

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

Friday
September 21, 2007
1:00 P.M.

PERS
11410 SW 68th Parkway
Tigard, OR

	ITEM	PRESENTER
A. Contested Case Hearings		
1.	Bowen Motion to Correct Appellate Record	DELANEY/KUTLER
B. Administration		
1.	July 20, 2007 Board Meeting Minutes	CLEARY
2.	Director's Report	CLEARY
a.	Forward-Looking Calendar	
b.	OIC Investment Report	SCHMITZ
c.	HB 2020 Report	
d.	Budget Report	
e.	Miscellaneous Information Reports	
C. Consent Action and Information Items		
1.	Second and Third Reading of Withdrawal Rules	DELANEY
2.	Second Reading of Administrative Review and Appeal Processes Rules	
3.	First Reading of Crediting Earnings to Employer Lump-Sum Payments Rule	
4.	First Reading of Lump-Sum Payments by Employers Rules	
5.	Notice of Employee Contributions for Prior Periods Rule	
6.	Notice of Eligibility Rules for Chapter 238 Program	
7.	Notice of Earnings Crediting at Loss of Membership Rules	
8.	Notice of Elimination of Break in Service Rules	
9.	Notice of Alternate Payees OSGP Rules	
10.	Notice of ETOB Rules	
11.	Notice of IAP Account Installments Rule	
12.	Notice of Notice of Domestic Relations Orders Rule	
13.	Notice of Reemployed Retirees Rule	
D. Action and Discussion Items		
1.	2007 Legislation Implementation	RISWICK
2.	2008 – 09 Legislative Process	DELANEY
E. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225		
1.	Litigation Update	LEGAL COUNSEL
2.	Status of Contested Cases	

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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., July 20, 2007
Tigard, Oregon

DRAFT

MINUTES

Board Members:

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

Staff:

Paul Cleary
Donna Allen
Steve Rodeman
Steve Delaney
Gay Lynn Bath
Tom Andrews

Daniel Rivas
Susan Riswick
Joe DeLillo
Dave Tyler
David Crosley
Jason Stanley
Kyle Knoll

Dale Orr
Jeannette Zang
Patrick Teague
Dale Lucht
Lisa Romo
Beth Porter

Others:

Deborah Tremblay
Richard Gilbert
Keith Kutler
Dean Hulbert
David Wimmer

Bob Davis
Bill Hallmark
Maria Keltner
Bill Spurling

Steve Manton
Bruce Adams
Steve Law
Victor Nolan

Chris Warner
P. Peg
Pat West
Denise Yunker

Chair Mike Pittman called the meeting to order at 1:00 P.M.

Board member Grimsley attended the meeting by phone.

ADMINISTRATION

B.1. BOARD MEETING MINUTES OF JUNE 15, 2007

The Board unanimously approved the minutes of the June 15, 2007 Board meeting.

B.2. DIRECTOR'S REPORT

Director Paul Cleary presented the Forward-Looking Calendar and noted that there is no meeting scheduled for August. Cleary noted that the September 21 meeting will focus on the legislative process and implementation of 2007 legislation. Cleary presented the OIC report ending June 30 showing a 7.75% year-to-date return for the OPERF regular account. Cleary reported minimal changes in the Budget Report and the HB2020 Report for Employer Reporting and Accounts Receivable Programs. Cleary reviewed the numerous positive member comments on the customer service retirement application group turn-in-forms sessions and individual application assistance sessions that have been instituted as part of the agency's 2007 – 09 budget implementation.

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 recommendation in the contested case hearing held earlier in the day.

It was moved by Mike Pittman and seconded by Eva Kripalani to approve the staff recommendation as presented. The motion passed unanimously.

Under that motion, the Board acted as follows:

ITEM A.1. CONTESTED CASE HEARING FOR WAYNE LOGEMANN

Adopted the draft final order as presented in the contested case hearing of Wayne Logemann.

C.2. ADOPTION OF DIRECT ROLLOVER RULES

Rodeman presented the proposed adoption of the Direct Rollover Rules modifications to conform to 2006 federal pension law changes and to state law changes made by the 2007 Oregon legislature allowing for non-spouse beneficiary rollovers and providing additional flexibility in processing rollovers.

It was moved by Eva Kripalani and seconded by Brenda Rocklin to adopt the permanent rule modifications as presented to OAR 459-005-0591, 459-005-0595, 459-005-0599, and 459-050-0090. The motion passed unanimously.

C.3. ADOPTION OF JUDGE MEMBER PROGRAM RULES

Rodeman presented the proposed adoption of the Judge Member Program Rules to document agency practices, clarify program administration and conform to state law changes made by the 2007 Oregon legislature.

It was moved by Brenda Rocklin and seconded by Eva Kripalani to adopt the permanent rule modifications as presented to OAR 459-040-0001, OAR 459-040-0010, OAR 459-040-0020, OAR 459-040-0030, OAR 459-040-0040, OAR 459-040-0050, OAR 459-040-0060, OAR 459-040-0070, and OAR 459-040-0080. The motion passed unanimously.

C.4. ADOPTION OF DOCUMENT RECEIPT DATE RULES

Rodeman presented the proposed adoption of the Document Receipt Date Rules modifications to clarify when documents will be considered "received" in response to the agency converting to workflows and digital document handling.

It was moved by Brenda Rocklin and seconded by Eva Kripalani to adopt the permanent rule modifications as presented to OAR 459-005-0220. The motion passed unanimously.

C.5. ADOPTION OF OSGP LOAN PROGRAM RULES

Rodeman presented the proposed adoption of the Oregon Savings Growth Plan (OSGP) Loan Program Rules modifications to streamline administration and address federal tax reporting requirements.

It was moved by Brenda Rocklin and seconded by Eva Kripalani to adopt the permanent rule modifications as presented to OAR 459-050-0077. The motion passed unanimously.

C.6. NOTICE OF RULEMAKING FOR CREDITING EARNINGS TO EMPLOYER LUMP-SUM PAYMENTS

[and]

C.7. NOTICE OF RULEMAKING FOR LUMP-SUM PAYMENTS BY EMPLOYERS

Rodeman presented the two related notices of rulemaking that would allow for implementation of payroll-to-payroll amortization of employer side accounts as opposed to the current annual basis and to conform earnings crediting rules to the payroll-based amortization of side account funds. Rodeman said that rulemaking hearings will be held on August 29, the public comment period ends on September 28 and the rules would be presented for adoption at the October 19, 2007 meeting.

ACTION AND DISCUSSION ITEMS

D.1. STRUNK AND EUGENE ADJUSTMENT PROJECT UPDATE

Patrick Teague, Benefit Payments Division Administrator and Dale Lucht, Manager of the *Strunk/Eugene* Adjustments Section presented a project update for the member account crediting and related benefit 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.

Teague reported on the status of account and benefit adjustments for 47,317 affected benefit recipients. Teague said that 90.5% of the affected accounts have been data validated while a total of 29.4% percent, or 10,306 benefit payments have been adjusted.

Lucht reviewed the process used in validating the data to ensure that all account balance and benefit payment adjustments are complete, accurate, and fully auditable.

Rodeman reviewed the administrative, legal, and fiduciary issues and options for the project, including actions the agency has taken to date in response to Judge Kantor's June 20, 2007 ruling the *Arken* and *Robinson* cases and preparation for a status conference with Judge Kantor that is scheduled for August 16, 2007.

D.2. 2006 EXPERIENCE STUDY

Bill Hallmark and Matt Larrabee of Mercer presented the Experience Study and related recommendations for use in the December 31, 2006 valuation. Hallmark outlined the study objectives, and summarized the recommendations involving actuarial methods and allocation procedures, economic assumptions, and demographic assumptions. Hallmark then detailed the proposed minor changes to actuarial methods and economic assumptions. Larrabee highlighted the recommended minor changes to current demographic assumptions.

The Board approved Mercer moving forward with the proposed actuarial methods and assumptions changes.

Hallmark also said the December 31, 2006 system-wide valuation results were currently scheduled to be presented at the September 21, 2007 Board meeting and individual employer reports would be presented at the October 19, 2007 meeting.

PERS Board meeting

7/20/2007

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D.3. 2007 LEGISLATIVE UPDATE

Deputy Director Steve Delaney reviewed the final status of 18 PERS bills resulting from the 2007 legislative session. Delaney said that staff will review the progress of 2007 bill implementation at the September Board meeting.

EXECUTIVE SESSION

Pursuant to ORS 192.660 (2) (f), (h), and ORS 40.255, the Board went into executive session at 2:35 P.M.

The Board reconvened to open session.

Chair Pittman 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	9-21-07
DATE	
AGENDA	B.2.a
ITEM	Calendar

October 2007

1:00 P.M. October 19, 2007

Adoption of Withdrawals Rules
Adoption of Administrative Review and Appeal Processes Rules
Adoption of Crediting Earnings to Employer Lump-Sum Payments Rule
Adoption of Lump-Sum Payments by Employers Rule
First Reading of Invoicing for Delinquent Employee Contributions Rule
First Reading of Eligibility Rules
First Reading of Earnings Crediting at Loss of Membership Rules
First Reading of Elimination of Break in Service Rules
First Reading of Alternate Payees Rules
First Reading of ETOB Rules
First Reading of IAP Account Installments Rule
First Reading of Notice of Contest Rule
First Reading of Reemployed Retirees Rule
2006 Actuarial Valuation Report

November 2007

1:00 P.M. November 16, 2007

Contested Case Hearing for Deanna Gary
Contested Case Hearing for Jan Karius
Adoption of Invoicing for Delinquent Employee Contributions Rule
Adoption of Eligibility Rules
Adoption of Earnings Crediting at Loss of Membership Rules
Adoption of Elimination of Break in Service Rules
Adoption of Alternate Payees Rules
Adoption of ETOB Rules
Adoption of IAP Account Installments Rule
Adoption of Notice of Contest Rule
Adoption of Reemployed Retirees Rule
Audit Committee Meeting

January 2008

2007 Preliminary Earnings Crediting

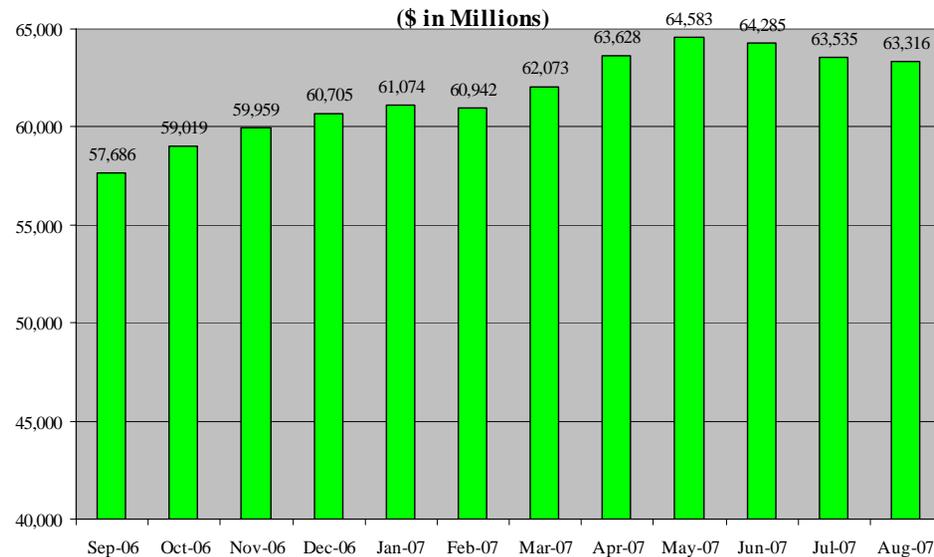
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OPERF	Regular Account				Historical Performance					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date ³	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Domestic Equity	24-34%	29%	\$ 18,295,084	29.7%	5.11	14.83	11.58	13.47	12.93	13.34
Non-US Equity	11-21%	16%	9,910,751	16.1%	10.31	22.68	24.41	25.52	24.68	22.18
Global Equity	5-11%	8%	4,735,351	7.7%	N/A					
Private Equity	9-15%	12%	7,269,014	11.8%	17.06	25.94	25.54	29.81	26.34	18.54
Total Equity	60-70%	65%	40,210,200	65.2%						
Opportunity Portfolio			152,926	0.2%	5.30					
Total Fixed	22-32%	27%	16,722,480	27.1%	2.05	4.81	3.98	4.73	5.53	6.31
Real Estate	5-11%	8%	4,575,156	7.4%	8.37	18.00	24.88	26.42	25.31	21.77
Cash	0-3%	0%	-	0.0%	3.56	5.37	4.94	4.12	3.42	3.02
TOTAL OPERF Regular Account		100%	\$ 61,660,762	100.0%	6.59	14.74	14.11	15.60	15.12	14.06
OPERF Policy Benchmark					7.37	15.30	13.43	13.88	13.78	13.00
Value Added					(0.78)	(0.56)	0.68	1.72	1.34	1.06

Asset Class Benchmarks:

Russell 3000 Index	4.95	14.94	11.80	12.96	12.55	12.82
MSCI ACWI Free Ex US	10.53	23.00	24.21	25.16	24.53	21.96
Russell 3000 Index + 300 bps--Quarter Lagged	18.82	25.63	19.27	17.47	19.28	14.86
LB Universal--Custom FI Benchmark	2.80	5.18	3.69	4.14	4.71	4.89
NCREIF Property Index--Quarter Lagged	8.29	16.59	18.38	17.42	15.45	13.73
91 Day T-Bill	3.51	5.29	4.81	4.02	3.27	2.89

TOTAL OPERF NAV
(includes variable fund assets)
One year ending August 2007

¹OIC Policy 4.01.18²Includes impact of cash overlay management.³For mandates beginning after January 1, YTD numbers are "N/A". Performance is reflected in Total OPERF.

SIMILAR RISK MIXES

ASSET CLASS	ALT 1	CURRENT	ALT 3	ALT 4	OIC APPROVED POLICY
US EQUITY	30%	33%	23%	20%	23%
FIXED INCOME	26%	27%	30%	30%	27%
INTERNATIONAL EQUITY	23%	20%	22%	20%	23%
REAL ESTATE	10%	8%	10%	12%	11%
PRIVATE EQUITY	11%	12%	15%	18%	16%
EQUITY LIKE	74%	73%	70%	70%	73%
PUBLIC EQUITY	53%	53%	45%	40%	46%
SIS RETURN AND VOLATILITY ESTIMATES					
RETURN	8.78%	8.79%	8.85%	8.94%	8.97%
RISK	13.15%	13.28%	13.63%	14.31%	14.17%
SHARPE RATIO	0.40	0.40	0.39	0.38	0.39
SIS RETURNS AND RISKS WITH OIC HISTORICAL VOLATILITY FOR RE AND PE					
RETURN	8.46%	8.45%	8.44%	8.46%	8.54%
RISK	10.51%	10.40%	9.82%	9.43%	10.12%
SHARPE RATIO	0.47	0.48	0.50	0.53	0.50
SIS VOLATILITY, EXPECTED RETURNS WITH EXPECTED ALPHAS					
RETURN	10.35%	10.32%	10.60%	10.83%	10.77%
RISK	13.34%	13.52%	13.93%	14.58%	14.47%
SHARPE RATIO	0.51	0.50	0.51	0.50	0.50
ASSET CLASS	EXP RETURN	EXP RET W/ ALPHAS	SIS STD DEV	OIC HIST STD DEV—PE/RE	
US LARGE CAP	8.4%	8.7%	14.7%	14.7%	
US SMALL CAP	9.0%	9.3%	23.4%	23.4%	
US FIXED INCOME	5.5%	6.6%	5.8%	5.8%	
INTL STOCK	8.7%	10.5%	19.2%	19.2%	
EMERGING MKTS STOCK	9.4%	11.2%	35.0%	35.0%	
INTERNATIONAL BOND	5.4%	6.5%	11.5%	11.5%	
REAL ESTATE	6.9%	9.8%	12.3%	6.3%	
PRIVATE MARKETS	10.7%	14.6%	34.5%	14.1%	
HIGH YIELD	6.4%	7.5%	8.5%	8.5%	
EMERGING MKTS DEBT	6.1%	7.2%	14.0%	14.0%	



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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September 21, 2007

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

MEETING	9-21-07
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 August 31, 2007 of employer reports and member records for calendar years 2006 and 2007.

	Calendar Year 2006	Calendar Year 2007
Reports due:		
▪ Number expected	12,885	7,865
▪ Number received	12,813	7,720
▪ Percent received	99.4%	98.2%
▪ Key Performance Measure	99.0%	N/A
Reports fully posted at 100%:		
▪ Number	12,413	6,764
▪ Percent received	96.3%	86.0%
▪ Key Performance Measure	95.0%	95.0%
Records due (estimated)	3,140,014	2,109,321
Records not posted:		
▪ Number	2,400	42,175
▪ Percent not posted	≤ .1%	2.0%
▪ Key Performance Measure	≤ .2%	≤ .2%
Contributions posted	\$ 426,925,054	\$283,434,795
Contributions not posted	\$51,584	\$2,121,425

As of August 31, 2007, employers submitted 99.4 % of the reports due for 2006. Of the reports submitted, less than 0.1% of records remain suspended (representing less than 0.01% of total contributions anticipated for 2006). For 2007, employers have submitted approximately 98% of the reports due. Of those reports submitted, approximately 86% 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.

Because of the positive feedback from the spring '07 outreach sessions, we designed a fall series of presentations which kicked-off on September 7, 2007. A total of 33 sessions will be conducted in 19 locations throughout the state. The fall '07 sessions cover the effects of 2007 legislation on employers, miscellaneous EDX reporting issues, and a review of new eligibility rules. More feedback from the fall sessions will be included in our future reports.

Finally, in August we conducted our annual employer customer satisfaction survey. We are currently tallying the results and analyzing the comments. The survey results will be presented at the October 2007 Board meeting.

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 August 31, 2007, we had 122 outstanding invoices with an aggregate balance of less than \$275,000. Our goal is to collect all outstanding invoices that exceed 30 days by following up with these employers by phone and letters each month.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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September 21, 2007

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

MEETING DATE	9/21/07
AGENDA ITEM	B.2.d. Budget

2005-07 BUDGET UPDATE

The Agency has expended a total of \$73,335,361, or 97.76% of our 2005-07 operating budget. The positive budget variance is currently projected at \$390,854. A final 2005-07 Budget Report will be submitted to the Board in January 2008.

2007-09 BUDGET UPDATE

Operating expenditures for the months of July and August 2007 have totaled \$2,373,356 and \$2,840,695 respectively. Through the first two months (8.33%) of the biennium, the Agency has expended a total of \$5,214,050, or 6.42% of our 2007-09 operating budget. The negative budget variance for the biennium is currently projected at \$830,599.

The primary reason for this negative variance is that the 3% Cost of Living Adjustments (COLAs) under the 2007 – 2009 DAS and SEIU Collective Bargaining Agreement are now included in our Personal Services projections. We anticipate DAS going to the legislature to request funding to cover the increase in Personal Services costs for state agencies with employees working under this Collective Bargaining Agreement.

2009-11 BUDGET UPDATE

Strategic work is continuing with Division and Section Managers on our 2009-11 Budget, in support of 2009-11 Division and Section-level Business Plans. A copy of our 2009-11 budget development schedule is attached to this report.

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2007-09 Agency-wide Operations - Budget Execution
Spending Plan - Actual and Estimated Expenditures
 2007-09 Summary as of August 31, 2007

B.2.d. Attachment 1

	1st QTR	2nd QTR	3rd QTR	4th QTR	5th QTR	6th QTR	7th QTR	8th QTR	ACTUAL EXPEND. TO DATE	EST. EXPEND.	ENC. & PRE-ENC.	TOTAL ESTIMATED EXPEND.	07-09 LAB BUDGET	VARIANCE	
Personal Services															
3110 Salaries & Wages	3,852,494	4,216,834	4,246,246	4,281,469	4,258,725	4,430,484	4,509,114	4,548,573	2,454,551	31,889,389		34,343,940	32,680,719	(1,663,221)	
3160 Temporary Appointments	44,694	29,428	29,428	29,428	18,000	18,000	18,000	18,000	27,235	177,744		204,979	161,789	(43,190)	
3170 Overtime	58,043	63,450	67,700	64,950	70,420	65,679	69,938	65,697	36,693	489,184		525,877	557,257	31,380	
3180 Shift Differential	1,659	1,361	1,361	1,361	1,551	1,551	1,551	1,551	1,205	10,740		11,945	2,039	(9,906)	
3190 All Other Differential	53,620	48,508	47,626	47,644	54,168	54,177	54,186	54,195	36,569	377,554		414,123	215,841	(198,282)	
3210 ERB Assessment	1,527	1,782	1,782	1,782	1,764	1,782	1,782	1,782	933	13,050		13,983	14,436	453	
3215 Wokers' Comp. Insurance (SA															
3220 PERS	489,539	550,362	554,529	558,658	557,316	578,545	589,082	593,559	306,922	4,164,669		4,471,591	4,252,243	(219,348)	
3221 Pension Bond Contribution	233,873	247,528	249,255	251,322	249,987	260,069	264,685	267,001	151,813	1,871,907		2,023,720	1,440,550	(583,170)	
3230 Social Security Taxes	305,407	333,508	336,016	338,501	336,819	349,597	355,938	358,633	194,157	2,520,263		2,714,419	2,570,354	(144,065)	
3240 Unemployment Comp.													38,550	38,550	
3250 Workers' Comp. Assess.	2,473	2,825	2,825	2,825	3,034	3,065	3,065	3,065	1,531	21,646		23,178	24,862	1,684	
3260 Mass Transit Tax	23,768	25,301	25,477	25,689	25,552	26,583	27,055	27,291	15,381	191,336		206,717	201,668	(5,049)	
3270 Flexible Benefits	1,010,279	1,130,976	1,130,976	1,130,976	1,119,552	1,130,976	1,130,976	1,130,976	633,287	8,282,400		8,915,687	9,162,048	246,361	
3455 Vacancy Savings													(189,052)	(189,052)	
3465 Reconciliation Adj.													(450,597)	(450,597)	
Unscheduled P.S.															
Total Personal Services	6,077,376	6,651,863	6,693,220	6,734,606	6,696,889	6,920,509	7,025,372	7,070,324	3,860,277	50,009,883		53,870,159	50,682,707	(3,187,452)	
		<i>actual</i>				<i>estimated</i>									
Services & Supplies															
4100 Instate Travel	12,559	18,480	18,480	18,480	18,527	18,480	18,517	24,240	6,399	141,363		147,762	210,761	62,999	
4125 Out-of-state Travel													11,472	11,472	
4150 Employee Training	21,030	4,500	4,500	4,500	4,659	4,500	4,500	6,000	19,530	34,659	10,375	64,564	714,454	649,890	
4175 Office Expenses	129,599	216,200	213,900	230,300	214,007	216,200	213,900	299,800	58,299	1,675,607		1,733,905	2,161,910	428,005	
4200 Telecommunications	33,199	54,405	54,405	54,405	54,405	54,405	54,405	72,540	15,064	417,105		432,169	612,136	179,967	
4225 St. Gov. Svc. Chg.	700,695	118,050	118,050	118,050	533,050	118,050	118,050	118,050	661,345	1,280,700		1,942,045	1,860,862	(81,183)	
4250 Data Processing	235,339	600,000	600,000	600,000	570,000	600,000	600,000	970,000	35,339	4,740,000		4,775,339	5,935,976	1,160,637	
4275 Publicity/Publications	11,701	10,500	10,500	10,500	10,500	10,500	10,500	14,000	8,201	80,500		88,701	250,065	161,364	
4300 Professional Services	174,783	323,100	323,100	323,100	323,100	323,100	323,100	407,800	63,783	2,457,400		2,521,183	2,629,520	108,337	
4315 IT Professional Services	378,287	251,800	261,000	261,000	472,783	261,000	261,000	348,000	294,887	2,199,983	10,276,000	12,770,870	11,417,030	(1,353,840)	
4325 Attorney General	50,259	93,000	93,000	93,000	90,000	93,000	93,000	123,800	19,259	709,800		729,059	979,893	250,834	
4350 Dispute Res. Svc.	2,300	6,900	6,900	6,900	6,900	6,900	6,900	9,200	52,900	52,900		52,900	83,322	30,422	
4375 Empl. Recruit./Devel.	10,316	13,500	13,500	13,500	13,500	13,500	13,500	17,700	5,816	103,200		109,016	59,834	(49,182)	
4400 Dues & Subscriptions	4,983	3,750	3,750	3,750	3,750	3,750	3,750	5,000	3,733	28,750		32,483	52,273	19,790	
4425 Facility Rental	96,075	100,875	100,875	100,875	100,875	100,875	100,875	101,500	62,450	740,375		802,825	834,745	31,920	
4450 Fuels/Utilities	31,570	30,000	30,000	30,000	30,000	30,000	30,000	30,000	21,570	220,000		241,570	166,056	(75,514)	
4475 Facility Maint.	101,237	90,000	90,000	90,000	90,000	90,029	90,000	120,000	71,237	690,029	63,715	824,981	902,010	77,029	
4575 Agency/Program S & S													6,500	6,500	
4625 Other COP Costs													2,762	(14,754)	
4650 Other S & S	2,139	1,950	1,950	3,027	1,950	1,950	1,950	2,600	1,489	16,027		17,516	79,486	59,845	
4700 Expendable Property	2,591	2,325	2,325	2,325	2,325	2,325	2,325	3,100	1,816	17,825		19,641	649,671	211,414	
4715 IT Expendable Property	22,457	56,700	56,700	56,700	56,700	56,700	56,700	75,600	3,557	434,700		438,257	8,000	8,000	
Unscheduled S & S															
Total Services & Supplies	2,021,119	1,996,035	2,002,935	2,020,412	2,597,030	2,005,264	2,002,972	2,748,930	1,353,774	16,040,922	10,350,090	27,744,786	29,628,738	1,883,952	
Capital Outlay															
5100 Office Furn./Fixture													31,825	31,825	
5150 Telecomm. Equip.													64,695	64,695	
5200 Technical Equipment															
5550 Data Proc.-Software										74,800		74,800	184,624	109,824	
5600 Data Proc.-Hardware										400,000		400,000	666,557	266,557	
5700 Building & Structure															
Total Capital Outlay											474,800	474,800	947,701	472,901	
Special Payments															
Total Special Payments															
Total Expenditures	8,098,495	8,647,898	8,696,155	8,755,018	9,293,920	8,925,773	9,028,344	9,819,254	5,214,050	66,050,805	10,824,890	82,089,745	81,259,146	(830,599)	

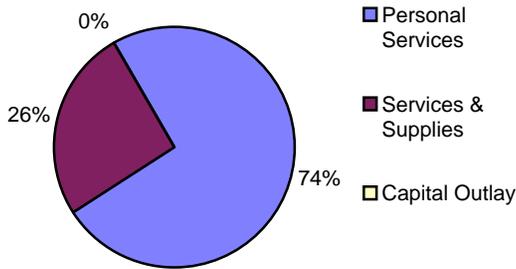
Percent of 2007-09 LAB Expended:	6.42%
Percent of Biennium Expired:	8.33%

2007-09 Agency-wide Operations - Budget Execution Summary Budget Analysis For the Month of: August 2007

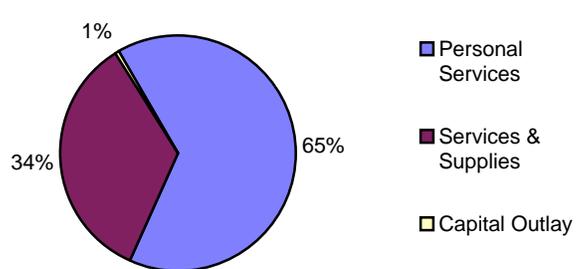
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2007-09 LAB	Variance
Personal Services	3,860,277	50,009,883	53,870,159	50,682,707	(3,187,452)
Services & Supplies	1,353,774	26,391,012	27,744,786	29,628,738	1,883,952
Capital Outlay		474,800	474,800	947,701	472,901
Special Payments					
Total	5,214,050	76,875,695	82,089,745	81,259,146	(830,599)

Actual Expenditures

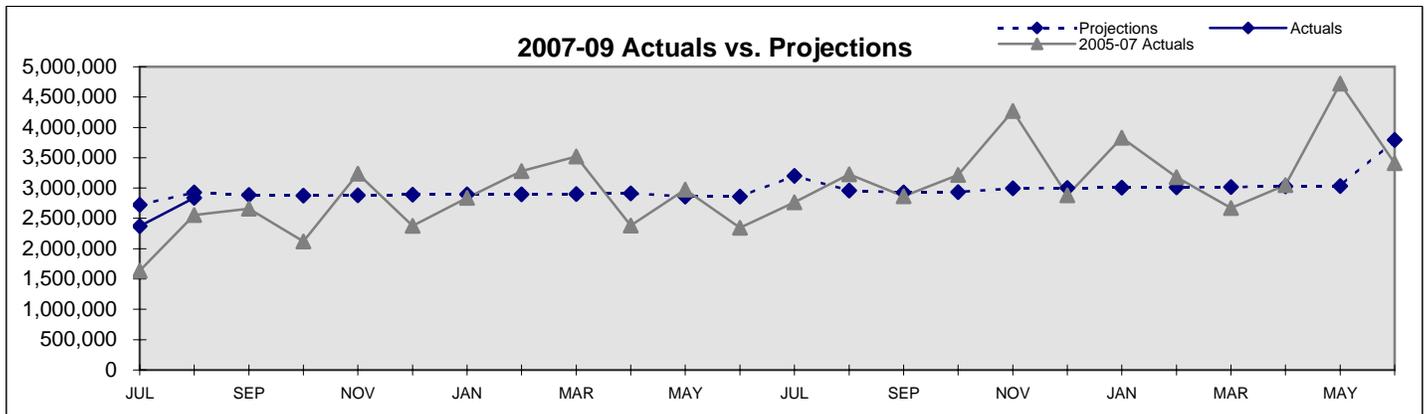


Projected Expenditures



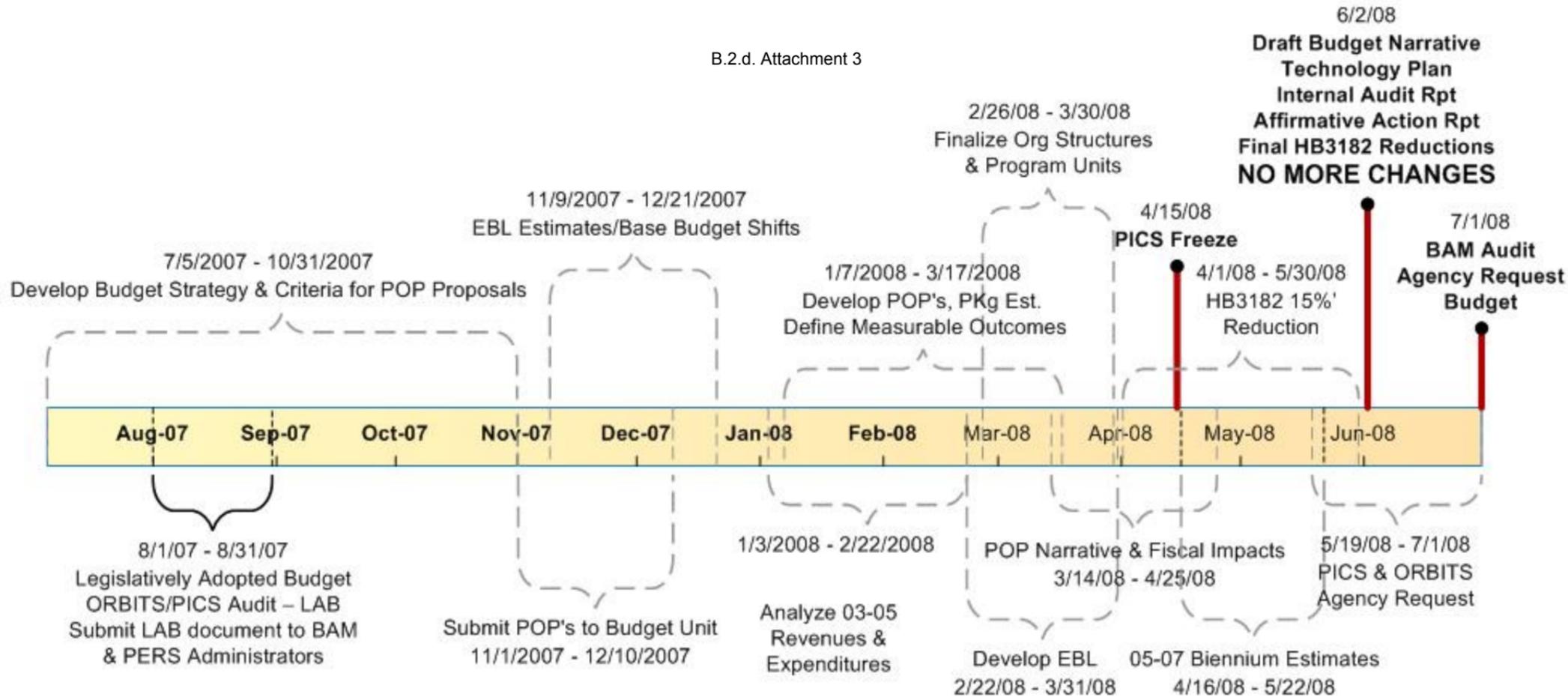
Monthly Summary

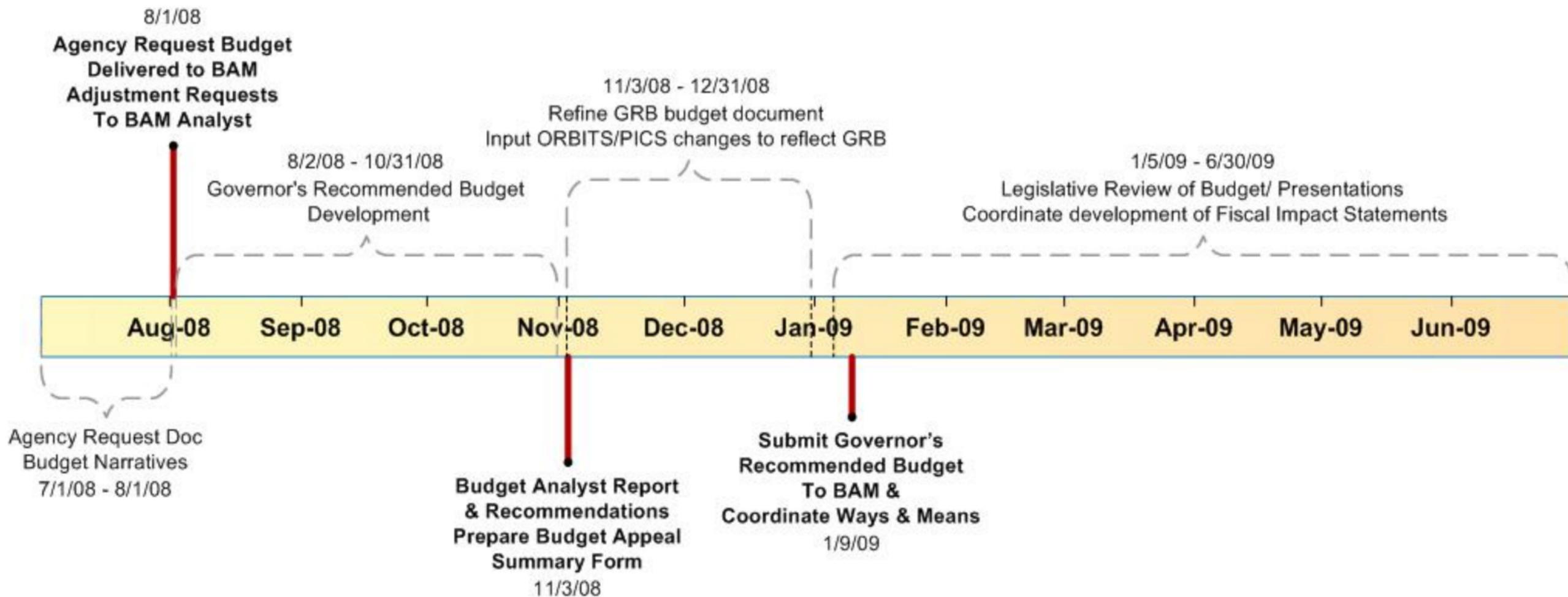
Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	1,969,885	2,214,164	244,278	1,930,138	2,273,176
Services & Supplies	870,809	712,345	(158,464)	676,887	1,199,591
Capital Outlay					21,582
Special Payments					
Total	2,840,695	2,926,509	85,814	2,607,025	3,494,350



2005-07 Biennium Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	42,359,527		42,359,527	46,875,869	4,516,342
Services & Supplies	29,461,389		29,461,389	27,460,026	(2,001,363)
Capital Outlay	331,114		331,114	679,533	348,419
Special Payments					
Total	72,152,030		72,152,030	75,015,428	2,863,398







Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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September 21, 2007

TO: Members of the PERS Board

FROM: Paul R. Cleary
Executive Director

SUBJECT: 2007 Replacement Ratio Study
2007 Purchasing Power Study
Benefit Distribution by County and State (2006 Tax Year)

MEETING DATE	9-21-07
AGENDA ITEM	B.2.e. Director's Report

Attached are two informational reports that provide different measures of the income replacement capabilities of PERS' retiree benefits. These reports are summarized as follows:

2007 Replacement Ratio Study

This analysis compares final average salaries to PERS benefit amounts at the time of retirement to calculate the percent of final average salary being "replaced" by the retirement benefit. It shows PERS benefit replacement ratios and related data from 1990 through 2006 for both "career" members who retired with 30 years of service and all members who retired regardless of years of service. This information will be used to update our "PERS By-The-Numbers" document and web posting.

