

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

Thursday March 22, 2012 1:00 P.M.	PERS 11410 SW 68 th Parkway Tigard, OR
ITEM	PRESENTER
A. Administration	
<ol style="list-style-type: none"> 1. January 27, 2012 Board Meeting Minutes 2. Director's Report <ol style="list-style-type: none"> a. Forward-Looking Calendar b. OIC Investment Report c. Operating Budget Report d. Employer Reporting Update e. Quarterly Report on Member Transactions f. Legislative Update g. Board Governance 	<p style="margin: 0;">CLEARY</p> <p style="margin: 0;">DALTON</p>
B. Administrative Rulemaking	
<ol style="list-style-type: none"> 1. Notice of OSGP Roth 457 Rules 2. Notice of Annual Earnings Crediting Rules 3. Adoption of Tax Remedy Rules 4. Adoption of Minimum Retroactive Payment Rule 5. Adoption of Earnings Crediting Rules 6. Adoption of Reemployment of Retired Members Rule 7. Adoption of Petition for Reconsideration Rule 	<p style="margin: 0;">RODEMAN</p>
C. Action and Discussion Items	
<ol style="list-style-type: none"> 1. 2011 Final Earnings Crediting and Reserving 2. Strunk/Eugene Overpayment Recovery 	<p style="margin: 0;">DUFRENE / RODEMAN RODEMAN</p>
D. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225	
<ol style="list-style-type: none"> 1. Litigation Update 	<p style="margin: 0;">LEGAL COUNSEL</p>

Note: There will be an Audit Committee Meeting immediately following the Board meeting.

In compliance with the Americans with Disabilities Act, PERS will provide this document in an alternate format upon request. To request this, contact PERS at 888-320-7377 or TTY 503-603-7766.

<http://www.oregon.gov/PERS/>

2012 Meeting Dates: January 27 - March 22 - May 18 - July 2 - September 28 - November 30

James Dalton, Chair Laurie Warner, Vice Chair John Thomas Pat West Rhoni Wiswall Paul R. Cleary, Executive Director



OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

January 27, 2012
Tigard, Oregon

Board Members:

James Dalton, Chair
Eva Kripalani
Laurie Warner
Pat West

Staff:

Donna Allen
Paul Brown
Paul Cleary
David Crosley
Joe DeLillo

Jon DuFrene
Yvette Elledge
Rick Howitt
Jeff Marcic
Joe O'Leary

Brenda Pearson
Steve Rodeman
Susan Sjordal
Jason Stanley
Stephanie Vaughn

Joined by Phone:

Mike Pittman

Others:

Bruce Adams
Keith Kutler
Matt Larrabee
Aruna Marsh

Victoria Nolan
P. Peg
Scott Preppernau
Bill Robertson

John Thomas
Deborah Tremblay
Scott Winkels
Rhoni Wiswall

Chair James Dalton called the meeting to order at 1:00 P.M.

ADMINISTRATION

A.1. BOARD MEETING MINUTES OF NOVEMBER 18, 2011 AND THE BOARD CONFERENCE CALL MEETING ON DECEMBER 16, 2011

The Board unanimously approved the minutes from the November 18, 2011 Board meeting.

The Board unanimously approved the minutes from the December 16, 2011 Board conference call meeting, noting the conference call start time of 10:00 AM.

A.2. DIRECTOR'S REPORT

Executive Director Paul Cleary presented the forwarding looking-calendar noting the next Board meeting will be March 22 which is a Thursday. Agenda items will include an update on the *Strunk/Eugene* overpayment recovery project, final 2011 Earnings Crediting and Reserving, and a 2012 Legislative Session update. The meeting will be followed by an Audit Committee meeting.

Cleary presented the December 31, 2011 year-end Oregon Investment Council (OIC) investment report. He noted a regular account annualized rate of return of 7.29 percent for the two-year period ending December 31, 2011, and one-year returns of 2.22 percent for the regular account and negative 7.53 percent for the variable account.

