Plan A before the judge member turns age 60.**

7 **(3) A judge member may retire under Plan A upon written application on a**
8 **form furnished by PERS:**

9 **(a) At age 65 or thereafter with an unreduced service retirement allowance.**

10 **(b) At or after age 60 but before age 65, with an actuarially reduced service**
11 **retirement allowance. The service retirement allowance shall be reduced by 8% for**
12 **each full year and 8% prorated for each partial year the effective retirement date**
13 **precedes the date the judge member attains age 65.**

14 **(4) If a judge member, retiring at age 70 or thereafter, was formerly**
15 **contributing to the Judges’ Retirement Fund and established membership in PERS**
16 **pursuant to ORS 237.215(3) (1989 Edition), the judge member shall be entitled to a**
17 **service retirement allowance as provided for in ORS 238.535(4).**

18 **Stat. Auth: ORS 238.650**

19 **Stats. Implemented: ORS 238.535**

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 040 – JUDGE MEMBERS

1 **459-040-0040**

2 **Plan B Service Retirement Allowance**

3 **(1) The Plan B service retirement allowance is a life pension calculated in**
4 **accordance with ORS 238.535(1)(b).**

5 **(2) A judge member is not eligible to receive a service retirement allowance**
6 **under Plan B before age 60.**

7 **(3) A judge member may retire under Plan B at age 60 or thereafter upon**
8 **written application on forms furnished by PERS.**

9 **(4) A judge member who retires under Plan B must serve as a pro-tem judge**
10 **for 35 days per calendar year for five years following the judge member’s**
11 **retirement date. Days of service in excess of 35 days in a calendar year may be**
12 **carried over and applied to the pro tem service obligation in future years.**

13 **Appointment and service as a pro-tem judge is administered by the Office of the**
14 **State Court Administrator under rules adopted by order of the Chief Justice of the**
15 **Oregon Supreme Court.**

16 **(5) If a judge member, retiring at age 70 or thereafter, was formerly**
17 **contributing to the Judges’ Retirement Fund and established membership in PERS**
18 **pursuant to ORS 237.215(3) (1989 Edition), the judge member shall be entitled to a**
19 **service retirement allowance as provided for in ORS 238.535(4).**

20 **Stat. Auth: ORS 238.650**

21 **Stats. Implemented: ORS 238.535**

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 040 – JUDGE MEMBERS

1 **459-040-0050**

2 **Variable Annuity Adjustments for Judge Members**

3 **(1) A judge member may have elected to have a portion of the judge member’s**
4 **contributions paid into the Variable Annuity Account in the Fund as provided in ORS**
5 **238.260(3) before June 30, 2003. A judge member who was participating in the Variable**
6 **Annuity Account on that date may continue to make contributions to the Variable**
7 **Annuity Account for service as a judge member performed on or after January 1, 2004.**

8 **(2) The retirement allowance of a judge member with a variable account, whether**
9 **receiving a service or disability retirement, shall be adjusted in accordance with ORS**
10 **238.260(12). The adjustment may result in a benefit greater than 75% of final average**
11 **salary.**

12 **(3) A retiring judge member participating in the Variable Annuity Account must**
13 **elect at retirement to transfer the variable account balance to the judge member’s**
14 **regular account in the fund, as of the effective date of retirement under the provisions of**
15 **ORS 238.260(9), or to maintain an account in the Variable Annuity Account under the**
16 **provisions of ORS 238.260(10) and (11).**

17 **(4) A judge member who meets the criteria of ORS 238.260(14)(a) may elect at any**
18 **time before retirement to make a one-time transfer of the balance of the judge member’s**
19 **variable account to the judge member’s regular account in accordance with ORS**
20 **238.260(14).**

21 **Stat. Auth: ORS 238.650**

22 **Stats. Implemented: ORS 238.260 & OL 2003 Ch. 625 § 19**

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 040 – JUDGE MEMBERS

1 **459-040-0060**

2 **Judge Member Death Before Retirement**

3 **If a judge member dies before retiring, benefits shall be distributed and**
4 **calculated as follows:**

5 **(1) For a surviving spouse:**

6 **(a) If the judge member has six or more years of service as a judge and the**
7 **judge member is not an inactive judge member performing pro tem service under**
8 **the provisions of ORS 238.545(4), the surviving spouse shall receive a life pension**
9 **equal to two-thirds of the retirement allowance the judge member would have**
10 **received under Plan A, had the judge member retired on the date of death.**

11 **(b) If the judge member has six or more years of service as a judge and the**
12 **judge member is an inactive judge member performing pro tem service under the**
13 **provisions of ORS 238.545(4) at the time of death, the surviving spouse shall receive**
14 **a life pension equal to two-thirds of the service retirement allowance the judge**
15 **member would have received under Plan B, had the judge member retired on the**
16 **date of death.**

17 **(c) If the judge member has less than six years of service as a judge, the**
18 **surviving spouse shall receive a lump sum payment equal to the amount credited to**
19 **the judge member account in the Fund on the first of the month following the date**
20 **of death.**

21 **(d) If a surviving spouse receiving a life pension under this section dies and the**
22 **total amount of pension payments received by the surviving spouse is less than the**

1 amount that had been credited to the deceased judge member's account as of the
2 date of death of the judge member, the designated beneficiary of the judge member
3 shall receive a lump sum payment equal to the remainder.

4 (2) For purposes of computing a surviving spouse's life pension in section (1) of
5 this rule, a judge member who dies before age 60 is deemed to have died at age 60.

6 (3) If the judge member has six or more years of service as a judge has no
7 surviving spouse, the designated beneficiary shall receive a lump sum payment
8 equal to the amount credited to the judge member account in the Fund on the first
9 of the month following the date of death.

10 (4) If the judge member has no surviving spouse and no designated beneficiary
11 at death, a lump sum payment equal to the amount credited to the judge member's
12 account on the date of death shall be paid to the judge member's estate.

13 (5) If the judge member, under the provisions of ORS 238.565(8), elects to have
14 a portion of the pension payable to a surviving spouse paid to a former spouse, the
15 designated portion shall be paid to the former spouse as a life pension. The portion
16 of the pension not paid to the former spouse shall be paid to the surviving spouse, if
17 any.

18 (a) The life of the first former spouse designated to receive a pension under
19 ORS 238.565(8) will be the measuring life of the pensions payable to the surviving
20 spouse and to any other former spouse.

21 (b) Upon the death of the first designated former spouse, the pensions payable
22 to the surviving spouse and to any other former spouse shall cease.

1 **(c) If, at the death of the first designated former spouse, the total amount of the**
2 **payments received by the surviving spouse and former spouse(s) is less than the**
3 **amount that had been credited to the deceased judge member’s account as of the**
4 **date of the judge member’s death, the judge member’s designated beneficiary shall**
5 **receive a lump sum payment equal to the remainder.**

6 **Stat. Auth: ORS 238.650**

7 **Stats. Implemented: ORS 238.565**

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 040 – JUDGE MEMBERS

1 459-040-0070

2 Judge Member Death After Retirement

3 If a judge member dies after the effective retirement date, benefits shall be
4 distributed and calculated as follows:

5 (1) Surviving Spouse Standard Two-thirds Benefit. The surviving spouse of a
6 judge member shall receive a life pension equal to two-thirds of the service retirement
7 allowance the judge member is receiving or is entitled to receive on the date of death.

8 (2) Additional benefit for surviving spouse. The surviving spouse may be entitled
9 to an addition to the pension described in section (1) of this rule if:

10 (a) The judge member selected a reduced retirement allowance under ORS
11 238.565(4); and

12 (b) The surviving spouse is the spouse of record on the effective date of
13 retirement.

14 (3) No surviving spouse. If the judge member has no surviving spouse and the
15 total amount of retirement allowance received by the retired judge member is less
16 than the amount credited to the judge member account on the judge member's
17 effective retirement date, the designated beneficiary shall receive a lump sum
18 payment equal to the remainder.

19 (4) Death of surviving spouse. If a surviving spouse receiving a pension under
20 section (1) of this rule dies and the total amount received as retirement allowance by
21 the retired judge member and as pension by the surviving spouse is less than the
22 amount credited to the judge member account on the effective date of retirement of

1 the judge member, the designated beneficiary of the judge member shall receive a
2 lump sum payment equal to the remainder.

3 (5) Default beneficiary. If the judge member has no valid written designation of
4 beneficiary filed with the PERS Board before the judge member's death, the
5 beneficiary of the judge member shall be the personal representative of the judge
6 member's estate.

7 (6) Unpaid accrued retirement allowance. Any accrued retirement allowance due
8 a retired judge member that is unpaid at the time of death of the judge member shall
9 be paid as follows:

10 (a) To the surviving spouse of the judge member;

11 (b) If there is no surviving spouse of the judge member, to the beneficiary of the
12 judge member;

13 (c) If there is no surviving spouse or beneficiary of the judge member, in the
14 manner provided for payments under ORS 238.390(2).

15 (7) If the judge member, under the provisions of ORS 238.565(8), elects to have a
16 portion of the pension payable to a surviving spouse paid to a former spouse, the
17 designated portion shall be paid to the former spouse as a life pension. The portion of
18 the pension not paid to the former spouse shall be paid to the surviving spouse, if any.

19 (a) The life of the first former spouse designated to receive a pension under ORS
20 238.565(8) will be the measuring life of the pensions payable to the surviving spouse
21 and to any other former spouse.

22 (b) Upon the death of the first designated former spouse, the pensions payable to
23 the surviving spouse and to any other former spouse shall cease.

1 **(c) If, at the death of the first designated former spouse, the total amount of the**
2 **payments received by the retired judge member and the payments received by the**
3 **surviving spouse and former spouse(s) is less than the amount credited to the**
4 **deceased judge member's account on the judge member's effective retirement date,**
5 **the judge member's designated beneficiary shall receive a lump sum payment equal**
6 **to the remainder.**

7 **Stat. Auth: ORS 238.650**

8 **Stats. Implemented: ORS 238.565**

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 040 – JUDGE MEMBERS**

1 **459-040-0080**

2 **Required Minimum Distribution of Judge Member Death Benefits**

3 **(1) In the event an active or inactive judge member dies before retiring, the**
4 **required minimum distribution of death benefits attributable to the deceased judge**
5 **member shall be made in accordance with OAR 459-014-0100.**

6 **(2) In the event a retired judge member dies, the required minimum**
7 **distribution(s) to a surviving spouse and/or to a beneficiary of the deceased judge**
8 **member shall be made in accordance with OAR 459-005-0560. For the purposes of**
9 **this rule, a former spouse is a non-spouse beneficiary of the deceased judge member.**

10 **(3) A lump sum distribution of death benefits of a deceased judge member may**
11 **be eligible for a rollover in accordance with OAR 459-005-0590 to 459-005-0599.**

12 **Stat. Auth: ORS 238.650**

13 **Stats. Implemented: ORS 238.565**



Oregon

Theodore R. Kulongoski, Governor

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July 20, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption of Document Receipt Date Rules
OAR 459-005-0220, *Receipt Date for Reports, Documents, and Remittances*

MEETING DATE	7/20/07
AGENDA ITEM	C.4. Doc Receipt

OVERVIEW

- Action: Adopt modifications to Document Receipt Date Rules
- Reason: The provisions dealing with when a document is deemed to be received by PERS require changes in response to the agency converting to workflows and digital document handling.
- Subject: Modifications to make the agency record filing process more definite and certain.
- Policy Issue: Should the date on which an item is received and processed by PERS be considered the receipt date?

BACKGROUND

OAR 459-005-0220 provides guidelines for document receipt by PERS. The current provision deeming a document to be received by PERS on its postmark date leads to problems as PERS converts to workflows and digital document handling. Staff recommends instead accepting the date stamped on the document when it is received by PERS. Alternatively, if a document is received and imaged by PERS but displays no receipt date stamp, the document would be deemed received on the imaged date.

POLICY ISSUE

Should the date on which an item is received by PERS be considered the receipt date?

The current rule considers a document's postmark date as the date the item is filed and received by PERS. Using this standard creates administrative difficulties as the postmark date is often not legible on the envelope, meaning the envelope must be notated or stamped by hand. Then, the envelope must be digitally captured and related to the document in question to establish its timely arrival. Alternatives considered in earlier rule drafts presented different problems, including difficulty in identifying methods of delivery and the application of grace periods, as pointed out in board discussions and public comment.