2007 Purchasing Power Study

This report, prepared by Mercer Human Resource Consulting as part of its standard contract, analyzes the impact of inflation on retiree benefits. The measure of inflation is the Consumer Price Index for Portland which is then used to compare how well monthly benefits paid to retirees and beneficiaries have kept up with inflation following retirement. This report also shows the historical Cost of Living Adjustments (COLA's) and various one-time payments and ad hoc benefit increases granted to retirees and beneficiaries.

Benefit Distribution by County and State (2006 Tax Year)

Also attached as information items are two maps showing the distribution of PERS retirees and gross retiree payments for the 2006 tax year by county within the State of Oregon and by the fifty United States. In total, PERS distributed some \$2.3 billion to approximately 100,000 recipients within Oregon; about \$314 million to approximately 17,000 recipients in the other forty-nine states plus Washington D.C. and Puerto Rico; and some \$5 million to about 300 recipients residing in 38 foreign countries.

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2007 Replacement Ratio Study (Based on 2006 Retirements)

Summary of findings

Average age at retirement: 59 years old

Average years of service at retirement: 21.5 years of service

Average monthly retirement benefit

- For all retirees from 1990-2006, the average monthly retirement benefit at time of retirement was \$2,041 per month, or about \$24,496 annually
- For those retirees in the most recent year (2006), the average monthly retirement benefit was \$2,336 per month, or about \$28,037 annually

Average public employee salaries at retirement

- For all retirees from 1990-2006, the final average salary at retirement was \$41,427 annually
- For 2006 retirees, the final average salary at retirement was \$53,513 annually

Average salary replacement ratio (see chart on following page)

- For all retirees from 1990-2006, the average annual retirement benefit equaled 55% of final average salary at the time of retirement
- For 2006 retirees, the average annual retirement benefit equaled 50% of final average salary
- For all retirees from 1990-2006, there were 8.4% who received annual benefits more than 100% of final average salary. The average years of service for this group was 31 years
- For 2006 retirees, there were 4.3% who received annual benefits more than 100% of final average salary. The average years of service for this group was 31 years

For members who retire with 30 years of service (see chart on following page)

- From 1990-2006, the average retirement benefit for 30-year members equaled 80% of final average salary and the average monthly benefit was \$3,308 per month
- The average retirement benefit for 30-year members peaked at 100% of final average salary in 2000 and their average monthly benefit was \$4,200 per month
- For 2006 only, the average retirement benefit for 30-year members equaled 83% of final average salary and the average monthly benefit was \$4,104 per month
- 11.55% of retirees from 1990-2006 had 30 years of service
- 11.75% of retirees in 2006 had 30 years of service

Summary of findings (continued)

B.2. Director's Report

Average salary replacement ratio based on final average salary (FAS)

Calendar Year	Retirees with 30 Years of Service		All Retirees in Study		
	# of Retirees in Study	Average Replacement Ratio Based on FAS	# of Retirees in Study	Average Replacement Ratio Based on FAS	% of Retirees Receiving >100% of FAS
1990	146	61%	1,866	44%	.0%
1991	217	61%	2,377	45%	.1%
1992	205	67%	2,432	48%	.5%
1993	289	66%	2,744	48%	.5%
1994	302	67%	3,298	49%	.3%
1995	304	66%	2,827	47%	1.0%
1996	281	70%	2,477	49%	1.4%
1997	295	83%	3,107	57%	7.5%
1998	465	89%	4,567	65%	12.0%
1999	548	93%	4,644	65%	14.0%
2000	273	100%	2,112	63%	15.8%
2001	391	99%	3,146	66%	16.5%
2002	670	96%	4,605	68%	17.4%
2003	942	93%	7,631	66%	14.4%
2004	471	84%	3,259	55%	5.5%
2005	393	84%	2,548	51%	4.4%
2006	347	83%	2,952	50%	4.3%
Total/Avg	6,539	80%	56,592	55%	8.4%

2007 Replacement Ratio Study

Exclusions and Assumptions

9/21/07

B.2. Director's Report

The Replacement Ratio Study population of 56,592 retirements was drawn from 80,703 retirements from January 1990 through December 2006, and covers retired members who selected comparable monthly benefit options. The techniques used in the 2007 PERS Replacement Ratio Study are consistent with the techniques used in previous studies.

The calculations do not include any federal Social Security benefits that a retiree may be eligible for based on the retiree's work history. The calculations also do not include the effects of the ongoing *Strunk/Eugene* benefit adjustments, which will generally impact retirements occurring in 2000-2004 and reduce the reported replacement ratios for those periods by several percentage points.

EXCLUSIONS:

Job Class Exclusions

The study is limited to retirees in the General Service and Police & Fire job classes from January 1990 through December 2006.

Job class 1 (General Service) includes 52,200 members; job class 2 (Police & Fire) includes 4,392 members. Excluded job classes are:

- Job class 3, Police/Fire Unit (able to buy service units)
- Job class 4, TIAA/CREF
- Job class 5, Judge Member
- Job class 6, Legislators
- Job class 7, TRFA
- Job class 8, Elected/Appointed Officials
- Job class A, A-Election

Beneficiaries and alternate payees were also excluded, as the inclusion of these populations would skew the results due to the wide range of payout scenarios related to death and divorce benefits.

Retirement Option Exclusions

Within job classes 1 and 2, additional records were excluded based upon retirement option. All lump sum benefit types were excluded due to the distorting effect of significant payouts at one time on replacement ratio results. These excluded retirement option codes are:

- L1 – Lump Sum Option 1: Refund of Account plus life annuity
- L2 – Lump Sum Option 2: Refund of Account Balance plus 100% J/S
- L3 – Lump Sum Option 3: Refund of Account Balance plus 50% J/S
- L7 – Total Lump Sum: Refund of employee and employer dollars
- L2A – Lump Sum Option 2A: Refund of Account Balance plus Pop-up or 100% J/S
- L3A – Lump Sum Option 3A: Refund of Account Balance plus Pop-up or 50% J/S

Other Exclusions

- Any record which fell outside the range January 1990 - December 2006 range
- Any record that had a greater than one-year gap between end contribution date and retirement date

2007 Replacement Ratio Study
Exclusions and Assumptions
9/21/07

B.2. Director's Report

ASSUMPTIONS:

For the purposes of this study the following assumptions were used:

- Any account with a variable balance during the three years prior to retirement was considered a variable account member.
- For final average salary (FAS), we use the average salary of the three calendar years prior to the year in which the member retired. This definition of FAS may not match the definition on which the actual member's benefit was calculated.
- Monthly gross benefit includes HB3349 benefits for qualifying retirees.

SPECIAL NOTE:

The averages and percentages displayed on the Replacement Ratio sheets are based upon the respective actual source data. The calculations on each Replacement Ratio sheet are not directly derived from one another. For instance, if the Average Monthly Gross benefit column is divided by the Average Monthly Salary column, it will not equal the Average Replacement Ratio column because the Average Replacement Ratio is derived from the average of replacement ratios in the source data. This method avoids distortions resulting from averaging averages. This is also the case with all of the median calculations. This method of analyzing the data provides a more accurate picture of the actual dataset being used.

**All Yr Service Stats by Year of Retirement
Average and Median**

B.2. Director's Report

**2007 Replacement
Ratio Study**

AVERAGE	Year	Number of Retirements	Average Retirement	Average Years	Average Monthly	Average Annual	Average Monthly	Average Annual	Average Replacement Ratio
			Age	of Service	Salary	Salary	Gross Benefit	Gross Benefit	
	1990	1,866	59	21	\$2,457	\$29,488	\$1,186	\$14,230	44%
	1991	2,377	60	22	\$2,578	\$30,937	\$1,242	\$14,900	45%
	1992	2,432	60	21	\$2,737	\$32,838	\$1,430	\$17,161	48%
	1993	2,744	60	22	\$2,851	\$34,206	\$1,464	\$17,565	48%
	1994	3,298	59	22	\$3,018	\$36,222	\$1,582	\$18,989	49%
	1995	2,827	59	21	\$3,067	\$36,801	\$1,553	\$18,640	47%
	1996	2,477	59	21	\$3,144	\$37,728	\$1,650	\$19,797	49%
	1997	3,107	59	21	\$3,244	\$38,928	\$2,008	\$24,096	57%
	1998	4,567	59	22	\$3,393	\$40,715	\$2,347	\$28,169	65%
	1999	4,644	58	22	\$3,555	\$42,660	\$2,452	\$29,418	65%
	2000	2,112	57	20	\$3,504	\$42,052	\$2,369	\$28,428	63%
	2001	3,146	58	21	\$3,811	\$45,735	\$2,633	\$31,599	66%
	2002	4,605	58	23	\$4,083	\$48,997	\$2,882	\$34,583	68%
	2003	7,631	58	23	\$4,146	\$49,747	\$2,835	\$34,022	66%
	2004	3,259	58	22	\$4,273	\$51,281	\$2,440	\$29,278	55%
	2005	2,548	58	21	\$4,368	\$52,418	\$2,293	\$27,514	51%
	2006	2,952	58	21	\$4,459	\$53,513	\$2,336	\$28,037	50%
	Average Totals:	56,592	59	21	\$3,452	\$41,427	\$2,041	\$24,496	55%

MEDIAN	Year	Number of Retirements	Median Retirement	Median Years	Median Monthly	Median Annual	Median Monthly	Median Annual	Median Replacement Ratio
			Age	of Service	Salary	Salary	Gross Benefit	Gross Benefit	
	1990	1,866	60	21	\$2,480	\$29,757	\$1,057	\$12,680	45%
	1991	2,377	60	22	\$2,569	\$30,823	\$1,087	\$13,048	45%
	1992	2,432	60	22	\$2,774	\$33,283	\$1,256	\$15,071	49%
	1993	2,744	60	22	\$2,868	\$34,413	\$1,294	\$15,528	48%
	1994	3,298	59	23	\$3,035	\$36,426	\$1,406	\$16,866	50%
	1995	2,827	59	22	\$3,067	\$36,810	\$1,368	\$16,422	48%
	1996	2,477	59	21	\$3,094	\$37,127	\$1,378	\$16,536	49%
	1997	3,107	59	22	\$3,205	\$38,462	\$1,676	\$20,108	57%
	1998	4,567	58	23	\$3,451	\$41,410	\$2,130	\$25,560	66%
	1999	4,644	58	22	\$3,604	\$43,245	\$2,175	\$26,097	65%
	2000	2,112	57	21	\$3,570	\$42,836	\$1,941	\$23,288	61%
	2001	3,146	58	22	\$3,826	\$45,913	\$2,271	\$27,257	65%
	2002	4,605	58	24	\$4,107	\$49,289	\$2,636	\$31,632	69%
	2003	7,631	58	24	\$4,184	\$50,204	\$2,642	\$31,707	66%
	2004	3,259	57	23	\$4,290	\$51,480	\$2,160	\$25,916	54%
	2005	2,548	58	22	\$4,361	\$52,336	\$1,931	\$23,177	47%
	2006	2,952	58	21	\$4,424	\$53,084	\$1,966	\$23,589	46%
	Median Totals:	56,592	58	22	\$3,451	\$41,410	\$1,931	\$23,177	50%

**30 Year Stats by Year of Retirement
Average and Median
Police/Fire and General Service**

**2007 Replacement
Ratio Study**

B.2. Director's Report

AVERAGE	Year	Number of Retirements	Average Retirement Age	Average Monthly Salary	Average Annual Salary	Average Monthly Gross Benefit	Average Annual Gross Benefit	Average Replacement Ratio
	1990	146	57	\$3,199	\$38,386	\$1,954	\$23,445	61%
	1991	217	56	\$3,253	\$39,031	\$1,989	\$23,871	61%
	1992	205	56	\$3,312	\$39,744	\$2,211	\$26,531	67%
	1993	289	56	\$3,532	\$42,382	\$2,347	\$28,169	66%
	1994	302	56	\$3,725	\$44,703	\$2,473	\$29,679	67%
	1995	304	55	\$3,781	\$45,376	\$2,471	\$29,656	66%
	1996	281	56	\$4,002	\$48,025	\$2,793	\$33,515	70%
	1997	295	56	\$4,014	\$48,162	\$3,281	\$39,377	83%
	1998	465	55	\$4,121	\$49,447	\$3,640	\$43,685	89%
	1999	548	54	\$4,252	\$51,020	\$3,914	\$46,968	93%
	2000	273	54	\$4,227	\$50,729	\$4,200	\$50,399	100%
	2001	391	54	\$4,554	\$54,644	\$4,433	\$53,196	99%
	2002	670	55	\$4,570	\$54,842	\$4,287	\$51,450	96%
	2003	942	54	\$4,682	\$56,190	\$4,247	\$50,961	93%
	2004	471	55	\$4,808	\$57,691	\$3,946	\$47,356	84%
	2005	393	54	\$4,809	\$57,703	\$3,944	\$47,328	84%
	2006	347	54	\$5,120	\$61,435	\$4,104	\$49,246	83%
	Average Totals:	6,539	55	\$4,115	\$49,383	\$3,308	\$39,696	80%

MEDIAN	Year	Number of Retirements	Median Retirement Age	Median Monthly Salary	Median Annual Salary	Median Monthly Gross Benefit	Median Annual Gross Benefit	Median Replacement Ratio
	1990	146	56	\$3,075	\$36,902	\$1,912	\$22,947	61%
	1991	217	56	\$3,174	\$38,092	\$1,942	\$23,301	62%
	1992	205	56	\$3,212	\$38,540	\$2,141	\$25,689	66%
	1993	289	56	\$3,443	\$41,317	\$2,254	\$27,051	66%
	1994	302	55	\$3,642	\$43,701	\$2,403	\$28,835	66%
	1995	304	55	\$3,713	\$44,551	\$2,456	\$29,466	65%
	1996	281	55	\$3,889	\$46,663	\$2,616	\$31,387	67%
	1997	295	55	\$3,945	\$47,337	\$3,220	\$38,641	80%
	1998	465	55	\$4,075	\$48,898	\$3,499	\$41,985	87%
	1999	548	54	\$4,191	\$50,296	\$3,760	\$45,124	91%
	2000	273	54	\$4,234	\$50,804	\$4,130	\$49,561	98%
	2001	391	54	\$4,467	\$53,603	\$4,355	\$52,266	98%
	2002	670	54	\$4,488	\$53,861	\$4,225	\$50,701	96%
	2003	942	54	\$4,615	\$55,384	\$4,184	\$50,212	93%
	2004	471	54	\$4,775	\$57,301	\$3,889	\$46,667	83%
	2005	393	54	\$4,692	\$56,310	\$3,961	\$47,530	84%
	2006	347	54	\$4,956	\$59,476	\$4,100	\$49,194	83%
	Median Totals:	6,539	55	\$4,075	\$48,898	\$3,499	\$41,985	83%

MERCER

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June 19, 2007

Mr. Dale S. Orr
Actuarial Services Manager
Oregon PERS
P.O. Box 23700
Tigard, OR 97281-3700

Via E-Mail

Subject:

Request Number: 2007-019
2007 Purchasing Power Study

Dear Dale:

As requested, we updated the annual purchasing power study for 2007 to compare how well monthly benefits paid to retirees and beneficiaries have kept up with inflation since retirement. Since the last study, the Consumer Price Index for Portland increased 2.58 percent in 2004, 2.56 percent in 2005 and 2.60 percent in 2006. With all retirees receiving a 2.0 percent annual cost-of-living adjustment, retirees experienced a decrease in purchasing power over the last three years.

Purchasing power in this report is defined as the cumulative post-retirement benefit increases in Tier 1/Tier 2 benefits compared to the cumulative CPI increases since the year of retirement. The chart below shows the change in purchasing power from 2004 to 2007 by year of retirement.

Year Retired	Purchasing Power		Year Retired	Purchasing Power	
	2004	2007		2004	2007
1980 & prior	78.7%	77.4%	1994	94.7%	93.1%
1981	81.5%	80.1%	1995	95.5%	93.9%
1982	83.5%	82.1%	1996	96.3%	94.7%
1983	83.7%	82.3%	1997	97.8%	96.1%
1984	81.4%	80.0%	1998	99.0%	97.4%
1985	80.4%	79.0%	1999	99.0%	97.4%
1986	81.3%	79.9%	2000	100.0%	98.3%
1987	81.3%	79.9%	2001	100.0%	98.3%
1988	81.7%	80.3%	2002	100.0%	98.3%
1989	82.9%	81.5%	2003	100.0%	98.3%
1990	85.3%	83.8%	2004	100.0%	98.3%
1991	88.5%	87.0%	2005		98.9%
1992	91.2%	89.6%	2006		99.4%
1993	93.3%	91.7%	2007		100.0%

MERCER

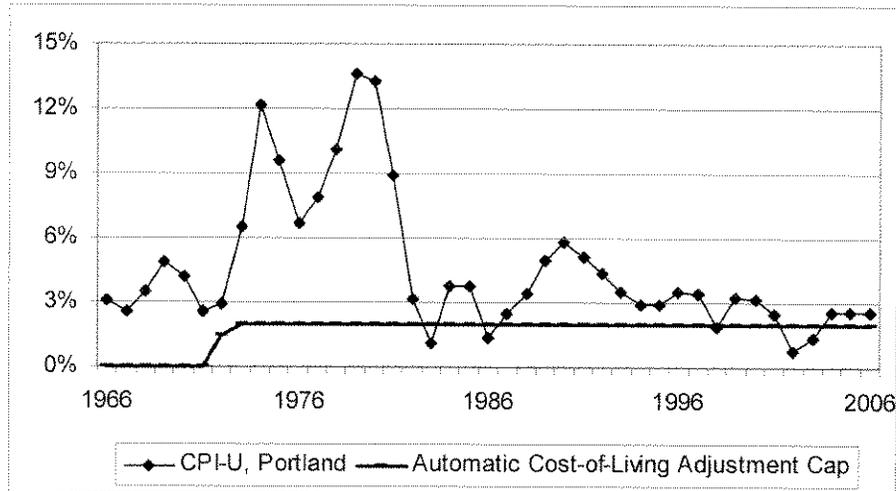
Human Resource Consulting

Page 2
June 19, 2007
Mr. Dale S. Orr
Oregon PERS

Inflation

Cost-of-living adjustments (COLAs) are automatically granted each year to retirees and beneficiaries up to a maximum of 2 percent based on the Consumer Price Index for Portland (defined by All Items, All Urban Consumers, Portland-Salem, OR-WA, Annual Average) as released by the Department of Labor. If the Consumer Price Index for Portland (CPI – Portland) exceeds 2 percent, then the retiree receives a 2 percent COLA and the remaining percentage is carried forward in a “bank” to be used in future years when the CPI-Portland is less than 2 percent. Retirees who have recently retired, and do not have a “bank” balance, receive a COLA equal to the CPI-Portland amount if less than 2 percent, otherwise they receive 2 percent.

The graph below shows the CPI-Portland compared to the automatic cost-of-living adjustment cap that is currently 2.0 percent.



The automatic COLA was established in 1972, and there have only been five years (1983, 1986, 1998, 2002 and 2003) when inflation has been below the COLA cap. Consequently, retiree benefits have tended to lose their purchasing power. Attachment A shows the history of increases in CPI-Portland from 1962 through 2006.

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The historical COLA amounts granted to retirees and beneficiaries are shown below:

Date	COLA	Exceptions
July 1972	1.5%	
July 1973 – present	2.0% (maximum COLA)	1.08% in 1984 if retired on or after August 1983 1.41% in 1987 if retired on or after August 1986 1.89% in 1999 if retired on or after August 1998 1.24% in 2003 if retired on or after August 2001 and prior to August 2002 0.77% in 2003 if retired on or after August 2002 1.36% in 2004 if retired on or after August 2001 and prior to August 2004 1.73% in 2004 if retired on or after August 2000 and prior to August 2001

Benefit Increases

From April 1964 through December 1971 there were some one-time additional payments granted to retirees. These payments are not included in this analysis as they did not affect the ongoing benefit paid to the retiree. A summary of the one-time payments follows:

Effective Date	One Time Payment Amount
April 1964	Monthly Benefit
April 1965	1.5 × Monthly Benefit
April 1966, April 1967	2 × Monthly Benefit
April 1968, April 1969, April 1970, April 1971	3 × Monthly Benefit
December 1971	3.5 × Monthly Benefit

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In addition, retirees and beneficiaries have been granted ad hoc benefit increases that resulted in increased monthly benefits going forward. A summary of the ad hoc increases granted by legislation is shown below, with the graded increases shown on Attachment B.

Effective Date	Ad Hoc Increase Granted by Legislation
January 1972	25% if retired prior to January 1968 12% if retired after December 1967 and prior to January 1972
January 1974	25% if retired prior to January 1968 20% if retired after December 1967 and prior to January 1972 12% if retired after December 1971 and prior to January 1974
October 1977	25% on first \$50 of monthly benefit 15% on next \$100 10% on next \$100 5% on next \$100 and 1% on monthly benefit over \$350
July 1979	2% for all retirees
July 1980	2% for all retirees
August 1981	Graded table by year of retirement to 11.40%
July 1982	Graded table by year of retirement to 11.40%
July 1985	Graded table by year of retirement to 7.28%
July 1986	Graded table by year of retirement to 7.28%
July 1989	Graded table by year of retirement to produce a 95% replacement of original purchasing power

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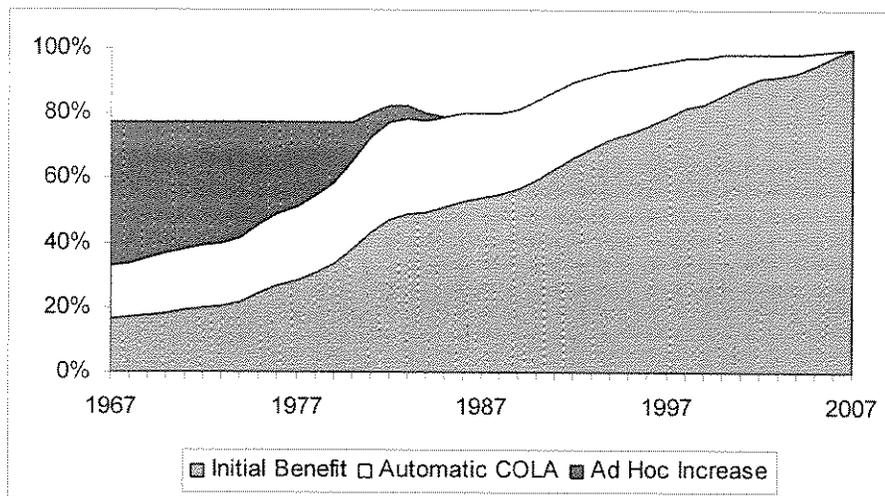
June 19, 2007

Mr. Dale S. Orr

Oregon PERS

Current Purchasing Power

The current purchasing power of retirees depends on both the automatic COLA increases and the ad hoc increases granted, compared to the growth in the CPI over the same time period. The graph below shows the cumulative effects of increases granted as a percentage of a benefit adjusted by CPI by year of retirement.



As shown in the graph above, for long-time retired members, the majority of the increases in their benefits since retirement have come from ad hoc increases. Retirees who retired within the past 18 years have not received any ad hoc increases. However, inflation has been significantly lower than in the late 1970's, and the automatic COLA increases have tracked changes in CPI more closely. Purchasing power for retirees since 1993 has remained within 90 percent of their original purchasing power.

Attachment C compares the cumulative post-retirement benefit increases in Tier 1/Tier 2 benefits to the cumulative CPI increases for the last 40 years. The middle columns show the level an initial benefit of \$100 per month would have risen to based on CPI increases and increases granted through PERS. The columns on the right show the percentage of the original \$100 benefit and the PERS-adjusted benefit as a percentage of the CPI-adjusted benefit.

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For example, a 1967 retiree with a \$100 per month original benefit would need to be receiving \$603.88 per month now to have kept pace with inflation. Benefit increases granted through PERS increased the \$100 per month benefit to \$467.34 per month. The original benefit of \$100 per month is 16.6 percent of the CPI-adjusted benefit and the PERS-adjusted benefit of \$467.34 is 77.4 percent of the CPI-adjusted benefit.

Our analysis and conclusions are based on the data, methods and assumptions described above. Differences in the methods and assumptions may produce different results.

If you have any questions about the purchasing power report or need any additional information, please let us know.

Sincerely,

[BJM]

Brenda J. Majdic, ASA, EA, MAAA

JCG/BJM/wrh/bjm:gjw
Enclosure

Copy:
Bill Hallmark, Matt Larrabee

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The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

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Attachment A

History of Consumer Price Index — Portland

Year	CPI 1967 Basis	Annual Percentage Increase	Year	CPI 1967 Basis	CPI 1982-84 Basis	Annual Percentage Increase
1962	88.5		1985	312.4		3.79%
1963	90.2	1.92%	1986	316.8	108.2	1.41%
1964	92.2	2.22%	1987		110.9	2.50%
1965	94.6	2.60%	1988		114.7	3.43%
1966	97.5	3.07%	1989		120.4	4.97%
1967	100.0	2.56%	1990		127.4	5.81%
1968	103.5	3.50%	1991		133.9	5.10%
1969	108.6	4.93%	1992		139.8	4.41%
1970	113.2	4.24%	1993		144.7	3.51%
1971	116.1	2.56%	1994		148.9	2.90%
1972	119.5	2.93%	1995		153.2	2.89%
1973	127.3	6.53%	1996		158.6	3.52%
1974	142.8	12.18%	1997		164.0	3.40%
1975	156.5	9.59%	1998		167.1	1.89%
1976	167.0	6.71%	1999		172.6	3.29%
1977	180.2	7.90%	2000		178.0	3.13%
1978	198.4	10.10%	2001		182.4	2.47%
1979	225.4	13.61%	2002		183.8	0.77%
1980	255.4	13.31%	2003		186.3	1.36%
1981	278.2	8.93%	2004		191.1	2.58%
1982	287.0	3.16%	2005		196.0	2.56%
1983	290.1	1.08%	2006		201.1	2.60%
1984	301.0	3.76%				

Source: U.S. Department of Labor, Bureau of Labor Statistics
Consumer Price Index, All Items, All Urban Consumers, Portland-Salem, OR-WA, Annual Average

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Attachment B

Year Retired	Ad Hoc Adjustments by Effective Year				
	1981	1982	1985	1986	1989
1950	11.40	11.40	7.28	7.28	18.00
1951	10.64	10.64	7.28	7.28	19.00
1952	10.56	10.56	7.28	7.28	10.00
1953	10.16	10.16	7.28	7.28	8.00
1954	10.04	10.04	7.28	7.28	8.00
1955	10.00	10.00	7.25	7.25	7.00
1956	9.68	9.68	7.06	7.06	9.00
1957	9.28	9.28	6.82	6.82	9.00
1958	9.08	9.08	6.70	6.70	5.00
1959	8.96	8.96	6.62	6.62	3.00
1960	8.76	8.76	6.50	6.50	3.00
1961	8.64	8.64	6.42	6.42	2.00
1962	8.56	8.56	6.37	6.37	1.00
1963	8.32	8.32	6.22	6.22	1.00
1964	8.12	8.12	6.09	6.09	-
1965	7.88	7.88	5.94	5.94	-
1966	7.56	7.56	5.73	5.73	-
1967	7.36	7.36	5.60	5.60	-
1968	7.20	7.20	5.49	5.49	7.00
1969	6.88	6.88	5.28	5.28	4.00
1970	6.60	6.60	5.09	5.09	-
1971	6.36	6.36	4.93	4.93	-
1972	6.20	6.20	4.82	4.82	15.00
1973	5.92	5.92	4.63	4.63	14.00
1974	5.28	5.28	4.17	4.17	25.00
1975	4.92	4.92	3.92	3.92	15.00
1976	4.72	4.72	3.77	3.77	7.00
1977	4.44	4.44	3.57	3.57	3.00
1978	4.76	4.76	3.80	3.80	16.00
1979	4.32	4.32	3.48	3.48	11.00
1980	4.00	4.00	3.24	3.24	3.00
1981	-	4.00	3.09	3.09	-
1982	-	-	3.01	3.01	-
1983	-	-	3.00	3.00	-
1984	-	-	-	3.00	-
1985	-	-	-	-	-
1986	-	-	-	-	-
1987	-	-	-	-	-
1988	-	-	-	-	-
1989	-	-	-	-	-

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Attachment C

Comparison of Tier 1/Tier 2 Benefits to CPI at August, 2007

Year Retired	Number of Years	Cumulative Increase		Purchasing Power	
		CPI	Tier 1/Tier 2	Initial	Tier 1/Tier 2
1967	40	603.88	467.34	16.6%	77.4%
1968	39	588.79	455.66	17.0%	77.4%
1969	38	568.88	440.25	17.6%	77.4%
1970	37	542.16	419.57	18.4%	77.4%
1971	36	520.13	402.52	19.2%	77.4%
1972	35	507.14	392.47	19.7%	77.4%
1973	34	492.71	381.30	20.3%	77.4%
1974	33	462.52	357.94	21.6%	77.4%
1975	32	412.32	319.09	24.3%	77.4%
1976	31	376.22	291.15	26.6%	77.4%
1977	30	352.57	272.85	28.4%	77.4%
1978	29	326.74	252.86	30.6%	77.4%
1979	28	296.77	229.67	33.7%	77.4%
1980	27	261.22	202.15	38.3%	77.4%
1981	26	230.54	184.61	43.4%	80.1%
1982	25	211.64	173.79	47.2%	82.1%
1983	24	205.15	168.79	48.7%	82.3%
1984	23	202.96	162.36	49.3%	80.0%
1985	22	195.61	154.57	51.1%	79.0%
1986	21	188.47	150.62	53.1%	79.9%
1987	20	185.86	148.53	53.8%	79.9%
1988	19	181.33	145.65	55.1%	80.3%
1989	18	175.33	142.82	57.0%	81.5%
1990	17	167.03	140.02	59.9%	83.8%
1991	16	157.85	137.28	63.4%	87.0%
1992	15	150.19	134.59	66.6%	89.6%
1993	14	143.85	131.95	69.5%	91.7%
1994	13	138.98	129.36	72.0%	93.1%
1995	12	135.06	126.82	74.0%	93.9%
1996	11	131.27	124.34	76.2%	94.7%
1997	10	126.80	121.90	78.9%	96.1%
1998	9	122.62	119.38	81.6%	97.4%
1999	8	120.35	117.17	83.1%	97.4%
2000	7	116.51	114.56	85.8%	98.3%
2001	6	112.98	111.08	88.5%	98.3%
2002	5	110.25	108.39	90.7%	98.3%
2003	4	109.41	107.56	91.4%	98.3%
2004	3	107.94	106.12	92.6%	98.3%
2005	2	105.23	104.04	95.0%	98.9%
2006	1	102.60	102.00	97.5%	99.4%
2007	0	100.00	100.00	100.0%	100.0%

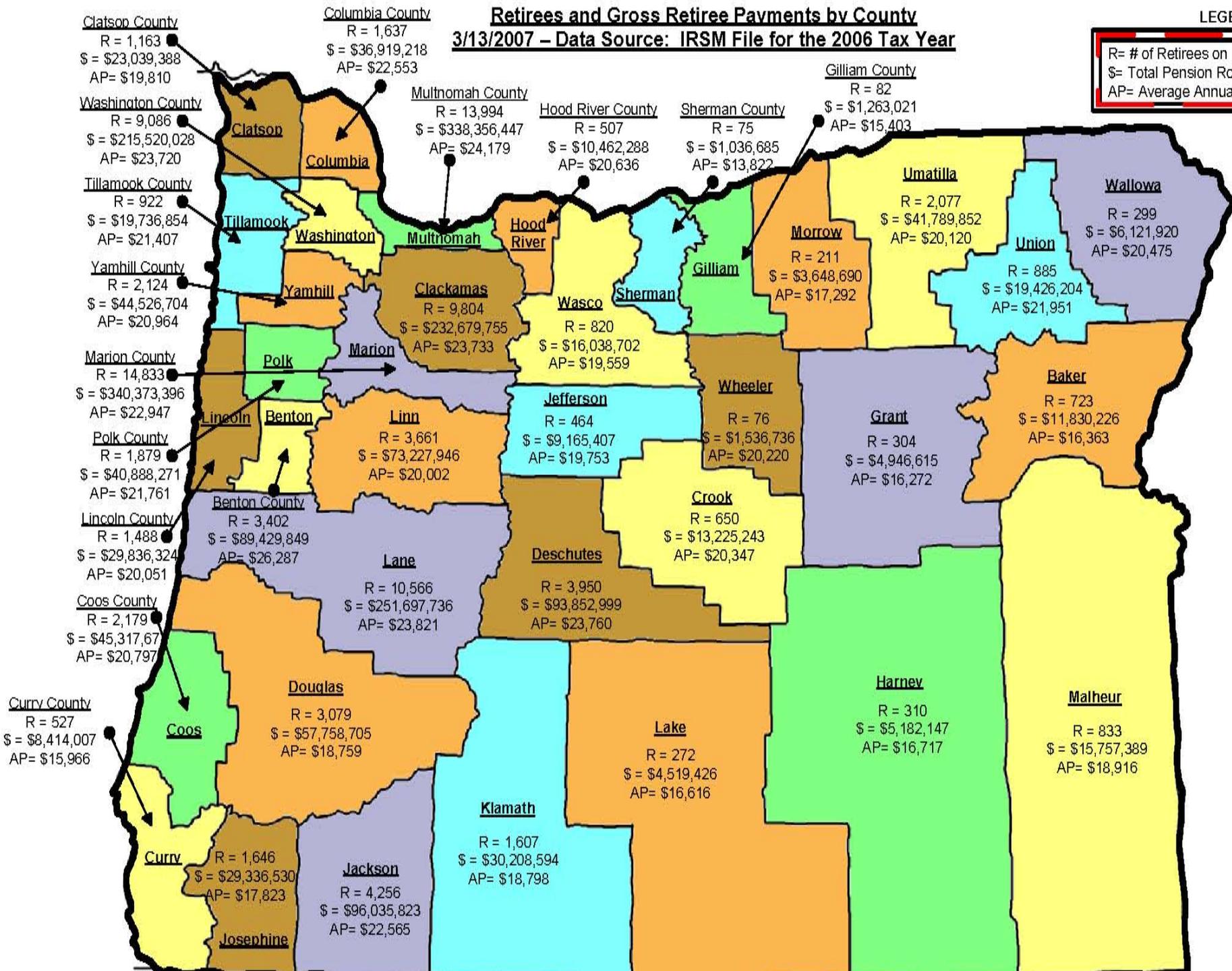
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Retirees and Gross Retiree Payments by County