Cleary reported that the PERS Actuary, Mercer, decided at the corporate level to no longer service public pension systems once current contracts expire. With PERS approval, Milliman has assumed the PERS actuarial services contract. Our current actuaries Matt Larrabee and Scott Peppernau joined Milliman and will continue to support PERS.

Matt Larrabee described how the calendar year 2011 investment performance impacts the employer rates that will be effective July 2013. Larrabee forecasted the average employer rate will increase by approximately 5 percent of payroll excluding side-account offsets and IAP contributions. He noted most of that increase is still due to the 2008 losses. Valuation results for calendar year 2011 will be submitted at the July meeting and 2013-15 employer rates will be presented to the Board in September (systemwide) and November (individual).

Dalton stated the message for employers is to plan on employer rates to go up and to the right.

Cleary reported the 2011-13 biennium operating budget is still showing a positive variance. He cautioned this would likely change with the upcoming *Strunk/Eugene* overpayment recovery project implementation costs.

Deputy Director Steve Rodeman presented the update on the agency's Mission Statement, Values, and Operating Principles. The next phase will be to engage a working team to document the agency's core work processes and map the sub-processes and related outcome measures.

Rodeman provided an update on the *Strunk/Eugene* overpayments recovery project. Rodeman reported PERS must defer any collection activities until the court process is completed. In the meantime, PERS is developing a project plan in hopes to begin work as soon as possible. The project plan will be presented at the March 22 Board meeting.

Board members expressed concern on how the collection process will be handled and the financial impact to members, in particular those who took a total lump sum. Rodeman explained that as a state agency, PERS must follow state collection process guidelines.

Cleary referred to the additional materials available on the website. PERS will communicate with stakeholder groups and do what it can to minimize the impact to members, while still collecting the overpayments as required.

NOTICE OF RULEMAKING

B.1. NOTICE OF MINIMUM RETROACTIVE PAYMENT RULE

Rodeman presented the Notice of Minimum Retroactive Payment rulemaking which would establish a minimum retroactive payment amount of \$5.00 for one-time payments. PERS is looking for stakeholder comment on the threshold amount. There will be a public hearing on February 28 and public comments are due by March 1.

B.2. NOTICE OF EARNINGS CREDITING RULES

Rodeman provided notice of rulemaking on the Earnings Crediting rules that will correct some misused terms and make other technical corrections. No action required.

B.3. NOTICE OF REEMPLOYMENT OF RETIRED MEMBERS RULE

Rodeman explained that as part of the regular updating of Social Security annual compensation limits; rulemaking has begun on the Reemployment of Retired Members Rules. He encouraged employers to provide additional viewpoints on the exception to work after retirement limitations for replacing employees called to active military duty. No action required.

B.4. NOTICE OF DISABILITY HOUSEKEEPING RULES

Rodeman provided notice of rulemaking on Disability Rules to enact several “housekeeping” edits. No action required.

B.5. NOTICE OF PETITION FOR RECONSIDERATION RULE

Rodeman provided notice of rulemaking for the Petition for Reconsideration Rule to clarify the requirements for such petitions. No action required.

RULE ADOPTION

B.6. ADOPTION OF RULES TO IMPLEMENT 2011 LEGISLATION

Rodeman presented the Rules to Implement 2011 Legislation for adoption by the Board. He requested delaying the adoption of rules 459-013-0310 and 459-013-0320 relating to implementation of HB 2456 (affecting state income tax remedy payments). This will allow additional policy work, legal review, and stakeholder engagement.

Board member Eva Kripalani moved and Board member Pat West seconded to adopt the Rules to Implement 2011 Legislation with the exception of 459-013-0310 and 459-013-0320. Motion passed unanimously.

B.7. ADOPTION OF DEATH AND SURVIVOR BENEFITS RULES

Rodeman presented the Death and Survivor Benefits Rules for adoption by the Board. He noted only minor changes were made since they were first noticed for rulemaking.

Kripalani moved and Board member Laurie Warner seconded to adopt the Death and Survivor Benefits Rules. Motion passed unanimously.