The proposed rule modifications would establish the date an item is stamped as received by PERS as the receipt date. Should a document be received and imaged by PERS but

display no receipt date stamp, the document would be deemed received on the imaged date. If the imaged date is later than the due date, the document would be deemed received five business days earlier than the imaged date. These standards are defined, predictable, less subject to manipulation, and present no additional administrative burden.

The draft rule also allows documents delayed in transit to PERS to be considered received on the date sent if the member meets the same requirements provided for lost documents. Those requirements were also amended to require that the original document be sent before the due date.

SUMMARY OF MODIFICATIONS TO RULE SINCE FIRST READING

The following rule modifications have been made since first reading:

Section (3) was amended to reinstate the existing text of the rule with minor changes. The text establishes that a document is received on the date displayed on the PERS date receipt stamp.

Section (4) was edited to provide a document that has been imaged but does not display a PERS date receipt stamp may be considered received on the imaged date. The grace period was edited to allow items missing a date receipt stamp to be considered received 5 business days before the imaged date.

Section (5) was amended to provide that if an item is delayed in transmission to PERS, the member has the same recourse as if the document had been lost.

In section (5)(a), “on or” was deleted to require evidence that a lost or delayed document was sent before the due date.

LEGAL REVIEW

The attached rule was submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on May 22, 2007 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public presented comment on the rule at the hearing. The public comment period ended on June 22, 2007 at 5:00 p.m. One comment was received.

On June 21, 2007, PERS received public comment from Maria Keltner, representing the Employers PERS Alliance. A copy of Ms. Keltner’s email is included with this memo.

Ms. Keltner suggested deleting the text “or the imaged date if the date received by PERS cannot be determined.” from section (3). She notes as her primary concerns administrative complexity and the possibility that imaging might be delayed. She also expresses concern regarding the rigidity of PERS imaging protocols.

Ms. Keltner recommended deleting section (4), which describes the grace period for items sent by regular mail. She commented that the proposal adds complexity by

requiring PERS to capture both the postmark and envelope to determine whether an item was received by regular mail and mailed within five business days of the due date.

After reviewing the Employers PERS Alliance's concerns, staff concurred with the suggested deletion in section (3). Section (4) was modified to apply the five-business day grace period to the document's imaged date if it does not contain a date receipt stamp. Incoming documents are imaged each business day with a goal of every document being imaged within 24 hours of the day it is received. A five-business day grace period is considered sufficient to avoid the risk of any delay attributable to the document being routed to imaging. Additionally, the rule permits a person to provide evidence of submitting the document before the due date if the document is lost or delayed.

IMPACT

Mandatory: No, the Board need not adopt the rule.

Impact: Streamlines and simplifies process for determining document receipt.

Cost: There are no discrete costs attributable to the rule.

RULEMAKING TIMELINE

April 13, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2007	<i>Oregon Bulletin</i> published the Notice.
May 18, 2007	PERS Board notified that staff began the rulemaking process.
May 22, 2007	Rulemaking hearing held at 2:00 p.m. in Tigard.
June 15, 2007	First reading of the rule.
June 22, 2007	Public comment period ended at 5:00 p.m.
July 20, 2007	Board may adopt the rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to "adopt rule modifications to OAR 459-005-0220, as presented."
2. Take no action and direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: The provisions dealing with document receipt require changes in response to the agency converting to workflows and digital document handling.

If the Board does not adopt: Staff would return with rule modifications that more closely fit the Board's policy direction if the Board determines that a change is warranted.

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 005 – ADMINISTRATION**

1 **459-005-0220**

2 **Receipt Date for Reports, Documents, *[and]* Remittances, and Payments**

3 (1) As used in this rule~~[,]~~;

4 **(a) “Imaged date” means the date on which a report, document, remittance, or**
5 **payment is imaged and stored electronically to a dedicated network server.**

6 **(b)** “Private express carrier” *[shall have]* **has** the same meaning as in ORS
7 293.660(2).

8 **(c) “Settlement date” means the date on which the participating Depository**
9 **Financial Institution (DFI) or its correspondent is scheduled to be debited or**
10 **credited by the Federal Reserve.**

11 (2) If the due date of a report, document, remittance, or payment falls on a weekend
12 or *[a]* legal holiday, the due date is deemed to be the next *[regular]* business day.
13 *[following.]*

14 (3)*[(a) Except as provided for in sections (3), (4), and (5) of this rule,]* Any report,
15 *[or]* document, **remittance, or payment** required by PERS shall be deemed filed and
16 received based on the receipt stamp affixed to the report, *[or]* document, **remittance, or**
17 **payment** when received by PERS.

18 *[(b) A remittance or payment and a remittance advice or a payment advice, as*
19 *described in OAR 459-005-0215, shall be deemed filed and received as provided in*
20 *sections (4), (5) and (6) of this rule.]*

21 *[(4) Any report, document, remittance or payment required by PERS which is:]*

1 [(a) Transmitted through the United States Postal Service (USPS) or by private
2 express carrier, shall be deemed filed or received on the date shown by the post office
3 cancellation mark or other record of transmittal;]

4 **(4) Any report, document, remittance, or payment that does not display a PERS**
5 **receipt stamp shall be deemed filed and received on the imaged date. If the imaged**
6 **date is later than the due date, the report, document, remittance, or payment shall**
7 **be deemed filed and received five business days prior to the imaged date.**

8 **(5) Any report, document, remittance, or payment required by PERS which is**
9 **[(b)] lost or delayed** in transmission through USPS or by a private express carrier, shall
10 be deemed filed and received on the date it was mailed or deposited for transmittal if the
11 sender:

12 [(A)]**(a)** Can establish by evidence satisfactory to PERS, which includes but is not
13 limited to documentation provided by USPS or the private express carrier, that the report,
14 document, [or] remittance, **or payment** was deposited in the USPS or with a private
15 express carrier [on or] before the date due for filing, and was correctly addressed to
16 PERS;

17 [(B)]**(b)** Files with PERS a duplicate of the lost report, document, [or] remittance,
18 **or payment**, in accordance with the **transmittal** requirements **of [specified in] OAR**
19 **459-005-0210 or 459-005-0215**; and

20 [(C)]**(c)** Satisfies the requirements of [paragraphs]**subsections [(A)](a) and [(B)](b)**
21 of this [sub]section within 30 days after PERS notifies the sender in writing of [its]
22 failure to receive the report, document, [or] remittance, **or payment**.

23 [(5) For purposes of this rule:]

1 [(a) "Settlement date" is the date on which the participating Depository Financial
2 Institution (DFI) or its correspondent is scheduled to be debited or credited by the
3 Federal Reserve.]

4 [(b) "Pay date" means the date inscribed on a pay check or settlement date if paid
5 by EFT, whichever is the later.]

6 (6) An electronic funds transfer (EFT) shall be deemed received on the settlement
7 date of the transfer. A settlement date specified by an employer for an EFT shall be no
8 later than the due date specified by PERS for a remittance or a payment.

9 (7) Any report or document that PERS [will] accepts by [telephonic facsimile
10 communication (fax)] fax as provided in OAR 459-005-0210 or 459-005-0215 which is:

11 (a) Transmitted by a fax device to any office of PERS shall be deemed filed or
12 received on the date of transmission as inscribed by the PERS fax device.

13 (b) Lost in transmission through a fax communication shall be deemed filed and
14 received when originally transmitted if the sender can establish by affidavit the proof of
15 sending and correct addressing, together with a copy of any activity report from the
16 sender's fax device, and a duplicate of the original report or document.

17 (8) A fax shall be accepted on weekends and holidays as long as the fax is otherwise
18 in compliance with due dates specified in [law and] administrative rule.

19 [(9) A report, document, remittance, or payment shall be transmitted in accordance
20 with the provisions of this rule and OAR 459-005-0215 prior to midnight of the date due
21 to be considered by PERS as received timely.]

22 [(10)](9) Any report or document that PERS [will] accepts by e-mail transmission as
23 specified in OAR 459-005-0210(5) which is:

1 (a) Transmitted by e-mail to any office of PERS shall be deemed received as of the
2 date **PERS receives** the transmission [*is received by PERS*].

3 (b) Lost in transmission by e-mail shall be deemed filed and received when
4 originally transmitted if the sender can establish by affidavit the proof of sending and
5 correct addressing, together with a copy of any activity report from the sender's
6 electronic device, and a duplicate of the original report or document.

7 **(10) A report or document transmitted by fax or e-mail must be transmitted in**
8 **accordance with the provisions of this rule and OAR 459-005-0215 and must be**
9 **received by PERS before midnight on the due date.**

10 (11) When transmitting a document or report by use of fax or e-mail, the sender
11 bears the risk of failure of the transmission.

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS **Chapters 238 and 238A** [238.005 - 238.750]



Oregon

Theodore R. Kulongoski, Governor

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July 20, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption of OSGP Loan Program Rules
OAR 459-050-0077, *Loan Program*

MEETING DATE	7/20/07
AGENDA ITEM	C. 5. Loan Program

OVERVIEW

- Action: Adopt modifications to OSGP Loan Program Rules.
- Reason: Modification of rule to clarify administration and tax reporting requirements.
- Subject: Oregon Savings Growth Plan, Loan Program.
- Policy Issues: None.

BACKGROUND

OAR 459-050-0077, establishing a loan program for Oregon Savings Growth Plan (OSGP) participants, was adopted by the Board on January 12, 2007, with an effective date of May 1, 2007. The delayed effective date was to permit the plans' third party administrator, CitiStreet, and OSGP to develop the processes to administer the program. In the course of that development, it became evident that the rule should be modified to more clearly address federal tax reporting requirements.

Under the rule as drafted, an OSGP participant with a loan in default may cure the default by resuming payments or repaying the loan balance in full before the end of a limited cure period. If the default is not cured, the loan balance is reported as a taxable distribution to the participant. The rule modifications more clearly distinguish between those participants who are eligible for an actual distribution and those who are not.

The proposed rule modifications also eliminate reamortization on loans that go into default but are cured by the participant resuming payments. Staff determined that reamortizing payments on these defaulted loans was administratively burdensome and disproportionately costly, since it would have generally resulted in a small change to the loan payment amount. Instead, the payments missed would be repaid before the end of the repayment period. Loans suspended for approved leaves of absence and absences due to military service would continue to be reamortized.

Lastly, requirements of the state payroll system (OSPS) needed to be accommodated. OSPS requires a signed authorization for payroll deduction. The rule modifications establish that a promissory note or other document that includes the payroll deduction amount and is signed by a participant as a requirement for obtaining the loan is acceptable as a payroll deduction agreement. Copies or images of these documents will

be made available to OSPS on request. This accommodation arose from the coordinated efforts of OSGP, Department of Justice, and OSPS.

SUMMARY OF MODIFICATIONS TO RULE SINCE FIRST READING

There have been no modifications to the proposed rule since first reading.

LEGAL REVIEW

The attached rule was submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on May 22, 2007 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public commented on the rule. The public comment period ended on June 22, 2007 at 5:00 p.m. and no public comment was received.

IMPACT

Mandatory: No. The Board need not adopt these rule modifications. However, OSGP staff is seeking these changes to improve the program's administration and accommodate the needs of the plan's stakeholders.

Impact: Clarification of tax reporting requirements will more effectively comply with federal tax law. Streamlining of administration will enhance efficiency and avoid additional costs.

Cost: There are no discrete costs attributable to the rule.

RULEMAKING TIMELINE

April 13, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2007	<i>Oregon Bulletin</i> published the Notice.
May 18, 2007	PERS Board notified that staff began the rulemaking process.
May 22, 2007	Rulemaking hearing held at 2:00 p.m. in Tigard.
June 15, 2007	First Reading of the rule.
June 22, 2007	Public comment period ended at 5:00 p.m.
July 20, 2007	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt rule modifications to OAR 459-050-0077, as presented.”
2. Take no action and direct staff to make changes to the rule or take other action.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Modifications to the rule clarify administration and tax reporting requirements.

If the Board does not adopt: Staff would return with rule modifications that more closely fit the Board’s policy direction if the Board determines that a change is warranted.

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 050 – DEFERRED COMPENSATION**

1 **459-050-0077**

2 **Loan Program**

3 (1) Definitions. For purposes of this rule:

4 (a) "Cure period" is that time from when a default occurs until the end of the quarter
5 following the quarter in which the default occurred.

6 (b) "Loan balance" means the outstanding principal and accrued interest due on the
7 loan.

8 (c) "Participant Loan" means a loan that only affects the deferred compensation
9 account of a participant.

10 (d) "Promissory note" means the agreement of loan terms between the Program and a
11 participant.

12 (e) "Third Party Administrator (TPA)" means the entity providing record keeping
13 and administrative services to the Program.