3/13/2007 – Data Source: IRSM File for the 2006 Tax Year

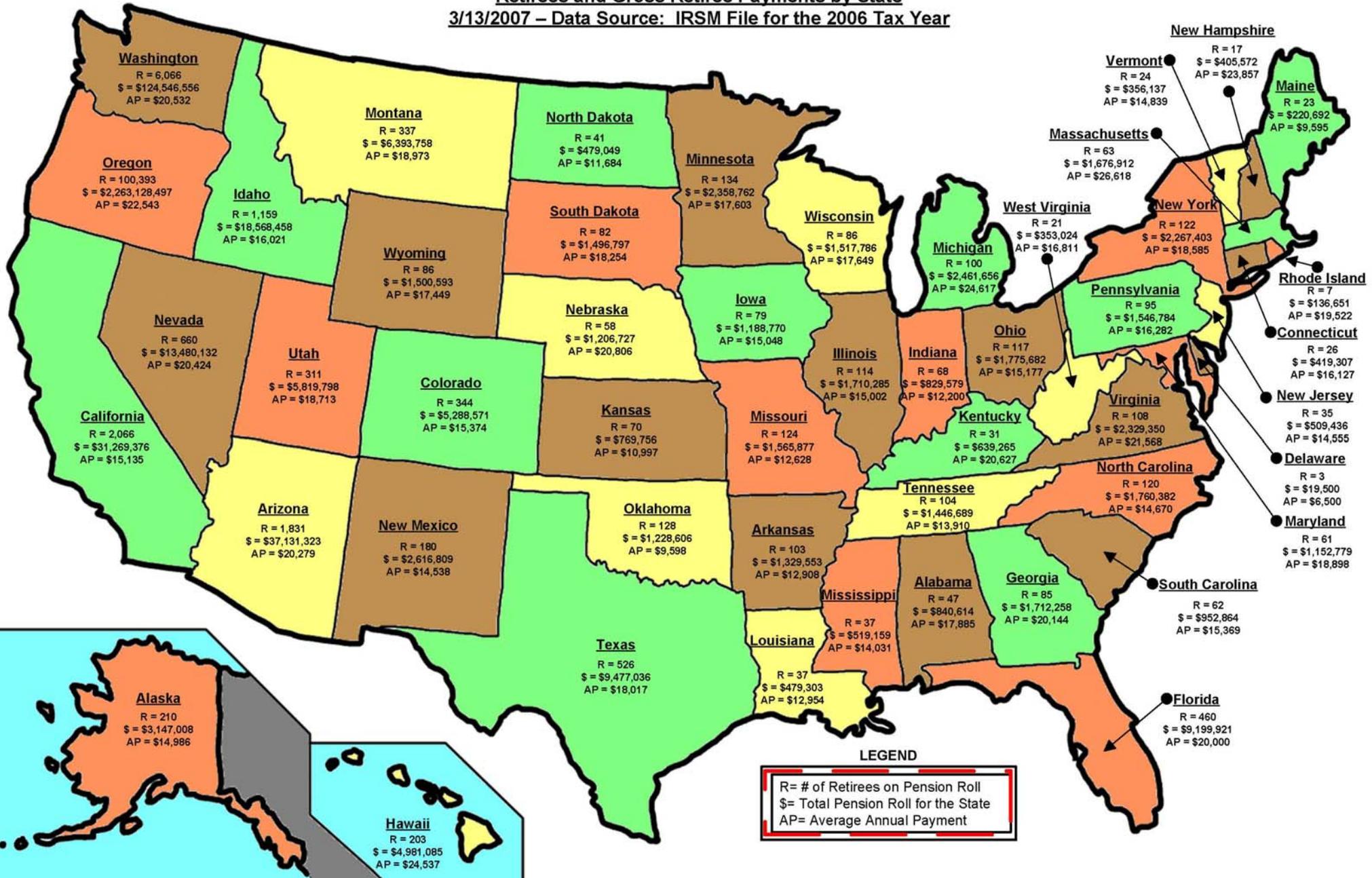
LEGEND

R= # of Retirees on Pension Roll
 \$= Total Pension Roll for the County
 AP= Average Annual Payment



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Retirees and Gross Retiree Payments by State
3/13/2007 – Data Source: IRSM File for the 2006 Tax Year



LEGEND

R = # of Retirees on Pension Roll
 \$ = Total Pension Roll for the State
 AP = Average Annual Payment

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Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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www.oregon.gov/pers

September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: Second Reading of Chapter 238 Withdrawal Rule
OAR 459-010-0055, *Withdrawal of Contributions*

Third Reading of OPSRP Withdrawal Rules
OAR 459-075-0020, *Withdrawal from OPSRP Pension Program*
OAR 459-080-0020, *Withdrawal of Individual Accounts*

MEETING DATE	9/21/07
AGENDA ITEM	C.1. Withdrawals

OVERVIEW

- Action: None. This is the second reading of the PERS Chapter 238 Program Withdrawal Rule, OAR 459-010-0055, and third reading of the OPSRP Withdrawal Rules, OAR 459-075-0020 and 459-080-0020.
- Reason: These new rules and rule modifications would establish and clarify procedures for withdrawals permitted under the Oregon Public Service Retirement Plan and PERS Chapter 238 Program. Further modifications have also been made to conform to statutory changes by HB 2281.
- Subject: Withdrawal from the OPSRP Pension Program, Individual Account Program, and PERS Chapter 238 Program.
- Policy Issue: Should the withdrawal processes for the PERS Chapter 238 Program and the OPSRP Programs reflect generally parallel administration?

BACKGROUND

Originally, the OPSRP withdrawal rules were to be modified to parallel where possible the withdrawal rule from the PERS Chapter 238 Program. That existing rule was also placed in rulemaking to align it with the provisions of the OPSRP-related rules. Public comment has supported making the withdrawal processes as parallel as possible.

Also, the PERS Board put forward a legislative concept that requires a member who withdraws from one program to withdraw from them all. That concept was passed by the 2007 legislature as HB 2281, effective January 1, 2008.

With the ultimate goal of having these administrative rules coordinate with the legislative changes and also parallel each other, staff recommended that final consideration of the OPSRP Pension and IAP withdrawal rules be postponed until the legislative process was completed on HB 2281 and the coordinating changes can be made on the PERS Chapter 238 Program rule that was then just entering rulemaking.

The Oregon Public Service Retirement Plan (OPSRP) provides for withdrawal from the OPSRP Pension Program and the Individual Account Program (IAP). Under both programs, a withdrawal terminates membership and forfeits accrued retirement credit or time toward vesting. A PERS Chapter 238 Program member may withdraw the amount credited to the member account pursuant to ORS 238.265 with similar termination of membership and forfeitures. Administration of withdrawals under the PERS Chapter 238 Program was a relatively independent process and fully established at the time the OPSRP programs were created. For consistency of administration, proposed administrative rules for the OPSRP programs generally parallel the established administration of withdrawals in the PERS Chapter 238 Program.

POLICY ISSUE

Should the withdrawal processes for the PERS Chapter 238 Program and the OPSRP Programs generally reflect parallel administration?

Consistent and parallel administration of withdrawals in all PERS programs is operationally efficient and more predictable and understandable for staff, employers, and members. The public comments made in association with the OPSRP rulemaking support parallel changes in the PERS Chapter 238 withdrawal rule. Comments also support a significant shift in the administration of mandatory re-deposits (when a member returns to PERS-covered employment without a bona fide separation).

PUBLIC COMMENT AND HEARING TESTIMONY

OPSRP Withdrawal Rules:

At second reading, PERS had received public comment from four stakeholders. Those comments were addressed in the memorandum and draft rules presented to the Board at that time. Since second reading, PERS has received additional public comment from four stakeholders. These comments are included with this memo.

Greg Hartman, representing the PERS Coalition, commented by letter dated January 17, 2007. Mr. Hartman expressed concerns over the use of ORS 238.618 to deny membership in the system as a remedy for non-payment. He also recommended that repayment over a period of one year be considered. The use of ORS 238.618 has been removed from the current draft of the rule and the collection provisions of ORS 238.715 and OAR 459-005-0610 were inserted to provide some flexibility in the recovery of improperly received payments.

Kathy Rodeman, Director of Business Services, Corvallis School District 509J, and Maria Keltner, on behalf of the Employers' PERS Alliance, commented by emails dated January 25 and 26, 2007, respectively, that they supported the shift of accountability for mandatory redeposits solely to the employee and the exclusion of the employer from this obligation. Ms. Keltner also recommended similar provisions be included in the PERS Chapter 238 Program rule.

Denise Yunker, Director, Human Resources Division, Oregon University System commented by letter dated May 4, 2007. Ms. Yunker requested that OAR 459-080-0020 be modified to acknowledge that a vested member of the Individual Account Program who elects to participate in an Optional Retirement Plan (ORP) under ORS 243.800 is also eligible to withdraw the individual accounts for transfer to the ORP. Staff determined the requested modification to be

unnecessary, as a transfer of the individual accounts to an ORP under ORS 243.800 is not a withdrawal under ORS 238A.375. Amounts transferred are not made available to the member but transferred directly to the ORP.

The extended period for public comment on all three rules ends September 30, 2007 at 5:00 p.m.

SUMMARY OF MODIFICATIONS TO RULES SINCE FIRST/SECOND READING

OAR 459-010-0055:

All modifications to the existing rule are reflected in bracketed italics (deletions) and bold underline (additions). The following modifications were made to the rule since first reading.

Subsection (1)(b) was added for clarity and consistency of administration with the OPSRP withdrawal rules.

Subsection (2)(d) was added to incorporate the “withdraw from one, withdraw from all” provisions of House Bill 2281.

Section (6) was edited to clarify that termination of membership is specific to the PERS Chapter 238 Program.

Section (7) was edited to establish the former member must repay the total amount of payments attributable to the withdrawal, acknowledging that trailing contributions or other adjustments might result in multiple payments to a withdrawing member.

Section (8) was edited to establish ORS 238.715 and OAR 459-005-0610 as the method of collection for improperly received withdrawal payments. The remedy of exclusion from the system until repayment was deleted.

OAR 459-075-0020:

All changes reflected in the second reading version presented to the Board have been accepted and changes since second reading are discussed below and reflected in bracketed italics (deletions) and bold underline (additions).

The definition of “effective date of withdrawal” was added as subsection (1)(b). This defined term is used in all the draft withdrawal rules to provide for parallel administration of withdrawals, especially in light of the withdrawal requirements of HB 2281.

Subsection (2)(e) was edited to use the defined term “effective date of withdrawal.”

Subsection (2)(f) was added to incorporate the “withdraw from one, withdraw from all” provisions of HB 2281.

Section (5) was edited to use the defined term “effective date of withdrawal.”

Section (6) underwent minor edits for clarity.

Section (7) was edited to provide that repayment must be by single lump sum payment and that the payment must include all amounts the former member received that are attributable to the withdrawal. Provisions were also added to describe the effect of repayment under this section.

Section (8) was extensively edited. First, recovery under ORS 238.715 and OAR 459-005-0610, including any interest, costs, or penalties assessed, was established as the remedy PERS will use in the event the former member fails to repay an improperly received withdrawal. Second, the

remedy of exclusion from the system until repayment was deleted. Lastly, provisions were added to describe the effect of repayment under this section.

OAR 459-080-0020:

All changes reflected in the second reading version presented to the Board have been accepted and changes since second reading are discussed below and reflected in bracketed italics (deletions) and bold underline (additions).

The definition of “effective date of withdrawal” was added as subsection (1)(b).

Subsection (2)(d) was added to incorporate the “withdraw from one, withdraw from all” provisions of HB 2281.

Section (3) was deleted as the reference to section 3, chapter 52, Oregon Laws 2007 in subsection (2)(d) incorporates the statutory requirement that a member may not withdraw less than all of their accounts. Subsequent sections were renumbered.

Section (4) was edited to use the defined term “effective date of withdrawal.”

Section (6) underwent minor edits for clarity.

Sections (7) and (8) were edited to parallel the edits described in sections (7) and (8) of OAR 459-075-0020.

LEGAL REVIEW

The attached draft 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.

IMPACT

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

Impact: Clarification of procedures and administration will benefit members and staff.

Cost: There are no discrete costs attributable to these rules. Statute requires the administration of withdrawals.

RULEMAKING TIMELINE

August 15, 2006	Staff began the rulemaking process for the OPSRP rules by filing Notice of Rulemaking with the Secretary of State.
September 1, 2006	<i>Oregon Bulletin</i> published the Notice.
October 20, 2006	PERS Board notified that staff began the rulemaking process.
October 24, 2006	Rulemaking hearing for OPSRP rules held at 2:00 p.m. in Tigard.
November 17, 2006	First reading of OPSRP rules.
November 24, 2006	Public comment period for OPSRP rules ended at 5:00 p.m.
December 15, 2006	Staff extended public comment period by filing Notice of Rulemaking with the Secretary of State.
January 12, 2007	Second reading of OPSRP rules.

Second/Third Reading –Withdrawal Rules

9/21/2007

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January 23, 2007	Second rulemaking hearing for OPSRP rules held in Tigard.
January 26, 2007	Extended public comment period for OPSRP rules ended.
February 15, 2007	Staff began the rulemaking process for the Chapter 238 rule by filing Notice of Rulemaking with the Secretary of State.
February 16, 2007	PERS Board notified that staff began the rulemaking process.
March 1, 2007	<i>Oregon Bulletin</i> published the Notice.
March 27, 2007	Rulemaking hearing for Chapter 238 rule held in Tigard.
March 30, 2007	First reading of Chapter 238 rule.
April 6, 2007	Public comment period for Chapter 238 rule ended at 5:00 p.m.
April 13, 2007	Staff renoticed all Withdrawal rules by filing Notice of Rulemaking with the Secretary of State.
May 1, 2007	<i>Oregon Bulletin</i> published the Notice.
May 31, 2007	Rulemaking hearing for all Withdrawal rules held in Tigard.
September 30, 2007	Extended public comment period for all Withdrawal rules ends.
October 19, 2007	Staff will propose adopting the permanent rules, including any amendments warranted by public comment or further research.

NEXT STEPS

The rules are scheduled to be presented to the PERS Board for adoption at the October 19, 2007 meeting.

- C.1. Attachment 1 – Hartman January 17 letter
- C.1. Attachment 2 – Rodeman January 25 email
- C.1. Attachment 3 – Keltner January 26 email
- C.1. Attachment 4 – Yunker May 4 letter

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BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

ATTORNEYS AT LAW

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January 17, 2007

BY FAX AND MAIL



Steve Rodeman
Public Employee Retirement System
PO Box 23700
Tigard, OR 97281-3700

Re: *OAD 459-075-0020*
Our File No.: 5415-237

Dear Steve:

These comments are on behalf of the PERS Coalition and are a follow-up to my previous comments. These comments are addressed to the current draft of the proposed rule. First I'd like to thank you for considering and responding to the previous comments which were made, as I believe the current draft of the rule is a significant improvement over the original version. There are, however, a couple of additional issues which I think should be addressed.

The current rule provides that if repayment of a mistaken contribution is not made within 30 days following the effective date of re-employment, that the member is barred from participation in PERS. This could lead to an unintended hardship if a mistaken payment is not promptly identified and the member does not have the immediate opportunity to make repayment. It is certainly possible and in fact likely that such a mistaken payment might not be discovered for some extended period of time. In fact, such a mistaken payment may only be discovered at the time that the member approaches retirement, leaving that member in the unsatisfactory position of finding out late in his or her career that they have not been a participant in PERS. I would suggest that the rule be modified so that any disqualification from participation commences only 30 days after notice has been given by PERS of the mistaken payment.

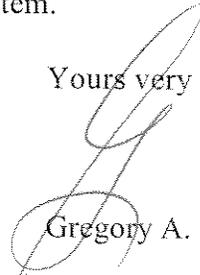
The other suggestion I have is that the rule be amended to permit repayment over a period longer than 30 days. I operate under the assumption that most members who withdraw from the system and receive a mistaken payment probably withdrew the funds in order to pay for ongoing necessities. Imposing a 30-day repayment requirement on them may be unduly harsh. An alternative would be to permit the member to make a written commitment to repayment within 30 days but allow the total sum to be repaid over the period of one year.

Steve Rodeman
January 17, 2007
Page 2

Failure to make that payment within the time promised would disqualify the member from participation until full payment was made.

I want to emphasize once again that my perspective on this issue is that members will take distributions from the plan in good faith, not understanding the need to be away from PERS employment for the full 30 plus 1 day as required under the statute. I think the need for PERS to recover these funds to protect the qualified status of the plan should be balanced against the needs of a member to make those repayments in a reasonable fashion to preserve their ability to continue participation in the system.

Yours very truly,



Gregory A. Hartman

GAH:kaj

G:\Hartman\AFSCME 5415\237 PERS 2\Rodeman 07-01-17.wpd

cc: PERS Coalition

>>> "RODEMAN, KATHY" 1/25/2007 3:55 PM >>>

Dear Mr. Rivas,

I'm writing in regard to the proposed withdrawal rules 459-075-0020 and 459-080-0020. Please thank the Board for the changes made requiring the employee to repay the lump-sum amounts. I can support the rules as proposed.

Sincerely,
Kathy Rodeman
Director of Business Services
Corvallis School District 509J

>>> "Maria Keltner" 1/26/2007 4:33 PM >>>

To: Daniel Rivas, PERS Administrative Rules Coordinator

Employers PERS Alliance Comments on Proposed Rules:

OAR 459-075-0020 withdrawal/repayment re: OPSRP Pension member

OAR 459-080-0020 withdrawal/repayment re: OPSRP IAP member

The revised proposed rules dated 12/15/06 take care of the Employers PERS Alliance concerns about the earlier version of these proposed rules. Under the revised proposed rules -- if an employee withdraws, is re-employed too soon after the withdrawal and does not repay PERS -- the employer is no longer required to either repay PERS or discharge the employee. The liability remains with the employee. This is how it should be.

We strongly encourage and support revising the withdrawal rules for the ORS Chapter 238 Program so they match this repayment/liability process in these proposed OPSRP rules.

Thank you for consideration of our comments.

Maria Keltner, on behalf of the Employers PERS Alliance



Oregon
University
System

**Office of the
Chancellor**
P.O. Box 3175
Eugene, OR 97403
<http://www.ous.edu>

May 4, 2007

Daniel Rivas, Rules Coordinator
Public Employees Retirement System
11410 SW 68th Parkway
Tigard, OR 97223

Re: OAR 459-080-0020 Withdrawal of Individual Accounts

Dear Mr. Rivas:

This is to note an omission in proposed rule 459-080-0020, and to request you add an additional provision applicable to ORS 234.800(6)(e) under subsection (2), or a new subsection of -080-0020, related to the Oregon University System's Optional Retirement Plan.

ORS 243.800(6)(e) provides that an administrative or academic employee of the Oregon University System who elects to participate in the Optional Retirement Plan in lieu of PERS may request that all amounts in the employee account, rollover account and employer account be transferred to the Optional Retirement Plan.

Although the statutory provision for members who elect the Optional Retirement Plan would prevail in case of conflict with the rule, we suggest it would be pro-active to mention this other circumstance that permits a vested member to withdraw an Individual Account Balance.

Thank you for making this addition to OAR 459- 080-0020.

Sincerely,

A handwritten signature in cursive script that reads "Denise Yunker".

Denise Yunker, MS, SPHR
Director, Human Resources Division

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 010 – MEMBERSHIP**

1 **459-010-0055**

2 **Withdrawal of Contributions**

3 (1) Definitions.

4 **(a)** A “controlled group” is a group of employers treated as a single employer for
5 purposes of maintaining qualified status under federal law.

6 **(b) “Effective date of withdrawal” has the same meaning as given the term in**
7 **OAR 459-005-0001(7).**

8 (2) An inactive member may withdraw the member account balance under ORS
9 238.265 if:

10 (a) The member has separated from employment with all participating employers
11 and all employers in a controlled group with a participating employer[, and];

12 (b) PERS receives the member’s request for withdrawal of the member account
13 before the member reaches earliest service retirement age; [and]

14 (c) The member has been absent from service with **all** participating employers **and**
15 **all employers in a controlled group with a participating employer** for at least [a] **one**
16 full calendar month following the month of separation; **and**[.]

17 **(d) The member complies with the requirements of section 1, chapter 52,**
18 **Oregon Laws 2007.**

19 (3) Under no circumstance may a member withdraw less than the entire balance in
20 the member account.

1 [(4) An inactive member shall receive an additional 50 percent of the balance of the
2 member account as of the effective date of withdrawal, including earnings credited under
3 OAR 459-007-0040, to be paid from employer contributions, if:]

4 [(a) As of the effective date of withdrawal, the member has been an inactive member
5 since on or before January 1, 2000;]

6 [(b) Employee contributions were made during each of five calendar years or more;]

7 [(c) Membership has not terminated under ORS 238.095 or 238.265; and]

8 [(d) The member’s effective date of withdrawal is on or after July 1, 2004, and
9 before June 30, 2006.]

10 **(4)**[(5) If a] **A** member **who withdrew** [withdraws] the member account and
11 receivedd[s] an additional 50 percent of the member account **pursuant to section 2,**
12 **chapter 276, Oregon Laws 2003** [under section (3) of this rule, the member] may not
13 subsequently restore the creditable service forfeited by the withdrawal under ORS
14 238.105 or 238.115.

15 **(5)**[(6)] The member may revoke the request for withdrawal of the member account
16 if PERS receives a written request to revoke [prior to]**before** the earlier of:

17 (a) The date of distribution; or

18 (b) The date PERS receives a valid court order requiring PERS to pay the
19 distribution to someone other than the withdrawing member.

20 **(6)**[(7)] If a member withdraws the member account under this rule, membership **in**
21 **the PERS Chapter 238 Program** shall be terminated as of the effective date of
22 withdrawal. **Membership rights accrued under ORS chapter 238 before the effective**

1 **date of withdrawal, including any service rights attributable to employment before**
2 **the effective date of withdrawal, are forfeited.**

3 ~~(7)~~(8) If a **former** member who has withdrawn the member account under this rule
4 returns to employment with any participating employer **or an employer in a controlled**
5 **group with a participating employer** [*prior to*] **before** the first day of the second
6 calendar month following the month **of the separation described in subsection (2)(a) of**
7 **this rule** [*in which the member had previously separated from a qualifying position*], **the**
8 **former member must repay to PERS in a single payment the total amount of the**
9 **payments attributable to the withdrawal within 30 days following the effective date**
10 **of employment. Upon receipt by PERS of repayment under this section, the**
11 **withdrawal of the former member is cancelled. Membership and service rights**
12 **forfeited under section (6) of this rule are restored as of the effective date of**
13 **withdrawal. The repayment amount will be credited pro rata to the accounts from**
14 **which the withdrawal amount was derived.** [*PERS shall notify the employer that the*
15 *employer shall be obligated to the Fund for the full amount of the member's withdrawal*
16 *not repaid, unless:*]

17 [*(a) The participating employer immediately terminates the employment upon*
18 *discovering or being notified of the member's failure to repay the withdrawn*
19 *contributions, and does not reemploy the member until the requirements of section (2) of*
20 *this rule are satisfied;*]

21 [*(b) The member repays the withdrawn amount in full within 30 days following the*
22 *effective date of such employment; or*]

1 *[(c) The full amount of the withdrawal is repaid by the participating employer from*
 2 *payroll deductions from the member’s monthly salary. Such payroll deductions shall be*
 3 *in amounts necessary to effect the repayment within one calendar year, unless a longer*
 4 *period is required so that monthly payroll deductions for this purpose do not exceed 25*
 5 *percent of the member’s net salary.]*

6 **(8) [(9)] If the former member fails to repay as provided in section (7) of this**
 7 **rule, PERS shall take all reasonable steps to recover the repayment amount due,**
 8 **including any interest, costs, or penalties assessed by PERS, under the provisions of**
 9 **ORS 238.715 and OAR 459-005-0610. Upon receipt by PERS of repayment under**
 10 **this section, the withdrawal of the former member is cancelled. Membership and**
 11 **service rights forfeited under section (6) of this rule are restored effective the first**
 12 **day of the month following the date of repayment. The repayment amount will be**
 13 **credited pro rata to the accounts from which the withdrawal amount was derived**
 14 **effective the first day of the month following the date of repayment. [If a**
 15 *participating employer employs a member after the member’s effective date of*
 16 *withdrawal and fails to notify the system of the employment the employer shall hold*
 17 *PERS harmless for any actual or perceived loss of benefits as a result of the withdrawal.]*

18 Stat. Auth.: ORS 238.650

19 Stats. Implemented: ORS 238.265, [& JOL 2003 Ch. 276, & [/ 2] **OL 2007 Ch. 52**

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 075 – OPSRP PENSION PROGRAM**

1 **459-075-0020**

2 **Withdrawal from OPSRP Pension Program**

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

4 (a) “Controlled group” means a group of employers treated as a single employer for
5 purposes of maintaining qualified status under federal law.

6 **(b) “Effective date of withdrawal” has the same meaning as given the term in**
7 **OAR 459-005-0001(7).**

8 **(c)/(b)** “Inactive member” has the same meaning given the term in ORS
9 238A.005(8).

10 **(d)/(c)** “Pension program” has the same meaning given the term in ORS
11 238A.005(12).

12 (2) An inactive member may withdraw from the OPSRP Pension Program under
13 ORS 238A.120 if:

14 (a) The member is vested in the pension program under ORS 238A.115;

15 (b) The member has separated from employment with all participating employers
16 and all employers in a controlled group with a participating employer;

17 (c) The member has been absent from service with all participating employers and
18 all employers in a controlled group with a participating employer for at least one full
19 calendar month following the month of separation;

20 (d) The member files with PERS a written request for withdrawal on a form
21 acceptable to PERS; *[and]*

1 (e) The actuarial equivalent of the member’s pension benefit is \$5,000 or less on the
 2 **effective** date **of** [PERS receives the] withdrawal [request]. The actuarial equivalent may
 3 not include any value attributable to cost-of-living adjustments under ORS 238A.210[.];
 4 **and**

5 **(f) The member complies with the requirements of section 2, chapter 52,**
 6 **Oregon Laws 2007.**

7 (3) Any amount payable to the member under the provisions of this rule must be
 8 paid to the member in a single lump-sum payment.

9 (4) A member may revoke a request for withdrawal from the pension program if
 10 PERS receives the member’s written revocation of the request before the earlier of:

11 (a) The date of distribution; or

12 (b) The date PERS receives a valid court order requiring PERS to pay the
 13 distribution to someone other than the withdrawing member.

14 (5) A member who withdraws from the pension program terminates membership in
 15 the pension program as of the **effective** date of **withdrawal**[distribution].

16 (6) A member who withdraws from the pension program forfeits any service
 17 performed by the member [prior to]**before** the date of the separation [required under]
 18 **described in** subsection (2)(b) of this rule and may not use that service for any purpose
 19 including, but not limited to, establishing membership under ORS 238A.100, vesting
 20 under ORS 238A.115, and the accrual of retirement credit under ORS 238A.140,
 21 238A.150, or 238A.155.

22 (7) If a former member who has withdrawn from the pension program returns to
 23 employment with a participating employer or an employer in a controlled group with a

1 participating employer *[prior to]***before** the first day of the second calendar month
 2 following the month of the separation *[required under]* **described in** subsection (2)(b) of
 3 this rule, the former member must repay to PERS **in a single payment** the *[full]***total**
 4 amount of *[the lump-sum]***all payments** attributable to the withdrawal within 30 days
 5 following the effective date of the employment. **Upon receipt by PERS of repayment**
 6 **under this section, the withdrawal of the former member is cancelled. Membership**
 7 **in the pension program and service forfeited under section (6) of this rule are**
 8 **restored as of the effective date of withdrawal.**

9 **(8)** If the former member fails to repay as provided in *[this]* section **(7)**, PERS shall
 10 take all reasonable steps to recover the repayment amount due, **including any interest,**
 11 **costs, or penalties assessed by PERS, under the provisions of ORS 238.715 and OAR**
 12 **459-005-0610.** *[Until the amount due is paid in full, the former member will be excluded*
 13 *from participation in the system pursuant to ORS 238.618. (8)]* Upon receipt by PERS of
 14 repayment under **this** section *[(7) of this rule]*, the withdrawal of the **former** member is
 15 cancelled. *[and m]***Membership** *[is reestablished]* in the pension program. *Any***and**
 16 service *[rights]* forfeited under section (6) of this rule are **restored***[vived]* **effective the**
 17 **first day of the month following the date of repayment.**

18 **Stat. Auth.: ORS 238A.450**

19 **Stats. Implemented: ORS 238A.[375]120, OL 2007 Ch. 52**

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459**

DIVISION 080 – OPSRP INDIVIDUAL ACCOUNT PROGRAM

1 **459-080-0020**

2 **Withdrawal of Individual Accounts**

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

4 (a) “Controlled group” means a group of employers treated as a single employer for
5 purposes of maintaining qualified status under federal law.

6 (b) **“Effective date of withdrawal” has the same meaning as given the term in**
7 **OAR 459-005-0001(7).**

8 **(c)** “Inactive member” has the same meaning given the term in ORS 238A.005(8).

9 ~~[(c)]~~**(d)** “Individual account program” has the same meaning given the term in ORS
10 238A.005(9).

11 ~~[(d)]~~**(e)** “Individual accounts” means the employee account, rollover account, and
12 employer account of a member of the Individual Account Program (IAP) to the extent the
13 member is vested in those accounts under ORS 238A.320.

14 (2) An inactive member may withdraw the individual accounts under ORS 238A.375
15 if:

16 (a) The member has separated from employment with all participating employers
17 and all employers in a controlled group with a participating employer;

18 (b) The member has been absent from service with all participating employers and
19 all employers in a controlled group with a participating employer for at least one full
20 calendar month following the month of separation; *[and]*

21 (c) The member files with PERS a written request for withdrawal on a form
22 acceptable to PERS; **and**.]

1 **(d) The member complies with the requirements of section 3, chapter 52,**
2 **Oregon Laws 2007.**

3 *[(3) A member must withdraw the entire balance in the individual accounts.]*

4 *[(4)](3) A member may revoke a request for withdrawal of the individual accounts if*
5 PERS receives the member’s written revocation of the request before the earlier of:

6 (a) The date of distribution; or

7 (b) The date PERS receives a valid court order requiring PERS to pay the
8 distribution to someone other than the withdrawing member.

9 *[(5)](4) A member who withdraws the individual accounts terminates membership*
10 *in the IAP as of the **effective** date of **withdrawal**/distribution].*

11 *[(6)](5) An employer account not included in the withdrawn individual accounts by*
12 *reason of the member’s failure to vest in the employer account is permanently forfeited as*
13 *of the date of distribution.*

14 *[(7)](6) A member who withdraws the individual accounts and is subsequently*
15 *employed with a participating employer forfeits any service performed by the member*
16 *[prior to]before the separation [required under]described in subsection (2)(a) of this*
17 *rule for the purpose of vesting in an employer account.*

18 *[(8)](7) If a former member who has withdrawn the individual accounts returns to*
19 *employment with a participating employer or an employer in a controlled group with a*
20 *participating employer [prior to]before the first day of the second calendar month*
21 *following the month of the separation [required under]described in subsection (2)(a) of*
22 *this rule the former member must repay to PERS **in a single payment** the [full]total*
23 *amount of **all payments attributable to** the withdrawal within 30 days following the*

1 effective date of the employment. **Upon receipt by PERS of repayment under this**
 2 **section, the withdrawal of the former member is cancelled. Membership in the IAP**
 3 **is restored as of the effective date of the withdrawal. Account(s) forfeited under**
 4 **section (5) and service forfeited under section (6) of this rule are restored effective**
 5 **the date of distribution. The repayment amount received will be credited pro rata to**
 6 **the accounts from which the withdrawal amount was derived.**

7 **(8)** If the former member fails to repay as provided in *[this]* section **(7)**, PERS shall
 8 take all reasonable steps to recover the repayment amount due, **including any interest,**
 9 **costs, or penalties assessed by PERS, under the provisions of ORS 238.715 and OAR**
 10 **459-005-0610.** *[Until the amount due is paid in full, the former member will be excluded*
 11 *from participation in the system pursuant to ORS 238.618.]*

12 *[(9)]* Upon receipt by PERS of repayment under **this** section *[(8) of this rule]*, the
 13 withdrawal of the **former** member is cancelled. *[and m]* **Membership [is reestablished]** in
 14 the IAP, **account(s) forfeited under section (5) of this rule, and service forfeited**
 15 **under section (6) of this rule are restored effective the first day of the month**
 16 **following the date of repayment.** The repayment amount received will be *[returned to*
 17 *the individual accounts and]* credited pro rata to the accounts from which the withdrawal
 18 amount was derived **effective the first day of the month following the date of**
 19 **repayment.** *[Any rights forfeited under sections (6) and (7) of this rule are revived.]*

20 Stat. Auth.: ORS 238A.450

21 Stats. Implemented: ORS 238A.375 **& OL 2007 Ch. 52**

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Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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11410 S.W. 68th Parkway, Tigard, OR
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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: Second Reading of Administrative Review and Appeal
Processes Rules
OAR 459-001-0030, *Review of Staff Actions and Determination*
OAR 459-001-0035, *Contested Case Hearing*
OAR 459-001-0040, *Petitions for Reconsideration*

MEETING DATE	9/21/07
AGENDA ITEM	C.2. Review/Appeal Processes

OVERVIEW

- Action: None. This is the second reading of the Administrative Review and Appeal Processes Rules.
- Reason: Changes are necessary because employer grievance procedures are not spelled out in the rules.
- Subject: PERS administrative review and appeal processes.
- Policy Issue: *Should employers have a specific process to follow to seek review or appeal of staff actions and determinations?*

BACKGROUND

Employers asked staff to begin rulemaking on the staff determination, contested case, and appeal rules to allow for modifications that would create a different dispute review and resolution process from that used for member disputes. These modifications to the review and hearing processes would include addressing disputes raised by PERS participating employers in connection with determinations made in regard to their obligations (e.g., paying contributions for prior years, being charged for associated earnings, etc.) that raise distinct issues from those posed by member contests.

While the rules are open, staff is also proposing some modifications to conform to the DOJ model rules and eliminate overlap and duplicative authorities.

SUMMARY OF MODIFICATIONS TO RULES SINCE FIRST READING

The Employers PERS Alliance (Alliance) submitted suggested changes to OAR 459-001-0030 on the procedure to review staff actions and determinations. Those suggestions are discussed further below; the other two rules were not changed since first reading.

The draft modifications to OAR 459-001-0030 reflected in the attachment to this memo represent staff's recommended changes based on the Alliance's proposals (as well as some grammatical changes). Briefly, they are:

Section (2): Add sections (h) through (o) to further describe the types of determinations subject to this process. Also, the last paragraph is amended to clarify that the 60-day deadline to request a review runs from the date the determination is sent, but that requests filed beyond the deadline will be considered for good cause.