ACTION AND DISCUSSION ITEMS

C.1.2011 PRELIMINARY EARNINGS CREDITING AND RESERVING

Rodeman and Fiscal Service Division Administrator Jon DuFrene presented the 2011 Preliminary Earnings Crediting and Reserving recommendations. Rodeman described the policy issue involving potential distribution of some of the Contingency Reserve. Two options were included showing different allocations, one with a Contingency Reserve distribution and one without a distribution. Staff recommended distributing \$199.1 million from the Contingency Reserve to the Tier One Rate Guarantee Reserve to eliminate the 2008 deficit in that reserve. Based on the Tier One Crediting for 2011, the Tier One Rate Guarantee Reserve would have an overall deficit of negative \$361.7M rather than negative \$560.8M following the recommend distribution.

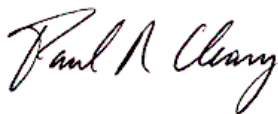
The Contingency Reserve would have a remaining balance of \$535.3M following the recommended distribution

All Board members confirmed their understanding of the options. Board members then provided comment on the recommendations. Rodeman noted other potential litigation and employer solvency risks supported maintaining a positive balance in the Contingency Reserve.

Warner moved and Kripalani seconded to adopt the preliminary crediting of earnings for calendar year 2011 as presented and to distribute \$199.1 million of the Contingency Reserve to liquidate the 2008 deficit in the Tier One Rate Guarantee Reserve, subject to final adoption at the March 22, 2012 Board meeting. Motion carried unanimously.

Dalton adjourned the meeting at 1:45 PM.

Respectfully submitted,



Paul R. Cleary
Executive Director

PERS Board Meeting Forward-Looking Calendar

Friday, May 18, 2012

Strategic Planning Update
2013-15 Budget Development Update
Notice of Contested Case Hearings Rules
Notice of Benefit Equalization Fund Rule
Notice of AP Variable Adjustment Rule
Adoption of Disability Rules
Adoption of Roth 457 Rules
Adoption of Annual Earnings Crediting Rule
2013 Retiree Health Insurance Plan Renewals

Friday, July 27, 2012

Adoption of Contested Case Hearings Rules
Adoption of Benefit Equalization Fund Rule
Adoption of AP Variable Adjustment Rule
2013-15 Agency Request Budget Approval
2011 Valuation Results
Audit Committee Meeting