14 (2) Eligibility for loan. Participants who are currently employed by a Plan Sponsor
15 that has agreed to participate in a Participant Loan program are eligible for a Participant
16 Loan. Retired participants, participants separated from employment, designated
17 beneficiaries, and alternate payees are not eligible.

18 (3) Application for loan: A participant must apply for a loan and meet the
19 requirements set forth in this rule.

20 (a) Once a loan is approved, a participant must execute a promissory note in the form
21 prescribed by the Program.

1 (b) If a participant is deceased prior to the disbursement of the proceeds of a loan,
2 the participant's loan application shall be void as of the date of death.

3 (4) Loan Types:

4 (a) General purpose loan -- a loan not taken for the purpose of acquiring a principal
5 residence. General purpose loans must be repaid over a non-renewable repayment period
6 of up to five years.

7 (b) Residential loan -- a loan made for the purpose of acquiring a principal residence,
8 which is, or within a reasonable time shall be, the principal residence of the participant.
9 Residential loans must be repaid over a non-renewable repayment period of up to 15
10 years. A refinancing does not qualify as a residential loan. However, a loan from the
11 Program that will be used to repay a loan from a third party will qualify as a residential
12 loan if the loan would qualify as a residential loan without regard to the loan from the
13 third party.

14 (5) Interest Rate: The rate of interest for a loan shall be fixed at one percent (1%)
15 above the prime interest rate as published by the Wall Street Journal on the last business
16 day of the month prior to the month in which the loan is requested.

17 (6) Loan Fees: A loan fee of \$50.00 shall be assessed when the loan is approved. The
18 fee shall be deducted from a participant's deferred compensation account on a pro-rata
19 basis from existing investments.

20 (7) Loan Limitations:

21 (a) The maximum loan amount is the lesser of:

22 (A) \$50,000; or

1 (B) One-half of the value of the participant's deferred compensation account on the
2 date the loan is made.

3 (b) The minimum loan amount is \$1000.

4 (c) A participant may only have one outstanding loan.

5 (d) A participant who has received a loan may not apply for another loan until 12
6 months from the date the previous loan was paid in full.

7 (8) Source of Loan: The loan amount will be deducted from a participant's deferred
8 compensation account.

9 (a) Loan amounts will be deducted pro-rata from existing investments in a
10 participant's deferred compensation account.

11 (b) A participant may not transfer a loan to or from another retirement or deferred
12 compensation plan.

13 (9) Repayment Terms: The loan amount will be amortized over the repayment period
14 of the loan with interest compounded daily to calculate a level payment for the duration
15 of the loan.

16 (a) Loan payments must be made by payroll deduction. To receive a loan from the
17 Program a participant must enter into a payroll deduction agreement. **For the purposes**
18 **of this rule, a promissory note or other document that includes the payroll**
19 **deduction amount and is signed by a participant as a requirement to obtain a loan**
20 **may be a payroll deduction agreement.** Except as provided in this rule, a participant
21 may not submit a loan payment directly to the Program or the Third Party Administrator.

22 (b) A participant is responsible for loan repayment even if the employer fails to
23 deduct or submit payments as directed under the payroll deduction agreement. To avoid

1 defaulting on a loan by reason of the employer's failure to deduct or submit a payment a
2 participant may submit a loan payment by sending a money order or certified check to the
3 Third Party Administrator.

4 (c) A participant may repay the loan balance in a single payment at any time before
5 the date the final loan payment is due.

6 (d) Partial payment of a scheduled payment and partial prepayment or advance
7 payment of future payments shall not be permitted.

8 (e) Loan payments will be allocated in a participant's deferred compensation account
9 in the same manner as the participant's current contribution allocation. If, for any reason,
10 the allocation is not known, the payment will be allocated to the Short-Term Fixed
11 Income Option.

12 (f) Any overpayment will be refunded to the participant.

13 (10) Leave of Absence. Terms of outstanding loans are not subject to revision except
14 as provided in this section.

15 (a) Loan payments may be suspended up to one year during an authorized leave of
16 absence if a participant's pay from the employer does not at least equal the payment
17 amount.

18 (A) Interest on a loan continues to accrue during a leave of absence.

19 (B) A participant must immediately resume payments by payroll deduction upon
20 return to work.

21 (C) The loan balance will be re-amortized upon the participant's return to work to be
22 repaid within the remaining loan repayment period.

1 (D) Loan payments may be revised to extend the remaining loan repayment period to
2 the maximum period allowed in the event the loan originally had a term shorter than the
3 maximum period allowed under section (4) of this rule.

4 (E) If a participant is on a leave of absence that exceeds one year, the loan shall be in
5 default unless repayment begins one year from the participant's last date worked or the
6 date the final payment is due under the promissory note, whichever is earlier.

7 (b) Military Leave. Loan payments for participants on military leave may be
8 suspended for the period of military service.

9 (A) A leave of absence for military service longer than one year will not cause a loan
10 to be in default.

11 (B) Loan payments by payroll deduction must resume upon the participant's return to
12 work.

13 (C) The original repayment period of a loan will be extended for the period of
14 military service or to the maximum repayment period allowed for that type of loan,
15 whichever is greater.

16 (D) Interest on a loan continues to accrue during a leave of absence for military
17 service. If the interest rate on the loan is greater than 6%, then under the provisions of the
18 Servicemembers Civil Relief Act of 2003, the rate shall be reduced to 6% during the
19 period of military service.

20 (E) The loan balance will be re-amortized upon the participant's return to work to be
21 repaid within the remaining loan repayment period as determined under paragraph (C) of
22 this subsection.

1 (c) A participant on an authorized leave of absence or military leave may submit
2 loan payments by sending a money order or certified check to the Third Party
3 Administrator.

4 (11) Tax Reporting.

5 (a) The loan balance of a general purpose loan will be reported as a taxable
6 distribution to the participant on the earlier of the last day of the loan repayment period,
7 as adjusted under paragraphs (10)(a)(D) or (10)(b)(C) of this rule, if applicable, or if the
8 loan is in default, the last day of the cure period.

9 (b) The loan balance of a residential loan will be reported as a taxable distribution to
10 the participant on the earlier of the last day of the loan repayment period, as adjusted
11 under paragraphs (10)(a)(D) or (10)(b)(C) of this rule, if applicable, or if the loan is in
12 default, the last day of the cure period.

13 (c) If a participant dies prior to the loan balance being repaid, and the participant's
14 beneficiary does not repay the loan balance in a single payment within 90 days of the
15 participant's death, the loan balance will be reported as a taxable distribution to the estate
16 of the participant.

17 (d) **If a participant is eligible to receive a distribution under the Program, [T]the**
18 reporting of a loan balance as a taxable distribution under this section will cancel the loan
19 at the time the taxable distribution is reported. **A canceled loan is a distribution and is**
20 **no longer outstanding in a participant's account.**

21 (e) **If a participant is not eligible to receive a distribution under the Program, a**
22 **loan balance reported as a taxable distribution under this section will be a deemed**
23 **distribution for tax reporting purposes. A loan deemed distributed may not be**

1 **canceled until the loan balance is repaid or the participant becomes eligible to**
 2 **receive a distribution. The loan balance will remain outstanding in the participant’s**
 3 **account and will continue to accrue interest until repaid or canceled.**

4 (12) Default.

5 (a) A loan is in default if a payment is not paid as scheduled or under any of the
 6 provisions set forth in this rule, the promissory note, or any related loan agreement.

7 (b) A loan is in default if the participant separates from employment with the plan
 8 sponsor that administers the loan payment payroll deductions.

9 (c) If a participant with a loan in default resumes loan payments by payroll deduction
 10 before the end of the cure period, the default will be cured. **The participant must pay**

11 **any missed payments and accrued interest before the end of the loan repayment**
 12 **period.** *[and the participant's loan balance will be re-amortized as if the participant had*
 13 *been on a leave of absence under the provisions of paragraph (10)(a)(C) of this rule.]*

14 (d) Except as provided in subsection (c) of this section, if the participant does not
 15 cure a default by repaying the loan balance before the end of the cure period, the loan
 16 balance will be reported as a taxable distribution to the participant **as provided in section**
 17 **(11) of this rule***[and the loan will be canceled].*

18 (13) The effective date of this rule is May 1, 2007.

19 Stat. Auth.: ORS 243.470

20 Stats. Implemented: ORS 243.401 - 243.507

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Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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July 20, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Notice of Rulemaking for Crediting Earnings to Employer Lump-Sum Payments
OAR 459-007-0530, *Crediting Earnings to Employer Lump-Sum Payments*

MEETING DATE	7/20/07
AGENDA ITEM	C.6. Erngs Crdtng

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Allow for the implementation of payroll-to-payroll amortization of side accounts as opposed to the current annual basis.
- Subject: Crediting earnings to employer lump-sum payments.
- Policy Issue: Should PERS apply a payroll-cycle based earnings crediting method to employer side accounts?

BACKGROUND

Employers can make lump-sum payments to PERS in addition to the regular employer contributions calculated as a percent of payroll. These lump-sum payments can occur when a PERS employer has a budget surplus or chooses to pre-fund their obligations through issuing a bond. The majority of these lump-sum payments are placed in side accounts. The side accounts, when amortized, provide an offset to the amount of payroll-based employer rate contributions that the employer owes.

This rule details how earnings are credited to these lump-sum payments. The rule modifications change crediting to occur monthly to coincide with the amortization schedule change proposed by employers (see agenda item C.7. for this meeting). Previously, this rule called for annual crediting.

SUMMARY OF RULES AND POLICY ISSUE

Policy Issue: Should PERS apply a payroll-cycle based earnings crediting method to employer side accounts?

Employers asked PERS to move to a monthly transfer schedule in amortizing their side accounts used to offset employer rates. This change to a monthly transfer will result in greater precision and timeliness in applying these offsets than the current method that used annual offsets. Staff recommends adopting this new schedule for improved accuracy and effectiveness in applying these side accounts to employer obligations.

The proposed change to this rule will allow earnings on these amounts to track this changed amortization methodology by crediting earnings monthly rather than annually. These changes are proposed to take effect January 1, 2008.

LEGAL REVIEW

The attached draft has been submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rule is presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on August 29, 2007 at 2:00 p.m. at the Oregon State Archives in Salem. The public comment period ends on September 28, 2007 at 5:00 p.m.

IMPACT

Mandatory: No, the Board need not adopt the rule.

Impact: Allows for a more accurate crediting of earnings to side accounts

Cost: There are no discrete costs attributable to the rule.

RULEMAKING TIMELINE

June 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
July 1, 2007	<i>Oregon Bulletin</i> published the Notice.
July 20, 2007	PERS Board notified that staff began the rulemaking process.
August 29, 2007	Rulemaking hearing to be held at 2:00 p.m. in Salem.
September 21, 2007	First reading of the rule.
September 28, 2007	Public comment period ends at 5:00 p.m.
October 19, 2007	Staff proposes adopting the permanent rule, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing will be held August 29, 2007. The rule is scheduled to be brought before the PERS Board for adoption at the October 19, 2007 meeting.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459

DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION

1 459-007-0530

2 Crediting Earnings To Employer Lump-Sum Payments

3 (1) Definitions.

4 (a) "Employer Contribution Account" means that portion of the Fund
5 designated by the Board, as a portion of the net assets of the Fund, that is funded by
6 employer contributions for the sole benefit of members of the trust with the purpose
7 of paying future retirement and death benefits.

8 [(a)](b) "Employer lump-sum payment" means any employer payment that:

9 (A) Is not regularly scheduled;

10 (B) Is not paid as a statutorily fixed percentage of salary; and

11 (C) [The contributor has control over whether to make the payment]Is paid at the
12 employer's election instead of at the PERS Board's direction.

13 [(b)](c) "UAL factor" represents [actual]allocated earnings or losses from
14 investments and is not subject to funding requirements of the Contingency or Capital
15 Preservation Reserves.

16 (2) Subject to [OL 2005 Ch. 808 Sec. 13(4)]ORS 238.229(4), the employer lump-sum
17 payment shall first be applied to liabilities attributable to creditable service by employees
18 of the employer before the [participating public] employer was grouped with other public
19 employers. Earnings on these amounts shall be credited based on the following:

20 (a) For the month in which the employer lump-sum payment is received, earnings
21 shall be credited based on the average annualized rate, prorated for the number of days
22 from date of receipt to the end of the month.

1 (b) For the remainder of the year, the employer lump-sum payment shall receive
2 earnings based on the difference between the final Tier Two annual earnings rate and the
3 Tier Two earnings rate in effect as of the first of the month after receipt of the payment.