Section (3): Clarify that a request for an informal conference does not change the 60-day time limit to request review.

Section (11): Provide a separate resolution process for employers other than the State of Oregon. Employers can choose the process they'd like to have followed after the Director's review: arbitration, mediation, or a contested case.

LEGAL REVIEW

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

PUBLIC COMMENT AND HEARING TESTIMONY

The first public comment period ended on June 22, 2007 at 5:00 p.m. In addition to the comments reported to the PERS Board at its June 2007 meeting, another comment was received by Maria Keltner on behalf of the Employers PERS Alliance. That comment is included as an attachment to this memo.

Of the changes suggested in the Alliance's comment, some were addressed by opening rulemaking on OAR 459-009-0130 on invoicing employers for prior period employee contributions (see Agenda Item C.5.). The balance of the comments are addressed in the manner recommended by staff through the modifications described above.

To allow all interested parties a further opportunity to comment on these new modifications, staff has reopened the public comment period. That period will now close on September 30, 2007.

IMPACT

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

Impact: Clarification of the process employers should follow to challenge a staff determination will benefit 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.

Second Reading – Review/Appeal Processes Rules

9/21/2007

Page 3 of 3

June 15, 2007	First Reading of the rules.
June 22, 2007	Initial public comment period ended at 5:00 p.m.
September 21, 2007	Second Reading of the rules.
September 30, 2007	Re-opened public comment period expires at 5:00 p.m.
October 19, 2007	Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

The rules are scheduled to be brought before the PERS Board for adoption at the October 19, 2007 meeting.

C.2. Attachment 1 – Employers PERS Alliance Comments

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June 13, 2007

To: Chair Pittman and members of the PERS Board
c/o Daniel Rivas, PERS Administrative Rules Coordinator
Daniel.Rivas@state.or.us

Re: Comments submitted on behalf of the Employers PERS Alliance
in the PERB Rulemaking Action to Amend:
OAR 459-001-0030, 459-001-0035 and 459-001-0040
Following are our Eligibility Determination Issues Background, General Principles and
Proposed Changes to these three Rules.

Background:

March 2007. Employers PERS Alliance representatives met with PERS staff to discuss resolving issues concerning eligibility determination invoices. These invoices started arriving in November or December 2006. Many of the invoices pertained to work performed 25, 30 or more years ago. We discovered invoices were the result of:
People appealing their retirement estimate data;
Delayed resolution of annual eligibility/posting issues;
Delayed resolution of employer initiated eligibility issues
Delayed collection of eligibility data from employers
PERS starting to work through a backlog of thousands of eligibility determinations

We were told that PERS processing priority is:
Retirement applications
2004-2006 Strunk/Eugene adjustments
Annuals audit reconciliation
Employer reported eligibility issues (lowest priority).

We also learned:
1996 PERS began allowing employers to voluntarily report part-time employee data.
1996 to 1997 PERS identified potential eligibility issues based on information employers had voluntarily reported. PERS issued some invoices to employers.
2003 PERS stopped invoicing and perhaps stopped working on the backlog.
2006 November or December PERS issues letter invoices saying 60 days to appeal before EDX generates an invoice. Invoices for a single member range from under \$100 to over \$10,000. Many cover contributions on work from 25, 30 or more years ago.

The invoices indicate the member is eligible because of various reasons, including:
Worked at least 600 hours with one or more employers during the year(s).
Qualified under partial year exception.
Hire date was adjusted, causing a change in the contribution start date.

The majority of these invoices seem to involve:
 Concurrent employment
 Part-time employment

We discovered that eligibility determinations are being made now using rules/procedures that were not in effect at the time the work was performed. So, the contributions may have been made correctly under the rules/procedures in effect at the time...but the result is different under the new rules/procedures. In some cases, at the time the work was performed, PERS was not collecting the data needed to make eligibility determinations. So even under the rules/procedures in effect at the time, PERS did not notify employers when many of these people became eligible for contributions because PERS was not collecting the data. In many cases, and particularly when the person had concurrent employment, the employers had no prior notice that contributions to PERS were due.

We discussed the appeals process and policy issues regarding eligibility determinations with PERS staff. We discussed situations where the PERS Contingency fund should cover the lost earnings on the employee 6% contributions and the employer rate contributions (for example: when the employer reported as required and/or tried to get PERS to accept contributions and/or PERS refunded contributions and later decided the contributions were due, etc). We discussed situations where: (a) the member should pay the MMPT 6% contributions; (b) the employer should pay the EPPT 6% contributions and the employer rate contributions. We discussed that similar situations should be treated the same. Some Alliance participants thought rulemaking would ensure equal treatment and transparency.

We were told a number of the policy issues involved required internal PERS staff discussion before policy recommendations could be shared with us and the Board.

I was told the policy issues will be resolved either in this rulemaking or elsewhere...so ... to avoid missing the wagon if it turns out this rulemaking is it ... the Employers PERS Alliance offers the following:

Employers PERS Alliance Policy Principles:

1. There must be a final determination of information used in computing retirement allowance/benefits. This should be a maximum of one year after the work is performed. When the annual year end reconciliation is completed, (including any appeals), that should be the final determination of such matters as: Salary, hours worked, when membership is established, when and how much contributions are due, when someone vests, etc. All determinations for calendar years prior to 2007 should be completed by December 31, 2008. Calendar year 2007 should be completed no later than December 31, 2008. Calendar year 2008 should be completed no later than December 31, 2009.
2. The rules/procedures in effect at the time the work is performed should be used for determining information that will be used in computing retirement allowance/benefit. Applying new rules/procedures retroactively is unfair to all stakeholders: employees, government employers, taxpayers and the system. Furthermore applying new rules

retroactively creates unnecessary financial burdens and instability for stakeholders. However, if changes in law, rule, policy, application, procedure, priority processing, etc. create different contribution determination outcomes from those in effect at the time the work was performed, then all additional employee and employer contributions and corresponding lost earnings on those contributions should be paid out of the Contingency Reserve. All overpayments should be refunded with interest.

3. If an employer failed to timely report information at the time the information was required by PERS, all unpaid contributions and lost earnings on those contributions resulting from the failure to timely report, should be the financial responsibility of that employer.

4. There should be one process for review/appeal of staff determinations whether the appeal is from an employee or an employer. It is unworkable to have more than one dispute resolution process for the same issues.... We are opposed to creating a process that could result in two decisions on the same issue..... one decision from a court and another decision from an arbitrator.

5. Similar situations should be treated the same.

The backlog concerning contributions due needs to be eliminated. The amounts due need to be finalized. The financial responsibility needs to be allocated. Contributions for 2007 and forward must not be allowed to hang in suspense while earnings are lost. The rules/procedures must stop being changed and applied retroactively. There should be consistent treatment. We appreciate staff's commitment to work with us on these and other concerns.

Attached are Employers PERS Alliance Proposed changes to the three Rules.

Thank you for your consideration of our concerns and suggestions.

Sincerely,

Maria Keltner
Employers PERS Alliance

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* * * * Please note that Employers PERS Alliance comments are in a special font to differentiate from the actual document.

Employers PERS Alliance Proposed changes to three PERS Rules:

OAR 459-001-0030

Review of Staff Actions and Determinations Regarding Persons and Employers

(1) For purposes of this rule, “Director” means the executive director of PERS, or an administrator appointed by the executive director.

(1) **(2)** Request for review. Any person or public employer may file with the Director a request for review of a staff action or determination. Except as provided for in ORS 238.450 or in Board rules on disability retirement, oral or written staff actions or determinations that are subject to review under this rule include but are not limited to:

- (a) Establishing membership;
- (b) Determining service credit, **eligibility of an employee for service credit**, and final average salary;
- (c) Refund of contributions;
- (d) Eligibility for benefits;
- (e) Computation of benefits;
- (f) Penalty (for late reporting);
- (g) Invoice amount** (of employee and employer contributions, including earnings on those contributions.);
- (h) Computation of contributions due;**
- (i) Determining creditable service and eligibility for creditable service;**
- (j) Determining retirement credit and eligibility for retirement credit;**
- (k) Refund of earnings on contribution refunds;**
- (l) Computation of earnings (lost as well as earned);**
- (m) Eligibility for contributions;**
- (m) Account balance;**
- (o) Charges and credits to account.**

The request shall be filed within 60 days following the date notice of the staff action or determination is received by the requesting person or employer. The notice must include the information that initiated the staff action or determination and the the notice must include the information used in making the staff action or determination. Late requests may be considered only if facts constituting good cause are alleged in the request.

(2) **(3)** Informal conferences. Informal conferences are available as an alternative means that may achieve resolution of any matter under review. A request for an informal conference does not *(relieve a person of the requirements for timely filing of a review)* change the time limit to file a request for review.

(3) **(4)** Criteria for request. A request for review of a staff action or determination shall be in writing and set forth:

- (a) A description of the staff action or determination for which review is requested;
- (b) A short statement of the manner in which the action is alleged to be in error;
- (c) A statement of facts that are **the** basis of the request;
- (d) Reference to applicable statutes, rules or court decisions *(upon which the person relies)* relied upon;
- (e) A statement of the relief *(the)* requested (seeks); and
- (f) A request for review.

(4) **(5)** Denial of request. The Director (*, or an administrator appointed by the Director,*) may deny any request *(made pursuant to)* for review under this rule:

- (a) Which does not contain the information required under section (3) **(4)** of this rule; or
- (b) *(Regarding which)* When, in the Director's view, there is no bona fide dispute of material fact, the pertinent statutes and rules are clear in their application to the facts, and there *(was)* is no(t a) material administrative error.
- (c) The denial of the request shall be made within 45 days of receipt of the *(member's)* request for review.

(5) **(6)** If a request is denied by the Director, (*or an administrator appointed by the Director,*) because it does not contain the information required under section (3) **(4)** of this rule, a *(person)* requester shall have one opportunity to correct that deficiency and resubmit a request for review within 45 days of the date of denial.

(6) **(7)** Approval of request. If the request for review is granted, the Director(*, or an administrator appointed by the Director,*) shall issue a written determination within 45 days of receipt of the *(member's)* request after:

- (a) Considering the request;
- (b) Directing staff to reconsider; or
- (c) Directing staff to schedule an informal (hearing) conference.

(7) The provisions of this section apply to all requests for review (by persons only),

(a) Contested case hearing. In lieu of issuing a written determination, the Director may direct the staff to schedule a formal contested case hearing. *(Such)* **The** hearing shall be conducted in accordance with *(OAR 459-001-0035)* **ORS 183.415 and the Attorney General's Model rules of Procedure.**

(8) **(b)** If a request is denied or the Director's determination is not the relief sought by the requester, and the Director did not cause a contested case hearing to be scheduled, a *(person)*

may file with the Board a) request for a contested case hearing may be filed with the Board pursuant to (OAR 459-001-0035) ORS 183.415 and the Attorney General's Model rules of Procedure.

(9) Extension of deadline. Any 45-day deadline within this rule may be extended upon request in writing for an additional 45 days. Additional time may be requested, but shall only be granted upon approval by both parties.

Employers PERS Alliance requests addition of the following Financial Responsibility language:

(10) Allocation of Financial Responsibility for staff determinations regarding contributions:

(a) Members are responsible for making retroactive MMPT or MPAT contributions. If MPPT or MPAT contributions are not made, no corresponding benefits will accrue to the person and no corresponding liabilities will accrue to the employer(s). PERS shall verify with the employer that a person has made MPPT/MPAT contributions prior to refunding contributions to a person and prior to issuing retirement benefits to a person.

(b) PERS is responsible for crediting member, employer and other relevant accounts for lost earnings on contributions pertaining to work performed more than 12 months prior to any staff determination that additional contributions are due. The Contingency Reserve shall be the source of these credits.

(c) Employers are responsible for making EPPT contributions and employer rate contributions unless:

i. there is a retroactive increase in contributions due to legislation, rule, policy or practice; or

ii. the employer correctly reported time and made or attempted to make contributions to PERS and PERS would not accept or returned the contributions to the employer; or

iii. the contributions were required as the result of concurrent employment and either:

a. the subject employer reported time but one or more other employers did not report time in a period when such reporting was required by PERS and as a result the time worked for the subject employer has been retroactively determined to be eligible; or

b. PERS did not require or allow reporting for members who are subsequently found to have achieved eligibility and as a result the employer could not have made the contributions timely.

(d) At the employer's request, staff will work out a payment plan for retroactive contributions. Overpayments and corresponding earnings will be refunded to the employer or credited to the employer's account at the employer's option.
(e) For the exemptions identified in Section 100 of this rule, PERS is responsible for making EPPT and employer rate contributions. The Contingency Reserve shall be the source of these contributions.

OAR 459-001-0035
Contested Case Hearing

Alliance is ok with PERS staff proposal to delete from current OAR 459-001-0035:

((4) Contested case hearing. The Board shall acknowledge receipt of a petition for a contested case hearing within 15 days of filing.)

Alliance requests change to one word in revised draft proposed by PERS Staff:

Old subsection (5) renumbered Subsection (4): change "member's" request to "party's" request.

OAR 459-001-0040
Petitions for Reconsideration

The alliance has no suggested changes to the draft initially proposed by PERS staff.

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 001 – PROCEDURAL RULES

1 459-001-0030

2 **Review of Staff Actions and Determinations Regarding Persons and Employers**

3 **(1) For purposes of this rule, “Director” means the executive director of PERS,**
4 **or an administrator appointed by the executive director.**

5 *[(1)](2)* Request for review. Any person or public employer may file with the
6 Director a request for review of a staff action or determination. Except as provided for in
7 ORS 238.450 or in Board rules on disability retirement, oral or written staff actions or
8 determinations that are subject to review under this rule include but are not limited to:

9 (a) Establishing membership;

10 (b) Determining service credit, **eligibility of an employee for service credit,** and
11 final average salary;

12 (c) Refund of contributions;

13 (d) Eligibility for benefits;

14 (e) Computation of benefits; *[or]*

15 (f) Penalty; *[for late reporting.]*

16 **(g) Invoice amount;**

17 **(h) Computation of contributions due;**

18 **(i) Determining creditable service and eligibility for creditable service;**

19 **(j) Determining retirement credit and eligibility for retirement credit;**

20 **(k) Refund of earnings on contribution refunds;**

21 **(l) Computation of earnings (lost as well as earned);**

22 **(m) Eligibility for contributions;**

1 **(n) Account balance; and**

2 **(o) Charges and credits to a member's or employer's reserve account.**

3 The request *[shall]***must** be filed within 60 days following the date *[of]* the staff
4 action or determination **is sent to the person or public employer requesting review.**

5 Late requests may be considered only if facts constituting good cause are alleged in the
6 request.

7 *[(2)]***(3)** Informal conferences. Informal conferences are available as an alternative
8 means that may achieve resolution of any matter under review. A request for an informal
9 conference does not **change the time limit to file a request for review.***[relieve a person*
10 *of the requirements for timely filing of a review request.]*

11 *[(3)]***(4)** Criteria for request. A request for review of a staff action or determination
12 *[shall]***must** be in writing and set forth:

13 (a) A description of the staff action or determination for which review is requested;

14 (b) A short statement of the manner in which the action is alleged to be in error;

15 (c) A statement of facts that are **the** basis of the request;

16 (d) Reference to applicable statutes, rules or court decisions **relied upon** *[upon*
17 *which the person relies];*

18 (e) A statement of the relief **requested** *[the request seeks];* and

19 (f) A request for review.

20 *[(4)]***(5)** Denial of request. The Director*[, or an administrator appointed by the*
21 *Director,]* may deny any request **for review under***[made pursuant to]* this rule:

22 (a) Which does not contain the information required under section *[(3)]***(4)** of this
23 rule; or

1 (b) **When** *[Regarding which]*, in the Director's view, there is no bona fide dispute of
2 material fact, the pertinent statutes and rules are clear in their application to the facts, and
3 there *[was not a]* **is no** material administrative error.

4 (c) The denial of the request shall be made within 45 days of receipt of the
5 *[member's]* request **for review**.

6 *[(5)](6)* If a request is denied by the Director*[, or an administrator appointed by the*
7 *Director,]* because it does not contain the information required under section *[(3)](4)* of
8 this rule, a *[person]***requester** shall have one opportunity to correct that deficiency and
9 resubmit a request for review within 45 days of the date of denial.

10 *[(6)](7)* Approval of request. If the request for review is granted, the Director*[, or an*
11 *administrator appointed by the Director, shall]* **must** issue a written determination within
12 45 days of receipt of the *[member's]* request after:

- 13 (a) Considering the request;
- 14 (b) Directing staff to reconsider; or
- 15 (c) Directing staff to schedule an informal *[hearing]***conference**.

16 *[(7) Contested case hearing. In lieu of issuing a written determination, the Director*
17 *may direct the staff to schedule a formal contested case hearing. Such hearing shall be*
18 *conducted in accordance with OAR 459-001-0035.]*

19 *[(8) If a request is denied or the Director's determination is not the relief sought by*
20 *the requester, and the Director did not cause a contested case hearing to be scheduled, a*
21 *person may file with the Board a request for a contested case hearing pursuant to OAR*
22 *459-001-0035.]*

1 [(9)](8) Extension of deadline. Any 45-day deadline within this rule may be
2 extended upon request in writing for an additional 45 days. *[Additional time may be*
3 *requested, but shall only be granted upon approval by both parties.]*

4 **(9) The provisions of this section apply to requests for review by persons only.**

5 **(a) Resolution process for persons. In lieu of issuing a written determination,**
6 **the Director may direct staff to schedule a formal contested case hearing. The**
7 **hearing must be conducted in accordance with ORS 183.415 and the Attorney**
8 **General’s Model Rules of Procedure.**

9 **(b) If a request is denied or the Director's determination is not the relief sought**
10 **by the person, and the Director did not cause a contested case hearing to be**
11 **scheduled, a person may file with the Board a request for a contested case hearing**
12 **pursuant to ORS 183.415 and the Attorney General’s Model Rules of Procedure.**

13 **(10) Resolution process for state agency employers. If a request is denied or the**
14 **Director's determination is not the relief sought by the employer, then the dispute**
15 **shall be resolved under the provisions of OAM policy 35.70.30.PO, the Interagency**
16 **Dispute Resolution Process.**

17 **(11) Resolution process for non-state agency employers. If a request is denied or**
18 **the Director's determination is not the relief sought by the employer, then the**
19 **employer can request the issue to be addressed by arbitration, mediation, or a**
20 **contested case.**

21 **(a) If the employer requests arbitration, PERS and the employer will as closely**
22 **as possible parallel the process outlined in OAM policy 35.70.30.PO for state agency**
23 **employers.**

1 **(b) If the employer requests a contested case, the process will be conducted**
2 **pursuant to ORS 183.415.**

3 Stat. Auth.: ORS 237.263

4 Stats. Implemented: ORS 183.413 - 183.470

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 001 – PROCEDURAL RULES**

1 **459-001-0035**

2 **Contested Case Hearing**

3 (1) Request for a contested case hearing. To obtain review of any determination *[by*
4 *the Director,]***made under OAR 459-001-0030** for which a contested case hearing has
5 not been held, the party *[shall]***must** file with the Board a *[petition]***request** for a
6 contested case hearing. The *[petition shall]* **request must** be filed within 45 days
7 following the date of the Director's determination. *[Late petitions may be considered only*
8 *if facts constituting a good cause are alleged in the petition.]*

9 (2) Informal conferences. Informal conferences are available as an alternative means
10 that may achieve resolution of any matter under review. *[A request for an informal*
11 *conference does not relieve a person of the requirements for timely filing of a request for*
12 *a contested case hearing.]*

13 (3) Criteria for request. The *[petition]***request** for a contested case hearing *[shall]*
14 **must** be in writing and set forth:

15 (a) A description of the determination for which review is requested;

16 (b) A short statement of the manner in which the determination is alleged to be in
17 error;

18 (c) A statement of facts that are the basis of the *[petition]***request**;

19 (d) Reference to applicable statutes, rules or court decisions upon which the
20 *[petitioner]***requester** relies;

21 (e) A statement of the action the *[petition]***request** seeks; and

22 (f) A request for a hearing.

1 *[(4) Contested case hearing. The Board shall acknowledge receipt of a petition for a*
2 *contested case hearing within 15 days of filing.]*

3 *[(5)](4) The Director, or an administrator appointed by the Director, may direct the*
4 *staff to schedule a formal contested case hearing or develop a recommendation to deny*
5 *the member's request to be presented to the Board. The Board may then deny a request*
6 *for a hearing when it has decided, in consultation with legal counsel, that the Board has*
7 *no authority to grant the relief requested.*

8 *[(6)](5) The hearing [shall] **must** be conducted in accordance with the Attorney*
9 *General's Model Rules of Procedure.*

10 *[(7) Proposed order. The administrative law judge's proposed order becomes final*
11 *90 days following service upon the petitioner, the Director and the Board through the*
12 *Director. Exceptions to the proposed order by the Director or the petitioner must be filed*
13 *with the Hearing Officer administrative law judge within 45 days of service. If the Board*
14 *determines additional time is necessary to review a proposed order and issue an*
15 *amended order, the Board may extend the time after which the proposed order will*
16 *become final in accordance with ORS 183.464(3).]*

17 *[(8) In accordance with the Attorney General's Model Rules of Procedure, the Board*
18 *may reject the order and direct the Hearings Officer to conduct further proceedings and*
19 *prepare an amended order within the time specified by the Board.]*

20 *[(9) Extension of deadline. Any 45-day deadline within this rule may be extended*
21 *upon request in writing for an additional 45 days. Additional time may be requested, but*
22 *shall only be granted upon approval by both parties.]*

1 ~~[(10)]~~**(6)** The Board [*will*] generally deliberates§ and decides§ on final orders during
2 regularly scheduled board meetings. The Board may instead deliberate and decide at any
3 other time and place allowed by law, as determined on a case-by-case basis, such as
4 electronically or via a telephone conference.

5 Stat. Auth.: ORS 238.650, 183.464 & 183.600 - 183.690

6 Stats. Implemented: ORS 183.413 - 183.470

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 001 – PROCEDURAL RULES**

1 **459-001-0040**

2 **Petitions for Reconsideration**

3 (1) *[Request for a]* Petition for reconsideration. *[Prior to]* **Before** initiating any
4 judicial review of a final order in a contested case, a party may file with the Board a
5 petition for reconsideration. If the party chooses to file a petition, it *[shall]* **must** be filed
6 within 60 days following the date the order becomes final. *[Late petitions may be*
7 *considered only if facts constituting good cause are alleged in the petition.]*

8 *[(2) Criteria for request. The petition for reconsideration shall be in writing and set*
9 *forth:]*

10 *[(a) A short statement of the manner in which the final order is alleged to be in*
11 *error;]*

12 *[(b) Reference to applicable statutes, rules or court decisions on which the party*
13 *relies;]*

14 *[(c) A suggested alternative form of order; and]*

15 *[(d) A request for reconsideration.]*

16 *[(3)]***(2)** Board action. The Board *[shall]* **must** either grant or deny a petition for
17 reconsideration within 60 days of filing. *[A petition may be denied if it does not contain*
18 *the information required under section (2) of this rule. If the petition for reconsideration*
19 *is granted, the Board may:]*

20 *[(a) Affirm the original order; or]*

21 *[(b) Reconsider and issue an amended order.]*

1 [(4)]**(3)** Staff action. If the petition **for reconsideration** is granted [*and the Board*
2 *reconsiders*], the [*Director shall submit*] **Board must enter a new final order in**
3 **accordance with OAR 137-003-0675 and may consider** written argument **from the**
4 **Director** on the merits of the petition [*for Board consideration*].

5 [(5)]**(4)** Petitioner action. Written argument from **a** petitioner [*shall*] **must** be
6 submitted together with the petition. The Board may schedule oral argument in its
7 discretion.

8 [(6) *Extension of deadline. Any 60-day deadline within this rule may be extended*
9 *upon request in writing for an additional 45 days. Additional time may be requested, but*
10 *shall only be granted upon approval by both parties.*]

11 Stat. Auth.: ORS 238.650

12 Stats. Implemented: ORS 183.413 - 183.470



Oregon

Theodore R. Kulongoski, Governor

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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: First Reading of OAR 459-007-0530, *Crediting Earnings to Employer Lump Sum Payments*

MEETING DATE	9/21/07
AGENDA ITEM	C.3. Employer Earnings Crediting

OVERVIEW

- Action: None. This is first reading of the Crediting Earnings to Employer Lump-Sum Payments Rule.
- 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, offset the payroll-based 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. Previously, this rule called for annual crediting.

SUMMARY OF RULE 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.

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

The rule has not been modified since the Board's last meeting.

LEGAL REVIEW

The attached draft rule 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 was held on August 29, 2007 at 2:00 p.m. in Salem. Lori Sattenspiel, representing the Oregon School Boards Association, and Maria Keltner from the Employers PERS Alliance, attended and asked several questions during a presentation prepared by Dale Orr and Tom Andrews from the Fiscal Services Department. Ms. Keltner withheld presenting comments verbally and instead said she would submit written comments. She did however emphasize the helpfulness of having a staff presentation at the hearing in order to fully understand the rules, and proclaimed that the discussion was invaluable.

On August 31, 2007, PERS received written public comment from Maria Keltner, representing the Employers PERS Alliance. We are in the process of reviewing her comments and will discuss them at the October Board meeting.

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 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

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



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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: First Reading of Lump-Sum Payments by Employers Rules
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	9/21/07
AGENDA ITEM	C.4. Lump-Sum Payments

OVERVIEW

- Action: None. This is the first reading of the Lump-Sum Payments by Employers Rules.
- 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 percentage of employer's liability to a change in employer rate. Lastly, the rules are modified to refer to the earnings crediting rule, which is also being proposed at this time to conform those practices to this payroll-cycle application schedule (see Agenda Item C.3.).

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

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

LEGAL REVIEW

The attached draft 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 was held on August 29, 2007 at 2:00 p.m. in Salem. Lori Sattenspiel, representing the Oregon School Boards Association, and Maria Keltner from the Employers PERS Alliance, attended and asked several questions during a presentation prepared by Dale Orr and Tom Andrews from the Fiscal Services Department. Ms. Keltner withheld presenting comments verbally and instead said she would submit written comments. She did however emphasize the helpfulness of having a staff presentation at the hearing in order to fully understand the rules, and proclaimed that the discussion was invaluable.

On August 31, 2007, PERS received written public comment from Maria Keltner, representing the Employers PERS Alliance. We are in the process of reviewing her comments and will discuss them at the October Board meeting.

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 held at 2:00 p.m. in Salem.
September 21, 2007	First Reading of the rules.
September 28, 2007	Public comment period ends at 5:00 p.m.

First Reading – Lump-Sum Payments by Employers Rules

9/21/07

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October 19, 2007 Staff will propose adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

The rules are 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 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) “Allocated Actuarial Liability” means the actuarial liability calculated using**
17 **the fair market value of assets.**

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

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

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

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

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

10 (A) That is not regularly scheduled;

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

12 (C) That is made for the express purpose of creating an actuarial surplus or
13 increasing an existing actuarial surplus; and

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

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

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

19 (A) That is not regularly scheduled;

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

21 (C) That is made for the express purpose of reducing the employer’s unfunded
22 actuarial liability; and

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

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

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

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

12 [(3)](4) Minimum surplus lump-sum payment amount. If an individual employer
13 elects to make a surplus lump-sum payment under this rule, the payment must [be at
14 least:] **result in a 100 basis point reduction in the employer’s pension program**
15 **contribution rate based on the individual employer’s reported payroll in the most**
16 **recent actuarial valuation.**

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

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

1 [(4)](5) Maximum surplus lump-sum payment amount. If an individual employer
 2 elects to make a surplus lump-sum payment under this rule, the payment [shall]may not
 3 be greater than the amount required to bring the employer's [total defined-benefit] lowest
 4 pension program contribution[s] rate to zero [percent of payroll] based upon the
 5 individual employer's reported payroll in the most recent actuarial valuation.

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

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

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

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

19 [(7)](8) PERS staff [shall]must notify the employer within five business days of
 20 receipt of the notification if the notification is incomplete or the process cannot be
 21 completed by the intended date(s) of the surplus lump-sum payment.

22 [(8)](9) Payment to the actuary. **The PERS consulting actuary must provide an**
 23 **invoice charging the employer for the cost of the rate reduction calculation**

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

8 *[(9)](10)* Calculation of the individual employer’s actuarial liability. Upon receipt of
 9 a complete notification and verification of payment to the actuary for actuarial services,
 10 PERS staff shall request that the PERS consulting actuary calculate:

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

14 *[(b)](a)* The minimum amount of the surplus lump-sum payment under section
 15 *[(3)](4)* of this rule;

16 *[(c)](b)* The maximum amount of the surplus lump-sum payment under section
 17 *[(4)](5)* of this rule;

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

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

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

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

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

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

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

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

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

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

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

1 ~~[(12)]~~**(13)** Notification of payment. The employer or its agent *[shall]***must** notify the
 2 PERS Employer Liability Coordinator in writing at least three business days *[prior*
 3 *to]***before** making a surplus lump-sum payment. This notification *[shall]***must** be in
 4 addition to the notification in section ~~[(6)]~~**(7)** of this rule and *[shall]***must** specify the
 5 dollar amount of the payment and the date the employer intends to make the payment.

6 ~~[(13)]~~**(14)** Method of payment. A surplus lump-sum payment must be made by
 7 either electronic transfer or check payable to the Public Employees Retirement System.

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

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

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

21 (c) Except as provided in subsection ~~[(14)]~~**(15)**(d), if the surplus lump-sum payment
 22 received by PERS is other than any amount specified in the notification under section
 23 ~~[(12)]~~**(13)** of this rule, the employer’s contribution rate shall be adjusted to the rate the

1 payment amount fully funds using the actuarial calculation in section [(9)](10) of this
2 rule.

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

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

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

10 (B) Taking action pursuant to ORS 238.225.

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

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

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

21 [(b)](17) **Side Account.** The surplus lump-sum payment shall be held in a Side
22 Account for the benefit of the employer making the surplus lump-sum payment. [On an
23 annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-

1 *funded contributions held in the Side Account that are to be amortized for that year.] **The***
 2 **amount amortized for each payroll reporting period shall be applied from the Side**
 3 **Account to the Employer Contribution Account of the individual employer or of the**
 4 **actuarial group in which the employer is participating, as applicable. The side**
 5 **account amortization period shall be equal to the remaining period that new Tier**
 6 **One and Tier Two gains and losses were amortized in the last rate-setting valuation.**

7 *[(c) 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 of the*
 9 *individual employer or of the actuarial group in which the employer is participating, as*
 10 *applicable.]*

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

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

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

22 Stat. Auth.: ORS 238.650

23 Stats. Implemented: ORS 238.225 to 238.229

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Oregon

Theodore R. Kulongoski, Governor

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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: Notice of Rulemaking for OAR 459-009-0130,
Employee Contributions for Prior Periods

MEETING DATE	9/21/07
AGENDA ITEM	C.5. Employee Contributions

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Address employer concerns about invoicing for employee contributions.
- Subject: Employee Contributions for Prior Periods.
- Policy Issues:
 1. When contributions are to be paid by the employee, should the employee not receive benefits from those contributions unless and until they are paid?
 2. Whether PERS should accept responsibility to pay for earnings associated with a prior period contribution and, if so, under what circumstances?

BACKGROUND

Employers raised several issues in the rulemaking on OAR 459-001-0030 to -0040 on reviews of appeals and contested cases. Some of these issues were particular to the process of invoicing employers for contributions in prior calendar years and for the earnings associated with those contributions. Staff indicated that those issues were better addressed in the rule related to the invoicing for those contributions, so we have begun rulemaking accordingly.

Prior period contributions can be owed for a number of reasons, such as determining that employment was in a qualifying position or that the employer inadvertently failed to make contributions. These circumstances are most often discovered when an employee's records are audited at the time of a benefit payment (retirement allowance or withdrawal). Previous practice had been for PERS to invoice the employer for all contributions and the earnings those contributions would have accrued had they been received when originally due.

POLICY ISSUES

1. *When contributions are to be paid by the employee, should the employee not receive benefits from those contributions unless and until they are paid?*

All employee contributions (whether to the PERS Chapter 238 regular or variable accounts or to the Individual Account Program) are paid by employers through the reporting and invoicing process. If the employer had agreed to assume and pay those contributions in a prior period, those should be billed to the employer. If, however, the employee had agreed to

pay those contributions, on either a pre- or after-tax basis, employers have advanced the position that they should not be responsible to pay those contributions. Previously, PERS would invoice the employer for all contributions and leave it to the employer to collect from the employee. Often, given the span of years, the employer has lost track of the employee and does not have any choice but to pay the contributions themselves, even if they had a different agreement with that employee at the time of the original employment.

The proposed rule modifications (at Section (1)(b)) would change the current practice so that contributions originally payable by the employee would be forwarded to PERS only when received by the employer. If the employee does not pay the contributions owed, no benefit would be paid for that period. Lastly, the notice to the employer and employee about the prior period contributions would include a deadline by which they must be paid (see Section (2)). The main purpose of the deadline is to establish closure so the employee can't remit the contributions years later and re-open the benefit payment process. That deadline will probably depend on the benefit to be paid, such as whether the member has applied for retirement.

2. *Whether PERS should accept responsibility to pay for earnings associated with a prior period contribution and, if so, under what circumstances?*

As described above, the current practice is to invoice the employer for all the earnings that a prior period contribution would have earned had it been paid in the prior period. Employers have identified several instances where PERS knew or should have known that the contributions were owed but hadn't made a final determination and issued an invoice until years later. This delay increases the amount of earnings owed, and employers contend that PERS should be responsible for those earnings caused by its delay. The proposed rule modifications impose an obligation on PERS to pay for earnings associated with any periods which occur after PERS has returned or failed to accept the contributions in question from the employer.

The proposed rule modifications also designate that any earnings PERS pays would be charged against the earnings available for distribution for the year that they were credited to the member's account. Employers originally discussed whether the Contingency Reserve could be a source of funds to pay these earnings. However, ORS 238.670(1)(b) prohibits use of that reserve's funds for expenses related to adjudicating an individual member's benefits or employer's liabilities. Instead, if PERS accepted responsibility for these earnings, we propose that they be charged to that year's available earnings.

The Employers PERS Alliance (Alliance) raised several issues that staff did not address in this rule, as explained below:

- *Contributions and associated earnings from retroactive changes:* The Alliance suggested that contributions and earnings resulting from retroactive changes to law or agency rule, policy, or practice be charged to the Contingency Reserve or administrative expenses. Staff contends that any changes caused by legislation should include a determination by the legislature as to whether those costs should be borne by individual employers or all employers and members collectively through a charge to administrative expenses or a

reserve. We would encourage that the legislature should make that explicit through any law that is projected to trigger such an obligation.

Any retroactive payment charges resulting from an agency action (rule, policy, or practice) would be a determination that an employer could challenge under the rules on reviews, contests, and appeals. Whether the charges are more appropriately borne by the employer or PERS could be resolved under those dispute resolution rules. If a widespread change occurs to trigger charges to a group or class of employers, the Contingency Reserve may be available for paying costs in resolving that dispute and the PERS Board could decide to do so.

- *Concurrent employment*: Contributions and associated earnings are sometimes payable because the employee was working for several PERS employers concurrently. If the employee worked more than 600 hours in a calendar year, contributions would be owed for that employment even if no single employer knew the employee had exceeded the threshold. The Alliance suggested that employers be held harmless from such costs and that, instead, they be borne by the Contingency Reserve or administrative expenses. As discussed above, the Contingency Reserve may not be available to pay the costs resulting from individual employer disputes. Therefore, were PERS to incur these costs, they would be spread across all employers and members as an administrative expense.