September 28, 2012

2013-15 Employer Rate Adoption

November 30, 2012

2013 Session Legislative Concept Approval
Audit Committee Meeting

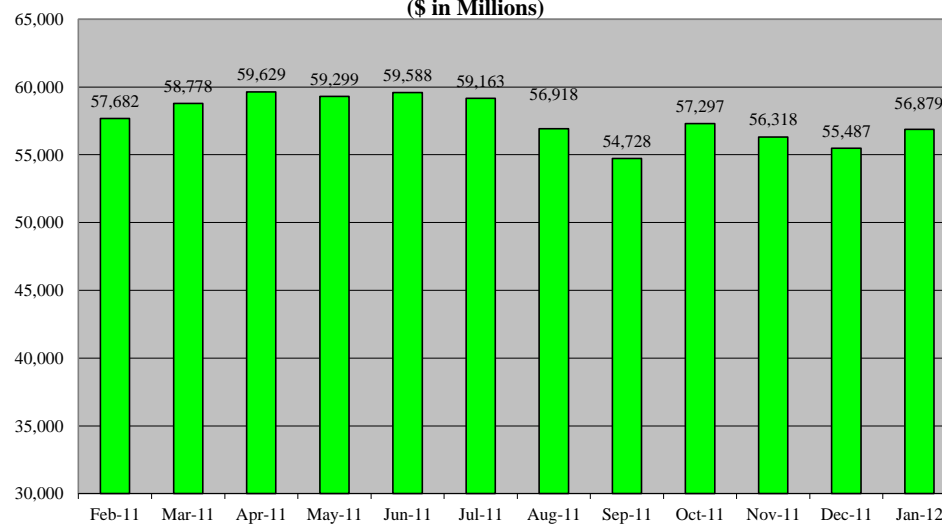


OPERF	Regular Account				Historical Performance (Annual Percentage)					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date ³	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Public Equity	38-48%	43%	\$ 20,460,293	36.5%	6.25	(3.57)	8.38	18.81	(0.95)	(0.94)
Private Equity	12-20%	16%	13,434,831	24.0%	N/A	11.06	13.72	7.34	3.07	7.25
Total Equity	54-64%	59%	33,895,124	60.5%						
Opportunity Portfolio			948,214	1.7%	1.18	1.11	7.16	17.66	4.54	4.20
Total Fixed	20-30%	25%	14,257,569	25.4%	1.85	7.09	8.42	14.03	7.64	7.31
Real Estate	8-14%	11%	6,563,948	11.7%	1.32	15.33	7.33	1.53	(2.74)	(0.74)
Alternative Investments	0-8%	5%	375,297	0.7%	(0.30)					
Cash	0-3%	0%	9,313	0.0%	0.49	0.46	0.63	1.16	1.13	2.00
TOTAL OPERF Regular Account		100%	\$ 56,049,465	100.0%	2.83	4.27	9.52	13.35	1.79	2.35
OPERF Policy Benchmark					3.09	3.13	8.43	11.70	1.66	2.44
Value Added					(0.26)	1.14	1.09	1.65	0.13	(0.09)
TOTAL OPERF Variable Account			\$ 829,191		6.11	(3.25)	8.30	18.48	(1.54)	(2.47)

Asset Class Benchmarks:

Russell 3000 Index	5.05	3.86	13.46	20.24	1.54	0.60
MSCI ACWI Ex US IMI Net	7.03	(9.03)	4.08	17.53	(2.82)	(1.23)
MSCI ACWI IMI Net	6.09	(3.64)	7.94	18.51	(1.08)	(0.68)
Russell 3000 Index + 300 bps--Quarter Lagged	3.57	3.57	8.79	5.45	(1.00)	2.82
Oregon Custom FI Benchmark	1.55	6.82	6.09	7.43	5.74	6.16
NCREIF Property Index--Quarter Lagged	16.10	16.10	10.85	(1.45)	0.19	3.40
91 Day T-Bill	0.00	0.09	0.11	0.15	0.49	1.40

TOTAL OPERF NAV
(includes variable fund assets)
One year ending January 2012
(\$ in Millions)



¹OIC Policy 4.01.18, as revised April 2011.

²Includes impact of cash overlay management.

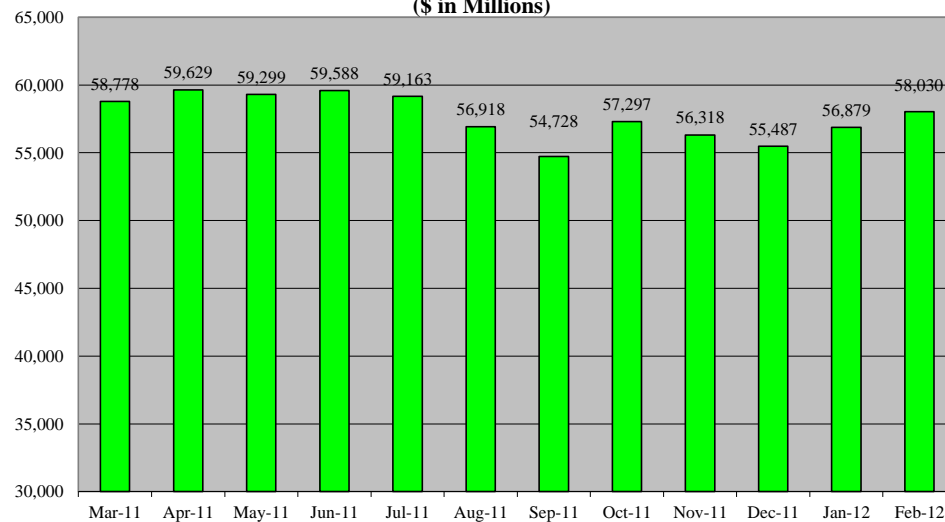
³For mandates beginning after January 1 (or with lagged performance), YTD numbers are "N/A". Performance is reflected in Total OPERF.