4 (c) In subsequent calendar years, earnings or losses shall be credited to the employer
5 lump-sum payment in accordance with OAR 459-007-0005(14).

6 (3) Earnings on an employer lump-sum payment held in a separate account *[subject to*
7 *ORS 283.225(9)]* shall be credited based on the following:

8 (a) For the month in which the employer lump-sum payment is received, earnings
9 shall be credited based on the average annualized rate, prorated for the number of days
10 from date of receipt to the end of the month.

11 (b) For the remainder of the year, the employer lump-sum payment shall receive
12 earnings based on the difference between the annual UAL factor and the UAL factor in
13 effect as of the first of the month after receipt of the payment.

14 **(4)(a) Amortized amounts to be applied to the Employer Contribution Account**
15 **shall receive earnings or losses based on the UAL factor, effective as of the first of the**
16 **calendar month following the date of the application of the amortized amount.**

17 *[(c)]***(b)** In subsequent calendar years, earnings shall be credited to **the remaining**
18 **balance of the employer’s side account created when the lump sum payment was**
19 **received** *[employer lump-sum payment]* on an annual basis in accordance with OAR 459-
20 007-0005(4).

21 *[(4)]***(5)** The provisions of this rule are effective on *[January]***January 1, [2004]****2008.**

22 Stat. Auth.: ORS 238.650

23 Stats. Implemented: ORS 238.225 to 238.229



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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July 20, 2007

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Administrator, PPLAD

SUBJECT: Notice of Rulemaking Lump-Sum Payments by Employers
OAR 459-009-0084, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group*
OAR 459-009-0085, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group*
OAR 459-009-0090, *Lump-Sum Payments by Employers in Excess of an Existing Unfunded Actuarial Liability*

MEETING DATE	7/20/07
AGENDA ITEM	C. 7. Lump-Sum

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reasons: Conform rules to payroll-based application of side account funds.
- Subject: Employer Lump-Sum payments
- Policy Issues: No policy issues have been identified at this time.

BACKGROUND

Employers can make lump-sum payments to PERS in addition to the regular employer contributions calculated as a percent of payroll. These lump-sum contributions can occur when a PERS employer has a budget surplus or chooses to pre-fund their obligations through issuing a bond. The rules to be modified set forth the process for lump-sum payments that are made to satisfy an unfunded actuarial liability (UAL) by employers that are pooled with other employers (-0084) and by those that are not pooled (-0085), plus a rule for surplus payments made by an employer that doesn't have a UAL (-0090). These lump-sum payments are put into side accounts that are then applied to reduce the employer's ongoing contribution rate to PERS.

The principle change in these rules is to specify that the transfer of amounts from these side accounts will occur each payroll period instead of annually. Employers requested this change so the amortization more closely matched their assumptions when they decided to use this pre-funding alternative. These modifications also simplify and correct language in the current rules. Further modifications to the rule on non-UAL surplus payments also change the minimum and maximum payment from a percentage of an employer's liability to a change in that employer's contribution rate. Lastly, the rules are modified to refer to the employer lump-sum payment earnings crediting rule, which is

also being noticed at this time to conform those practices to this payroll-cycle application schedule (see agenda item C.6. for this meeting).

LEGAL REVIEW

The attached rules have been submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rules are presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing is scheduled for August 29, 2007 at 2:00 p.m. at the Oregon State Archives in Salem. The public comment period ends on September 28, 2007 at 5:00 p.m.

IMPACT

Mandatory: No, but the rules are within the authority granted by statute.

Impact: The modifications conform to state law and may have a minor fiscal impact on PERS administration.

Cost: Employers that elect to make a lump-sum payment under these rules will incur the cost of the actuarial calculation, the lump-sum payment amount, and administrative fees to maintain the resulting side account. There is not expected to be any significant cost incurred by members, PERS administration, or the PERS Fund.

RULEMAKING TIMELINE

June 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
July 1, 2007	<i>Oregon Bulletin</i> published the Notice.
July 20, 2007	PERS Board notified that staff began the rulemaking process.
August 29, 2007	Rulemaking hearing to be held at 2:00 p.m. in Salem.
September 21, 2007	First Reading of rule.
September 28, 2007	Public comment period ends at 5:00 p.m.
October 19, 2007	Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing is scheduled for August 29, 2007. The rule is scheduled to be brought before the PERS Board for first reading on September 21, 2007 with adoption scheduled for the October 19, 2007 meeting.

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 009 – PUBLIC EMPLOYER**

1 **459-009-0084**

2 **Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in**
3 **an Actuarial Group**

4 Purpose. The purpose of this rule is to establish procedures and requirements
5 *[pursuant to ORS 238.225]* for the adjustment of employer contribution rates when an
6 *[unfunded actuarial liability lump-sum payment is made by an]* individual public
7 employer participating in an actuarial group **makes an unfunded actuarial liability**
8 **lump-sum payment.**

9 (1) Definitions. For the purposes of this rule:

10 *[(a) "Employer Contribution Account" means that portion of the Fund designated by*
11 *the Board, as a portion of the net assets of the Fund, that is funded by employer*
12 *contributions which are to be used] for the sole benefit of members of the trust with the*
13 *purpose of paying future retirement and death benefits.]*

14 *[(b)](a)* "Fair Value UAL" means the unfunded actuarial liability calculated using
15 the fair market value of assets.

16 *[(c)](b)* "Transition Unfunded Actuarial Liabilities" means the unfunded actuarial
17 liabilities attributed to an individual employer for the period *[prior to]***before** entry into
18 the Local Government Rate Pool, or the State and Local Government Rate Pool if the
19 employer did not participate in the Local Government Rate Pool.

20 *[(d)](c)* "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial
21 liability over the actuarial value of assets.

1 [(e)](d) "Unfunded Actuarial Liability Lump-Sum Payment" means any employer
2 payment:

3 (A) That is not regularly scheduled;

4 (B) That is not paid as a percentage of salary;

5 (C) That is made for the express purpose of reducing the employer's unfunded
6 actuarial liability; and

7 (D) Where the employer has control over the timing or whether to make the
8 payment.

9 (2) Lump-sum payment amount. If an individual employer elects to make a UAL
10 lump-sum payment under this rule, the payment must be at least 25 percent of the
11 individual employer's UAL calculated under section (6) of this rule or \$1 million,
12 whichever is less. Alternatively, an employer may elect to pay 100 percent of the
13 individual employer's UAL calculated under section (6) of this rule.

14 (3) Requirements. In order to make a UAL lump-sum payment, an employer must
15 comply with the process described in sections (4) through (10) of this rule.

16 (4) Initiating UAL lump-sum payment process. At least 45 calendar days [*prior to*]
17 **before** the date the employer intends to make a UAL lump-sum payment, the employer
18 [*shall*]**must** notify the PERS Employer Liability Coordinator in writing that it intends to
19 make a UAL lump-sum payment. The notification [*shall*]**must** specify:

20 (a) The amount of the intended lump-sum payment;

21 (b) Whether the intended payment is to be for 100 percent of the individual
22 employer's calculated UAL; and

1 (c) No more than two potential dates for the payment. PERS staff *[shall]***must** notify
2 the employer within five business days of receipt of the notification if the notification is
3 incomplete or the process cannot be completed by the intended dates of the UAL lump-
4 sum payment.

5 (5) Payment to the actuary. **The PERS consulting actuary must provide an**
6 **invoice charging the employer for the cost of the actuarial liability calculation**
7 **requested by the employer.** At least 30 calendar days *[prior to]***before** the date the
8 employer intends to make a UAL lump-sum payment, the employer *[shall]***must** remit
9 payment for the cost of the UAL calculation directly to the PERS consulting actuary
10 according to the instructions on the invoice *[provided by the PERS consulting actuary]*.
11 Failure to remit payment according to the terms of this section may result in the PERS
12 consulting actuary not completing the employer's UAL calculation by the proposed UAL
13 lump-sum payment date.

14 (6) Calculation of the individual employer's UAL. Upon receipt of a complete
15 notification and verification of payment to the actuary for actuarial services, PERS staff
16 shall request that the PERS consulting actuary calculate:

17 (a) 100 percent of the employer's share of the UAL for the actuarial group in which
18 the employer is participating. This calculation *[shall]***must** be:

19 (A) Based on the fair value UAL of the actuarial pool in which the employer
20 participates, from the most recent actuarial valuation;

21 (B) Based on the covered salary, as a proportion of the pool, reported by the
22 employer for the year of most recent actuarial valuation; and

1 (C) Adjusted to reflect the effect of time from the most recent actuarial valuation to
2 the intended date(s) of payment, using generally recognized and accepted actuarial
3 principles and practices.

4 (b) The effect of the following UAL lump-sum payment amounts on the individual
5 employer's contribution rate using the one or two potential dates for payment specified by
6 the employer in its notification in section (4) above:

7 (A) 100 percent of the individual employer's UAL calculated in subsection (6)(a) of
8 this rule;

9 (B) The UAL lump-sum payment amount specified by the employer in its
10 notification, if provided; and

11 (C) The minimum amount of the UAL lump-sum payment under section (2) of this
12 rule.

13 (7) Notification of calculation. PERS staff *[shall]***must** notify the employer in
14 writing of the results of the individual employer's calculation in section (6) above,
15 including the effective date(s) for the reduced employer contribution rates based on the
16 one or two potential dates for payment. In addition, PERS *[shall]***must** send the employer
17 a notification describing risks and uncertainties associated with the calculation of the
18 individual employer's UAL.

19 (8) Notification of UAL lump-sum payment. The employer or its agent *[shall]***must**
20 notify the PERS Employer Liability Coordinator in writing at least three business days
21 *[prior to]* **before** making a UAL lump-sum payment. This notification shall be in
22 addition to the notification in section (4) of this rule and *[shall]***must** specify the amount
23 of the payment and the date it intends to make the payment.

1 (9) Method of payment. A UAL lump-sum payment must be made by either
2 electronic transfer or check payable to the Public Employees Retirement System.

3 (10) Receipt of UAL lump-sum payment. In order to adjust the employer
4 contribution rate to that reported by PERS in section (7) of this rule, PERS must receive
5 the correct funds no later than five business days after the corresponding intended date of
6 the UAL lump-sum payment specified in the notification described in section (8) of this
7 rule.

8 (a) If the UAL lump-sum payment is received by PERS on or before the intended
9 date specified in the notification described in section (8) of this rule or within the five
10 business days following the intended date, the new employer contribution rate [*will*]**shall**
11 be effective for payrolls dated on or after:

12 (A) The date specified in the notification; or

13 (B) The first of the month following receipt of the UAL lump-sum payment by
14 PERS, whichever is later.

15 (b) If the UAL lump-sum payment is received by PERS more than five business days
16 after the intended payment date, the employer's contribution rate shall be adjusted in the
17 next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

18 (c) If the UAL lump-sum payment received is other than any amount specified in the
19 notification under section (8) of this rule, the employer's contribution rate shall be
20 adjusted to the rate the payment amount fully funds using the actuarial calculation in
21 subsection (6)(b) of this rule.

1 (d) If the UAL lump-sum payment received is less than the minimum amount
2 described in section (2) of this rule, the funds will be returned to the employer and no
3 adjustment will be made to the employer contribution rate.

4 (e) Nothing in this rule shall be construed to prevent the Board from:

5 (A) Adjusting employer contribution rates based upon the date of receipt of funds or
6 errors in the notification described in section (7) of this rule; or

7 (B) Taking action pursuant to ORS 238.225.

8 (11) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the
9 UAL lump-sum payment made by the employer shall first be applied to any transition
10 unfunded actuarial liabilities. The remainder of the payment shall offset any pooled
11 unfunded actuarial liabilities and shall be treated as pre-funded contributions and
12 additional assets for the payment of obligations of the employer under ORS chapters 238
13 or 238A, rather than as a reduction of those obligations.