Staff doesn't concur that, as a policy matter, costs resulting from concurrent employment should necessarily be allocated to all participating employers and members. If, instead, the employers can suggest a different allocation method involving only that employee's employers, that can be considered for further modification.

- *Payment plans and methods for employers*: The Alliance also requested that PERS allow employers to pay for contributions and earnings over time instead of at the point at which the obligation is recognized. Staff is concerned that these arrangements could create anomalies in the determination of system liabilities and valuation of assets. Plus, there is no statutory authority for PERS to provide payment plans to employers as there is for recovering overpayments from members under ORS 238.715.

LEGAL REVIEW

The attached draft rule 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 October 23, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on October 26, 2007 at 5:00 p.m.

IMPACT

Mandatory: No, the Board need not adopt the rule. The modifications are proposed at the request of the Employers PERS Alliance.

Impact: Members would no longer receive benefits resulting from prior period contributions unless they paid those contributions themselves, if they had originally agreed to pay those contributions at the time of their employment.

Cost: PERS would incur additional costs if it accepted responsibility for some of the earnings associated with prior period contributions. These costs would reduce the earnings available for distribution, spreading that impact predominantly over employers, members, and the Benefits-In-Force (BIF) reserve.

RULEMAKING TIMELINE

- | | |
|--------------------|---|
| August 15, 2007 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| September 1, 2007 | <i>Oregon Bulletin</i> published the Notice. |
| September 21, 2007 | PERS Board notified that staff began the rulemaking process. |
| October 19, 2007 | First reading of the rule. |
| October 23, 2007 | Rulemaking hearing to be held at 2:00 p.m. in Tigard. |
| October 26, 2007 | Public comment period ends at 5:00 p.m. |
| November 16, 2007 | Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research. |

NEXT STEPS

A hearing will be held on October 23, 2007. The rule is scheduled to be brought before the PERS Board for adoption at the November 16, 2007 meeting.

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

1 **459-009-0130**

2 **[Invoicing for Delinquent] Employee Contributions for Prior Periods**

3 (1) When *[required to invoice for]* employee contributions~~[, or employer "pick-up"~~
4 *of employee contributions,]* (ORS 238.205)~~[,]~~ **are determined by PERS to be required**
5 **for [on wages] salary** paid in previous calendar years, or allocated to such years pursuant
6 to ORS 238.005~~[(11)]~~**(21)(b)(C) or ORS 238A.005(16)(b)(E),[:]** **PERS must notify**
7 **both the employee and the employer of the amount of contributions required, the**
8 **pay period and salary for which the contributions are to be paid, and the**
9 **information relied upon by PERS in determining that the contributions are due.**

10 **The notice will also identify the person required to pay the contributions as follows:**

11 *[For Tier One members, an amount equal to the earnings actually distributed for*
12 *Tier One members for those years shall be added to the Tier One member's individual*
13 *account and the amount charged to the employer.]*

14 *[(2) For Tier Two members, an amount equal to the amount actually distributed for*
15 *Tier Two members for those years shall be added to the Tier Two member's individual*
16 *account and charged to the employer.]*

17 *[(3) For both Tier One and Tier Two members participating in the Variable Annuity,*
18 *an amount equal to the amount actually distributed to members participating in the*
19 *Variable Annuity for those years shall be added to the member's account in the Variable*
20 *Annuity account in the Fund and charged to the employer.]*

21 **(a) If PERS determines that the contributions should be paid as EPPT, as**
22 **defined in OAR 459-009-0200, the employer must pay the contributions.**

1 **(b) If PERS determines the contributions should be paid as MPPT or MPAT,**
2 **the employee must pay the contributions to the employer for remittance to PERS.**
3 **The notice will also include a date by which the contributions must be received by**
4 **PERS to be included in the employee’s benefit calculation. If the employee does not**
5 **pay the contributions by the deadline stated in the notice, the employee will receive**
6 **no benefit related to the pay period for which those contributions are required.**

7 **(2) The notice provided under section (1) will also include a determination of**
8 **the amount of earnings owed on the contributions and the extent to which PERS has**
9 **determined that the employer should pay those earnings or to which PERS will pay**
10 **the earnings.**

11 **(a) In determining the amount of earnings that the employer should pay, PERS**
12 **will not include earnings accrued for periods after PERS has returned or failed to**
13 **accept the contributions if the employer paid them before PERS sent the notice that**
14 **they were owed.**

15 **(b) Any earnings paid by PERS will be charged to administrative expenses for**
16 **the year in which the earnings are actually credited to the employee’s account.**

17 **Stat. Auth: ORS 238.650**

18 **Stats. Implemented: ORS 238.200 and 238.705**



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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: Notice of Rulemaking for Eligibility Rules for the PERS Chapter 238 Program
OAR 459-010-0003, *Eligibility and Membership for the PERS Chapter 238 Program*
OAR 459-010-0014, *Creditable Service in the PERS Chapter 238 Program*
OAR 459-010-0035, *Six-Month Waiting Period*
OAR 459-013-0110, *Eligibility for Early Benefits*

MEETING DATE	9/21/07
AGENDA ITEM	C.6. Eligibility

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: The current rules need to be amended to clarify current practice and administration of eligibility standards for membership, accrual of creditable service, and the effect of reaching earliest retirement age.
- Subject: Eligibility for membership, accrual of creditable service, and effect of reaching earliest retirement age in the PERS Chapter 238 Program.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

To become eligible for benefits in the PERS Chapter 238 Program, an employee must establish membership by completing a waiting period and meet certain other criteria. Once membership is established, the member's employment periods may result in accrual of creditable service, which is used for calculating retirement benefits and establishing eligibility for other aspects of the program, like non-duty disability benefits. Reaching earliest retirement age triggers certain protections that preserve benefit eligibility.

While the statutory criteria for these plan elements have remained relatively constant, PERS' approach to these determinations has evolved through attempts to eliminate complexity and accelerate the process. Now, the EDX reporting system had further evolved the type and nature of information available for these determinations. The employer is now able to clearly communicate their intention as to whether an employee is in a qualifying position, and PERS can track employment segments better to make more timely determinations. Staff began rulemaking on the following rules to more comprehensively clarify standards and practices in these areas of program administration.

OAR 459-010-0003: This rule outlines the criteria to establish membership in the PERS Chapter 238 Program. The proposed rule modifications streamline and simplify the process and give relevance to an employer's designation of a position as qualifying or non-qualifying.

Acknowledging that the employer can best determine whether a position is qualifying, PERS accepts the employer's designation of a position as qualifying or non-qualifying unless the actual employment record demonstrates that an employee objectively did or did not meet the statutory standard. The proposed Section (5) of the rule reflects provisions on establishing membership moved from OAR 459-010-0035, Six-Month Waiting Period. Those provisions are more appropriately placed in this rule.

OAR 459-010-0014: This rule provides standards used for the determination of accrual of creditable service by an active member of the PERS Chapter 238 Program. The rule was restructured and edited to clarify its existing provisions.

OAR 459-010-0035: This rule outlines the requirements of the six-month waiting period to establish membership in the PERS Chapter 238 Program. The proposed rule modifications incorporate the qualifying position definition of OAR 459-010-0003, clarify the start date of a waiting period, and add provisions on extending the waiting period of school employees for periods during which school is not in session.

OAR 459-013-0010: This rule was last modified in 1999; these modifications delete provisions that are unnecessary or no longer relevant. The proposed rule modifications also clarify the status of a member who reaches earliest retirement age.

LEGAL REVIEW

The attached draft 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 will be held on October 23, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on October 26, 2007 at 5:00 p.m.

IMPACT

Mandatory: No, the Board could retain the existing rules language, but the rules would be less clear and would inhibit the simplification of these determinations.

Impact: Employers, members, and staff will benefit from the rules' clarification and simplification of the standards used in these determinations. More manageable standards will enhance understanding and efficient administration by employers and staff.

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

RULEMAKING TIMELINE

August 15, 2007 Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.

September 1, 2007 *Oregon Bulletin* published the Notice.

Notice – Eligibility Rules

9/21/2007

Page 3 of 3

- September 21, 2007 PERS Board notified that staff began the rulemaking process.
- October 19, 2007 First reading of the rules.
- October 23, 2007 Rulemaking hearing to be held at 2:00 p.m. in Tigard.
- October 26, 2007 Public comment period ends at 5:00 p.m.
- November 16, 2007 Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing will be held on October 23, 2007. The rules are scheduled to be presented to the PERS Board for adoption at the November 16, 2007 meeting.

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 010 – MEMBERSHIP**

1 **459-010-0003**

2 **Eligibility and Membership for the PERS Chapter 238 Program**

3 (1) For the purpose of this rule:

4 (a) “Concurrent positions” means *[positions]***employment** with two or more *[PERS]*
5 participating employers *[where the positions occur together]* in *[any given]***the same**
6 calendar year.

7 **(b) “Partial year of separation” means a period in the calendar year the**
8 **employee separates from employment that begins on January 1 of the year and ends**
9 **before the last working day of the year.**

10 *[(b)](c)* “Qualifying position” means **a position designated by the employer as**
11 **qualifying, except:**

12 **(A) A position or concurrent positions in which an employee performs at least**
13 **600 hours of service in a calendar year is qualifying regardless of employer**
14 **designation;**

15 **(B) A position in a partial year of separation that is continued from an**
16 **immediately preceding calendar year in which the employee performed at least 600**
17 **hours of service in the position or concurrent positions is qualifying regardless of**
18 **employer designation; and**

19 **(C) A position with one employer in which the employee is employed for the**
20 **entire calendar year and fails to perform at least 600 hours of service in that**
21 **position or concurrent positions in the calendar year is non-qualifying regardless of**
22 **employer designation.**

1 *[(A) For an employee who is employed in a position or in concurrent positions*
2 *designated as non-qualifying and performs 600 or more total hours of service in a*
3 *calendar year, the position or concurrent positions will be considered qualifying and the*
4 *employee shall be considered to have performed service in a qualifying position from the*
5 *date of employment or January 1 of the calendar year in which the employee performed*
6 *more than 600 hours of service, whichever is later.]*

7 *[(B) Except as provided in paragraph (C) of this subsection, for an employee who is*
8 *employed in a position or concurrent positions designated as qualifying and performs*
9 *less than 600 hours of service in a calendar year, the position or concurrent positions*
10 *will be considered non-qualifying from the date of employment or January 1 of the*
11 *calendar year in which the employee performed less than 600 hours of service, whichever*
12 *is later.]*

13 *[(C) For purposes of determining qualification upon separation from employment,*
14 *but not for any other purpose, if an employee was employed in a position or concurrent*
15 *positions for less than a full calendar year and performed less than 600 hours of service*
16 *in that calendar year, but would have performed 600 hours of service or more if the*
17 *employee had performed service in the same position or concurrent positions for the full*
18 *calendar year, and if the employee performed 600 or more hours of service in the*
19 *previous calendar year, the position or concurrent positions will be considered qualifying*
20 *up to the date of separation.]*

21 *[(c)](d) “Service” means a[ny calendar month] **period in which** an employee:*

22 (A) Is in an employer/employee relationship, as defined in OAR 459-010-0030; and

1 (B) Receive~~[d]~~s a payment of “salary,” as defined in ORS 238.005 or similar
2 payment from workers compensation or disability.

3 **(e) “Working day” means a day that the employer is open for business.**

4 **(2) At the time an employee is hired, an employer must designate the**
5 **employee’s position as qualifying or non-qualifying. An employer must designate a**
6 **position as qualifying if the position is one in which an employee would normally**
7 **perform at least 600 hours of service in a calendar year.**

8 **(3) Employer designation of a position as qualifying or non-qualifying must be**
9 **determined by PERS from information communicated to PERS by the employer.**
10 **An employer designation that is contrary to the provisions of subsection (1)(c) of**
11 **this rule in any calendar year will be reversed for that calendar year.**

12 ~~[(2)]~~**(4) Eligibility.** An employee **who is employed in a qualifying position before**
13 **August 29, 2003 by an employer participating in the PERS Chapter 238 Program is**
14 **eligible to become a member of that program** *[qualifies as a member of PERS under*
15 *ORS 238.015]* if the employee:

16 (a) **Begins***[Has completed a 6]* **the six-**month waiting period **described in OAR**
17 **459-010-0035 before August 29, 2003;***[as defined in ORS 238.015(1);]*

18 *[(b) Has been employed in a qualifying position];*

19 *[(c) Is not otherwise ineligible for membership; and]*

20 *[(d)]***(b)** *[Has]***Does** not elect~~[ed]~~ to participate in an optional or alternative
21 retirement plan as provided in ORS Chapters 243 and 353~~[.]~~; **and**

22 **(c) Is not otherwise ineligible for membership.**

1 **(5) Membership. An employee who meets the requirements of section (4) of this**
 2 **rule becomes a member of the PERS Chapter 238 Program on the first day of the**
 3 **calendar month following the completion of the six-month waiting period described**
 4 **in OAR 459-010-0035 provided that the employee is employed on that date by the**
 5 **same employer that employed the employee throughout the waiting period.**

6 *[(3) An employee shall remain an active member in PERS if the employee is*
 7 *employed in a qualifying position that totals 600 or more hours of service per calendar*
 8 *year.]*

9 *[(4) If an employee hired into a non-qualifying position completed service meeting*
 10 *the definition of “qualifying position” under section (1)(b) of this rule, the employee shall*
 11 *qualify as an active member for that calendar year.]*

12 *[(5)(a) If an active member in a qualifying position is terminated or they separate*
 13 *from employment prior to completing 600 hours of service in a year, the member shall*
 14 *not receive any service credit for that year unless they qualify under section (1)(b)(C)*
 15 *above.]*

16 *[(b) If an active member in a qualifying position is terminated or they separate from*
 17 *employment prior to completing 600 hours of service in a year and do not qualify under*
 18 *section (1)(b)(C), in addition to not receiving any service credit, all contributions for the*
 19 *year, employee and employer, shall be credited to the employer.*

20 *[(6) The provisions of this rule are effective for all eligibility determinations made*
 21 *on or after January 1, 2006.]*

22 Stat. Auth.: ORS 238.650

23 Stats. Implemented: ORS 238.005, 238.015, & 238A.025 [243.800 & 353.250]

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 010 – MEMBERSHIP

1 459-010-0014

2 Creditable Service in the PERS Chapter 238 Program

3 (1) For purposes of this rule:

4 (a) “Active member” has the same meaning as provided in ORS 238.005(12)(b).

5 (b) “Creditable service” has the same meaning as provided in ORS 238.005(5).

6 (c) “Major fraction of a month” means a minimum of 50 hours in any calendar
7 month in which an active member is being paid a salary by a participating public
8 employer and for which benefits under ORS Chapter 238 are funded by employer
9 contributions.

10 (2) An active member accrues one month of creditable service for each month
11 in which the member performs service for the major fraction of the month.

12 (3) An active member is presumed to have performed service for a major
13 fraction of a month if:

14 (a) The member performs at least 600 hours of service in the calendar year and
15 the member’s employer(s) reports salary and hours for a pay period occurring
16 within the calendar month;

17 (b) The member starts employment on or before the 15th day of the calendar
18 month;

19 (c) The member ends employment on or after the 16th day of the calendar
20 month; or

21 (d) The member ends employment before the 16th day of the calendar month,
22 but is reemployed in a qualifying position before the end of the calendar month.

1 **(4) A determination of creditable service based on the presumptions in section**
 2 **(3) of this rule may be rebutted by the member or the employer by providing**
 3 **records that establish that the member did or did not perform service for the major**
 4 **fraction of a month as defined in subsection (1)(c) of this rule.**

5 **(5) Sections (2) and (3) of this rule notwithstanding, an active member who is a**
 6 **school employee will accrue six months of creditable service if the member performs**
 7 **service for all portions of a school year that fall between January 1 and June 30, and**
 8 **six months of creditable service if the member performs service for all portions of a**
 9 **school year that fall between July 1 and December 31.**

10 **(6) A member may not accrue more than one month of creditable service for**
 11 **any calendar month and no more than one year of creditable service for any**
 12 **calendar year.**

13 **(7) The provisions of this rule are effective for service credit determinations**
 14 **made on or after January 1, 2008.**

15 *[(a) "Service credit" has the same meaning as "creditable service" in ORS*
 16 *238.005(5).]*

17 *[(b) "Major fraction of a month" means a minimum of 50 hours in any calendar*
 18 *month in which an active member is being paid a salary by a participating public*
 19 *employer and contributions are due to the system either by or on behalf of the member.]*

20 *[(2) An active member will be considered to have met the definition of performing*
 21 *service for a major fraction of a calendar month if:]*

22 *[(a) The member has performed at least 600 hours of qualifying service, as defined*
 23 *in OAR Chapter 459, in that same calendar year; and]*

1 *[(b) The member's employer(s) have reported salary and hours for a pay period*
2 *occurring within that calendar month.]*

3 *[(3) An active member will not be considered to have met the definition of*
4 *performing service for a major fraction of a calendar month if the member:]*

5 *[(a) Starts employment after the 15th of a calendar month, or]*

6 *[(b) Ends employment prior to the 16th of a calendar month, unless the member*
7 *begins employment again in another qualifying position prior to the end of that calendar*
8 *month.]*

9 *[(4) The granting or denial of creditable service based on the considerations in*
10 *sections (2) and (3) above can be rebutted by the member or employer providing records*
11 *that establish that the member did or did not in fact perform service for the requisite*
12 *number of hours required to be considered a major fraction of a month under section*
13 *(1).]*

14 *[(5) If the active member is a school employee, they may instead accrue one half*
15 *year of service credit if the employee:]*

16 *[(a) Is or was employed in a qualifying position as defined in OAR Chapter 459;*
17 *and]*

18 *[(b) Is employed for all portions of a school year when it is normally in session.]*

19 *[(6) Except as provided for under section (3) of this rule, an employee may not*
20 *accrue more than one full month of service credit for any number of hours worked in a*
21 *calendar month and no more than one year of service credit for any number of hours*
22 *worked in a calendar year.]*

1 *[(7) The provisions of this rule are effective for service credit determinations made*
2 *on or after January 1, 2006.]*

3 Stat. Auth.: ORS 238.650

4 Stats. Implemented: ORS 238.[015]**005, 238.300**

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 010 – MEMBERSHIP**

1 **459-010-0035**

2 **Six-Month Waiting Period**

3 (1) The six-month waiting period required for establishing membership under ORS
4 238.015 is *[shall be]* six full calendar months of service *[(uninterrupted by a total of*
5 *more than 30 working days during such six months) to]* with the same employer *[or*
6 *concurrent employers]*. The service must be in a qualifying position, as defined in
7 OAR 459-010-0003. The six full calendar months of service may not be interrupted
8 by more than 30 consecutive working days. For the purposes of this rule, a working
9 day is defined as a day that the employer is open for business.

10 (2) The waiting period begins*[six full calendar months]*:

11 (a) *[Begins o]* On the date the employee is hired, and includes the month of hire as
12 a full calendar month, if the date of hire is the first business day of the month. For
13 the purposes of this rule, a business day is defined as Monday through Friday when
14 PERS is open for business; [and]

15 (b) On the first day of the month following the date of hire; or

16 (c) On the first day of the month following the end date of an interruption of
17 service of more than 30 consecutive working days.

18 *[(b) Includes the month in which the employee is hired if employment begins on the*
19 *first business day of the month. For the purposes of this rule, a business day is Monday*
20 *through Friday when PERS is open for business.]*

21 *[(2) Membership in the system shall be established as of the first of the month*
22 *following six full calendar months of service, as defined in section (1) of this rule,*

1 provided that the employee is employed on that date by the same employer or employers
2 concurrently employing the employee during that six-month period.]

3 (3) In the event an employee is on an an [qualified]official leave of absence under
4 OAR 459-010-0010, the period of absence shall not constitute an interruption of the
5 waiting period under Section (1) of this rule. The [six-month] waiting period shall be
6 extended by the length of the [qualified] leave of absence.

7 **(4) Absence from service by an educational employee during periods that the**
8 **employing educational institution is not in session does not constitute an**
9 **interruption of the waiting period under Section (1) of this rule. The waiting period**
10 **shall be extended by the length of the period the educational institution is not in**
11 **session.**

12 [(4) The provisions of this rule shall be applied retroactively to August 1, 2003.]

13 Stat. Auth.: ORS 238.650

14 Stats. Implemented: ORS 238.015 [& 238A.025]

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 013 – RETIREMENT BENEFITS**

1 **459-013-0110**

2 **Eligibility for Early Benefits**

3 **A member who reaches earliest retirement age under ORS 238.280 becomes**
4 **eligible for a service retirement benefit that will be paid upon written application to**
5 **the Board. After becoming eligible under that section, a member may not withdraw**
6 **their account under ORS 238.265 nor will their membership terminate by operation**
7 **of ORS 238.095(2).**

8 *[(1) Any member who is within five years of the earliest service retirement age may*
9 *terminate employment with all participating employers and become eligible for reduced*
10 *service benefits, including prior service pension, on reaching the earliest service*
11 *retirement age by filing a written application with PERS for such benefits. The member's*
12 *benefit account shall be established on the first day of the month in which the application*
13 *is received by PERS or the first day of the month following the date of separation,*
14 *whichever is the later, and in no case shall be retroactive to an earlier date.]*

15 *[(2) Before normal retirement age, a member shall not be eligible to retire unless the*
16 *member has a severance from employment with all employers participating in PERS and*
17 *all employers in the same controlled group as a participating employer. For this purpose,*
18 *a "controlled group" is a group of employers required to be treated as a single employer*
19 *for purposes of satisfying the requirements for qualified retirement plans under federal*
20 *law.]*

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238.280 **& 238.095**

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Oregon

Theodore R. Kulongoski, Governor

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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: Notice of Rulemaking for Earnings Crediting at Loss of Membership Rules
OAR 459-007-0110, *Crediting Earnings at Tier One Loss of Membership*
OAR 459-007-0160, *Crediting Earnings to Loss of Membership Account for Periods of Active Membership*
OAR 459-007-0290, *Crediting Earnings at Tier Two Loss of Membership*

MEETING DATE	9/21/07
AGENDA ITEM	C.7. LOM Earnings Crediting

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Section 5 of HB 2619 requires PERS to credit net earnings to Loss of Membership accounts when a former member re-establishes active membership. OAR 459-007-0110 and 459-007-0290 need to be amended to reflect this change and OAR 459-007-0160 is a new rule explaining how the Loss of Membership accounts will be credited.
- Subject: Crediting earnings to Loss of Membership accounts for periods of active membership.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

HB 2619, effective July 16, 2007, includes a provision requiring PERS to credit earnings and losses to Loss of Membership accounts when a former member establishes active membership. Net earnings and losses will be credited only for periods of active membership on and after July 16, 2007. The proposed rule modifications and creation are necessary because of this statutory change.

OAR 459-007-0110: The proposed rule modification provides an exception under which a Tier One member's Loss of Membership account will receive earnings by referencing the new OAR.

OAR 459-007-0290: The proposed rule modification provides an exception under which a Tier Two member's Loss of Membership account will receive earnings by referencing the new OAR.

OAR 459-007-0160: This new rule outlines the manner in which Loss of Membership accounts will be credited with net earnings and losses.

LEGAL REVIEW

The attached draft 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 will be held on October 23, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on October 26, 2007 at 5:00 p.m.

IMPACT

Mandatory: Yes, the exiting rules' provisions are contrary to Section 5 of HB 2619. The rule modifications and the creation of the new rule accommodate the statutory change.

Impact: Members will benefit from the crediting of earnings to Loss of Membership accounts during periods they are unable to withdraw these accounts.

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

RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 19, 2007	First reading of the rules.
October 23, 2007	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
October 26, 2007	Public comment period ends at 5:00 p.m.
November 16, 2007	Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing will be held on October 23, 2007. The rules are scheduled to be presented to the PERS Board for adoption at the November 16, 2007 meeting.

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459**

DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION

1 **459-007-0110**

2 **Crediting Earnings at Tier One Loss of Membership**

3 When a Tier One member's membership terminates under ORS 238.095(2), earnings
4 from the effective date of the last annual rate to the first of the month following the
5 month of loss of membership shall be credited to the member account in the manner
6 specified in this rule.

7 (1) Earnings on the former member's regular account shall be credited as follows:

8 (a) If earnings for the calendar year [*prior to*]**before** the date of loss of membership
9 have not yet been credited, earnings shall be credited for that year based on the latest
10 year-to-date calculation available for that year.

11 (b) Earnings for the calendar year of loss of membership shall be credited based on
12 the latest year-to-date calculation as of the first of the month following the date of loss of
13 membership.

14 (2) If the former member is participating in the Variable Annuity Account, earnings
15 or losses of the Variable Annuity Account shall be credited to the former member's
16 variable account as follows:

17 (a) If earnings or losses for the calendar year [*prior to*]**before** the date of loss of
18 membership have not yet been credited, earnings or losses for that year shall be credited
19 based on the latest year-to-date calculation available for that year.

20 (b) Earnings or losses for the calendar year of loss of membership shall be credited
21 as of the end of the calendar month of loss of membership based on the latest year-to-date
22 calculation as of the first of the month following the date of loss of membership

1 (3) **Except as provided in OAR 459-007-0160**, [N]no earnings or losses shall be
2 credited for any period following the calendar month of loss of membership.

3 Stat. Auth.: ORS 238.650

4 Stats. Implemented: ORS 238.095 & ORS 238.435

OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459

DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION

1 **459-007-0160**

2 **Crediting Earnings to Loss of Membership Account for Periods of Active**

3 **Membership**

4 **In accordance with ORS 238.095(5), as amended by section 5, chapter 776,**
5 **Oregon Laws 2007, when a former member establishes membership in the system**
6 **and has a Loss of Membership account, earnings or losses during dates of active**
7 **membership will be credited to the Loss of Membership account in the manner**
8 **specified in this rule.**

9 **(1) Partial year crediting.**

10 **(a) If active membership begins after the first of the year and continues through**
11 **the end of the calendar year, earnings or losses from the date of active membership**
12 **to December 31 of that calendar year shall be credited to the Loss of Membership**
13 **account based on the Tier Two rate for the calendar year less the latest year to date**
14 **Tier Two rate on the date of active membership.**

15 **(b) If the member is active on January 1 of the calendar year and active**
16 **membership ends before December 31 of that calendar year, earnings or losses shall**
17 **be credited to the Loss of Membership account based on the latest year to date Tier**
18 **Two rate available as of the first of the month in which active membership ends.**

19 **(c) If active membership begins after the first of the year and ends before**
20 **December 31 of that calendar year, earnings or losses shall be credited to the Loss of**
21 **Membership account based on the latest year to date Tier Two rate available as of**

1 **the first of the month in which active membership ends less the latest year to date**

2 **Tier Two rate available on the date of active membership.**

3 **(2) Full year crediting. Earnings or losses for full calendar years of active**

4 **membership will be credited based on the Tier Two rate for the year.**

5 **(3) The effective date of this rule is July 17, 2007. No earnings or losses will be**

6 **credited to a Loss of Membership account for periods of active membership before**

7 **July 17, 2007.**

8 **Stat. Auth.: ORS 238.650**

9 **Stats. Implemented: ORS 238.095, 238.435 & OL 2007 Ch. 776**

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459**

DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION

1 **459-007-0290**

2 **Crediting Earnings at Tier Two Loss of Membership**

3 When a Tier Two member's membership terminates under ORS 238.095(2), earnings
4 from the effective date of the last annual rate through the end of the month of loss of
5 membership shall be credited to the member account in the manner specified in this rule.

6 (1) Earnings or losses on the former member's regular account shall be credited as
7 follows:

8 (a) If earnings or losses for the calendar year [*prior to*]**before** the date of loss of
9 membership have not yet been credited, earnings or losses shall be credited for that year
10 based on the latest year-to-date calculation available for that year.

11 (b) Earnings or losses for the calendar year of loss of membership shall be credited
12 based on the latest year-to-date calculation as of the end of the month of the date of loss
13 of membership

14 (2) If the former member is participating in the Variable Annuity Account, earnings
15 or losses of the Variable Annuity Account shall be credited to the former member's
16 variable account as follows:

17 (a) If earnings or losses for the calendar year [*prior to*]**before** the date of loss of
18 membership have not yet been credited, earnings or losses for that year shall be credited
19 based on the latest year-to-date calculation for that year.

20 (b) Earnings or losses for the calendar year of loss of membership shall be credited
21 as of the end of the month of loss of membership based on the latest year-to-date
22 calculation as of the first of the month following the date of loss of membership.

1 (3) **Except as provided in OAR 459-007-0160**, [N]no earnings or losses shall be
2 credited for any period following the calendar month of loss of membership.

3 Stat. Auth.: ORS 238.650

4 Stats. Implemented: ORS 238.095



Oregon

Theodore R. Kulongoski, Governor

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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: Notice of Rulemaking for Rules Affected by House Bill
2285, Elimination of "Break in Service"/Accrual of Retirement Credit.
OAR 459-011-0050, *Forfeiture and Restoration of Service Rights*
OAR 459-070-0001, *Definitions*
OAR 459-075-0010, *Eligibility and Membership*
OAR 459-075-0150, *OPSRP Retirement Credit*

MEETING DATE	9/21/07
AGENDA ITEM	C.8. BIS Elimination

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: These rules were originally drafted to accommodate provisions of ORS Chapter 238A (2003) regarding "Break in Service" and the full-time equivalency (FTE) accrual method for OPSRP Pension Program retirement credit. The rules need to be amended to comply with the elimination of these concepts by House Bill 2285.
- Subject: Elimination of "Break in Service" and Accrual of OPSRP Pension Program Retirement Credit.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

House Bill 2285 eliminates the statutory provisions for "Break in Service." "Break in Service" established special conditions under which a PERS Chapter 238 Program member would become a member of the OPSRP Pension Program upon returning to PERS-covered employment. HB 2285 applies retroactively to treat "Break in Service" as if it had never existed. A PERS Chapter 238 Program member remains a member of that program unless that membership is terminated under the provisions of ORS 238.095.

HB 2285 also retroactively eliminates the FTE accrual method of OPSRP Pension Program retirement credit and establishes an accrual method that parallels the accrual of creditable service in the PERS Chapter 238 Program.

The proposed modifications to these rules are necessary to accommodate the provisions of HB 2285.

OAR 459-011-0050: A PERS Chapter 238 Program member who withdraws and returns to PERS-covered employment may, under certain circumstances, restore the membership and service rights forfeited by the withdrawal. The proposed rule modifications eliminate provisions applying "Break in Service" to the restoration of rights under this rule.

OAR 459-070-0001: This rule provides definitions to be used in the OARs in Divisions 070, 075, and 080 regarding OPSRP. The proposed rule modifications remove “Break in Service” from the OPSRP definitions and, in addition, clarify standards for determining a qualifying position in the OPSRP Pension Program. The revised definitions of “qualifying position” and “service” reflect the same standards as in OAR 459-010-0003, which would result in parallel and consistent determinations in the OPSRP Pension and PERS Chapter 238 Programs.

OAR 459-075-0010: This rule outlines the criteria to establish membership in the OPSRP Pension Program. The proposed rule modifications delete text regarding the effect of “Break in Service” upon eligibility. The remaining eligibility provisions have been restructured for clarity and to include provisions addressing employment of a PERS Chapter 238 Program member by an employer participating only in the OPSRP Pension Program. The waiting period and membership provisions have been edited to provide for parallel administration of eligibility and membership in the PERS Chapter 238 Program provisions in OARs 459-010-0003 and 459-010-0035 to the extent permitted by statute.

OAR 459-075-0150: This rule was extensively rewritten to eliminate provisions regarding the FTE accrual method for OPSRP Pension Program retirement credit. The proposed modifications mirror the accrual method for creditable service in the PERS Chapter 238 Program, again providing for parallel and consistent administration of the programs.

LEGAL REVIEW

The attached draft 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 will be held on October 23, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on October 26, 2007 at 5:00 p.m.

IMPACT

Mandatory: Yes, the rules’ provisions regarding “Break in Service” and the accrual of OPSRP Pension Program retirement credit are contrary to the provisions of House Bill 2285. If not modified to accommodate the statutory changes the rules will become obsolete and meaningless.

Impact: Members, employers, and staff will benefit from comprehensive guidance regarding the implementation of House Bill 2285 and the parallel administration of programs.

Cost: There are no discrete costs attributable to these rules. Parallel administration of programs may provide administrative savings.

RULEMAKING TIMELINE

- | | |
|--------------------|--|
| August 15, 2007 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| September 1, 2007 | <i>Oregon Bulletin</i> published the Notice. |
| September 21, 2007 | PERS Board notified that staff began the rulemaking process. |

Notice – Elimination of Break in Service/Accrual of Retirement Credit Rules

9/21/2007

Page 3 of 3

- October 19, 2007 First reading of the rules.
- October 23, 2007 Rulemaking hearing to be held at 2:00 p.m. in Tigard.
- October 26, 2007 Public comment period ends at 5:00 p.m.
- November 16, 2007 Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing will be held on October 23, 2007. The rules are scheduled to be presented to the PERS Board for adoption at the November 16, 2007 meeting.

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 011 – RETIREMENT CREDIT**

1 **459-011-0050**

2 **Forfeiture and Restoration of Service Rights**

3 (1) A member who, pursuant to ORS 238.265, withdraws the amount credited to the
4 member's account forfeits all membership rights accrued under ORS chapter 238 [*prior*
5 *to*]**before** the date of the withdrawal, including any service rights attributable to
6 employment [*prior to*]**before** the date of the withdrawal.

7 (2) Any such person who reenters the service of a participating employer within five
8 years from the date of the last separation from employment that preceded the member's
9 withdrawal may, at any time during the one-year period immediately following the date
10 of reemployment, repay to PERS, in a single lump sum payment, an amount equal to the
11 amount withdrawn plus the earnings the amount withdrawn would have accumulated
12 from the date of withdrawal to the date of repayment. [*A person who makes a repayment*
13 *as described in this section shall establish or reestablish membership in the system as*
14 *provided in section (3) or (4) of this rule.*]

15 (3) [*If the date of the former member's repayment under section (2) is before the date*
16 *on which the former member incurs a "Break in Service" under ORS 238A.025, the*

17 **Upon repayment as described in section (2) of this rule, the** PERS Chapter 238
18 **Program** membership and service rights forfeited by the withdrawal will be **restored**
19 [*vived*]. The former member will reestablish membership in the PERS Chapter 238
20 Program on the first day of the month following the date of the repayment. **Service by**
21 **the former member from date of reemployment to the date membership is**

1 **reestablished shall be attributed to the PERS Chapter 238 Program.** The withdrawn
2 member account will be reestablished in the amount of the repayment.

3 *[(4) If the date of the former member's repayment under section (2) occurs on or*
4 *after the date the former member incurs a "Break in Service" under ORS 238A.025, the*
5 *PERS Chapter 238 membership and service rights forfeited by the withdrawal will be*
6 *restored to the extent they existed immediately prior to the withdrawal. The withdrawn*
7 *member account will be reestablished in the amount of the repayment. Membership and*
8 *service subsequent to the date of reemployment will be subject to the provisions of the*
9 *OPSRP Pension Program. The former member will establish membership in the OPSRP*
10 *Pension Program on the earlier of:]*

11 *[(a) The date the former member establishes membership pursuant to ORS*
12 *238A.100; or]*

13 *[(b) The first day of the month following the date of the repayment.]*

14 *[(5)]***(4)** Notwithstanding the provisions of this rule, a member who withdraws
15 pursuant to ORS 238.265 and receives an additional amount pursuant to section 2,
16 chapter 276, Oregon Laws 2003, may not reestablish membership under section (2) of
17 this rule.