OPERF	Regular Account				Historical Performance (Annual Percentage)					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date ³	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Public Equity	38-48%	43%	\$ 21,486,393	37.6%	11.87	(1.54)	10.61	24.92	0.40	0.21
Private Equity	12-20%	16%	13,416,297	23.5%	N/A	11.06	13.72	7.34	3.07	7.25
Total Equity	54-64%	59%	34,902,690	61.1%						
Opportunity Portfolio			969,940	1.7%	3.51	1.16	8.14	18.42	5.14	4.67
Total Fixed	20-30%	25%	14,380,821	25.2%	2.87	7.43	8.72	15.09	8.11	7.19
Real Estate	8-14%	11%	6,532,284	11.4%	1.73	14.84	7.01	2.20	(2.50)	(0.68)
Alternative Investments	0-8%	5%	375,297	0.7%	(0.30)					
Cash	0-3%	0%	4,271	0.0%	0.67	0.51	0.67	1.30	1.09	1.95
TOTAL OPERF Regular Account		100%	\$ 57,165,303	100.0%	5.15	5.00	10.37	15.83	2.42	2.80
OPERF Policy Benchmark					5.71	4.27	9.42	14.42	2.33	2.97
Value Added					(0.56)	0.73	0.95	1.41	0.09	(0.17)
TOTAL OPERF Variable Account			\$ 864,569		11.44	(1.33)	10.20	24.57	0.55	(1.10)

Asset Class Benchmarks:

Russell 3000 Index	9.49	4.45	13.92	26.49	3.41	1.77
MSCI ACWI Ex US IMI Net	13.14	(6.16)	7.03	23.64	(2.16)	(0.25)
MSCI ACWI IMI Net	11.42	(1.69)	9.87	24.68	0.04	0.37
Russell 3000 Index + 300 bps--Quarter Lagged	3.57	3.57	8.79	5.45	(1.00)	2.82
Oregon Custom FI Benchmark	2.38	7.38	6.31	7.88	5.94	6.02
NCREIF Property Index--Quarter Lagged	16.10	16.10	10.85	(1.45)	0.19	3.40
91 Day T-Bill	0.00	0.08	0.11	0.14	0.46	1.32

TOTAL OPERF NAV
(includes variable fund assets)
One year ending February 2012
(\$ in Millions)



¹OIC Policy 4.01.18, as revised April 2011.

²Includes impact of cash overlay management.

³For mandates beginning after January 1 (or with lagged performance), YTD numbers are "N/A". Performance is reflected in Total OPERF.



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board
FROM: Kyle J. Knoll, Budget Officer
SUBJECT: March 2012 Budget Report

2011-13 BUDGET UPDATE

Operating expenditures for January 2012 were \$ 2,955,522, and preliminary expenditures for February 2012 are \$2,768,165.

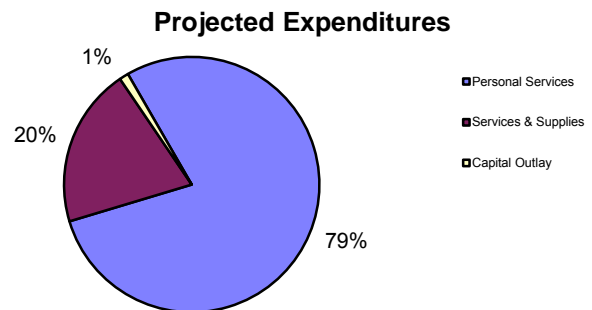
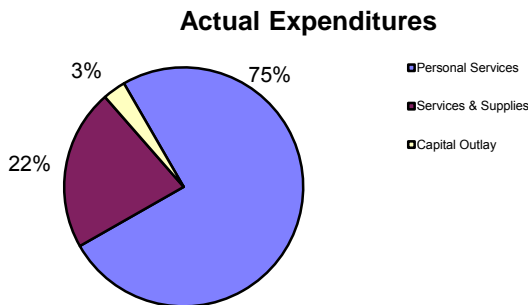
- February 2012 expenditures close in the Statewide Financial Management System (SFMS) March 16th, and will be included in the May budget report to the Board.
- To date, through the first eight months (33.33%) of the 2011-13 biennium, the Agency has expended a total of \$ 23,785,433, or 30.5% of PERS' legislatively approved operating budget of \$78,010,820.
- The current projected positive variance is \$ 1,996,840, or approximately 2.6% of the operating budget.