14 *[(a)]***(12) Side Account.** The UAL lump-sum payment shall be held in a Side
15 Account for the benefit of the employer making the UAL lump-sum payment. *[On an*
16 *annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-*
17 *funded contributions held in the Side Account that are to be amortized for that year.]* **The**
18 **amount amortized for each payroll reporting period shall be applied from the Side**
19 **Account to the actuarial group in which the employer is participating.**

20 *[(b) After earnings or losses have been credited for the year, the amount amortized*
21 *shall be transferred from the Side Account to the Employer Contribution Account of the*
22 *actuarial group in which the employer is participating.]*

1 ~~[(12)]~~**(13)** Crediting earnings or losses. **Side accounts shall be credited with**
2 **earnings and losses in accordance with OAR 459-007-0530.** *[For the purposes of this*
3 *rule, Side Accounts shall be credited with all interest and other income received from*
4 *investment of the account funds during the calendar year, less any amounts withheld from*
5 *earnings for administrative expenses under ORS 238.610 or paid into the reserve account*
6 *established under ORS 238.670(1).]*

7 ~~[(13)]~~**(14)** Nothing in this rule shall be construed to convey to an employer making a
8 UAL lump-sum payment any proprietary interest in the Public Employees Retirement
9 Fund or in the UAL lump-sum payment made to the fund by the employer.

10 *[(14) Effective date of rule. This rule shall apply to all UAL lump-sum payments*
11 *initiated on or after the effective date of this rule.]*

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS 238.225 to 238.229

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 009 – PUBLIC EMPLOYER**

1 **459-009-0085**

2 **Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating**
3 **in an Actuarial Group**

4 Purpose. The purpose of this rule is to establish procedures and requirements
5 *[pursuant to ORS 238.225]* for the adjustment of employer contribution rates when an
6 *[unfunded actuarial liability lump-sum payment is made by an]* individual public
7 employer not participating in an actuarial group **makes an unfunded actuarial liability**
8 **lump-sum payment.**

9 (1) Definitions. For the purposes of this rule:

10 (a) "Employer Contribution Account" means that portion of the Fund designated by
11 the Board, as a portion of the net assets of the Fund, that is funded by employer
12 contributions which are to be used] for the sole benefit of members of the trust with the
13 purpose of paying future retirement and death benefits.

14 (b) "Fair Value UAL" means the unfunded actuarial liability calculated using the fair
15 market value of assets.

16 (c) "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial
17 liability over the actuarial value of assets.

18 (d) "Unfunded Actuarial Liability Lump-Sum Payment" means any employer
19 payment:

20 (A) That is not regularly scheduled;

21 (B) That is not paid as a percentage of salary;

1 (C) That is made for the express purpose of reducing the employer's unfunded
2 actuarial liability; and

3 (D) Where the employer has control over the timing or whether to make the
4 payment.

5 (2) Lump-sum payment amount. If an employer elects to make a UAL lump-sum
6 payment under this rule, the payment must be at least 25 percent of the employer's UAL
7 calculated under section (6) of this rule or \$1 million, whichever is less. Alternatively, an
8 employer may elect to pay 100 percent of the employer's UAL calculated under section
9 (6) of this rule.

10 (3) Requirements. In order to make a UAL lump-sum payment, an employer must
11 comply with the process described in sections (4) through (10) of this rule.

12 (4) Initiating UAL lump-sum payment process. At least 45 calendar days [*prior*
13 *to*]**before** the date the employer intends to make a UAL lump-sum payment, the
14 employer shall notify the PERS Employer Liability Coordinator in writing that it intends
15 to make a UAL lump-sum payment. The notification shall specify:

16 (a) The amount of the intended lump-sum payment;

17 (b) Whether the intended payment is to be for 100 percent of the employer's
18 calculated UAL; and

19 (c) No more than two potential dates for the payment. PERS staff [*shall*]**must** notify
20 the employer within five business days of receipt of the notification if the notification is
21 incomplete or the process cannot be completed by the intended dates of the UAL lump-
22 sum payment.

1 (5) Payment to the actuary. **The PERS consulting actuary must provide an**
 2 **invoice charging the employer for the cost of the actuarial liability calculation**
 3 **requested by the employer.** At least 30 calendar days [*prior to*]**before** the date the
 4 employer intends to make a UAL lump-sum payment, the employer [*shall*]**must** remit
 5 payment for the cost of the UAL calculation directly to the PERS consulting actuary
 6 according to the instructions on the invoice [*provided by the PERS consulting actuary*].
 7 Failure to remit payment according to the terms of this section may result in the PERS
 8 consulting actuary not completing the employer’s UAL calculation by the proposed UAL
 9 lump-sum payment date.

10 (6) Calculation of an employer's UAL. Upon receipt of a complete notification and
 11 verification of payment to the actuary for actuarial services, PERS staff shall request that
 12 the PERS consulting actuary calculate:

- 13 (a) 100 percent of the employer's UAL. This calculation [*shall*]**must** be:
 - 14 (A) Based on the fair value UAL from the most recent actuarial valuation; and
 - 15 (B) Adjusted to reflect the effect of time from the most recent actuarial valuation to
 - 16 the intended date(s) of payment, using generally recognized and accepted actuarial
 - 17 principles and practices.

18 (b) The effect of the following UAL lump-sum payment amounts on the employer's
 19 contribution rate using the one or two potential dates for payment specified by the
 20 employer in its notification in section (4) above:

- 21 (A) 100 percent of the employer's UAL calculated in subsection (6)(a) of this rule;
- 22 (B) The UAL lump-sum payment amount specified by the employer in its
- 23 notification, if provided; and

1 (C) The minimum amount of the UAL lump-sum payment under section (2) of this
2 rule.

3 (7) Notification of calculation. PERS staff *[shall]***must** notify the employer in
4 writing of the results of the employer's calculation in section (6) above, including the
5 effective date(s) for the reduced employer contribution rates based on the one or two
6 potential dates for payment. In addition, PERS *[shall]***must** send the employer a
7 notification describing risks and uncertainties associated with the calculation of the
8 individual employer's UAL.

9 (8) Notification of UAL lump-sum payment. The employer or its agent *[shall]***must**
10 notify the PERS Employer Liability Coordinator in writing at least three business days
11 *[prior to]***before** making a UAL lump-sum payment. This notification shall be in addition
12 to the notification in section (4) of this rule and *[shall]***must** specify the amount of the
13 payment and the date it intends to make the payment.

14 (9) Method of payment. A UAL lump-sum payment must be made by either
15 electronic transfer or check payable to the Public Employees Retirement System.

16 (10) Receipt of UAL lump-sum payment. In order to adjust the employer
17 contribution rate to that reported by PERS in section (7) of this rule, PERS must receive
18 the correct funds no later than five business days after the corresponding intended date of
19 the UAL lump-sum payment specified in the notification described in section (8) of this
20 rule.

21 (a) If the UAL lump-sum payment is received by PERS on or before the intended
22 date specified in the notification described in section (8) of this rule or within the five

1 business days following the intended date, the new employer contribution rate will be
2 effective for payrolls dated on or after:

3 (A) The date specified in the notification; or

4 (B) The first of the month following receipt of the UAL lump-sum payment by
5 PERS, whichever is later.

6 (b) If the UAL lump-sum payment is received by PERS more than five business days
7 after the intended payment date, the employer's contribution rate shall be adjusted in the
8 next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

9 (c) If the UAL lump-sum payment received is other than any amount specified in the
10 notification under section (8) of this rule, the employer's contribution rate shall be
11 adjusted to the rate the payment amount fully funds using the actuarial calculation in
12 subsection (6)(b) of this rule.

13 (d) If the UAL lump-sum payment received is less than the minimum amount
14 described in section (2) of this rule, the funds will be returned to the employer and no
15 adjustment will be made to the employer contribution rate.

16 (e) Nothing in this rule shall be construed to prevent the Board from:

17 (A) Adjusting employer contribution rates based upon the date of receipt of funds or
18 errors in the notification described in section (7) of this rule; or

19 (B) Taking action pursuant to ORS 238.225.

20 (11) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the
21 UAL lump-sum payment made by the employer shall be treated as pre-funded
22 contributions and additional assets for the payment of obligations of the employer under
23 ORS chapters 238 or 238A, rather than as a reduction of those obligations.

1 *[(a)](12) **Side Account.*** The UAL lump-sum payment shall be held in a Side
 2 Account for the benefit of the employer making the UAL lump-sum payment. *[On an*
 3 *annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-*
 4 *funded contributions held in the Side Account that are to be amortized for that year.] **The***
 5 **amount amortized for each payroll reporting period shall be applied from the Side**
 6 **Account to the employer’s Employer Contribution Account.**

7 *[(b) After earnings or losses have been credited for the year, the amount amortized*
 8 *shall be transferred from the Side Account to the Employer Contribution Account.]*

9 *[(12)](13) Crediting earnings or losses. **Side accounts shall be credited with***
 10 **earnings and losses in accordance with OAR 459-007-0530.** *[For the purposes of this*
 11 *rule, Side Accounts shall be credited with all interest and other income received from*
 12 *investment of the account funds during the calendar year, less any amounts withheld from*
 13 *earnings for administrative expenses under ORS 238.610 or paid into the reserve account*
 14 *established under ORS 238.670(1).]*

15 *[(13)](14) Nothing in this rule shall be construed to convey to an employer making a*
 16 *UAL lump-sum payment any proprietary interest in the Public Employees Retirement*
 17 *Fund or in the UAL lump-sum payment made to the fund by the employer.*

18 *[(14) Effective date of rule. This rule shall apply to all UAL lump-sum payments*
 19 *initiated on or after the effective date of this rule.]*

20 Stat. Auth.: ORS 238.650

21 Stats. Implemented: ORS 238.225 to 238.229

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 009 – PUBLIC EMPLOYER**

1 **459-009-0090**

2 **Surplus Lump-Sum Payments by Employers**

3 Purpose. The purpose of this rule is to establish procedures and requirements
4 *[pursuant to ORS 238.225]* for the adjustment of employer contribution rates when **an**
5 **individual public employer that does not have an existing unfunded actuarial**
6 **liability (UAL) makes a lump-sum payment.** *[lump-sum payment is made by an*
7 *individual public employer that does not have an existing unfunded actuarial liability, or*
8 *when an individual employer makes a lump-sum payment in excess of the employer’s*
9 *unfunded actuarial liability.] **An employer with an existing unfunded actuarial***
10 **liability must first submit a lump-sum payment for the full amount of that unfunded**
11 **actuarial liability under OAR 459-009-0084 or 459-009-0085, as applicable, before**
12 **the employer may make a payment under this rule.**

13 (1) Definitions. For the purposes of this rule:

14 (a) “Actuarial Surplus” means the excess of the actuarial value of an employer’s
15 assets over the employer’s actuarial liability.

16 (b) “Employer Contribution Account” means that portion of the Fund designated by
17 the Board, as a portion of the net assets of the Fund, that is funded by employer
18 contributions *[to be used]* for the sole benefit of members of the trust with the purpose of
19 paying future retirement and death benefits.

20 (c) [*“Fair Value UAL” or “Fair Value”*]**Allocated** Actuarial Liability” means the
21 *[UAL or]* actuarial liability calculated using the fair market value of assets.

1 (d) “IAP” means the Individual Account Program of the Oregon Public Service
2 Retirement Plan.

3 (e) “Pension Program Contributions” means the total calculated employer
4 contribution due in any reporting period for both the *[PERS]***Chapter 238** and OPSRP
5 pension programs, excluding any IAP **or retiree health insurance program** contribution
6 due.

7 (f) “Surplus Lump-Sum Payment” means any employer payment:

8 (A) That is not regularly scheduled;

9 (B) That is not paid as a percentage of salary;

10 (c) That is made for the express purpose of creating an actuarial surplus or increasing
11 an existing actuarial surplus; and

12 (D) Where the employer has control over the timing or whether to make the
13 payment.

14 **(g) “UAL” or “Unfunded Actuarial Liability” means the excess of the actuarial**
15 **liability over the actuarial value of assets.**

16 *[(g)](h)* “UAL Lump-Sum Payment” means any employer payment:

17 (A) That is not regularly scheduled;

18 (B) That is not paid as a percentage of salary;

19 (c) That is made for the express purpose of reducing the employer’s unfunded
20 actuarial liability; and

21 (D) Where the employer has control over the timing or whether to make the
22 payment.

1 [(h) “Unfunded Actuarial Liability” or “UAL” means the excess of an employer’s
2 actuarial liability over the actuarial value of assets.]

3 (2) For employers [making a combined surplus lump-sum payment and UAL lump-
4 sum payment] **with an existing UAL that wish to make a payment in excess of the**
5 **existing UAL, the surplus lump-sum payment must be made after and separately**
6 **from the UAL lump-sum payment and** the provisions of this rule apply only to the
7 surplus lump-sum payment [unless otherwise indicated].