18 Stat. Auth.: ORS 238.650

19 Stats. Implemented: ORS 238.105 **& OL 2007 Ch. 769**

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459**

DIVISION 070 – OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY

1 **459-070-0001**

2 **Definitions**

3 The words and phrases used in this Division have the same meaning given them in
4 ORS 238A.005 unless otherwise indicated *[in this rule]*. Specific and additional terms for
5 purposes of Divisions 70, 75 and 80 are defined as follows unless context requires
6 otherwise:

7 (1) “Academic employee of a community college” means an instructor who teaches
8 classes offered for college-approved credit or on a non-credit basis.

9 (a) Librarians, counselors, and aides in non-teaching positions, tutors, or other non-
10 teaching faculty, and classified, professional or nonprofessional support staff are not
11 academic employees for the purposes of section 20 of OL 2005 Ch. 332, but are subject
12 to the membership requirements under ORS 238A.100 and OAR 459-075-0010.

13 (b) The governing body of a community college shall determine who is an academic
14 employee in its employ under this rule. In making that determination, a community
15 college shall consider all disciplines (academic activity) collectively when an employee’s
16 assignment includes multiple disciplines.

17 *[(2) “Break in Service” means a period concluding on or after August 29, 2003,*
18 *during which a member of PERS performs no service with a participating public*
19 *employer in a qualifying position for a duration of:]*

20 *[(a) Six or more consecutive calendar months; or]*

21 *[(b) 12 or more consecutive calendar months under one of the following*
22 *circumstances:]*

1 *[(A) The member of PERS ceases performance of service for purposes that have*
2 *qualified the member for family leave, as described in ORS 238A.025(3)(c), as*
3 *determined by the employer; or]*

4 *[(B) The member of PERS ceases performance of service for career development*
5 *purposes, as described in ORS 238A.025(3)(d); or]*

6 *[(C) The member ceases performance of service on or after August 29, 2003 due to*
7 *the seasonal nature of the employee’s employment and does not return to the same*
8 *employer.]*

9 *[(3)](2) “Calendar month” means a full month beginning on the first calendar day of*
10 *a month and ending on the last calendar day of the same month.*

11 *[(4)](3) “Calendar year” means 12 calendar months beginning on January 1 and*
12 *ending on December 31 following.*

13 *[(5)](4) “Employee” has the same meaning as “eligible employee” in ORS*
14 *238A.005(4).*

15 *[(6)](5) “Employee class” means a group of similarly situated employees whose*
16 *positions have been designated by their employer in a policy or collective bargaining*
17 *agreement as having common characteristics.*

18 *[(7)](6) “Employee contributions” means contributions made to the individual*
19 *account program by an eligible employee under ORS 238A.330, or on behalf of the*
20 *employee under ORS 238A.335.*

21 *[(8)](7) “Final Average Salary” (FAS) has the same meaning given the term in:*

22 *(a) ORS 238A.130(1) for OPSRP Pension Program members who are not employed*
23 *by a local government as defined in ORS 174.116; or*

1 (b) ORS 238A.130(3) for OPSRP Pension Program members who are employed by a
2 local government as defined in ORS 174.116.

3 [(9)](8) “Member” has the same meaning given the term in ORS 238A.005(10).

4 [(10)](9) “Member account” means the account of a member of the individual
5 account program.

6 [(11)](10) “Member of PERS” has the same meaning as “member” in ORS
7 238.005(12)(a), but does not include retired members.

8 [(12)](11) “OPSRP” means the Oregon Public Service Retirement Plan.

9 [(13)](12) “Overtime” means the salary or hours, as applicable, that an employer has
10 designated as overtime.

11 **(13) “Partial year of separation” means a period in the calendar year the**
12 **employee separates from employment that begins on January 1 of the year and ends**
13 **before the last working day of the year.**

14 [(14) “PERS” means the retirement system established under ORS chapter 238.]

15 [(15)](14)[(a)] “Qualifying position” means a position **designated by the employer**
16 **as qualifying, except:**

17 **(a) A position or concurrent positions in which an employee performs at least**
18 **600 hours of service in a calendar year is qualifying regardless of employer**
19 **designation;**

20 **(b) A position in a partial year of separation that is continued from an**
21 **immediately preceding calendar year in which the employee performed at least 600**
22 **hours of service in the position or concurrent positions is qualifying regardless of**
23 **employer designation; and**

1 **(c) A position with one employer in which the employee is employed for the**
2 **entire calendar year and fails perform at least 600 hours of service in that position**
3 **or concurrent positions in the calendar year is non-qualifying regardless of**
4 **employer designation.** *[or positions in which an employee is expected to perform 600 or*
5 *more combined hours of service in a calendar year.]*

6 *[(b) An academic employee of a community college who is employed .375 full-time*
7 *equivalent (FTE) on a 12-month basis or .50 FTE on a 9-month basis is deemed to have*
8 *performed 600 hours or more in the calendar year.]*

9 *[(c) If an employee is employed in a position or positions not designated as*
10 *qualifying and performs 600 or more total hours of service in a calendar year, the*
11 *position or positions will be considered qualifying and the employee shall be considered*
12 *to have performed service in a qualifying position from the date of employment or*
13 *January 1 of the calendar year in which the employee performed more than 600 hours of*
14 *service, whichever is later.]*

15 *[(d) Except as provided in subsection (e) of this section, if an employee is employed*
16 *in a position or positions designated as qualifying and performs less than 600 hours of*
17 *service in a calendar year, the position will be considered non-qualifying from the date of*
18 *employment or January 1 of the calendar year in which the employee performed less than*
19 *600 hours of service, whichever is later.]*

20 *[(e) For purposes of determining qualification upon separation from employment in*
21 *a position or positions, but not for any other purpose, if an employee was employed in a*
22 *position or positions for less than a full calendar year and performed less than 600 hours*
23 *of service in that calendar year, but would have performed 600 hours of service or more*
24 *if the employee had performed service in the same position or positions for the full*

1 calendar year, and if the employee performed 600 or more hours of service in the
2 previous calendar year, the position or positions will be considered qualifying as of the
3 date of separation.]

4 [(16)](15) “Salary” has the same meaning given the term in ORS 238A.005(16).

5 [(17)](16) “School employee” has the meaning given the term in ORS 238A.140(7).

6 [(18)](17) “Service[.]” **means a period in which an employee:**

7 **(a) Is in an employer/employee relationship, as defined in OAR 459-010-0030;**

8 **and**

9 **(b) Receives a payment of “salary,” as defined in ORS 238.005A(16) or similar**

10 **payment from workers’ compensation or disability.** [Except as provided in subsection

11 (c) of this section, a person is still providing “service,” for purposes of determining

12 whether a “Break in Service” has occurred under Section 2a, Chapter 733, Oregon laws

13 2003, during any calendar month that a member:]

14 [(a) Is in an employer/employee relationship; and]

15 [(b) Receives a payment of “salary,” as that term is defined in ORS 238.005(21) or

16 similar payment from workers compensation or disability.]

17 [(c) A member who is a school employee will be considered to provide “service”

18 during any calendar month the institution is not normally in session so long as the

19 member is in an employer/employee relationship both before and after the period the

20 institution is not normally in session.]

21 [(19)](18) The provisions of this rule are effective on January 1, 2004.

22 Stat. Auth.: 238A.450

23 Stats. Implemented: 238A.005, 238A.025, 238A.140, 238A.330, [&] 238A.335 **&**

24 **OL 2007 Ch. 769**

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OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 075 – OPSRP PENSION PROGRAM

1 459-075-0010

2 Eligibility and Membership

3 (1) Eligibility. An employee who is employed in a qualifying position on or after
4 August 29, 2003 by an employer participating in the OPSRP Pension Program is
5 eligible to become a member of that program unless the employee:

6 (a) Has established membership in the PERS Chapter 238 Program before
7 August 29, 2003 under the terms of ORS 238A.025 and has not terminated
8 membership in that program under ORS 238.095;

9 (b) Is a judge member as defined in ORS 238.500;

10 (c) Elects to participate in an optional or alternative retirement plan as
11 provided in ORS Chapters 243 and 353; or

12 (d) Is otherwise ineligible for membership.

13 *[An employee is eligible to become a member and receive benefits under the OPSRP*
14 *pension program, and ineligible to become (or remain) a member of PERS or accrue*
15 *benefits under PERS, if the employee:]*

16 *[(a) Begins employment in a qualifying position with a participating public employer*
17 *on or after August 29, 2003;]*

18 *[(b) Was not a member of PERS before August 29, 2003; and]*

19 *[(c) Did not perform any period of service before August 29, 2003, that is credited to*
20 *the six-month period required under ORS 238.015 for membership in PERS; or]*

21 *[(d) Was an active or inactive member of PERS on August 28, 2003, and incurs a*
22 *"Break in Service."]*

1 **(2) Notwithstanding section (1) of this rule, an employee who established**
 2 **membership in the PERS Chapter 238 Program before August 29, 2003 under the**
 3 **terms of ORS 238A.025 and has not terminated membership in that program under**
 4 **ORS 238.095 may nevertheless be eligible to establish membership in the OPSRP**
 5 **Pension Program if employed by a public employer that is participating in the**
 6 **pension program and is not participating in the PERS Chapter 238 Program.**

7 *[(2) "Break in Service":]*

8 *[(a) For purposes of this section, ORS 238A.025 and section 2a of chapter 733,*
 9 *Oregon Laws 2003:]*

10 *[(A) "Active member of PERS" means an employee who is a member of PERS and*
 11 *not separated from service in a qualifying position with a participating public employer.]*

12 *[(B) "Inactive member of PERS" means an employee who is a member of PERS but*
 13 *was separated from service in a qualifying position with a participating public employer,*
 14 *including a member who was on a leave of absence without pay as described in OAR*
 15 *459-010-0010.]*

16 *[(b) An employee will not incur a "Break in Service" if the employee was an inactive*
 17 *vested member of PERS on August 28, 2003, and returns to a qualifying position before*
 18 *January 1, 2006 with the same participating public employer the employee was employed*
 19 *with before the employee became inactive.]*

20 *[(c) If an employee who was an active member of PERS on August 28, 2003, incurs a*
 21 *"Break in Service", the employee shall be entitled to benefits under PERS for all service*
 22 *performed prior to the "Break in Service", and benefits under the OPSRP pension*
 23 *program for all service performed after the "Break in Service."]*

1 *[(d) If an employee who was an inactive member of PERS on August 28, 2003,*
2 *incurs a "Break in Service" concluding prior to January 1, 2004, the employee shall be*
3 *entitled to benefits under PERS for all service performed prior to the "Break in Service"*
4 *and benefits under the OPSRP pension program for all service performed on or after*
5 *January 1, 2004.]*

6 *[(e) If an employee who was an inactive member of PERS on August 28, 2003,*
7 *incurs a "Break in Service" concluding on or after January 1, 2004, the employee shall*
8 *be entitled to benefits under PERS for all service performed prior to the "Break in*
9 *Service" and benefits under the OPSRP pension program for all service performed after*
10 *the "Break in Service"]*

11 *[(f) If a member of PERS ceases performance of service for one of the reasons*
12 *described in ORS 238A.025(3)(c) or (d), the member returns to a qualifying position if*
13 *the member resumes performance of hours of service: and]*

14 *[(A) Performs 600 hours of service in the calendar year(s) of absence; or]*

15 *[(B) Performs a total of 600 hours of service in the calendar year prior to leaving*
16 *service, with no less than 50 hours per month performed in the last six months of that*
17 *year, and performs 600 hours of service in the calendar year following the return to*
18 *service, with no less than 50 hours per month performed in the first six months of that*
19 *year.]*

20 *[(g) If a member of PERS ceases performance of service for reasons other than those*
21 *described in ORS 238A.025(3)(c) or (d), the member returns to a qualifying position if*
22 *the member resumes performance of service and performs 600 hours in the calendar year*
23 *of the return to service.]*

1 [(h) If a member of PERS ceases performance of service to serve as a legislator, the
2 absence from regular employment for that purpose shall not be considered a "Break in
3 Service."]

4 [(i) If a member of PERS ceases performance of service to serve in the uniformed
5 services, as defined in the 1994 federal Uniformed Services Employment and
6 Reemployment Rights Act (USERRA), and meets the eligibility requirements for
7 reemployment under USERRA, the absence from service for that purpose shall not be
8 considered a "Break in Service."]

9 [(j) If a member of PERS ceases performance of service and receives a disability
10 retirement allowance under ORS 238.320, the absence from regular employment during
11 that period, regardless of when the disability period begins or ends, shall not be
12 considered a "Break in Service."]

13 [(k) If a member of PERS ceases performance of service on or after August 29, 2003,
14 due to the seasonal nature of the employee's employment, the absence from regular
15 employment during that period shall not be considered a "Break in Service" as long as
16 the employee returns to the same public employer before 12 full calendar months have
17 elapsed.]

18 (3) Membership:

19 (a) [Except as provided in subsection (c) of this section, a] An employee who meets
20 the requirements in section (1) or (2) of this rule [shall] becomes a member of the OPSRP
21 [p] Pension [p] Program on the first day of the calendar month [after] following the
22 employee's completion[es] of a waiting period of six full calendar months of
23 [employment] service in a qualifying[ied] position with the same participating public

1 employer. The six full calendar months of service may not be interrupted by more
2 than 30 consecutive working days. For the purposes of this rule, a working day is
3 defined as a day that the employer is open for business.

4 (b) The waiting period begins:

5 (A) On the date the employee is hired, and includes the month of hire as a full
6 calendar month, if the date of hire is the first business day of the month. For the
7 purposes of this rule, a business day is defined as Monday through Friday when
8 PERS is open for business;

9 (B) On the first day of the month following the date of hire; or

10 (C) On the first day of the month following the end date of an interruption of
11 service of more than 30 consecutive working days.

12 *[If the six months required by subsection (a) of this section are interrupted by 30 or*
13 *more consecutive working days in which the employee performs no paid service for the*
14 *same participating public employer, the period of employment prior to the interruption*
15 *shall not count toward the six-month requirement.]*

16 (c) In the event an employee is on an official leave of absence as described in
17 OAR 459-010-0010, the period of absence shall not constitute an interruption of the
18 waiting period under subsection (a) of this section. The waiting period shall be
19 extended by the length of the leave of absence.

20 *[An employee who was an active or inactive member of PERS on August 28, 2003,*
21 *and incurred a "Break in Service." shall become a member of the OPSRP pension*
22 *program on the first day of the calendar month after the return to employment.]*

1 **(d) Absence from service by an educational employee during periods that the**
2 **employing educational institution is not in session shall not constitute an**
3 **interruption of the waiting period under subsection (a) of this section. The waiting**
4 **period shall be extended by the length of the period the educational institution is not**
5 **in session.**

6 Stat. Auth.: ORS 238A.450

7 Stats. Implemented: ORS 238A.025, **238A.100 &** OL 2007 **Ch. 769**[3 Ch 733(2)(a)]

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 075 – OPSRP PENSION PROGRAM**

1 **459-075-0150**

2 **OPSRP Retirement Credit**

3 **(1) For purposes of this rule:**

4 **(a) “Active member” has the same meaning as provided in ORS 238A.005(1).**

5 **(b) “Major fraction of a month” means a minimum of 50 hours in any calendar**
6 **month in which an active member is being paid a salary by a participating public**
7 **employer and for which benefits under ORS Chapter 238A are funded by employer**
8 **contributions.**

9 **(2) An active member accrues one month of retirement credit for each month in**
10 **which the member performs service for the major fraction of the month.**

11 **(3) An active member is presumed to have performed service for a major**
12 **fraction of a month if:**

13 **(a) The member performs at least 600 hours of service in the calendar year and**
14 **the member's employer(s) reports salary and hours for a pay period occurring**
15 **within the calendar month;**

16 **(b) The member starts employment on or before the 15th day of the calendar**
17 **month;**

18 **(c) The member ends employment on or after the 16th day of the calendar**
19 **month; or**

20 **(d) The member ends employment before the 16th day of the calendar month,**
21 **but is reemployed in a qualifying position before the end of the calendar month.**

1 **(4) A determination of retirement credit based on the presumptions in section**
 2 **(3) of this rule may be rebutted by the member or the employer by providing**
 3 **records that establish that the member did or did not perform service for the major**
 4 **fraction of a month as defined in subsection (1)(c) of this rule.**

5 **(5) Sections (2) and (3) of this rule notwithstanding, an active member who is a**
 6 **school employee will accrue six months of retirement credit if the member performs**
 7 **service for all portions of a school year that fall between January 1 and June 30, and**
 8 **six months of creditable service if the member performs service for all portions of a**
 9 **school year that fall between July 1 and December 31.**

10 **(6) A member may not accrue more than one month of retirement credit for**
 11 **any calendar month and no more than one year of retirement credit for any**
 12 **calendar year.**

13 *[(1)]***(7)** Credit for the six-month **waiting** period required by OAR 459-075-
 14 0010*[(3)]***(2)**.

15 (a) Upon establishing membership in the pension program, a member shall receive
 16 credit for the *[hours of service]***waiting period** required to establish membership under
 17 OAR 459-075-0010*[(3)]***(2)**.

18 *[(b) The amount of credit awarded under this section shall be determined in*
 19 *accordance with subsections (1) and (3) through (6), section 11, chapter 733, Oregon*
 20 *Laws 2003 (Enrolled HB 2020)].*

21 *[(c)]***(b)** If the member's *[period of employment prior to]***waiting period before**
 22 establishment of membership included an interruption of service as described in OAR

1 459-075-0010[(3)](2)(b), no credit shall be awarded for the period of employment [prior
2 to]before the interruption.

3 [(d) No credit shall be awarded for hours of service performed prior to January 1,
4 2004.]

5 [(2) Retirement credit. A member shall accrue retirement credit in accordance with
6 section 11, chapter 733, Oregon Laws 2003 (Enrolled HB 2020)].

7 [(a) Retirement credit for school employees. If a member performs a combined total
8 of 600 or more hours in a calendar year in one or more positions as a school employee,
9 prorated retirement credit will be calculated for each position by dividing the number of
10 the member's hours of service in each position by the number of hours of service
11 required of a full-time school employee for that same position or comparable position.]

12 [(b) Retirement credit for school employees employed in another qualifying position
13 in a calendar year. If a member performs a combined total of 600 or more hours of
14 service in one or more positions as a school employee and another qualifying position or
15 positions in a calendar year, prorated retirement credit will be calculated for each
16 position in the following manner:]

17 [(A) For each position as a school employee, by using the method described in
18 section (2)(a) of this rule; and]

19 [(B) For each non-school qualifying position, by dividing the number of the
20 member's hours of service in each non-school qualifying position by 2000.]

21 [(3) A member only accrues retirement credit for calendar years in which the
22 member performs 600 or more total hours of service in one or more qualifying positions.

1 *No member may receive more than one full year of retirement credit for any calendar*
2 *year.]*

3 **(8) The provisions of this rule are effective for retirement credit determinations**
4 **made on or after January 1, 2008.**

5 Stat. Auth.: *[OL 2003 Ch. 733]***238A.450**

6 Stats. Implemented: *[OL 2003 Ch. 733]***OL 2007 Ch. 769**



Oregon

Theodore R. Kulongoski, Governor

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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: Notice of Rulemaking for Alternate Payees OSGP Rules
OAR 459-050-0080, *Distribution of Funds After a Severance of Employment*
OAR 459-050-0220, *Distribution of an Alternate Payee Account*

MEETING DATE	9/21/07
AGENDA ITEM	C.9. Alternate Payees

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Update rules to reflect legislative changes.
- Subject: Alternate payee account distributions from OSGP.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

House Bill 2286 amended provisions in the Oregon Savings Growth Plan (OSGP) at ORS 243.507 to allow an alternate payee to take a distribution from his or her account prior to the date the employee would be eligible to receive a distribution. These changes were made to conform to governmental 457(b) deferred compensation plan regulations enacted pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 that allow an alternate payee to take a distribution without a qualifying event, if allowed in a Qualified Domestic Relations Order. These rule modifications are necessary to comply with the statutory changes. While the rules are open, definitions are also being re-ordered so that the terms are listed alphabetically, for style purposes.

LEGAL REVIEW

The attached draft rules have 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 October 23, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on October 26, 2007 at 5:00 p.m.

IMPACT

Mandatory: No, the Board need not adopt the rules but the changes are necessary to conform to the statutory changes.

Impact: Consistent use of terms will benefit members and staff.

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

RULEMAKING TIMELINE

- | | |
|--------------------|---|
| August 15, 2007 | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| September 1, 2007 | <i>Oregon Bulletin</i> published the Notice. |
| September 21, 2007 | PERS Board notified that staff began the rulemaking process. |
| October 19, 2007 | First reading of the rules. |
| October 23, 2007 | Rulemaking hearing to be held at 2:00 p.m. in Tigard. |
| October 26, 2007 | Public comment period ends at 5:00 p.m. |
| November 16, 2007 | Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research. |

NEXT STEPS

A hearing will be held on October 23, 2007. The rules are scheduled to be brought before the PERS Board for adoption at the November 16, 2007 meeting.

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

1 **459-050-0080**

2 **Distribution of Funds After a Severance of Employment**

3 The purpose of this rule is to establish the criteria and process for obtaining a
4 distribution of deferred compensation funds after a participant's severance of employment
5 as defined herein. Distribution under the Deferred Compensation Program shall be made in
6 accordance with any minimum distribution or other limitations required by Internal
7 Revenue Code (IRC) section 401(a)(9), [(1)26 U.S.C. 401(a)(9) and related regulations.

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

9 [(a) "Severance of Employment" means a participant has ceased rendering services
10 as an employee or an independent contractor of a plan sponsor for a minimum of 30
11 consecutive days, including services as a temporary employee, and has no intention to
12 return to work for the plan sponsor.]

13 [(b) "Intention to return to work" means a written or oral, formal or informal
14 agreement has been made with the plan sponsor to return to work on a full time, part time
15 or temporary basis at the time the severance is effective. If a participant returns to work
16 with the plan sponsor within 30 calendar days of severance, then a rebuttable presumption
17 exists that the participant intended to return to work as of the date of severance.]

18 [(c)](a) "Commencement date" means the month and year that a participant [or an
19 alternate payee] will begin receiving a distribution(s) from the Deferred Compensation
20 Program, whether by operation of the participant's [or alternate payee's] election or under
21 the terms of the plan. [The commencement date may be no earlier than the second
22 calendar month following the month in which severance from employment became

1 *effective.] The commencement date is not the date that the necessary funds are liquidated*
2 *for distribution.*

3 *[(d) “Liquidation of funds” means the conversion of the necessary funds from the*
4 *investments in the Deferred Compensation Program into cash for payment under a*
5 *specified manner of distribution.]*

6 *[(e) “Liquidation date” means the date the Deferred Compensation Program*
7 *designates for liquidation of funds. Generally, the liquidation date will not be earlier than*
8 *the 25th day of the calendar month preceding the commencement date. The Deferred*
9 *Compensation Program may determine the liquidation date based on normal business*
10 *practices. The Deferred Compensation Program is not liable to a participant for failure to*
11 *liquidate an investment on a specified date.]*

12 *[(f)](b) “Date of distribution” means the date funds are distributed to the participant,*
13 *alternate payee, beneficiary, or other recipient in accordance with the plan, regardless of*
14 *the mechanism by which those funds are distributed.*

15 **(c) “Intention to return to work” means a written or oral, formal or informal**
16 **agreement has been made with the plan sponsor to return to work on a full time, part**
17 **time or temporary basis at the time the severance is effective. If a participant returns**
18 **to work with the plan sponsor within 30 calendar days of severance, then a rebuttable**
19 **presumption exists that the participant intended to return to work as of the date of**
20 **severance.**

21 **(d) “Liquidation date” means the date the Deferred Compensation Program**
22 **designates for liquidation of funds. Generally, the liquidation date will not be earlier**
23 **than the 25th day of the calendar month preceding the commencement date. The**

1 **Deferred Compensation Program may determine the liquidation date based on**
2 **normal business practices. The Deferred Compensation Program is not liable to a**
3 **participant for failure to liquidate an investment on a specified date.**

4 **(e) “Liquidation of funds” means the conversion of the necessary funds from the**
5 **investments in the Deferred Compensation Program into cash for payment under a**
6 **specified manner of distribution.**

7 [(g)](f) “Manner of distribution” means the manner elected by the participant,
8 alternate payee, or beneficiary in accordance with the terms of the plan, in which a
9 distribution is to be paid out of the Deferred Compensation Program.

10 [(h)](g) “Required beginning date” means April 1 of the calendar year following the
11 later of:

- 12 (A) The calendar year in which the participant reaches 70-1/2 years of age; or
- 13 (B) The calendar year in which the participant retires.

14 **(h) “Severance of Employment” means a participant has ceased rendering**
15 **services as an employee or an independent contractor of a plan sponsor for a**
16 **minimum of 30 consecutive days, including services as a temporary employee, and**
17 **has no intention to return to work for the plan sponsor.**

18 (2) Manner of distribution. Subject to the provisions of sections (3) through (5) set out
19 below, a participant, surviving beneficiary, or alternate payee may elect a manner of
20 distribution, designate one or more beneficiaries, and change beneficiaries at any time. The
21 total amount distributed may not exceed the total account value. The following manners of
22 distribution are available:

1 (a) Total distribution of the account value in a lump sum. A lump-sum distribution is
2 not eligible for direct deposit;

3 (b) Single distribution of a portion of the account value in a lump sum. This form of
4 lump-sum distribution is not eligible for direct deposit. Funds not distributed shall continue
5 to receive earnings or losses based on the performance of investment option(s) in which
6 funds are held;

7 (c) Systematic withdrawal distribution for a specific number of years, which may be
8 paid annually, semiannually, quarterly or monthly. Any funds remaining after each
9 periodic payment shall continue to receive earnings or losses based on the performance of
10 investment option(s) in which the funds are held. The remaining number of periodic
11 distributions shall not change. However, the amount of distributions shall be adjusted
12 depending on the earnings or losses experienced;

13 (d) Periodic specified dollar amount distribution. This distribution may be paid
14 annually, semiannually, quarterly or monthly, and may be paid in specific dollar amounts
15 in \$5 increments. Any funds remaining after each periodic payment shall continue to
16 receive earnings or losses based on the performance of investment option(s) in which the
17 funds are held. The amount of each periodic distribution will remain the same throughout
18 the withdrawal period. However, the withdrawal period may vary depending on the
19 earnings or losses experienced;

20 (e) Required minimum distribution, which will provide an annual distribution of the
21 minimum amount required in IRC section 401(a)(9), [(26 U.S.C. 401(a)(9))]. This
22 manner of distribution is available only to those who defer distribution to age 70-1/2 years
23 of age (no later than April of the year following the year reaching 70-1/2 years of age) or a

1 participant who continues to work and severs employment after 70-1/2 years of age. Funds
2 not distributed shall continue to receive earnings or losses based on the performance of
3 investment option(s) in which funds are held; or

4 (f) Mandatory single lump-sum distribution of an account balance of less than \$1,000.
5 This distribution shall be made to any participant or alternate payee with an account
6 balance of less than \$1,000 within one year of the participant's severance of employment.

7 (3) Application Requirements. Application shall be made on forms provided by, or
8 other methods approved by, the Deferred Compensation Program. No distribution may be
9 paid unless a timely and complete application is filed with the Deferred Compensation
10 Program as follows:

11 (a) An application for distribution or to change the manner of distribution will be
12 considered filed in a timely manner if it is received in writing or other method approved by
13 the Deferred Compensation Program at least 30 days [*prior to*]before the requested
14 commencement date. The commencement date may be no earlier than the second calendar
15 month following the month of severance of employment.

16 (b) An application for distribution or to change the manner of distribution may be
17 made by a participant, surviving beneficiary, or alternate payee or the authorized
18 representative of a participant, surviving beneficiary or alternate payee. A valid document
19 appointing an authorized representative such as a power of attorney, guardianship or
20 conservatorship appointment, must be submitted to the Deferred Compensation Program.
21 The Deferred Compensation Program retains the discretion to determine whether the
22 document is valid for purposes of this rule.

1 (c) The participant, surviving beneficiary, or alternate payee must file a tax-
2 withholding certificate with the Deferred Compensation Program at least 30 days *[prior*
3 *to]***before** the requested commencement date. If the certificate is not filed, the Deferred
4 Compensation Program shall withhold state income taxes based on a marital status of
5 single and no dependents and federal income taxes based on a marital status of married and
6 3 dependents, or other federally mandated tax withholding requirements. A new certificate
7 may be filed at any time, and will be applied to distributions paid on and after the first
8 calendar month following the date received or as soon as reasonably possible.

9 (d) When direct deposit is permitted under the Deferred Compensation Plan, a request
10 for periodic distributions to be transmitted to a financial institution for direct deposit must
11 be made using a Deferred Compensation Program Automatic Deposit Agreement.

12 (e) Distribution of deferred compensation funds will occur no later than five days
13 following the date funds necessary for a specified payment were liquidated. Liquidation of
14 funds will be done on a pro-rata basis determined by the investment allocation of an
15 account at the time the funds are liquidated or from the Stable Value account, at the
16 participant’s election. The election must be filed before the participant begins receiving
17 distributions. If the participant elects distribution from the Stable Value account and there
18 are insufficient funds in that account on the date of each distribution (whether monthly,
19 quarterly, semi-annually, or annually), the distribution will be done on the pro-rata basis
20 described above regardless of the participant’s election.

21 (4) Denial of distribution election. The Deferred Compensation Program may deny
22 any distribution election if that denial is required to maintain the status of the Deferred

1 Compensation Program under the Internal Revenue Code and regulations adopted pursuant
2 to the Internal Revenue Code and ORS Chapter 243.

3 (5) Changing the manner of distribution. A participant, surviving beneficiary or
4 alternate payee may change or discontinue the manner of distribution only as follows and
5 subject to the requirements of section (3) above:

6 (a) Manners of distribution under sections (2)(c), (2)(d) and (2)(e) of this rule may be
7 changed at any time upon application as required under section (3) of this rule.

8 (b) Distributions under sections (2)(c) and (2)(d) of this rule may be discontinued
9 upon written notification or by other methods approved by the Deferred Compensation
10 Program. The participant, surviving beneficiary, or alternate payee must submit an
11 application, as required in section (3) of this rule, to restart distributions and elect a manner
12 of distribution for the remaining account.

13 (c) Subject to the requirements of this rule, a participant, surviving beneficiary or
14 alternate payee who has commenced receiving a required minimum distribution may apply
15 under the requirements of section (3) of this rule:

16 (A) For one or more additional distributions in a lump sum not to exceed the total
17 value of the account; and

18 (B) To change the manner of distribution so long as future distributions will be
19 continuous and equal to or greater than the minimum distribution required.

20 *[[Publications: Publications referenced are available from the agency.]]*

21 Stat. Auth: ORS 243.470

22 Stats. Implemented: ORS 243.401 - 243.507, **& OL 2007 Ch. 54**

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

1 **459-050-0220**

2 **Distribution of an Alternate Payee Account**

3 (1) Commencement date of distribution. Subject to other requirements set forth in
4 this division of administrative rules, a distribution to an alternate payee may commence
5 *[no earlier than 60 days after the participant's date of severance from employment but no*
6 *later than the alternate payee's required beginning date in accordance with IRC*

7 *401(a)(9) and OAR 459-050-0080]* **earlier than the date an employee would be eligible**
8 **to receive payments under the plan if and to the extent expressly provided for in the**
9 **terms of any judgment of annulment or dissolution of marriage or of separation, or**
10 **the terms of any court order or court-approved property settlement agreement**
11 **incident to any judgment of annulment or dissolution of marriage or of separation.**

12 (2) Distribution options. Subject to the rules and regulations pertaining to required
13 minimum distributions, the alternate payee may elect to receive payment in any manner
14 available to the participant under the Deferred Compensation Plan and OAR 459-050-
15 0080, without regard to the form of payment elected by the participant.

16 (3) Application. The alternate payee must file an application for distribution, or
17 request to change a distribution option with the Deferred Compensation Program at least
18 30 days *[prior to]* **before** the requested date of the change or the distribution
19 commencement date *[as prescribed in OAR 459-050-0080]*.

20 (4) Life expectancy factor. The life expectancy of the alternate payee shall be used
21 anytime the form of payment elected by the alternate payee is based on a life expectancy
22 factor.

1 (5) Tax liability. If the alternate payee is a spouse or former spouse, the alternate
2 payee shall be solely responsible for the total amount of state and federal taxes at the time
3 of distribution of an alternate payee's account effective January 1, 2002. If an alternate
4 payee is someone other than the spouse or former spouse of the participant, the
5 participant shall be solely responsible for the total amount of state and federal taxes at
6 time of distribution of their alternate payee's account.

7 Stat. Auth: ORS 243.470

8 Stats. Implemented: ORS 243.401 - ORS 243.507, **& OL 2007 Ch. 54**



Oregon

Theodore R. Kulongoski, Governor

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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: Notice of Rulemaking for Equal To or Better Than Rules
OAR 459-030-0011, *Equal To or Better Than Exemption*
OAR 459-030-0025, *Standards for Review of Police Officers and Firefighters Retirement Plans*
OAR 459-030-0030, *Board Action on Petition and Review of Order*

MEETING DATE	9/21/07
AGENDA ITEM	C.10. ETOB

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Update rules to reflect legislative changes.
- Subject: Board assessment of non-PERS employer retirement benefits for police officers and firefighters.
- Policy Issue: What circumstances should trigger a review of a previously granted exemption from PERS participation for an employer's police and fire members?
- Staff Recommendation: Trigger a review when the non-PERS employer reduces police officer and firefighter retirement benefits.

BACKGROUND

ORS 237.620 requires all public employers to provide PERS retirement benefits to their police officer or firefighter employees unless the PERS Board determines that the retirement benefit provided by the employer is equal to or better than (ETOB) the equivalent PERS benefit. The Board has developed a set of rules that outlines the application process and methodology for an actuarial review of the employer's retirement benefits to determine if the benefits meet the ETOB standard.

House Bill 2280 eliminates the requirement that the PERS Board conduct an ETOB study every two years. This bill also sets the comparative benchmark for the ETOB study to the PERS benefits that were in effect at the time the police officer or firefighter was hired. Lastly, the bill eliminates the requirement that those employers failing to meet the ETOB standard must join PERS but, rather, requires the employer to provide comparable benefits to police officers and firefighters. Three sets of rule modifications are necessary to reflect these legislative changes.

POLICY ISSUE

What circumstances should trigger a review of a previously granted exemption from PERS participation for an employer's police and fire members?

One of the primary purposes of HB 2280 was to eliminate the two-year ETOB testing requirement as the consensus of PERS stakeholders was that requirement was costly and administratively burdensome while providing little extra protection to those non-PERS employees. HB 2280 changes the statute to leave the trigger for an ETOB review to be determined by the PERS Board.

Staff Recommendation: Based on stakeholder testimony during consideration of HB 2280, staff recommends that the ETOB review be triggered only when the employer reduces benefits by amending the non-PERS retirement plan after the previous exemption was granted.

LEGAL REVIEW

The attached draft rules have 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 October 23, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on October 26, 2007 at 5:00 p.m.

IMPACT

Mandatory:

OAR 459-030-0011: Yes, as the PERS Board must establish a standard for reviewing the ETOB exemption by rule.

OAR 459-030-0025: Yes, this rule conflicts with the requirements of HB 2280. Specific comparative measures for the ETOB study based on the equivalent retirement benefits offered by PERS at the time the non-PERS police officers or firefighters were hired need to be added to the rule.

OAR 459-030-0030: Yes, this rule conflicts with the requirements of HB 2280. This legislation eliminated the requirement that all non-PERS employers failing the ETOB study provide PERS retirement benefits to its police officers and firefighters.