Senate Bill (SB) 5701-A, passed by the Oregon Legislature during the February 2012 Legislative Session, reduces PERS Personal Services budget by \$750,000, to capture the agency's share of the statewide effort to restructure state government business operations and management of agency programs. After SB 5701-A is signed by the Governor, the budget reduction will be reflected in PERS' 2011-13 Legislatively Approved Budget (LAB), as well as related budget reports.

2011-13 Agency-wide Operations - Budget Execution
Summary Budget Analysis
For the Month of: February 2012

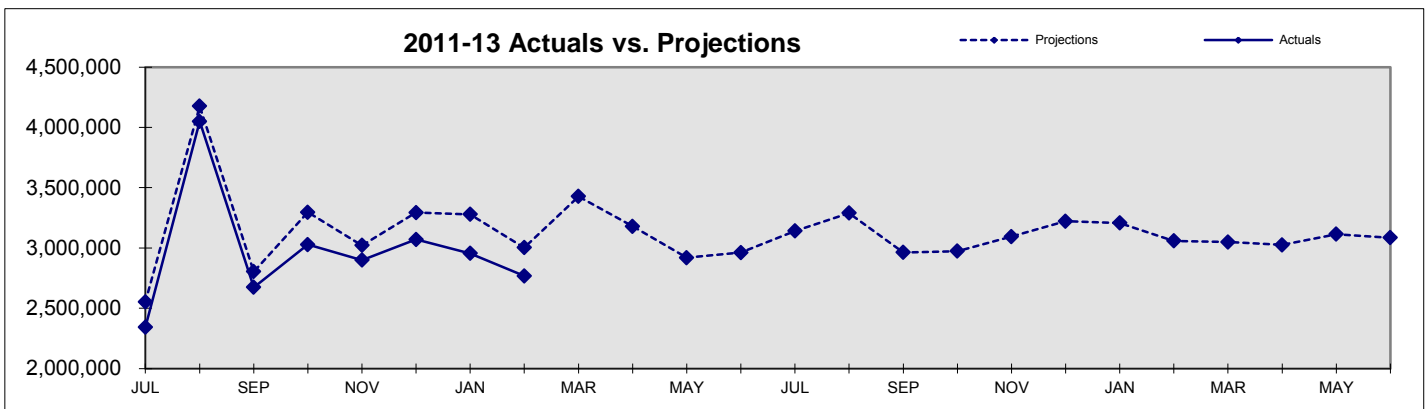
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2011-13 LAB	Variance
Personal Services	18,100,907	39,110,105	57,211,013	56,577,463	(633,550)
Services & Supplies	5,037,913	12,179,734	17,217,647	20,505,769	3,288,122
Capital Outlay	646,613	938,707	1,585,320	927,588	(657,732)
Total	23,785,433	52,228,546	76,013,980	78,010,820	1,996,840



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Monthly Projected Exp.
Personal Services	2,273,078	2,468,969	195,891	2,261,118	2,445,828
Services & Supplies	474,975	520,573	45,598	651,848	620,508
Capital Outlay	20,112	12,840	(7,272)	89,500	34,311
Total	2,768,165	3,002,382	234,217	3,002,467	3,100,646



2009-11 Biennium Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2009-11 LAB	Variance
Personal Services	50,562,257		50,562,257	52,751,494	2,189,237
Services & Supplies	25,938,410		25,938,410	29,916,870	3,978,460
Capital Outlay	1,384,164		1,384,164	593,588	(790,576)
Total	77,884,830		77,884,830	83,261,952	5,377,122



Oregon

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board

FROM: Yvette Elledge, Customer Services Division Administrator

SUBJECT: Employer Reporting Update for 2011

System changes in 2011 successfully completed the RIMS Conversion Project and provided us with new functionality, in particular the ability to designate positions as “qualifying” or “non-qualifying”. Going forward, that allows member employment data to be more accurate, as well as more efficiently reported. The challenge has been cleaning up eight years of previously reported data so that the new records could post correctly.