8 (3) **Limitation on surplus lump-sum payments. An employer may make only**
9 **one payment per calendar year under the provisions of this rule.**

10 (4) Minimum surplus lump-sum payment amount. If an individual employer elects to
11 make a surplus lump-sum payment under this rule, the payment must [be at least:] **result**
12 **in a 100 basis point reduction in the employer’s pension program contribution rate**
13 **based on the individual employer’s reported payroll in the most recent actuarial**
14 **valuation.**

15 [(a) \$100,000 or 100 percent of the individual employer’s actuarial liability,
16 whichever is less, for an employer whose actuarial liability as calculated under section
17 (9) of this rule is less than \$1 million; or]

18 [(b) Ten percent of the individual employer’s actuarial liability, for an employer
19 whose actuarial liability as calculated under section (9) of this rule is equal to or greater
20 than \$1 million.]

21 [(4)](5) Maximum surplus lump-sum payment amount. If an individual employer
22 elects to make a surplus lump-sum payment under this rule, the payment [shall] **may** not
23 be greater than the amount required to bring the employer’s [total defined-benefit] **lowest**

1 pension program contribution[s] **rate** to zero [percent of payroll] based upon the
2 individual employer’s reported payroll in the most recent actuarial valuation.

3 [(5)](6) Requirements. In order to make a surplus lump-sum payment, an employer
4 must comply with the process described in sections [(6)](7) through [(14)](15) of this
5 rule.

6 [(6)](7) Initiating surplus lump-sum payment process. At least 45 calendar days
7 [prior to]before the date the employer intends to make a surplus lump-sum payment, the
8 employer [shall]must notify the PERS Employer Liability Coordinator in writing that it
9 intends to make a surplus lump-sum payment. The notification [shall]must specify:

10 (a) Whether the intended payment [is to]shall be for [100 percent of the individual
11 employer’s calculated actuarial liability]the maximum payment amount as provided
12 in section (5) of this rule, or, if other than [100 percent]the maximum amount, the
13 percent of [the]payroll reduction in the individual employer’s [calculated actuarial
14 liability]rate or dollar amount of the intended payment; and

15 (b) No more than two potential dates for the payment.

16 [(7)](8) PERS staff [shall]must notify the employer within five business days of
17 receipt of the notification if the notification is incomplete or the process cannot be
18 completed by the intended date(s) of the surplus lump-sum payment.

19 [(8)](9) Payment to the actuary. **The PERS consulting actuary must provide an**
20 **invoice charging the employer for the cost of the rate reduction calculation**
21 **requested by the employer.** At least 30 calendar days [prior to]before the date the
22 employer intends to make a surplus lump-sum payment, the employer [shall]must remit
23 payment for the cost of the [actuarial liability]rate reduction calculation directly to the

1 PERS consulting actuary according to the instructions on the invoice *[provided by the*
2 *PERS consulting actuary]*. Failure to remit payment according to the terms of this section
3 may result in the PERS consulting actuary not completing the employer’s *[actuarial*
4 *liability)]***rate reduction** calculation by the proposed surplus lump-sum payment date.

5 [(9)]**(10)** Calculation of the individual employer’s actuarial liability. Upon receipt of
6 a complete notification and verification of payment to the actuary for actuarial services,
7 PERS staff shall request that the PERS consulting actuary calculate:

8 [(a)] *100 percent of the employer’s actuarial liability, or 100 percent of the*
9 *employer’s share of the actuarial liability for the actuarial group in which the employer*
10 *is participating, as applicable;]*

11 [(b)]**(a)** The minimum amount of the surplus lump-sum payment under section
12 [(3)]**(4)** of this rule;

13 [(c)]**(b)** The maximum amount of the surplus lump-sum payment under section
14 [(4)]**(5)** of this rule;

15 [(d)]**(c)** The alternative percentage or dollar amount specified by the employer in its
16 notification under section [(6)]**(7)** of this rule; and

17 [(e)]**(d)** The effect of **each of** the *[following surplus lump-sum payment amounts]*
18 **amounts calculated in subsections (a) to (d) of this section** on the individual
19 employer’s contribution rate using the potential date(s) for payment specified by the
20 employer in its notification. *[in section (6) of this rule:]*

21 [(A)] *100 percent of the individual employer’s actuarial liability calculated in*
22 *subsection (9)(a) of this rule;]*

1 [(B) The surplus lump-sum payment amount specified by the employer in its
2 notification, if other than 100 percent;]

3 [(c) The minimum amount of the surplus lump-sum payment calculated in subsection
4 (9)(b) of this rule; and]

5 [(D) The maximum amount of the surplus lump-sum payment calculated in
6 subsection (9)(c) of this rule.]

7 [(10)](11) The calculations described in section [(9)](10) of this rule [shall] **must**
8 be:

9 (a) Based on the individual employer’s [fair value actuarial liability] **pension**
10 **program contribution rate** from the most recent **rate setting** actuarial valuation;

11 (b) Based on the covered salary, for the individual employer or as a proportion of the
12 pool, as applicable, reported by the employer for the year of the most recent actuarial
13 valuation; and

14 (c) Adjusted to reflect the effect of time from the most recent actuarial valuation to
15 the intended date(s) of payment, using generally recognized and accepted actuarial
16 principles and practices.

17 [(11)](12) Notification of calculation. PERS staff [shall] **must** notify the employer in
18 writing of the results of the individual employer’s calculation under section [(9)](10). In
19 addition, PERS [shall] **must** send the employer a notification describing risks and
20 uncertainties associated with making a lump-sum payment.

21 [(12)](13) Notification of payment. The employer or its agent [shall] **must** notify the
22 PERS Employer Liability Coordinator in writing at least three business days [prior
23 to] **before** making a surplus lump-sum payment. This notification [shall] **must** be in

1 addition to the notification in section ~~[(6)](7)~~ of this rule and ~~[shall]~~**must** specify the
2 dollar amount of the payment and the date the employer intends to make the payment.

3 ~~[(13)](14)~~ Method of payment. A surplus lump-sum payment must be made by
4 either electronic transfer or check payable to the Public Employees Retirement System.

5 ~~[(14)](15)~~ Receipt of payment. In order to adjust the employer contribution rate to
6 that reported by PERS in section ~~[(11)](12)~~ of this rule, PERS must receive the correct
7 funds no later than five business days after the corresponding intended date of the surplus
8 lump-sum payment specified in the notification described in section ~~[(12)](13)~~ of this
9 rule.

10 (a) If the surplus lump-sum payment is received by PERS on or before the intended
11 date specified in the notification described in section ~~[(12)](13)~~ of this rule or within the
12 five business days following the intended date, the new employer contribution rate
13 ~~[will]~~**shall** be effective for payrolls dated on or after the first of the month following
14 receipt of the payment by PERS.

15 (b) If the surplus lump-sum payment is received by PERS more than five business
16 days after the intended payment date, the employer's contribution rate shall be adjusted in
17 the next actuarial valuation based on the date of receipt of the payment.

18 (c) Except as provided in subsection ~~[(14)](15)~~(d), if the surplus lump-sum payment
19 received by PERS is other than any amount specified in the notification under section
20 ~~[(12)](13)~~ of this rule, the employer's contribution rate shall be adjusted to the rate the
21 payment amount fully funds using the actuarial calculation in section ~~[(9)](10)~~ of this
22 rule.

1 (d) If the surplus lump-sum payment received by PERS is less than the minimum
2 amount described in section [(3)](4) of this rule, or greater than the maximum amount
3 described in section [(4)](5) of this rule, the funds [will]shall be returned to the employer
4 and no adjustment [will]shall be made to the employer contribution rate.

5 (e) Nothing in this rule shall be construed to prevent the Board from:

6 (A) Adjusting employer contribution rates based upon the date of receipt of funds or
7 errors in the notification described in section [(11)](12) of this rule; or

8 (B) Taking action pursuant to ORS 238.225.

9 [(15) Frequency of surplus lump-sum payments. An employer may make only one
10 surplus lump-sum payment per calendar year.]

11 (16) Actuarial treatment of the payment. For actuarial purposes, the surplus lump-
12 sum payment made by the employer shall be treated as pre-funded contributions and
13 additional assets for the payment of obligations of the employer under ORS Chapters 238
14 or 238A, rather than as a reduction of those obligations.

15 [(a) If the employer makes a combined surplus lump-sum payment and UAL lump-
16 sum payment, the UAL lump-sum payment amount shall be held in a separate Side
17 Account to which the provisions of OAR 459-009-0084 or 459-009-0085, as applicable,
18 shall apply.]

19 [(b)](17) **Side Account.** The surplus lump-sum payment shall be held in a Side
20 Account for the benefit of the employer making the surplus lump-sum payment. [On an
21 annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-
22 funded contributions held in the Side Account that are to be amortized for that year.] **The**
23 **amount amortized for each payroll reporting period shall be applied from the Side**

1 **Account to the Employer Contribution Account of the individual employer or of the**
 2 **actuarial group in which the employer is participating, as applicable. The side**
 3 **account amortization period shall be equal to the remaining period that new Tier**
 4 **One and Tier Two gains and losses were amortized in the last rate-setting valuation.**

5 *[(c) After earnings or losses have been credited for the year, the amount amortized*
 6 *shall be transferred from the Side Account to the Employer Contribution Account of the*
 7 *individual employer or of the actuarial group in which the employer is participating, as*
 8 *applicable.]*

9 *[(17)](18) Crediting earnings or losses. **Side accounts shall be credited with***
 10 **earnings and losses in accordance with OAR 459-007-0530.***[For the purposes of this*
 11 *rule, Side Accounts shall be credited with all interest and other income received from*
 12 *investment of the account funds during the calendar year, less any amounts withheld from*
 13 *earnings for administrative expenses under ORS 238.610 or paid into the reserve account*
 14 *established under ORS 238.670(1).]*

15 *[(18)](19) Nothing in this rule shall be construed to convey to an employer making a*
 16 *surplus lump-sum payment any proprietary interest in the Public Employees Retirement*
 17 *Fund or in the surplus lump-sum payment made to the fund by the employer.*

18 *[(19) Effective date of rule. This rule shall apply to all surplus lump-sum payments*
 19 *initiated on or after the effective date of this rule.]*

20 Stat. Auth.: ORS 238.650

21 Stats. Implemented: ORS 238.225 to 238.229



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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July 20, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
Patrick O. Teague, Administrator, BPD
SUBJECT: Strunk/Eugene Adjustment Project Update

MEETING DATE	7/20/07
AGENDA ITEM	D.1. S/E Update

I. PROJECT UPDATE

The attached process and status reports detail the work completed on the adjustments resulting from the Oregon Supreme Court's decisions in the Strunk and City of Eugene cases and the settlement agreement in the Eugene case. These reports will be described in more detail during the staff's presentation at the July 20, 2007 PERS Board meeting.

II. INTERIM STEPS

Judge Kantor issued an opinion and order on June 20, 2007 in the combined Arken and Robinson cases. The opinion found that Section 14b of the 2003 PERS Reform legislation constrained the methods available to the PERS Board to recover the amounts overpaid to benefit recipients as a result of the 1999 earnings crediting to Tier One member regular accounts. Since Judge Kantor's opinion, PERS staff have taken the following steps to suspend collection activity:

- Reversed all benefit adjustments that were scheduled to occur on July 1, 2007. Instead, these recipients continue to receive monthly benefits in the same amount as their June 1, 2007 benefit payment.
- Suspended any further notifications to benefit recipients of overpayment and underpayment amounts.
- Returned any lump sum payments received after the date of the judge's opinion.
- Notified all invoice recipients that had not yet paid to withhold payment pending clarification of the court's opinion.
- Notified all individuals who had asked for a review of the staff's determination of the overpayment and underpayment amount that those reviews will be suspended until the court provides further clarification.

A status conference with Judge Kantor is scheduled for August 16, 2007. PERS staff will assess its processes and options once further clarification is provided on or after that date.

III. POLICY ISSUE

Should PERS allow the 2007 Cost of Living Adjustment (COLA) that is scheduled to go into effect July 1, payable August 1, to be paid to monthly benefit recipients in the Strunk/Eugene adjustment population?

The 2007 COLA is 2 percent (the maximum allowed under statute) based on the Consumer Price Index for Portland increase of 2.6 percent in 2006. The vast majority of monthly benefit recipients still to be adjusted in this project are receiving the same benefit amount they were getting on July 1, 2003, when the COLA freeze was instituted, or upon their retirement after that date. Once the Strunk case held that the COLA freeze method from the 2003 PERS Reform legislation could not be used, PERS relied on ORS 238.715(1)(c) to offset the amount owed to the benefit recipient in COLA(s) against the amount owed PERS from the 1999 over-crediting under our “one-touch” benefit adjustment approach.