Impact: These changes will result in lower costs and a reduced administrative burden for both PERS and ETOB employers.

Cost: The revised rules will result in cost savings for non-PERS employers by eliminating the frequent ETOB exemption review. Changing the comparison standard may limit potential costs savings for employers, but that effect is not discrete to this rule.

RULEMAKING TIMELINE

- August 15, 2007 Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
- September 1, 2007 *Oregon Bulletin* published the Notice.
- September 21, 2007 PERS Board notified that staff began the rulemaking process.
- October 19, 2007 First reading of the rules.
- October 23, 2007 Rulemaking hearing to be held at 2:00 p.m. in Tigard.
- October 26, 2007 Public comment period ends at 5:00 p.m.
- November 16, 2007 Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing will be held on October 23, 2007. The rules are scheduled to be brought before the PERS Board for adoption at the November 16, 2007 meeting.

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OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459

DIVISION 030 – LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR
POLICE OFFICERS AND FIRE FIGHTERS

1 459-030-0011

2 “Equal To or Better Than” Exemption

3 (1) *[If a]* A public employer **that** provides retirement benefits to its police officers
4 and firefighters that are equal to or better than the benefits that would be provided to
5 them under *[the Oregon Public Service Retirement Plan]* PERS *[, the public employer]*
6 may petition the Board for **an** exemption from participation of such employees. Such
7 petition will be reviewed under the requirements and timelines of this division.

8 **(2) Any exemption granted under this division may continue only so long as the**
9 **public employer does not decrease the retirement benefits provided under the public**
10 **employer’s plan at the time of the valuation date.**

11 **(3) Whenever a change decreasing the public employer’s retirement benefits is**
12 **adopted, the public employer must file with the Board a new petition for exemption.**
13 **If the public employer fails to file a new petition within 60 days of adoption (or the**
14 **date the change in retirement benefits takes effect, if later) then the exemptions will**
15 **expire and the public employer will become subject to OAR 459-030-0030.**

16 *[(2) The Board will review any exemption granted under this division every two*
17 *years to determine whether the exempt public employer is complying with the*
18 *requirements of this division.]*

19 Stat. Auth.: ORS 238.650

20 Stats. Implemented: ORS 237.620 **& OL 2007 Ch. 622**

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OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459

DIVISION 030 – LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR
POLICE OFFICERS AND FIRE FIGHTERS

1 **459-030-0025**

2 **Standards for Review of Police Officers and Firefighters Retirement Plans**

3 (1) A determination whether a public employer provides retirement benefits to its
4 police officers and firefighters that are equal to or better than the benefits that would be
5 provided to them **by**[under] **PERS** [the Oregon Public Service Retirement Plan
6 (OPSRP)] will be made as of the valuation date. The “valuation date” is the date set by
7 the Board as of which the retirement benefits under the public employer’s retirement plan
8 and **the PERS**[under the OPSRP] retirement plan shall be compared.

9 (2) The Board will consider the aggregate total actuarial present value of [all]
10 retirement benefits **for each employee class** accrued since July 1, 1973 and projected to
11 be accrued after the valuation date by the group of police officers and firefighters
12 employed on the valuation date by the public employer. The projected benefits will
13 compare the total value of benefits, **by class**, that would be accrued if the police officers
14 and firefighters **were**[became] members of **an equivalent class of employees**
15 **participating in the PERS retirement benefit plan as follows:**

16 **(a) Police officers or firefighters who are entitled to receive benefits only under**
17 **ORS chapter 238 and who established membership in the system before January 1,**
18 **1996, as described in ORS 238.430(2);**

19 **(b) Police officers or firefighters who are entitled to receive benefits only under**
20 **ORS chapter 238 and who established membership in the system on or after**
21 **January 1, 1996, and before August 29, 2003, as described in ORS 238.630.**

1 **(c) Police officers or firefighters who established membership in the system on**
2 **or after August 29, 2003, and are entitled to benefits only under the Oregon Public**
3 **Service Retirement Plan as described in ORS 238A.025.***[OPSRP or remained in the*
4 *plan being evaluated.]*

5 *[(a)]***(d)** The Board *[will]***may** not require that every retirement benefit for each
6 individual employee be equal to or better than the particular benefit **that employee**
7 **would have received as a member of that employee's class as defined under**
8 **subsections (a) to (c) of this section***[he or she would receive under OPSRP].*

9 *[(b)]***(e)** The Board will require that the public employer's retirement plan or plans
10 provide at least eighty percent (80%) of the actuarial present value of projected
11 retirement benefits in each of the major categories of benefits available **for each**
12 **employee class under the equivalent PERS retirement benefit***[under OPSRP],*
13 namely: A service retirement; a disability retirement; a death benefit; and vesting.

14 (3) In conducting an actuarial review of a public employer's retirement plan for its
15 police officers and firefighters, the actuary retained by the Board will use demographic
16 data supplied by the employer to determine whether the retirement benefits provided
17 under the plan are equal to or better than the benefits which would be provided under
18 **PERS***[OPSRP]*. If the employer does not provide sufficient data in a timely manner, the
19 actuary will use a hypothetical data set representing a demographic cross-section of
20 police officers and firefighters who are subject to this division.

21 (4) The Board will conduct its review based on its current actuarial assumptions for
22 **the equivalent class of** police officers and firefighters of public employers in
23 **PERS***[OPSRP]*.

1 (5) The Board will consider the cost of the benefits to be provided and the proportion
2 of the cost being paid by the public employer and the participating police officers and
3 firefighters. The Board will consider whether the benefits to be provided by the employer
4 are funded, and the adequacy of funding. Whether the benefits are provided by contract,
5 trust or insurance, or a combination thereof shall have no effect on the decision to grant
6 or deny the petition.

7 (6) In considering a public employer’s retirement plan provisions, the Board will not
8 value portability of pension credits, tax advantages, Social Security benefits or
9 participation, and any worker’s compensation component of a public employer’s plan as
10 determined by the employer.

11 (7) Additional actuarial assumptions as shall be needed to evaluate public employer
12 plan provisions shall be considered by the Board’s actuary to be consistent with
13 assumptions specified in these rules. Any disputes as to the appropriateness of additional
14 actuarial assumptions shall be resolved by the Board in its sole discretion.

15 Stat. Auth: ORS 238.650

16 Stats. Implemented: ORS 237.620 **& OL 2007 Ch. 622**

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 030 – LOCAL PUBLIC EMPLOYER RETIREMENT PLANS FOR
POLICE OFFICERS AND FIRE FIGHTERS**

1 **459-030-0030**

2 **Board Action on Petition and Review of Order**

3 (1) The actuary will issue a written report that concludes whether a public
4 employer's plan meets the standards for receiving an exemption under OAR 459-030-
5 0025. After receipt of the written actuarial review report and recommendations of staff,
6 the Board will issue an order granting or denying the petition for exemption. No order
7 denying a petition for exemption will be issued until at least 90 days after the actuary had
8 delivered its report to the Board. During that period, the public employer may amend its
9 plan to comply retroactive to the valuation date or file a written request for an extension.
10 Upon filing of that request, the Board will not enter an order denying a petition for
11 exemption for an additional 60 days after receiving the request. If a public employer
12 submits an amended plan before the Board adopts an order denying the exemption, the
13 actuary will submit a supplemental report on whether the amended plan meets the
14 required standards under OAR 459-030-0025. The Board may adopt an order at any time
15 after receiving the supplemental report.

16 (2) Within 60 days of the effective date of any order issued under this rule, the
17 public employer, the affected public employees, or their labor representative may file a
18 petition for rehearing or reconsideration pursuant to OAR 459-001-0010 and 459-001-
19 0040.

20 *[(3) A public employer who has received an order denying its petition for exemption*
21 *and who has exhausted its remedies under this division will join the Oregon Public*

1 *Service Retirement Plan as of the following January 1, or such other date as the Board*
2 *directs in its order.]*

3 Stat. Auth: ORS 238.650

4 Stats. Implemented: ORS 237.620 **& OL 2007 Ch. 622**



Oregon

Theodore R. Kulongoski, Governor

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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: Notice of Rulemaking for OAR 459-080-0250,
IAP Account Installments

MEETING DATE	9/21/07
AGENDA ITEM	C.11. IAP Account Installments

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Update rule to include new IAP distribution option provided in House Bill 2679.
- Subject: IAP Estimated Lifetime Installment Option.
- Policy Issue: Which method of calculating the estimated lifetime distribution should PERS adopt?
- Staff Recommendation: The calculation method that is also used to determine required minimum distributions as that method will most accurately reflect the investment experience of the member's account.

BACKGROUND

HB 2679 provided a new distribution option for retirement benefits paid from the IAP account. This new option, to pay installments based on the member's estimated life expectancy, allows PERS to report on their 1099R a known exception to the penalty for distributions made under this option to retirees under age 59½.

POLICY ISSUE

Which method of calculating the estimated lifetime distribution should PERS adopt?

The estimated lifetime distribution option is not an annuity, nor is it a guarantee that payments will continue for the member's actual lifetime. Instead, the payment stream is based on the member's estimated life expectancy. There are three methods the IRS permits PERS to use that will qualify for the 1099R report penalty exception:

- 1) Required Minimum Distribution Method
 - a. The account balance is divided by the individual's life expectancy, using one of three IRS' mortality tables, resulting in the amount to be distributed for the year.
 - b. This amount would be divided by 12 to determine the monthly amount, or by four to determine a quarterly amount (depending on the member's request and subject to the minimum payment amount of \$200 provided by ORS 238A.400).
 - c. The account will continue to be subject to market gains and losses.
 - d. Under this method, the annual distribution amount is recalculated each year.

- e. Once the account reaches a zero balance, distributions cease.
- 2) Amortization Method
- a. Amortizes the member's account for a period of years equal to the member's life expectancy, based on one of three IRS mortality tables.
 - b. The interest rate used must be reasonable based on the federal mid-term rate.
 - c. The rate used is not a guarantee, but is used only to determine the distribution amount.
 - d. The account will continue to be subject to market gains and losses.
 - e. Under this method, the distribution amount is set and does not change once determined in the first year. The payment will be monthly, quarterly, or annually (depending on the member's request and subject to the minimum payment amount of \$200 provided by ORS 238A.400)
 - f. Once the account has a zero balance, distributions cease.
- 3) Annuitization Method
- a. Determines the amount of the distribution by multiplying the member's account balance by an annuity factor. This factor must be based on a particular IRS mortality table.
 - b. The annuity factor is based on the member's age when distributions begin.
 - c. The interest rate used must be reasonable, based on the federal mid-term rate.
 - d. The interest rate is not guaranteed and the amount determined is not guaranteed for any period of time. The assumptions are used only to determine the distribution amount.
 - e. The account will continue to be subject to market gains and losses.
 - f. Under this method, the distribution amount is set and does not change once determined in the first year. The payment will be monthly, quarterly, or annually (depending on the member's request and subject to the minimum payment amount of \$200 provided by ORS 238A.400)
 - g. Once the account has a zero balance, distributions cease.

Staff Recommendation: Of the three possible methods, staff recommends using the first option, the Required Minimum Distribution Method. Only under this method is the annual distribution amount recalculated every year, more accurately reflecting the actual earnings and losses posted to the member's account. Payment duration will more closely match the schedule originally set, although the amount will fluctuate with market shifts. While this method imposes the most substantial administrative burden, it closely parallels one which staff is already familiar and is using for the other non-lump sum IAP account distribution options (5, 10, 15 and 20 year installments).

LEGAL REVIEW

The attached draft rule 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 October 23, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on October 26, 2007 at 5:00 p.m.

IMPACT

Mandatory: Yes, the existing rule did not provide for an estimated lifetime distribution option. The proposed modifications incorporate this new statutory provision.

Impact: Members are benefited by an additional distribution option. There is no impact to employers and staff will benefit by clear direction on the method by which to calculate the estimated lifetime distribution amounts.

Cost: There will be an administrative cost impact in adopting this new payment schedule. The scope and nature of those costs depend on which method is used to calculate the payments. Staff costs will probably be similar under any of the three methods; the second or third methods would incur additional actuarial services costs to either develop the amortization assumptions and procedure or to calculate the actuarial factors.

RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 19, 2007	First reading of the rule.
October 23, 2007	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
October 26, 2007	Public comment period ends at 5:00 p.m.
November 16, 2007	Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing will be held on October 23, 2007. The rule is scheduled be brought before the PERS Board for adoption at the November 16, 2007 meeting.

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 080 – OPSRP INDIVIDUAL ACCOUNT PROGRAM**

1 **459-080-0250**

2 **IAP Account Installments**

3 (1) Definitions.

4 **(a) “Estimated Life Expectancy” means the member’s life expectancy as**
5 **determined by the applicable IRS mortality table.**

6 **(b)** “Payout Period” means the span of years over which the member elects to
7 receive installment payments under section (2) of this rule.

8 (2) Upon retirement, a member of the individual account program who elects to
9 receive the amounts in the member’s employee and employer accounts in installments
10 under ORS 238A.400(2) shall designate the number of years over which the installments
11 are to be paid, selecting a period of 5, 10, 15, or 20 years, **or a period equal to the**
12 **member’s estimated life expectancy.** The member may also request that installments be
13 made on a monthly, quarterly, or annual basis.

14 (3) Installments will be adjusted at each payment to reflect investment gains and
15 losses on the unpaid balance. The **amount of each 5-, 10-, 15-, or 20-year installment**
16 **will be determined by dividing the** member’s adjusted balance *[will be divided]* by the
17 number of **remaining** installment payments *[left to determine the amount to be paid to*
18 *that member]*. **Installments paid for the member’s estimated life expectancy will be**
19 **determined for a calendar year by dividing the member’s adjusted balance by the**
20 **member’s remaining estimated life expectancy, which amount will then be paid**
21 **monthly, quarterly, or annually.**

1 (4) If a member requests installments under section (2) of this rule, but the amount of
2 the requested installment would be less than \$200 as determined at the time of the initial
3 request, the frequency and Payout Period of the installment payment will be modified so
4 that the amount of the installment is at least \$200. If the member's account balance is
5 \$1,000 or less at the time of the initial request, the member will not be eligible for
6 installments and the balance will be paid in a lump sum.

7 (5) Notwithstanding the Payout Period selected by the member under section (2) of
8 this rule, any distribution will be adjusted to comply with the required minimum
9 distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that
10 section, as in effect August 29, 2003.

11 (6) Members who elect a five year Payout Period or a lump sum payment may elect
12 to directly roll over any portion of their IAP installment or lump sum payment to an
13 eligible retirement plan, subject to the following limitations:

14 (a) Members will not be permitted to directly roll over any IAP installment payments
15 if the total annual distribution from their IAP account is reasonably expected to total less
16 than \$200.

17 (b) If members elect to have a portion of their IAP installment or lump sum payment
18 paid directly to them and a portion directly rolled over, the portion to be rolled over
19 cannot be less than \$500 or that portion will be paid directly to the member.

20 (7) Members who elect a 10-, 15-, or 20-year, **or an estimated life expectancy**
21 Payout Period cannot elect to have any portion of their installment payments rolled over.

1 (8) Members who are subject to the required minimum distribution requirements
2 referenced in section (5) of this rule may only roll over that portion of their installment or
3 lump sum payments that exceeds required minimum distribution requirements.

4 Stat. Auth.: ORS 238A.450

5 Stats. Implemented: ORS 238A.400 **& OL 2007 Ch. 412**

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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: Notice of Rulemaking for Domestic Relations Orders
OAR 459-045-0030, *General Administration*

MEETING DATE	9/21/07
AGENDA ITEM	C.12. Domestic Relations

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Update Domestic Relations Orders rule to reflect legislative change in “notice of contest” terminology.
- Subject: Notice of Contest.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

The Domestic Relations Orders rule currently uses the term “notice of contest,” which House Bill 2282 changed to “notice of dispute.” While the rule is open for rulemaking, changes for grammar and terminology are also being proposed.

LEGAL REVIEW

The attached draft rule 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 October 23, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on October 26, 2007 at 5:00 p.m.

IMPACT

Mandatory: No, the Board need not adopt the rule.
Impact: Consistent use of terms will benefit members and staff.
Cost: There are no discrete costs attributable to the rule.

RULEMAKING TIMELINE

August 15, 2007 Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007 *Oregon Bulletin* published the Notice.

Notice – Domestic Relations Orders

9/21/07

Page 2 of 2

- September 21, 2007 PERS Board notified that staff began the rulemaking process.
- October 19, 2007 First reading of the rule.
- October 23, 2007 Rulemaking hearing to be held at 2:00 p.m. in Tigard.
- October 26, 2007 Public comment period ends at 5:00 p.m.
- November 16, 2007 Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing will be held on October 23, 2007. The rule is scheduled to be brought before the PERS Board for adoption at the November 16, 2007 meeting.

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0030**

2 **General Administration**

3 (1) An alternate payee's award is payable to the alternate payee if the member would
4 be eligible to receive benefits upon separation from service. The member is not required
5 to be separated from service.

6 (2) A court order may restrict an alternate payee's award to be payable only when the
7 member applies for and receives benefits.

8 (3) Unless prohibited by court order, an alternate payee who requests a withdrawal
9 shall receive an additional 50 percent of the alternate payee award as of the effective date
10 of withdrawal if:

11 (a) The alternate payee's effective date of withdrawal is on or after July 1, 2004, and
12 before June 30, 2006; and

13 (b) As of the alternate payee's effective date of withdrawal, the member has met the
14 requirements of OAR 459-010-0055(4), or would meet them except that *[he or she]***the**
15 **member** has not withdrawn that portion of the member account that may be withdrawn.

16 (4) Under no circumstance may an alternate payee withdraw less than the entire
17 alternate payee award *[and payment under this section constitutes payment in full]*.

18 (5) The alternate payee may revoke the request for withdrawal if PERS receives a
19 written request to revoke *[prior to]***before** the date of distribution.

20 (6) The separate account in the name of the alternate payee shall be credited with
21 earnings in accordance with OAR chapter 459, division 007 *[as follows]***to the earlier of:**

22 (a) T*[o t]*he date of distribution of the separate account; or

1 (b) T[o t]he date a non-vested member ceases to be a member as provided in ORS
2 238.095(2)[, whichever is earlier].

3 (7) An alternate payee who is awarded a separate account in the Fund in [his or
4 her]the alternate payee's own name shall not be allowed to participate in the Variable
5 Annuity Account in the Fund, as described in ORS 238.260, regardless of whether the
6 member participated in the Variable Annuity Account in the Fund. Once a separate
7 account is established for the alternate payee, those funds [will]shall no longer receive
8 variable annuity account earnings.

9 (8) At the time of the division and establishment of the alternate payee accord, the
10 alternate payee account [will]shall be administered under Tier One pursuant to ORS
11 238.250 and 238.255 if:

12 (a) The member established membership in PERS or performed any period of
13 service for a participating public employer that is credited to the six month period of
14 employment required of an employee under ORS 238.015 [prior to]before January 1,
15 1996; or

16 (b) The member ceased to be a member of PERS under the provisions of ORS
17 238.095[,] or 238.105, but restored part or all of the forfeited creditable service from
18 before January 1, 1996, under the provisions of ORS 238.115 or 238.105, after January 1,
19 1996.

20 (9) At the time of the division and establishment of the alternate payee account, the
21 alternate payee account [will]shall be administered under Tier Two pursuant to ORS
22 238.250 and 238.435, if the provisions of section[s] (8)(a) and (b) of this rule are not
23 applicable to the member.

1 (10) The provisions of this rule do not apply to judge members under ORS 238.500
2 *[through]*to 238.585.

3 (11) The provisions of this rule do not apply to the benefits provided *[under]*by the
4 Oregon Public Service Retirement Plan Pension Program under ORS Chapter 238A.

5 (12) An alternate payee who elects to begin receiving *[his or her]*an award pursuant
6 to a court order that uses the Division Methods described in OAR 459-045-0010
7 *[Sections]*(1) and (2), may select any retirement payment option available to the
8 member, other than a joint and survivor annuity, but only if a court order allows the
9 alternate payee to make any elections. The retirement payment to an alternate payee
10 *[shall]*must be:

11 (a) Contingent on the member's eligibility for retirement benefits, regardless of
12 whether the member actually retires;

13 (b) *[Shall be s]*Separate and independent from the member's payment date and
14 payment option; and

15 (c) *[Shall be a]*Actuarially computed based on the age and life expectancy of the
16 alternate payee.

17 (13) The alternate payee may elect to convert the Refund Annuity Option as
18 described in ORS 238.300 to one of the following optional forms:

19 (a) Option 1, as described in ORS 238.305(1);

20 (b) Option 4, as described in ORS 238.305(1); or

21 (c) The lump-sum payment option, as described in ORS 238.305(2)(a) and (b) and
22 238.305(3).

1 (14) Alternate payees are provided 60 days from the date of their first payment to
2 change the option or designation of beneficiary, except that the designation of beneficiary
3 under the Refund Annuity Option or Option 4 may be changed by the alternate payee at
4 any time before the alternate payee's death.

5 (15) An alternate payee whose total award is less than \$200 per month under Option
6 1, defined in ORS 238.305(1), shall receive in lieu of any and all allowances or other
7 benefits or form of payment described in section (13) of this rule, a one time lump-sum
8 payment equal to the actuarial value as of the effective date of the alternate payee's
9 retirement, as is the case for a member under ORS 238.315.

10 (16)(a) PERS shall provide to the alternate payee a written summary of the
11 information used in making a retirement computation. An alternate payee may
12 *[contest]***dispute** the accuracy of the factual information used by PERS in making the
13 computation of the retirement allowance or benefit by filing a written notice of
14 *[contest]***dispute** with PERS not later than *[whichever of the following days occurs*
15 *last]***the later of:**

16 (A) The 30th day after the date on which the computation and information is
17 provided to the alternate payee under this section; or

18 (B) The 30th day after the date on which the retirement allowance or benefit to
19 which the alternate payee is entitled first becomes payable.

20 (b) The filing of a notice of *[contest]***dispute** under this section extends the time
21 allowed for election of an optional form of retirement allowance or benefit until the 30th
22 day after the conclusion of the *[contest]***dispute** proceeding or review results in a change
23 in the computation of the retirement allowance or benefit.

1 (c) Upon receiving a notice of [*contest*]**dispute** under this section, PERS shall
 2 determine the accuracy of the [*contested*]**disputed** information and make a written
 3 decision either affirming the accuracy of the information and computation based thereon
 4 or changing the computation using corrected information. PERS shall provide to the
 5 member a copy of the decision and a written explanation of any applicable statutes and
 6 rules.

7 (d) This section does not affect any authority of PERS, on its own initiative, to
 8 correct an incorrect computation of any retirement allowance or benefit.

9 (17) An alternate payee [*shall*]**may** not receive any cost of living increase under
 10 ORS 238.360, or special ad-hoc increase that may be granted by the Legislature under
 11 238.365 or 238.385, or any other type of increase that may be granted to PERS retirees
 12 until benefits are first paid by PERS to or on behalf of the member.

13 (18) An alternate payee [*shall*]**is** not [*be*] entitled to health insurance benefits under
 14 ORS 238.410, 238.415, and 238.420 regardless of whether a court order awards these
 15 benefits to an alternate payee.

16 (19) An alternate payee [*shall*]**is** not [*be*] entitled to any benefits derived from the
 17 optional purchase of police officer and fire fighter unit benefits under 238.440 regardless
 18 of whether a court order awards these benefits to an alternate payee.

19 (20) If an alternate payee begins receiving a payment [*prior to*]**before** the member,
 20 the alternate payee is not entitled to any further increases in retirement credit that the
 21 member may earn or become entitled to [*prior to*]**before** the member's actual retirement
 22 due to continued employment, earnings, or other benefits earned as a member
 23 participating in PERS.

1 (21) Alternate payee court awards made after a member has retired under ORS
 2 238.300 or 238.320 *[shall]***must** be paid as deductions from the retired member's
 3 retirement allowance or lump-sum benefit or from the member's beneficiary's retirement
 4 allowance or lump sum payment. No alternate payee account *[will]***shall** be established.

5 (22) A court order may require a member who retired under ORS 238.300 or
 6 238.320 to change the designated beneficiary outside the timeframe allowed under ORS
 7 238.305(5) or 238.325(2). The retirement allowance *[will]***shall** be adjusted based on the
 8 new beneficiary's age to ensure the value of the benefits *[will]***is** not *[be]* greater than the
 9 allowance the member is otherwise eligible to receive.

10 (23) Members who retire for disability under ORS 238.320 or 238.325 are
 11 considered retired members and all the provisions of sections (12) through (21) of this
 12 rule apply to the alternate payee.

13 (24) Death benefits payable from an alternate payee account are as follows:

14 (a) If an alternate payee dies before payout or retirement, the alternate payee award
 15 is payable to the alternate payee's designated beneficiary or estate as provided by ORS
 16 238.390 and 238.395. No employer death benefits are payable under ORS 238.395 unless
 17 the member would have been eligible for employer death benefits had the member died
 18 on the same date as the alternate payee.

19 (b) If an alternate payee has begun receiving retirement benefits or dies after the first
 20 payment is due, the benefits due the designated beneficiary or estate, if any, *[will]***shall**
 21 be based on the option selected by the alternate payee.

22 (c) If an alternate payee dies after applying for a monthly retirement benefit but
 23 before the first of the month following the effective retirement date, the account shall be

1 treated as if the alternate payee died before retirement and benefits *[will]***shall** be paid
2 under subsection (a) above.

3 (d) If the alternate payee is awarded a percentage of a benefit, as long as the award is
4 payable the award *[will]***shall** continue to be paid to the alternate payee's designated
5 beneficiary, unless the court decree specifies otherwise.

6 (25) If the member predeceases the alternate payee, the benefits payable to the
7 alternate payee are as follows:

8 (a) The alternate payee who has a separate account becomes eligible to withdraw his
9 or her account in the form of a death benefit under ORS 238.390 and 238.395 (if
10 eligible). If the alternate payee elects a death benefit under ORS 238.390 and 238.395 (if
11 eligible), the death benefit shall be in lieu of any withdrawal, service or disability
12 retirement or any other benefit. If the alternate payee does not elect a death benefit, the
13 alternate payee shall be eligible to withdraw the separate account, or to leave the account
14 in the Fund and elect to draw benefits under one of the optional retirement choices
15 described in section (13) of this rule, any time on or after the date the member would
16 have reached earliest retirement age.

17 (b) If the alternate payee is awarded a percentage of a benefit, as long as the award is
18 payable the award shall be paid according to the decree of divorce or separation or
19 annulment unless the court decree provides for no alternate payee death benefits from the
20 member's account.

21 (26) Benefit payments to either the member or the alternate payee, or to both
22 simultaneously, that exceed the allowable limits set forth in Section 415 of the Internal
23 Revenue **Code** (IRC) shall be deducted from the benefit payment(s) to the member or the

1 alternate payee, or both. Unless a final court order specifies the allocation of the
2 deduction for benefits that exceed the limits in IRC Section 415, PERS shall pro rate the
3 amount that exceed those limits in the same proportions that benefits were awarded to the
4 member and the alternate payee as specified in a final court order.

5 (27) Distributions of benefits under OAR chapter 459, division 045 must not
6 jeopardize the status of the programs as being part of a tax-qualified governmental plan.

7 Stat. Auth.: ORS 238.465 & 238.650

8 Stats. Implemented: ORS 238.450, 238.465 [*& OL 2003 Ch. 276 Sec. 2*] **& OL 2007**

9 **Ch. 53**



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: Notice of Rulemaking for OAR 459-017-0060,
Reemployment of Retired Members

MEETING DATE	9/21/07
AGENDA ITEM	C.13. Reemployed Retirees

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: The current rule needs to be amended to accommodate legislative changes and reflect the most recent Social Security annual compensation limitations.
- Subject: Reemployment of retired members of the PERS Chapter 238 Program.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

The categories of retired members who can return to work after retirement in the PERS Chapter 238 Program and exceed the 1039-hour limit listed under ORS 238.082 were amended by several bills passed by the 2007 legislative session. Specifically:

HB 2184: Adds the deputy director or assistant director of the Department of Human Services if the Governor approves the exception.

HB 2585: Adds an exception for retired members employed as a teacher or administrator by a community college district located in a county of 35,000 inhabitants or less. Clarifies the exception for retired members employed as a teacher or administrator by an education service district (ESD) by eliminating the requirement that the ESD be located in a county of 35,000 inhabitants or less and by adding that the primary duties of the retired member must be performed in a county of 35,000 inhabitants or less. Exempts retired members employed as a speech-language pathologist or speech-language pathologist assistant by a school district or education service district (This provision sunsets January 2, 2016). Also provides that these provisions, as well as the current exception for employment as a teacher or administrator by a school district located in a county of 35,000 inhabitants or less, are available to members who took early retirement if employment in the position doesn't start until at least six months after the member's retirement date.

HB 2619: Clarifies that hours worked while employed by the Legislative Assembly or Oregon State Police for service during a legislative session are not counted toward the 1039-hour limitation. Removes requirement that retired members be age 65 or older to be eligible for exception.

SB 4: Creates an exception for employment as a nurse, or for a nurse employed for the purpose of teaching nursing, during a declared nursing workforce shortage, which was declared by the Legislature in Section 1 of the bill.

SB 342: Exempts a registered nurse who is hired as a nursing instructor from the 1039-hour limitation. Also, exempts a retired member hired by the Department of Public Safety Standards and Training to provide training under ORS 181.610 - 181.712. Both provisions sunset January 2, 2016.

Also, HB 2401 created a new eligibility standard for early retirement for telecommunicators. As most exceptions to the limitations of ORS 238.082 are not available to members who retired early, this bill also affects the provisions of the rule.

Application of the limitations ORS 238.082 may be affected by the Social Security annual compensation limits. The proposed rule modifications incorporate the most recent limits.

The proposed rule modifications also clarify the effect if a retired member exceeds the 1039-hour limit of ORS 238.082 in the first six months following retirement.

LEGAL REVIEW

The attached draft rule 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 October 23, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on October 26, 2007 at 5:00 p.m.

IMPACT

Mandatory: Yes, the rule should be updated to reflect the statutory changes. Otherwise, the rule would provide incomplete guidance regarding reemployed retired members and outdated Social Security annual compensation limits.

Impact: Members, employers and staff will benefit from more comprehensive guidance in an area that has become increasingly complex. Retired members will benefit from the updated Social Security annual compensation limits. The impact upon any individual retired member will be specific to the retired member's retirement and reemployment situation.

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

RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 19, 2007	First reading of the rule.

Notice – Reemployment of Retirees

9/21/2007

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October 23, 2007 Rulemaking hearing to be held at 2:00 p.m. in Tigard.

October 26, 2007 Public comment period ends at 5:00 p.m.

November 16, 2007 Staff proposes adopting the permanent rule modifications, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing will be held on October 23, 2007. The rule is scheduled to be presented to the PERS Board for adoption at the November 16, 2007 meeting.

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**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459**

DIVISION 017 – REEMPLOYED RETIRED MEMBERS

1 **459-017-0060**

2 **Reemployment of Retired Members**

3 (1) Reemployment under ORS 238.082. A retired member of the system receiving a
4 service retirement allowance, who has elected an option other than the total lump sum
5 option under ORS 238.305(3), including those who have retired at a reduced benefit
6 under ORS 238.280(1), *[or]* (2), **or (3), as amended by section 1, chapter 404, Oregon**
7 **Laws 2007**, may be employed under ORS 238.082 by a participating employer without
8 loss of retirement benefits provided:

9 (a) The period or periods of employment with one or more public employers
10 participating in the system do not exceed 1039 hours in a calendar year; or

11 (b) If the retired member is receiving retirement, survivors, or disability benefits
12 under the federal Social Security Act, the period or periods of employment do not exceed
13 the greater of 1039 hours in a calendar year or the total number of hours in a calendar
14 year that, at the retired member's specified hourly rate of pay, limits the annual
15 compensation of the retired member to an amount that does not exceed the following
16 Social Security annual compensation limits:

17 (A) For retired members who have not reached full retirement age under the Social
18 Security Act, the annual compensation limit is \$12,**960***[480]*; or

19 (B) For the calendar year in which the retired member reaches full retirement age
20 under the Social Security Act and only for compensation for the months *[prior to]***before**
21 reaching full retirement age, the annual compensation limit is \$**34,440***[3,240]*.

1 (2) A retired member described in section (1) of this rule who has reached full
2 retirement age under the Social Security Act may work an unlimited number of hours
3 without loss of retirement benefits.

4 (3) The limitations on employment in section (1) of this rule do not apply if:

5 (a) The retired member meets the requirements *[under]***of** ORS 238.082(3), (4), (5),
6 or (6), **section 1, chapter 307, Oregon Laws 2007, or section 4, chapter 789, Oregon**
7 **Laws 2007,** and did not retire at a reduced benefit under the provisions of ORS
8 238.280(1), *[or]*(2), **or (3), as amended by section 1, chapter 404, Oregon Laws 2007;**
9 *[or]*

10 **(b) The retired member is employed in a position that meets the requirements**
11 **of ORS 238.082(3), as amended by section 1, chapter 774, Oregon Laws 2007, the**
12 **date of employment is more than six months after the member’s effective retirement**
13 **date, and the member’s retirement otherwise meets the standard of a bona fide**
14 **retirement;**

15 **(c) The retired member is employed by a school district or education service**
16 **district as a speech-language pathologist or speech-language pathologist assistant**
17 **and;**

18 **(A) The retired member did not retire at a reduced benefit under the provisions**
19 **of ORS 238.280(1), (2), or (3), as amended by section 1, chapter 404, Oregon Laws**
20 **2007; or**

21 **(B) The date of employment is more than six months after the member’s**
22 **effective retirement date and the member’s retirement otherwise meets the standard**
23 **of a bona fide retirement;**

1 **(d) The retired member meets the requirements of section 2, chapter 499,**
 2 **Oregon Laws 2007;**

3 **(e) The retired member is employed for service during a legislative session**
 4 **under ORS 238.092(2), as amended by section 4, chapter 776, Oregon Laws 2007; or**

5 *[(b)]***(f)** The retired member is on active state duty in the organized militia and meets
 6 the requirements under ORS 399.075(8).

7 (4) If a retired member is reemployed subject to the limitations of ORS 238.082 and
 8 section (1) of this rule, *[but]*the period or periods of employment subsequently exceed
 9 those limitations, *[the following will occur if]***and** employment continues into the month
 10 following the date the limitations are exceeded:

11 **(a) If the member has been retired for six or more calendar months:**

12 *[(a)]***(A)** PERS will cancel the member's retirement. The last monthly service
 13 retirement allowance payment the member is entitled to will be for the month in which
 14 the limitations were exceeded. A member who receives benefits to which he or she is not
 15 entitled must repay those benefits to PERS.

16 *[(b)]***(B)** The member will reestablish active membership as required by ORS
 17 238.078 the first of the calendar month following the date the limitations were exceeded.

18 *[(c)]***(C)** The member's account shall be rebuilt in accordance with the provisions of
 19 section (9) of this rule.

20 **(b) If the member has been retired for less than six calendar months:**

21 **(A) PERS will cancel the member's retirement effective the date of the**
 22 **member's reemployment.**

1 **(B) All retirement benefits received by the member must be repaid to PERS in a**
 2 **single payment before the member can be reemployed.**

3 **(C) The member will reestablish active membership as required by ORS**
 4 **238.078 effective the date the member is reemployed.**

5 **(D) The member account shall be rebuilt as of the date that PERS receives the**
 6 **single payment. The amount in the member account shall be the same as the amount**
 7 **in the member account at the time of the member's retirement.**

8 (5) Reemployment of retired member who elected the total lump sum option. A
 9 retired member who has elected the total lump sum option under ORS 238.305(3) may
 10 return to work with a participating employer in the six month period following the
 11 member's effective retirement date without having to repay the retirement benefits paid to
 12 them provided:

13 (a) The retired member is designated by the employer(s) as a casual, emergency, or
 14 seasonal worker as defined in OAR 459-005-0001; and

15 (b) The period or periods of employment with one or more public employers
 16 participating in the system do not exceed 599 hours.