The policy issue now presented is whether PERS should continue to offset the 2007 COLA that would otherwise be paid to Strunk/Eugene monthly benefit recipients against the overpayment amounts owed, or allow that COLA to be paid starting August 1, 2007 to all eligible recipients.

FISCAL/ADMINISTRATIVE ANALYSIS

All monthly benefit recipients are still paid out of the agency’s legacy RIMS system. RIMS is “hard-wired” to adjust from July 1, payable August 1, each year. From an administrative viewpoint, stopping the COLA from being paid is harder because an exclusion list has to be loaded into RIMS. The actual dollar amount of the 2007 COLA to be paid, from the PERS Fund’s perspective, is not significant.

Almost all benefit recipients yet to be adjusted would see a benefit increase if their benefit was recalculated to 11.33% for 1999 earnings crediting and the intervening COLAs applied. Continuing to suspend the COLA this year does not increase the total amount overpaid to such a recipient, it would only reduce that recipient’s net overpayment amount depending on when the final adjustment occurs.

LEGAL ANALYSIS

The scope and application of Judge Kantor’s opinion is not certain. First, the opinion and order have not been reduced to judgment, so it has no immediate legal effect on the parties. Second, no class has been certified, so any judgment to be entered may only affect the named parties to the case. Third, the judge’s opinion doesn’t define whether the “overpayment” includes only the amounts paid to date or whether affected accounts should be re-credited at 20% for 1999 earnings. Consequently, the judge’s opinion does not clearly address, much less resolve, this policy question.

FIDUCIARY ANALYSIS

Allowing the 2007 COLA to be applied would not significantly jeopardize future overpayment recovery efforts if those efforts were to start again. If the Strunk/Eugene project resumed, these recipients would subsequently be adjusted for 11.33% crediting

and repay any remaining net overpayment either through an Actuarial Reduction Method (ARM) adjustment or lump sum payment amount.

STAFF RECOMMENDATION

Apply the 2007 COLA to the July 1 benefits, payable August 1, for the remaining monthly benefit recipients in the Strunk/Eugene project population. Without controlling legal direction and posing negligible recovery risk, the administrative process of applying the 2007 COLA would be simplified at little over-all fiscal impact.

Attachment 1 *Strunk & Eugene* Core Principals and Success Criteria

Attachment 2 *Strunk & Eugene* Data Validation Process

Attachment 3 *Strunk & Eugene* Project Workflow

Attachment 4 *Strunk & Eugene* Population and Project Progress

Attachment 5 *Strunk & Eugene* Project Statistics

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Strunk & Eugene Core Principals and Success Criteria

To ensure the success of this project, the PERS Board & PERS Executives defined a set of Core Principles and Success Criteria. Both the Principles and the Criteria were used as guides when making key project decisions.

Core Principles

The following principles guide the planning and execution of this project:

- The negative adjustment on the retiree's current benefit payment is as small as possible.
- The account processing priority and order is transparent and communicated to stakeholders for input.
- Communications are complete, understandable, concise, and we proactively answer potential questions.
- The project is completed in the most efficient method that does not put undue burden on other business operations.
- The impact to the Rims Conversion Project (RCP) is planned and managed for success.
- Members of the core *Strunk* and *Eugene* team are dedicated 100% to the project.
- One touch per account. This means we attempt to push the account through the process in the most efficient means possible and present a final transaction to the impacted benefit recipient.

Success Criteria

The project is successful if:

- Recipients incur no disruption in the receipt of monthly PERS benefits.
- The identified population of accounts requiring adjustment includes all impacted accounts.
- All account balance and benefit payment adjustments are complete, accurate, and fully auditable. This means all underlying data issues must be resolved.
- The invoicing and accounts receivable processes optimize collections.
- 2004 member statements can be created from Phase I of this project.
- No data is corrupted or lost as a result of our processing.
- Completed within the approved budget.
- Completed within the approved timeline.

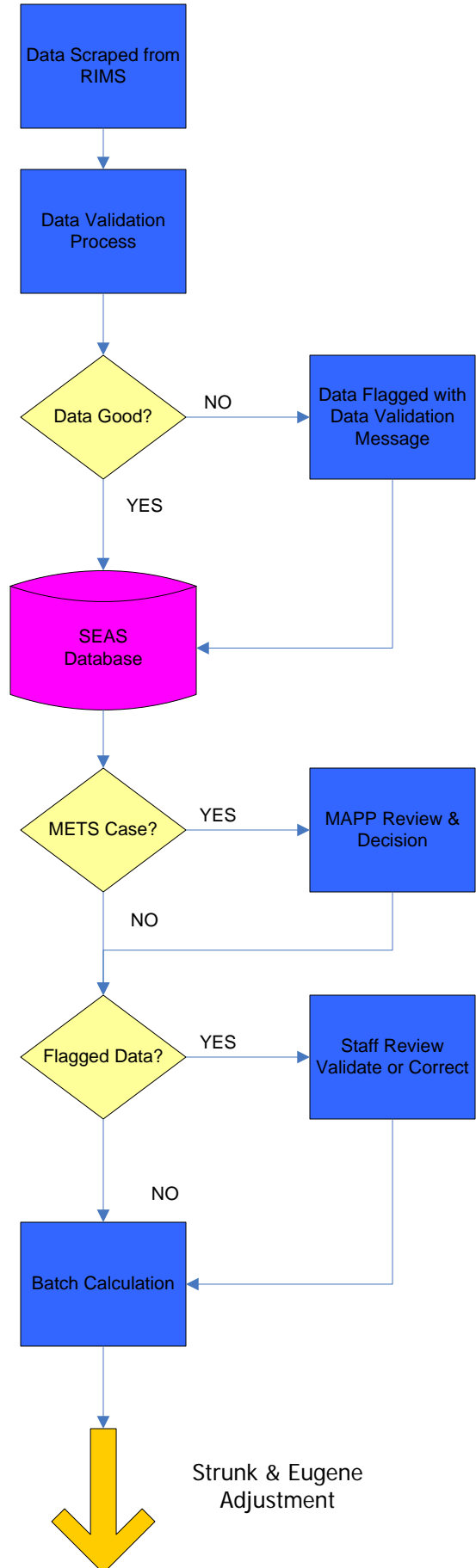
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STRUNK AND EUGENE DATA VALIDATION PROCESS

SEAS Eligibility Review Process

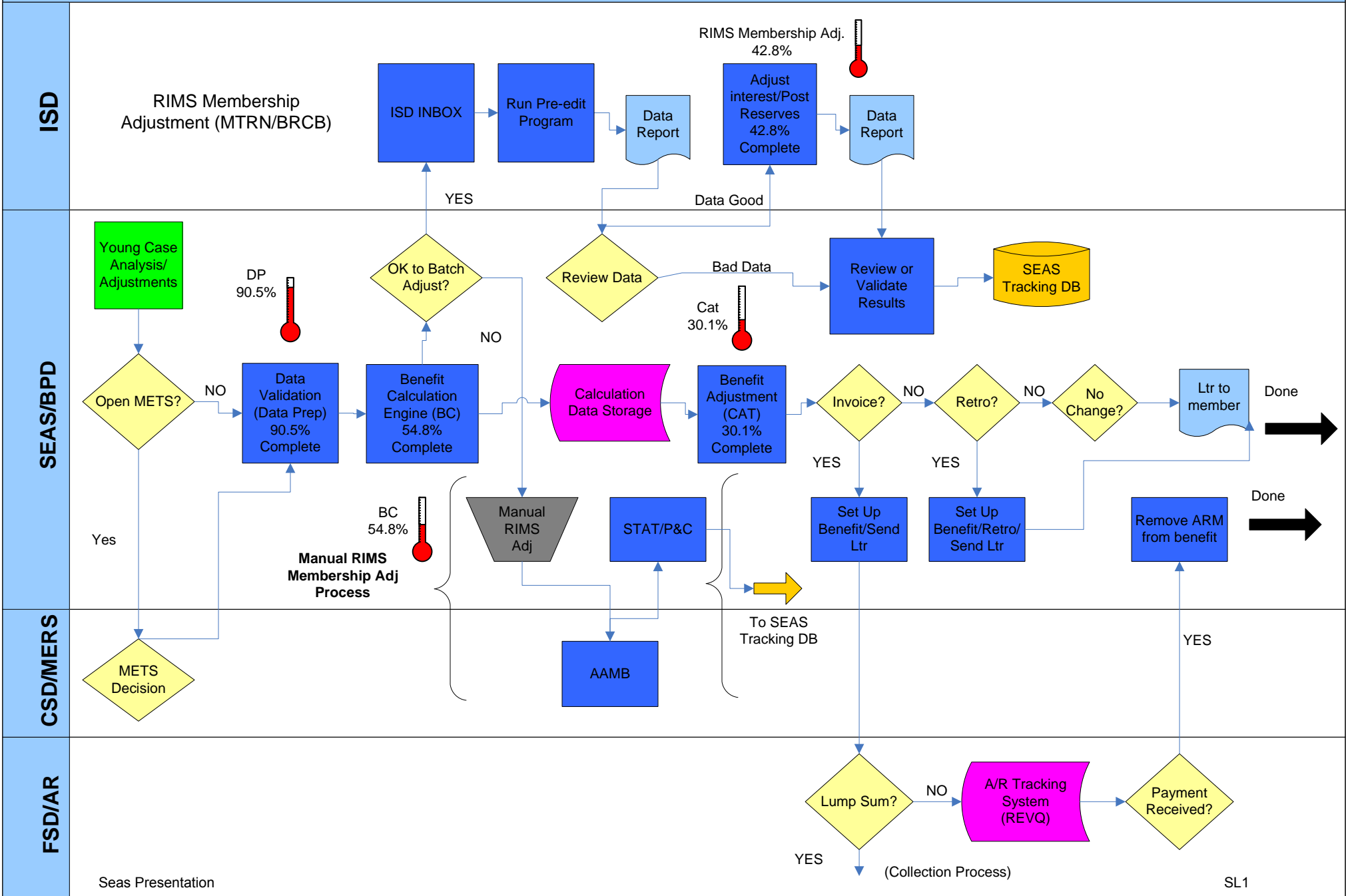
For the Strunk & Eugene Adjustment Section we have adopted the following approach to validating the data for use in the recalculation. In all cases we trust the data unless it falls into one of the following three categories:

- 1. Incorrect Data** – Corrected separation not posted, manual adjustment on RIMS is incorrect, identical salary transaction posted more than once
- 2. Missing Data** – No separation, No Sick Leave information, No Salary Certification, Lump Sum Vacation Pay (LSVP) not re-posted.
- 3. Unusable Data** – Unresolved issue with retirement eligibility (METS), legal procedure such as an open appeal, Database (DB) Fix, or data does not conform to rules or statute.



Strunk & Eugene Project

For Member & AP Retirements (Total Population 34,000 Accounts)



Strunk & Eugene Population & Project Progress						
<i>Impacted Accounts</i>	Original Population (1)	Population Change (2)	Total Current Population (3)	Adj.Complete Accounts (4)	Accounts Not Adj. (5)	% Finished (6)
Member & AP Retirements Post 3/1/00	34,000	1,025	35,025	10,306	24,719	29.4%
Account Withdrawals (Members & AP's)	5,000	1,756	6,756	0	6,756	0.0%
Final LSI for Retirements prior to 4/1/00	1,000	(54)	946	0	946	0.0%
Pre Retirement Death Benefits	1,400	(233)	1,167	0	1,167	0.0%
Non-Retired AP/Member Divisions	3,000	269	3,269	1,869	1,400	57.2%
Re-employed Retiree's	140	14	154	0	154	0.0%
TOTAL ACCOUNTS	44,540	2,777	47,317	12,175	35,142	25.7%

(1) Original Strunk & Eugene population was the amount of impacted accounts estimated prior to the inception of the Strunk & Eugene Adjustment Project.

(2) Upon planning of the Strunk & Eugene Adjustment Project, the team was able to better analyze the project data and made adjustments to the population buckets.

(3) This is the current population as of today.

(4) This is the total amount of accounts that has been adjusted with Strunk & Eugene interest to date. (Note: Although only 25.7% of the accounts have been adjusted to date, 90.5% of the population has been through the data validation process and 54.8% of the population has been through the calculation verification process and is ready to be adjusted.

(5) Many accounts in this population are captured in the Strunk & Eugene database waiting for COLA adjustments in 2007 or 2008. After the designated COLA adjustment, the monthly benefit (including the ARM reduction) will be more than the original benefit prior to Strunk & Eugene.

(6) Percentage of total population that has been adjusted.

SEAS Project Statistics

Type	Adjustments in May	Adjustments to Date
ARM Reduced	872	4461
ARM Invoice Paid	18	273
Total Lump Sum Invoice	249	656
Less than \$50	51	242
No over/under	57	478
Underpayments Paid	186	2132
	1433	8242 * Retired accounts
	0	2064 * Manually processed retirement accounts (w/out S&E tools)
	0	1869 *Non-retired AP/Member Division
Total Adjusted Population:	1433	12175

Type	Total Invoiced May	Total Invoiced to Date	Average Inv. Amt.
ARM Reduced	\$3,511,130.90	\$19,061,975.48	\$4,026.61
Total Lump Sum Invoice	\$3,257,340.26	\$8,921,940.01	\$13,600.52
	\$6,768,471.16	\$27,983,915.49	

Type	Total Invoiced May	Total Invoiced to Date	Average Underpayment Amt.
Underpayments Paid	\$277,177.29	\$4,188,268.29	\$1,964.48

Type	Total Invoiced May	Total Invoiced to Date	Average Inv. Amt.
Under \$50 Invoices Written Off	\$1,208.61	\$5,541.17	\$22.90

Type	Total Invoices Paid to Date	Total Dollars Collected to Date	Average Paid Inv. Amt.
Lump Sum	74	\$477,222.09	\$6,448.95
ARM Invoice Paid	273	\$508,786.89	\$1,863.69
	347	\$986,008.98	

Type	Checks Returned: Kantor opinion
Lump Sum	8
ARM	5
	13

Appeals & Contests	May Total	Received to Date
Appealed	14	123
Contest	2	8
Percentage of population	0.0011%	0.005%

* "To-Date" = Project inception thru June 2007



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
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Tigard, OR 97281-3700
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July 20, 2007

TO: Members of the PERS Board

FROM: Dale S. Orr, Coordinator, Actuarial Analysis Section

SUBJECT: 2006 Experience Study

MEETING DATE	7/20/07
AGENDA ITEM	D.2. Exp. Study

On July 20, 2007, Bill Hallmark and Matthew Larrabee of Mercer Human Resource Consulting (Mercer) will present the findings from the 2006 Experience Study and will ask the Board to approve the assumptions and methods contained in the study. If approved by the Board, these assumptions and methods will be used to develop the 2006 System-wide Valuation Report which is scheduled to be presented at the September 21, 2007 Board meeting.

An electronic version of Mercer's presentation will be sent to the Board members prior to the meeting, if available.

Recommended Board Action: Approve Mercer's methodology and assumption recommendations outlined in the 2006 Experience Study.

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July 20, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: 2007 Legislative Update

MEETING	07-20-07
DATE	
AGENDA	D.3.
ITEM	Legislative

With the conclusion of the 2007 session of the Oregon Legislature, we have fourteen PERS-related bills that have been passed and signed by the Governor, and another four that are waiting for possible signing by the Governor.

Following is a summary of each bill considered during the past session, whether it passed or failed. This same summary was mailed out earlier this month to the PERS Board as well as the Legislative Advisory Committee as the final legislative newsletter of this past session.

On July 20, PERS staff will update the Board regarding any remaining bills the Governor may have signed. Additionally, staff will briefly review those bills that passed and answer any questions Board members may have regarding the specifics of the bills.

On September 21, PERS staff will review the progress of bill implementation with the Board. As requested by the Board, staff will also be prepared to discuss the general topic of reemployed retirees, and options the Board may wish to consider for developing and proposing legislative changes in 2009.

PERS-RELATED BILLS THAT DID PASS

[Note: Bills passed and signed by the Governor generally become effective on January 1, 2008. Bills that passed with an emergency clause become effective upon signing by the Governor. Those bills that passed with an emergency clause are noted below.]

HB 2007A DOMESTIC PARTNERS

Among other provisions, directs PERS to extend the same rights and benefits to domestic partners as those to married individuals, unless such extension would conflict with a condition of the plan's tax qualification.

Signed by the Governor on May 9, 2007.

HB 2184A REEMPLOYED RETIREES

Among other provisions, allows a deputy director or assistant director of the Department of Human Services to exceed the 1039 hour limitation, if the Governor approves.

Signed by the Governor on June 7, 2007. [Emergency clause]

HB 2280B EQUAL-TO-or-BETTER-THAN

Removes requirement that ETOB study be conducted every two years. Allows PERS by administrative rule to determine when ETOB study is to be conducted. Provides for three-tiered standard of review for ETOB plans based on commensurate PERS programs; requires employer compliance; provides for legal action by employees of non-compliant employer.

Signed by the Governor on June 27, 2007.

HB 2281 WITHDRAWALS

Requires a member who withdraws (not retires) from any one of PERS' programs, to withdraw from all PERS programs at the same time.

Signed by the Governor on April 17, 2007.

HB 2282 NOTICE OF CONTEST

Changes the statutory term "Notice of Contest" to less confusing "Notice of Dispute."

Signed by the Governor on April 17, 2007.

HB 2283A OREGON INVESTMENT COUNCIL

Removes requirement that the Governor appoint one member of the PERS Board to also serve concurrently on the Oregon Investment Council, making such appointment discretionary rather than mandatory.

Signed by the Governor on June 27, 2007. [Emergency clause]

HB 2284B BREAK IN SERVICE [An exception]

Exempts employees who are absent from employment for more than six months due to administrative or disciplinary action from the "Break In Service" provisions, if the employee is reinstated to employment by judgment, administrative order, arbitration, settlement, or other resolution. NOTE: Passage of HB 2285B nullifies need for this bill.

Signed by the Governor on June 27, 2007.

HB 2286 OREGON SAVINGS GROWTH PLAN

Clarifies that an order creating an Alternate Payee of an OSGP participant may commence payments from the Alternate Payee account earlier than the participant's first eligibility.

Signed by the Governor on April 17, 2007.

HB 2358 OREGON SAVINGS GROWTH PLAN

Allows Oregon State Bar employees to participate in the OSGP.

Signed by the Governor on April 17, 2007.

HB 2397B ROLLOVERS

Allows the PERS Board to accept rollover contributions from PERS members for repayment of overpayments or erroneous payments. Allows beneficiaries to roll over death benefits. Allows certain members to transfer funds from OSGP for creditable service time purchases.

Signed by the Governor on June 27, 2007.

HB 2401B 9-1-1 OPERATORS

Allows 9-1-1 operators with 25 years of service as a telecommunicator to retire with a reduced benefit if not yet age eligible.

Signed by the Governor on June 13, 2007.

HB 2679 INDIVIDUAL ACCOUNT PROGRAM

Allows payout of the IAP account over the life expectancy of the member, in addition to the current 5, 10, 15 or 20-year payout periods.

Signed by the Governor on June 13, 2007.

HB 5040 PERS BUDGET

Signed by the Governor on May 31, 2007. [Emergency clause]

SB 342A REEMPLOYED RETIREES

Exempts member who is a registered nurse and is hired as a nursing instructor from the 1039-hour limitation. Also, exempts member hired as an instructor by the Department of Public Safety Standards and Training. Sunsets January 2, 2016.

Signed by the Governor on June 20, 2007.

SB 872A JUDGES

Provides that judge members may designate a portion of the pension payable to a surviving spouse to be paid to a former spouse.

Signed by the Governor on June 20, 2007.

PERS-RELATED BILLS AWAITING GOVERNOR'S SIGNATURE (As of 7/6/07)

HB 2285B BREAK IN SERVICE and PART TIME GROSS UP

Eliminates "Break In Service" statutory provisions. Also eliminates the "gross up" methodology for tracking part time employees in the OPSRP Pension program and provides that retirement credit under the OPSRP Pension program will be calculated in the same manner as creditable service under the PERS Chapter 238 (Tier One/Two) programs. Both provisions apply retroactively to all service performed before, on, or after the effective date of the bill.

Signed by Speaker and President.

HB 2585 REEMPLOYED RETIREES

Exempts from the 1039 hour limitation retired members who are employed (1) as a teacher or administrator by a community college district located in a county of 35,000 inhabitants or less, (2) as a teacher or administrator by an education service district if the primary duties are performed in a county of 35,000 inhabitants or less, (3) as a speech pathologist or speech-language pathologist assistant by a school district or education service district. Also provides that these exemptions, and current exemption for employment by a school district in a county of 35,000 inhabitants or less, are available to members who took early retirement if the date of employment is at least six months later than the member's retirement date.

Signed by Speaker and President. [Emergency clause]

HB 2619A PERS OMNIBUS BILL

(1) Allows police officer to make full cost purchase of creditable service for service as public safety officer in another state.

(2) Exempts hours worked by retired member employed by the Legislative Assembly or the Oregon State Police for service during the legislative session from the 1039 hour limitation.

(3) Provides for net earnings and losses to be credited to member accounts in Loss of Membership status during subsequent periods of active membership.

Signed by Speaker and President. [Emergency clause]

SB 4B REEMPLOYED RETIREES

Among other provisions, exempts member who is a nurse and is hired as a nurse, or nurse instructor, from the 1039-hour limitation during a declared nursing workforce shortage.

Signed by the President, still awaiting signing by the Speaker.

PERS-RELATED BILL CONCEPTS THAT DID NOT PASS

HB 2492 BENEFITS PAID TO FELONS

Made pension benefits subject to execution if the individual is convicted of a felony.

Considered by the House Judiciary Committee, the bill never moved out of committee.

HB 2592A TAX WITHHOLDING

Required PERS to withhold local income tax from retirement distributions under certain conditions.

Considered by the Senate Revenue Committee, all reference to PERS was removed by the dash 10 amendment.

HB 2593 REEMPLOYED RETIREES

Exempted retired members hired as nurses or nurse instructors from the 1039 hour limitation.

Considered by the House Committee on Health Care. Passed out of committee, the bill was referred to Ways and Means and never moved out of that committee.

HB 2623 BREAK IN SERVICE

Eliminated the "Break In Service" provisions.

Considered by the House Business and Labor Committee. Passed out of committee with a referral to Ways and Means. The bill never moved out of that committee. The concept however was subsequently moved to HB 2285.

HB 2724 REEMPLOYED RETIREES

Exempted any retired member hired by a school district, educational service district or community college as other than management or teacher from the 1039 hour limitation.

Referred to the House Business and Labor Committee, the bill was never heard.

HB 3061 VOLUNTARY DEDUCTIONS

Would have required PERS to allow retired members and beneficiaries to have voluntary monthly contributions deducted from their benefit payments and paid to labor organizations.

Considered by the House Business and Labor Committee, the bill never moved out of committee.

HB 3318A POLICE AND FIRE

Among other provisions, re-classified Oregon University Campus security officers as Police and Fire officers for PERS benefit purposes.

Passed by the House, the bill was referred to Ways and Means and never moved out of committee.

HB 3361 REEMPLOYED RETIREES

Exempted retired member employed by the Legislative Assembly or the Oregon State Police for service during the legislative session from the 1039 hour limitation.

Considered by the House Business and Labor Committee. Passed out of committee with a referral to Ways and Means. The bill never moved out of that committee. The concept however was subsequently moved to HB 2619A.

HB 3385 POLICE AND FIRE

Would have granted P&F status to (1) dog control officers, (2) OHSU campus security, and (3) Judicial Department employees providing court security.

Referred to the House Business and Labor Committee, the bill was never heard.

HB 3451A PART TIME GROSS UP

Eliminated the “gross up” methodology for tracking part time employees in the OPSRP Pension program and provided that retirement credit under the OPSRP Pension program would be calculated in the same manner as creditable service under the PERS Chapter 238 (Tier One/Two) programs.

Considered by the House Business and Labor Committee. Passed out of committee with a referral to Ways and Means. The bill never moved out of that committee. The concept however was subsequently moved to HB 2285.

HB 3536 DOMESTIC PARTNERS (RECIPROCAL BENEFICIARIES)

Would have granted PERS benefits to reciprocal beneficiaries, a status suggested as an alternative to domestic partnership.

Referred to the House Committee on Elections, Ethics and Rules, the bill was never heard.

SB 384A OPTIONAL RETIREMENT PLAN

Allowed a school administrator who was not a PERS member to choose an alternate retirement plan in lieu of PERS.

Considered by the Senate Education Committee, all reference to PERS was removed by a dash amendment.

SB 478 JUDGES

Provided that judge members could not be required to remain a resident of Oregon as a condition of retirement under the retirement option requiring 35 days of pro tem service.

Referred to the Senate Commerce Committee, the bill was never heard.