17 (6) The return to work in a qualifying or other position after six months following
 18 the retirement date of a member who elected the total lump sum option has no effect on
 19 the retirement status of that member and, upon such reemployment, the member is not
 20 required to repay retirement benefits.

21 (7) If a retired member described in section (5) of this rule, is working subject to the
 22 limitation of subsection (5)(b) of this rule and the member exceeds that limitation, the
 23 member's retirement will be cancelled. The member will be required to repay to PERS in

1 a single payment the total amount of all retirement benefits received. The member will
2 reestablish active membership as required by ORS 238.078 effective the first of the
3 calendar month following the date the member exceeded that limitation. The member's
4 account shall be rebuilt in accordance with ORS 238.078(2) and subsection (10)(d) of this
5 rule. Upon subsequent retirement, the member may choose a different retirement
6 payment option.

7 (8) Limitations on hours of employment in sections (1) and (5) of this rule will be
8 based on the number of hours employed on and after the retired member's effective
9 retirement date.

10 (9) Reemployment under ORS 238.078(1). If a member has been retired for service
11 for more than six calendar months and is reemployed in a qualifying position by a
12 participating employer under the provisions of ORS 238.078(1), the following will occur:

13 (a) PERS will cancel the member's retirement effective the date of the member's
14 reemployment.

15 (b) The member will reestablish active membership as required by ORS 238.078 on
16 the date the member is reemployed.

17 (c) If the member elected an option other than a lump sum option under ORS
18 238.305(2) or (3), the member need not repay any service retirement allowance payment
19 received that is attributable to the period the member was separated from service. The last
20 monthly service retirement allowance payment to which the member is entitled will be
21 for the month [*prior to*]**before** the calendar month in which the member is reemployed.

22 A member who receives benefits to which he or she is not entitled must repay those

1 benefits to PERS. Upon subsequent retirement, the member may choose a different
2 retirement option.

3 (A) The member's account shall be rebuilt as required by ORS 238.078 effective the
4 date active membership is reestablished.

5 (B) Amounts distributed from the **Benefits-In-Force Reserve** (BIF) under the
6 provisions of subsection (A) shall be credited with earnings at the BIF rate or the
7 assumed rate, whichever is less, from the date of retirement to the date of active
8 membership.

9 (d) If the member elected a partial lump sum option under ORS 238.305(2), the
10 member need not repay any service retirement allowance payment received that is
11 attributable to the period the member was separated from service. The last monthly
12 service retirement allowance payment to which the member is entitled will be for the
13 month [*prior to*] **before** the calendar month in which the member is reemployed. A
14 member who receives benefits to which he or she is not entitled must repay those benefits
15 to PERS. No repayment of lump sum payment(s) received during the period the member
16 was separated from service is required. Upon subsequent retirement, the member may not
17 choose a different retirement option unless the member has repaid to PERS an amount
18 equal to the lump sum payment(s) received and the interest that would have accumulated
19 on that amount.

20 (A) The member's account shall be rebuilt as required by ORS 238.078 effective the
21 date active membership is reestablished.

22 (B) Amounts distributed from the BIF under the provisions of subsection (A),
23 excluding any amounts attributable to any lump sum repayment(s) by the member, shall

1 be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the
2 date of retirement to the date of active membership.

3 (e) If the member elected the total lump sum option under ORS 238.305(3), no
4 repayment of the total lump sum payment received is required. Upon subsequent
5 retirement, the member may not choose a different retirement option unless the member
6 has repaid to PERS in a single payment an amount equal to the total lump sum payment
7 received and the interest that would have accumulated on that amount.

8 (A) If the member repays PERS as described in subsection (e) the member's account
9 shall be rebuilt as required by ORS 238.078 effective the date that PERS receives the
10 single payment.

11 (B) Amounts distributed from the BIF under the provisions of subsection (A) shall
12 not be credited with earnings for the period from the date of retirement to the date of
13 active membership.

14 (10) Reemployment under ORS 238.078(2). If a member has been retired for service
15 for less than six calendar months and is reemployed in a qualifying position by a
16 participating employer under the provisions of ORS 238.078(2), the following will occur:

17 (a) PERS will cancel the member's retirement effective the date of the member's
18 reemployment.

19 (b) All retirement benefits received by the member must be repaid to PERS in a
20 single payment before the member can be reemployed.

21 (c) The member will reestablish active membership as required by ORS 238.078
22 effective the date the member is reemployed.

1 (d) The member account shall be rebuilt [*effective*]**as of** the date that PERS receives
2 the single payment. The amount in the member account shall be the same as the amount
3 in the member account at the time of the member's retirement.

4 (e) Upon subsequent retirement, the member may choose a different retirement
5 payment option.

6 (11) Upon the subsequent retirement of any member who reestablished active
7 membership under ORS 238.078, the retirement benefit of the member shall be calculated
8 using the actuarial equivalency factors in effect on the effective date of the subsequent
9 retirement.

10 (12) The provisions of subsections (9)(c)(B), (9)(d)(B), and (9)(e)(B) of this rule are
11 applicable to members who reestablish active membership under ORS 238.078 whose
12 initial effective retirement date is on or after the effective date of this rule.

13 (13) Reporting requirement. The employer shall notify PERS under which statute a
14 retiree is reemployed in a format acceptable to PERS.

15 (a) Upon request by PERS, a participating employer shall certify to PERS that a
16 retired member has not exceeded the number of hours allowed in ORS 238.082 and
17 sections (1) and (5) of this rule.

18 (b) Upon request by PERS a participating employer shall provide PERS with
19 business and employment records to substantiate the actual number of hours a retired
20 member was employed.

21 (c) Participating employers shall provide the information requested in this section
22 within 30 days of the date of the request.

1 (14) Sick leave. Accumulated unused sick leave reported by the employer to PERS
2 upon a member's retirement, as provided in ORS 238.350, shall not be made available to
3 a retired member returning to employment under sections (1) or (9) of this rule.

4 **(15) Subsections (3)(c) and (3)(d) of this rule are repealed effective January 2,**
5 **2016.**

6 Stat. Auth.: ORS 238.650

7 Stats. Implemented: ORS 238.078, [&] 238.082, **238.092, 399.075, OL 2007 Chs.**
8 **307, 404, 499, 774, 776 & 789.**

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Oregon

Theodore R. Kulongoski, Governor

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September 21, 2007

TO: Members of the PERS Board
FROM: Susan Riswick, Manager, PPLAD
SUBJECT: 2007 Legislation Implementation

MEETING DATE	9/21/07
AGENDA ITEM	D.1. Legislation Implementation

OVERVIEW

Following the close of the 2007 Legislative Session, PERS began working on implementation of new legislation. In all, there are 18 PERS-related bills, and another 17 bills which, while not directly PERS related, will have an impact on the way we do business as a state agency. Of the 18 PERS-related bills, six had emergency clauses and took effect immediately upon signing.

APPROACH

PERS is taking an enterprise project management approach to implementing the 2007 legislative changes. The implementation efforts are coordinated through a single point of contact – the Agency Implementation Coordinator. Each bill is assigned to a specific division for implementation across the entire agency. The Agency Implementation Coordinator will ensure that implementation plans include collaboration with all affected PERS divisions. Mechanisms and processes are in place to facilitate communication on status, issues, and risks throughout the project.

Bill Implementation Plans are drafted and will be finalized during the month of September. A plan template is attached to this memo as Attachment 1. Each plan evaluates and identifies requirements in the following areas:

- Forms and Communication
- Procedures and Staff Training
- Computer Processes and System Changes
- Personnel and Workload
- Actuarial and Legal
- Oregon Administration Rules & Agency Business Rules
- Coordination with RCP and Business Process Owners

CHALLENGES

The 2007 legislative changes have varying impacts on agency operations ranging from minor to moderate to significant operational impacts requiring program and system changes. To identify those challenges and address them appropriately, roles and responsibilities for each team involved in implementation have been identified, as shown in Attachment 2.

Implementation for the following PERS-related bills will result in minor impacts and system changes, e.g., forms will need to be amended or staff training conducted:

Bill #	Bill Title	Bill Description	Assigned Division
HB 2184 Effective 6/7/07	DHS 1030 Exemption	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.	CSD
HB 2280	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.	FSD
HB 2282	Notice of Dispute	Changes the statutory term "Notice of Contest" to the less confusing "Notice of Dispute."	BPD
HB 2283 Effective 6/26/07	Oregon Investment Council Membership	Removes requirement that the Governor appoint one member of the PERS Board to serve on the Oregon Investment Council.	PPLAD
HB 2286	Oregon Savings Growth Plan – Alternate Payee	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.	OSGP
HB 2358	Oregon Savings Growth Plan – Oregon State Bar	Allows Oregon State Bar employees to participate in the OSGP.	OSGP
HB 5040	PERS Budget	Established PERS 2007-09 budget	FSD
SB 4 Effective 7/17/07	Nursing Workforce Shortage	Declares nursing workforce shortage. Among other provisions, allows retired nurses to exceed 1039-hour limitation.	CSD
SB 342	Reemployed Retired Nurses	Allows registered nurses who have retired to work unlimited hours as a "nurse instructor."	CSD

The following PERS-related bills have moderate impacts creating communication needs, adding complexity, and requiring more case-by-case analysis. Most may not require major

2007 Legislation Implementation

September 21, 2007

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system changes but PERS will need to look at the addition of some manual processes. Forms will need to be created or amended, staff training conducted, and OARs and business rules revised.

Bill #	Bill Title	Bill Description	Assigned Division
HB 2281	Withdrawals	Requires a member who withdraws (not retires) from any PERS programs to withdraw from all PERS programs at the same time.	CSD
HB 2397	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.	BPD
HB 2401	Early Retirement for Tele-communicators (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.	BPD
HB 2585 Effective 7/16/07	Reemployed Retirees – Community Colleges	Exempts ESD employees whose “primary work duties” are in a county of 35,000 inhabitants or less from the 1039-hour limitation on employment. Also exempts community colleges and Speech Pathologists.	CSD
HB 2619	Police Officer Full Cost Purchase (part 1)	Allows police officers to purchase up to four years of service time served as a police officer out-of-state.	CSD
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.	BPD
SB 872 Effective 6/20/07	Judge members	Provides that Judge Member’s may designate ex-spouse as PERS beneficiary.	BPD

The following bills potentially have a major impact to PERS. Analysis is still underway as to the extent of that impact. For example, HB 2007 involves complicated analysis of what benefits may impact the plan's tax qualification. Also, HB 2285 needs to be fully evaluated because of issues around retroactivity, implementation timing, and major programming changes.

Bill #	Bill Title	Bill Description	Assigned Division
HB 2007	Domestic Partnerships	Among other provisions, directs PERS to extend the same rights and benefits to registered domestic partners as those to married individuals, unless such extension would conflict with a condition of the plans tax qualification.	PPLAD
HB 2285	Eliminates "Break In Service" and "Gross Up" of OPSRP Part Timers	Eliminates "Break in Service (BIS) statutory provisions retroactively and directs PERS to make the necessary adjustments to member accounts affected by BIS. Eliminates provisions regarding full-time equivalency (FTE) and accrual of OPSRP retirement credit and provides for accrual of retirement credit in the same manner as in the PERS Chapter 238 Program. Eliminates requirement that salary of a part-time employee be grossed up to full-time salary for calculation of final average salary in OPSRP.	Joint – CSD & BPD
HB 2619	Crediting of LOM Accounts (part 2)	Provides for earnings and losses to LOM accounts during future re-employment.	CSD

NON-PERS RELATED BILLS:

While the 2007 Legislation Implementation Plan is focused on the PERS-related bills, work is underway to address the 17 Non-PERS related bills, such as:

HB 2592 – Oregon Government Ethics Commission: makes substantial changes to government standards and practices, such as limits on gifts to public officials

HB 2702 – Plain Language Standards: directs the Governor to assign a state agency the responsibility of developing a plan to ensure state agencies conform to plain language standards.

SB 583 – Oregon Consumer Theft Protection Act: outlines the requirements for reporting a breach of security of a consumer's personal information; requires social security numbers be redacted on all external communication; and requires state agencies to implement an Information Security Program.

PERS 2007 LEGISLATION IMPLEMENTATION PLAN

BILL NUMBER:	
RELATED LAW:	
BILL EFFECTIVE DATE:	
ASSIGNED DIVISION	
DIVISION IMPLEMENTATION COORDINATOR:	
BILL IMPLEMENTATION MANAGER:	
AFFECTED DIVISIONS:	
ORIGINAL (PLAN) DATE:	
LAST REVISED DATE:	

BILL SUMMARY (provided by PPLAD)

ATTACHMENT 1

IMPACT

FORMS: (amendments or new must be coordinated with Forms Committee)

COMMUNICATIONS: Internet, Intranet, Handouts, Group Presentation and Phone Scripting, Employer web/manual

PROCEDURE DEVELOPMENT AND ROLLOUT:

STAFF TRAINING PLANS: (Coordinate with Mary Waldron)

COMPUTER PROCESSES: (Subsystem enhancements; workarounds until automated)

WORKLOAD: (Additional staff or shifting duties)

PERSONNEL HIRING by division:

Position Title					
CSD					
BPD					
ISD					
FSD					
PPLAD					

ATTACHMENT 1

DIVISION BUDGET CHANGES:

ACTUARIAL: (Anything needed from Mercer?)

LEGAL: (Clarification of policy from PPLAD or questions for legal counsel (via PPLAD))

RULES: (Amend or adopt new OARs via PPLAD)

BUSINESS RULE DEVELOPMENT/CHANGES/ROLLOUT:

COORDINATION WITH RCP:

COORDINATION WITH BUSINESS PROCESS OWNER (BPO):



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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September 21, 2007

TO: Members of the PERS Board
FROM: Steve Delaney, Deputy Director
SUBJECT: 2008 – 09 Legislative Process

MEETING DATE	9-21-07
AGENDA ITEM	D.2. Legislative

The PERS Board asked staff to come to the September Board meeting prepared to discuss the legislative process. The Board was concerned with the large volume of PERS-specific bills that had passed (18 in total) during the recently concluded 2007 session. The goal of this discussion is to outline a best practices plan of action that would allow the Board to more effectively register its comments, either in support of, or against, various concepts as they move through the legislative process.

The Board's desire to for greater engagement in the process is consistent with the 2003 legislative directive to the Board, as outlined in Oregon Revised Statute (ORS) 238.660(9):

“The board may review legislative proposals for changes in the benefits provided under this chapter and ORS chapter 238A and may make recommendations to committees of the Legislative Assembly on those proposed changes. In making recommendations under this subsection, the board acts as a policy advisor to the Legislative Assembly and not as a fiduciary. In making recommendations under this subsection on the Oregon Public Service Retirement Plan established by ORS chapter 238A, the board shall seek to maintain the balance between benefits and costs, and the relative risk borne by employers and employees with respect to investment performance, reflected in ORS chapter 238A as in effect on January 1, 2004.”

BOARD ACTIVITY PRIOR TO EACH SESSION

PERS legislative preparation normally begins in the fall of each odd-numbered year, shortly after a legislative session has come to a close. In this early stage staff collects concepts internally, as well as from stakeholders such as the Legislative Advisory Committee, and presents those to the Board to determine which concepts, if any, the Board would like to see further developed.

Concepts must be submitted to the Department of Administrative Services (DAS) by approximately mid-April of each even-numbered year. The Board typically submits a series of concepts at that stage for review, but does not give final approval at this stage.

Legislative proposals must be submitted to the Oregon Legislature by December of each even-numbered year. Traditionally the PERS Board reviews its Governor-approved proposals by November of that year, following further input from the Legislative Advisory Committee, and indicates to PERS staff which proposals have final approval for actual submission. In general

the Board has not given final approval to any proposal that does not have support of both the employer and labor representatives of the Legislative Advisory Committee.

BOARD ACTIVITY DURING SESSION

Recent legislative session history suggests that in addition to Board sponsored bills, anywhere between 30 and 50 legislative bills relating to PERS may be introduced by other parties. With the PERS Board meeting on a monthly basis, it is rarely possible to obtain immediate Board recommendation as to any given bill. On January 7, 2005, the PERS Board approved the following decision matrix for staff use during legislative sessions, with the caveat that “the decision matrix is intended to guide PERS staff in relating to interested parties the likelihood of the PERS Board taking a position on various legislative proposals. The decision matrix is only suggestive of likely Board positions; it is not binding upon the Board.”

BILL TOPIC	BOARD POSITION
Administration of Plan - All aspects	The Board will take a position as appropriate with regard to proposed administrative changes; consideration will include the possible workload impact upon PERS staff.
Benefits - Adequacy, amount, size	The Board does not take a position with regard to appropriate benefit levels, which is a legislative prerogative. The Board will provide factual information regarding the impact of proposed bills on member benefits, employer rates, and system funding as part of its fiscal impact analysis.
Benefits - Plan Structure (i.e. vesting, benefit factor, FAS, payment options)	The Board will take a position as appropriate with regard to proposals to change plan structure. Specifically, while plan structure is a legislative prerogative, the Board will look to legislative intent and will determine if a proposal accomplishes the intent, and will take a position accordingly.
Membership - PERS eligibility - Coverage status - Classification (i.e. P&F)	As membership issues affect benefits, the Board does not take a position with regard to membership issues, which is a legislative prerogative. The Board will provide factual information regarding the impact of proposed bills on membership rights, impact on member benefits, employer contribution rates and system funding as part of its fiscal impact analysis.
PERS Board - Authority - Functions	The PERS Board as trustee of the Public Employees Retirement System has fiduciary duties and will take a position as appropriate with regard to bill proposals impacting the PERS Board and its ability to fulfill those

	responsibilities.
<p>PERS Board</p> <ul style="list-style-type: none"> - Membership (i.e. number, groups represented) 	<p>The PERS Board does not take a position with regard to membership on the PERS Board, which is a legislative prerogative.</p>
<p>PERS Fund</p> <ul style="list-style-type: none"> - All aspects 	<p>The PERS Board as a trustee of the Public Employees Retirement Fund has fiduciary duties and will take a position as appropriate with regard to bill proposals impacting the PERS Fund.</p>
<p>Tax Qualification of Plan</p> <ul style="list-style-type: none"> - All aspects 	<p>The PERS Board is required by Oregon Revised Statute (ORS 238.630(3) (g)) to maintain the tax qualification of the plan, and will take a position as appropriate with regard to bill proposals impacting the plan’s tax qualification status.</p> <p>It is possible that a bill initially falling within the policy scope of a prior topical area above (such as <i>Benefits</i>) may actually require a PERS Board position because of impact on the tax qualification status of the PERS plan.</p>

THE LEGISLATIVE ADVISORY COMMITTEE

To assist the PERS Board in the process of providing the Oregon Legislature with requested advice, 2003 reform legislation also created the Legislative Advisory Committee (LAC):

“The board shall appoint a committee to advise the board on legislative proposals for changes in the benefits provided under this chapter and ORS chapter 238A. The committee must have an equal number of members representing labor and management. No costs of reviewing legislative proposals and making recommendations under this subsection may be charged to the fund. Any member of the committee who is an active member of the system shall be released by the participating public employer who employs the member for the purpose of conducting the official business of the committee, and the wages or salary of the member may not be reduced by the employer during periods that the member is released from duty for the purpose of conducting the official business of the committee.” ORS 238.660(10)

Current membership:

REPRESENTING LABOR	REPRESENTING EMPLOYERS
AFSCME	Association of Oregon Counties
AFT (Faculty members)	League of Oregon Cities
International Assoc of Firefighters	Oregon School Boards Association
Oregon Education Association	Special Districts Association of Oregon
Oregon Nurses Association	State Management Representative
Oregon School Employees Association	Large entity (currently City of Portland)
SEIU	Small entity (currently Roseburg Sch.Dis.)

The LAC is often cited as being similar in nature to the Worker’s Compensation Management-Labor Advisory Committee (MLAC) as outlined in ORS 660.790. There are, however, some major differences between the LAC and MLAC, such as the following:

- (1) MLAC members are appointed by the Governor and confirmed by the Senate. [LAC members are recommended by PERS staff and confirmed by the PERS Board.]
- (2) MLAC reports both findings and recommendations directly to the Legislative Assembly. [LAC reports to the PERS Board.]
- (3) Though not statutorily mandated, MLAC has historically been used by the Governor’s Office as a litmus test as to Worker’s Compensation issues. It is generally understood that a bill will not receive the Governor’s signature if MLAC has not approved the concept.

DISCUSSION

The question is really whether the PERS Board wants to serve as plan managers, providing general principles and guidance to the Oregon Legislature, or if instead the Board desires to actively influence the formation of specific public policy as it relates to employee retirement benefits. A policy choice here would have direct impact as to how the LAC is best used.

Assuming the Board wants to continue with its current general advisory role to the Oregon Legislature, there is an option to be considered in allowing for a more rapid PERS Board response to bills and bill amendments as they are introduced than that currently provided by the matrix. The Board may want to consider allowing PERS staff to arrange a regularly scheduled telephone conference meeting of the PERS Board, perhaps once a week, at least in the early weeks of session as bill are initially being introduced and in the later stages when bill amendments are being considered by committees. Staff would provide background information regarding bills to be considered in the upcoming telephone conference call, and public notice

would be published, allowing stakeholders and other interested parties to listen to the discussions as well.

The Board may also want to reconsider how the LAC influences the outcome of PERS-related legislation. While the Board is statutorily placed in the position of “policy advisor” to the Oregon Legislature, the Board could consider taking a position similar to that of the Governor’s Office with regard to MLAC activity. The Board could by policy indicate that it will not support in public hearing any bill that has not been endorsed by the LAC. This would not prevent the Board from introducing its own bills, nor bind the Board to a course of action, anymore than the Governor presently is legally bound by MLAC decisions. It could narrow the range of bills introduced by other parties to topics that are universally seen as beneficial to all plan stakeholders.

To assist in this consideration, PERS staff is inviting testimony from Representative Greg Macpherson (D-Lake Oswego) at the meeting of the 21st. Representative Macpherson was instrumental in the creation of the LAC during the 2003 session and would provide important background information as to expectations for the LAC.

Additionally, testimony will be provided by both a labor and employer representative, sharing their thoughts as to LAC activity to-date, and how they would like to see the LAC evolve in the future.

ACTION

Following the invited testimony, PERS staff will be looking to the PERS Board as to direction for further development of policies and procedures regarding the PERS Board and LAC interaction in the legislative process.

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ADDITIONAL ITEMS FOR PERS BOARD

September 21, 2007

- 1. Agenda Item C.2. Administrative Review and Appeal Processes Rules**
September 20, 2007 Hartman Memo

- 2. Agenda Item C.5. Employee Contribution for Prior Periods Rule**

September 18, 2007 Hartman Memo

- 3. Agenda Item C.10. Notice of ETOB Rules**

September 17, 2007 Hartman Memo
September 12, 2007 DeLashmutt Memo

- 4. Agenda Item D.2. 2004 – 09 Legislative Process**

September 19, 2007 Delaney Memo

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BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

Walk-in Agenda Item 1

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September 20, 2007

BY EMAIL AND MAIL

Steve Delaney
Deputy Director
Public Employees Retirement System
PO Box 23700
Tigard, OR 97281-3700

Re: OAR 459-001-0030, 459-001-0035, and 459-001-0040
Our File No.: 5415-237

Dear Steve:

This memo follows up on our discussion and these comments are made on behalf of the PERS Coalition. When the initial suggestions were made by the PERS Employers Alliance that there should be a designated method for resolving disputes between employers and PERS, I wrote to Steve Rodeman in a letter dated May 16, 2007 and indicated to him that the only concern the Coalition had was that this new potential process should not be used to decide issues which would have an impact on employee rights. It has become very clear, both in Marie Keltner's recent testimony to the PERS board on behalf of the Alliance as well as the substance of the rule that it is drafted broadly enough to encompass disputes which clearly will have an impact on employee rights.

Whatever dispute resolution process PERS devises should, at a minimum, be guaranteed to protect the rights of all interested parties, whether employees or employers, and lead to a final determination which will be binding on all parties. The current rules as drafted fail this fundamental test because they make no provision for protecting the rights of members or allowing their participation in adjudications which may impact their rights. Even more troubling, with the development of these rules there would appear to be two separate adjudicative processes, one for employers and one for employees, which could conceivably lead to conflicting results. As an example, if PERS makes a determination that an employee is entitled to have been a participant, that decision may be challenged by an employer and adjudicated through the processes which are now under consideration in these new rules. If the employer were to prevail in that adjudication then upon notice to the employee that he or she no longer was entitled to participation, that decision could be challenged and litigated through the employee dispute mechanism, with the adjudicator in

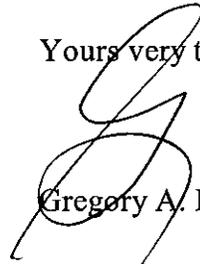
Steve Delaney
September 20, 2007
Page 2

that case reaching an opposite result. I can't think of a more effective method of creating confusion and complexity in resolving disputes about PERS rights and benefits.

Because the issue will now be before the board it seems a perfect opportunity to make certain that whatever system is designed will protect the rights of all concerned and will lead to quick and efficient adjudication of contested issues. It may be relatively rare that a dispute will arise which will involve both employer and employee rights but such disputes will inevitably arise and there should be a mechanism in place for their determination.

Because we are in the initial stages of rulemaking I have not addressed specific issues within the rule itself but rather chose to limit my comments to the more general problems I see with the current approach. Hopefully after some consideration all interested parties can move toward an adjudicative process which is quick, efficient, and avoids confusion, waste, and further complications.

Yours very truly,



Gregory A. Hartman

GAH:kaj

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cc: Clients

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

Walk-in Agenda Item 2

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September 18, 2007

BY EMAIL AND MAIL

Steve Delaney
Deputy Director
Public Employees Retirement System
PO Box 23700
Tigard, OR 97281-3700

Re: OAR 459-009-0130
Our File No.: 5415-237

Dear Steve:

The purpose of this letter is to make comments on behalf of the PERS Coalition on the proposed modifications to OAR 459-009-0130. The proposed rule change has two major components which I will address separately.

1. The proposed rule provides that when PERS determines that retroactive billings to an employer are required that employees will be solely responsible to pay employee contributions and further that no benefits will be paid for periods of time when the employee has the obligation to make a payment to PERS unless and until that payment is made. This proposed rule is clearly inconsistent with the statute. ORS 238.200, which provides for the employee contribution, establishes quite clearly in Section 2 that the burden falls upon the employer to deduct employee contributions and transmit those amounts to PERS. In a circumstance where the board has determined that a retroactive payment must be made, it is the employer's responsibility to forward both employer and employee contributions to the board. The employer may well have a legal right to recover from employees any amounts which were not properly deducted from their payroll, but they do not have the option of avoiding their obligations under the PERS statute. There is no basis in the statute for PERS to withhold benefits for any period when employee contributions have not been made.

As we discussed, this precise issue was litigated in a case entitled *Tri-Met v. Jones*, Multnomah County Circuit Court No. 9501-00343. My recollection is that initially PERS

Steve Delaney
September 18, 2007
Page 2

sued Tri-Met taking the position that a number of Tri-Met employees were police officers and entitled to equal-to-or-better-than benefits under ORS 237.620. That case was resolved by an agreement by which Tri-Met retroactively placed those employees in PERS. Unfortunately that settlement agreement did not clearly provide for the mechanism for funding the benefits under PERS. Subsequently Tri-Met took the position that because these employees were required to make a contribution to PERS, that Tri-Met had no obligation to make any payment to the system until the employees had forwarded the employee contributions. A second lawsuit was filed (as referenced above) and the court specifically rejected Tri-Met's position and held that the employer had the obligation to forward both employee and employer contributions. The failure of the employer to withhold those contributions initially did not relieve them of the responsibility to pay those amounts to PERS.

The proposed PERS rule as drafted is not only inconsistent with the statute but also inconsistent with the precedent established by the Multnomah County Circuit Court in the Tri-Met litigation and the proposed rule should be rejected.

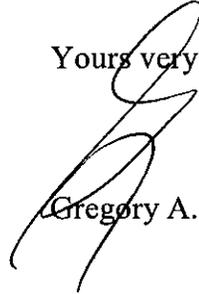
2. The rule provides in essence that in certain circumstances where it has been determined that PERS has been mistaken in its invoicing to employers that PERS will absorb some portion of the earnings on those billings for prior service which will be funded as an administrative expense. It appears that there are several problems with the rule as drafted. First the rule requires in every instance where there are retroactive billings some analysis, agreement, or adjudication about the relative fault of PERS and the employer on why the mistake occurred. This is not likely to decrease the administrative burden on PERS. If the mistake involves a single employee the requirement payment is not likely to be a substantial hardship to an employer and it is hard to understand why a relative fault assessment makes much sense. On the other hand if the problem involves a large number of employees then they are presumably employed by a large number of employers and charging some portion of the earnings on these payments to administrative expenses would not appear to be a very effective remedy. Utilizing administrative expenses as a source of payment also opens up arguments about whether earnings on employee accounts are suitably used for remedying errors created by PERS and employers which require retroactive payments. Absent some showing that the current system is causing substantial hardship on employers, it is not clear why that system needs to be changed.

The rulemaking memo also notes, under Policy Issues, some additional issues raised by the employers which are not being addressed in the proposed rules for the reasons stated.

Steve Delaney
September 18, 2007
Page 3

On behalf of the PERS Coalition we generally agree that those are not topics which need to be addressed in rulemaking.

Yours very truly,



Gregory A. Hartman

GAH:kaj

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cc: Clients

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>>> Brian DeLashmutt 9/12/2007 9:51 AM >>>

Daniel

I am reviewing the proposed rules on ETOB and will take some time to do future review but under 0011-1 , I see what I believe is a need for a change. It says in essence the review only occurs when the employer decreases his plan. I think it should be "when an employer changes his plan". Unless a review occurs how would anyone know if the change is for the better or is a decrease in benefits?

Brian DeLashmutt

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September 17, 2007

BY EMAIL AND FIRST CLASS MAIL

Paul Cleary
Executive Director
Public Employee Retirement System
PO Box 23700
Tigard, OR 97281-3700

Re: ORS 237.620 (Equal-to-or-Better-Than)
Our File No.: 5415-237

Dear Paul:

The 1973 legislature provided that police officers and fire fighters in the state of Oregon were entitled either to participation in PERS or alternatively to a pension plan which was equal to or better than PERS. This requirement has been a source of controversy virtually since its inception. The 2007 legislature made two significant changes to the equal-to-or-better-than statute. The first and most fundamental is that the default position for employers who do not provide an equal-to-or-better-than plan is no longer mandatory participation in PERS. At the inception of the equal-to-or-better-than requirement, requiring an employer who did not meet the test to integrate into PERS made good sense. However with the development of multiple PERS tiers, integration into PERS, which can only be done on a prospective basis, no longer provided an adequate remedy to those police or fire fighters whose plans were not deemed sufficient. In fact when we last reviewed the rules on equal-to-or-better-than it became clear that forcing participation in PERS could actually be harmful to police officers and fire fighters whose plans were no longer sufficient to meet the test.

The new statute avoids this problem by eliminating integration into PERS as the default and now requiring that an employer whose plan is not deemed sufficient is required to make amendments to bring the plan up to sufficiency under the equal-to-or-better-than standard. Interestingly an employer who failed the equal-to-or-better-than test is not only no longer required to join PERS, but joining PERS would be extremely unlikely to satisfy the test under the new statute.

The second significant change in the new statute is the more specific direction given by the legislature that testing must be done by classes based on the tier that the participant would have been in, had they been a member of PERS. This will require a fundamental restructuring of the test as the most recent test would clearly not be adequate under this more-specific approach.

Paul Cleary
September 17, 2007
Page 2

I believe that the new statute raises some fundamental issues which need to be addressed during the rulemaking process.

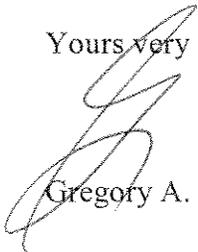
1. Because integration into PERS is no longer the default, this is no longer a request for an exemption from PERS but is more properly thought of as a request for certification. This change will have the greatest impact in determining what the appropriate role for PERS is in circumstances where an employer does not pass the equal-to-or-better-than test. Does PERS's responsibility end once it has determined that the employer is not in compliance with the statute, or does PERS have a greater responsibility to assure compliance?

2. Clearly the test which will be administered pursuant to the legislature's more specific direction is going to be substantially different from the most recent test. Certainly the rules to implement the new statute should not be finalized until the actuary has had an opportunity for full input on the type of analysis which will be required. Any rules should be written so that they are consistent with that required test.

3. The adoption of the more-specific standards for comparison will require a new test for exempt employers once the rulemaking process has been completed. The next question which should be addressed is what would be an appropriate trigger for additional testing in the future. Should it focus solely on potential changes in either PERS or the employer's plan, or will the passage of time, which may change the demographics of an employer, also be sufficient to trigger a new test?

The last time the PERS board did rulemaking in this area, it did so only after stakeholders had a full opportunity to meet with PERS staff as well as the PERS actuary to explore all of the issues which arose under the prior testing process. Given the substantial change mandated by the statute, it would be entirely appropriate for the PERS board to create an opportunity for stakeholders to meet with PERS staff as well as the PERS actuary to explore some of the issues identified above and other issues which may arise during the rulemaking process. I would appreciate your including this letter in the board's meeting packet for the upcoming meeting, and I will, of course, be ready to address any issues at the upcoming meeting on this equal-to-or-better-than process.

Yours very truly,



Gregory A. Hartman

GAH:kaj

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Memo

To: The PERS Board
From: Steve Delaney, PERS Deputy Director
CC: Representative Greg Macpherson
Date: 9/19/2007
Re: THE LEGISLATIVE PROCESS (September 21, 2007 meeting of the PERS Board)

I spoke with Representative Greg Macpherson (D-Lake Oswego) in preparation for the September 21, 2007 meeting of the PERS Board. Specifically, we discussed his thoughts on how the Legislative Advisory Committee (LAC) could best be used in the legislative process. Representative Macpherson was instrumental in drafting the 2003 legislation that established the LAC.

The representative indicated that in 2003 the Management-Labor Advisory Committee (MLAC) used in worker's compensation issues was the model being followed when drafting the LAC implementation language. That model has accomplished a lot in recent years by bringing discipline to the worker's compensation process. It was understood that there are some basic differences between the two systems that prevented a true copying of MLAC. Worker's compensation has no comparable organization as the PERS Board. The concept was never to elevate the LAC so that it has a role separate from that of the PERS Board. The PERS Board alone is statutorily authorized to make and implement policy as it relates to the state's retirement system.

The goal was to create a counterpart to the MLAC that would assist in bringing discipline to the PERS legislative process.

It was envisioned that the PERS Board would rely upon the LAC to do the preliminary work and forward legislative concepts to the Board with its recommendation for passage or opposition. The PERS Board, as the steward of the system would retain the authority over the recommendation to the Legislature, but generally would be expected to ratify the recommendation made by the LAC.

The effectiveness of this process depends on the expectation that a recommendation coming from the PERS Board/LAC would be followed by the Governor and Legislature. Without such a process, the retirement system remains open to every legislator's individual ideas as to what should be changed based on imperfect information received from narrowly-focused constituents.

Representative Macpherson concluded that he did not see the need for any statutory change in the process, but instead he would encourage the PERS Board to proactively put in place the process as contemplated at the time of reform in 2003.