The sheer volume of the data that required analysis and correction was not anticipated as well as the length of time that would be needed to clear all the errors. A plan was implemented last July that included the use of temporary employees, staff from the Employer Service Center, additional staff from other teams, and use of overtime to correct this data. The plan also required employer involvement.

In addition, anything that impacted employer reporting for 2011 was included in the Member Account Contribution Reconciliation work that the Employer Service Center does for year-end closing, focusing on accounts that have financial impact to employers. These efforts helped clear 20,502 of the 139,732 account errors identified for review and correction.

Due to this additional workload, the following data shows how employer reporting for 2011 was impacted. This data is as of March 5, 2012:

Member Records

- 97.6 % posted
- 87,461 suspended records remaining
 - 17,427 of these have potential financial impact (contributions)
 - 287 employers
 - 6,602 members
- Comparison of suspended records to last year - >250%

Employer Reports

- 99.3 % posted
- 9 employers are missing 94 reports (This includes the charter school employers who are involved in the federal investigation)
- Implemented the Report Recovery process to improve received rate of ER reports

Currently staff is doing the following to plan for this work through 2012:

- Developing a process to waive the prior year earnings charges for 2011 that the employers may receive if the delay was due to PERS. Financial impact to PERS may be up to \$62,000 to be covered as part of administrative expenses.
- Ongoing communication to employers to fully engage them in the clean-up process.
- Developing a plan to complete this clean-up effort by the end of 2012.



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board

FROM: Jim Jost, Metrics Engineer

SUBJECT: Quarterly Report on Member Transactions

Attached is the PERS Quarterly Report of Member Transactions with updated results for the four quarters through Dec 31, 2011.

This report reflects production volume and pending information for five key agency activities. This information is being provided to assist the Board in understanding the general workload demands and performance of PERS' operations. The report provides a breakout of activity on both a quarterly and a cumulative, calendar year-to-date basis. The report shows the activity from the last four quarters and the year-to-date charts shows cumulative totals for the four quarters of calendar year 2010 compared to the 2011 cumulative four quarter results.

In addition, the 'Retirements', 'Withdrawals', and 'Estimates' activities reflect the combined statistics of Tier One, Tier Two, and OPSRP Pension Program. Pending counts do not necessarily reflect a backlog of work, but rather the normal end-of-quarter carry-over of items in the processing pipeline.

Supplemental information to assist in understanding the report is as follows:

'ESTIMATES' BACKLOG

Tier One and Tier Two estimates continued to be in backlog status. A backlog occurs when the number of pending estimates exceeds twice the normal amount of work-in-process. Estimates normally increase in the fourth Quarter and the first Quarter and then level off for the second and third Quarters. This was the pattern seen last year, and the pattern seems to be holding this year.

PERS continues to give priority to those members with a retirement already scheduled, or those members with a projected retirement date within 90 days. PERS is currently meeting the needs of this population. Any available resources are being allocated to the remaining estimates based on the estimate request receipt date.

RETIREMENTS

All retirement transactions are in normal status (i.e. none are in backlog status). And, as we discussed last quarter, there usually is a jump in retirements in the second quarter because of school retirees, and other factors. Calendar year 2011 showed a pattern of a large increase in retirements in the second quarter and then relatively flat during the rest of the year.

Even though spikes do occur, all retirements are paid in accordance with statute. Staff continue working hard and regularly pay out a portion of finalized applications in 30 to 45 days after retirement, and pay out all finalized applications within 62 days of the date the first monthly benefit was due.

Also, these numbers are slightly skewed because some members apply months in advance of their retirements. This causes the applications to remain in pending status longer than normal because they cannot be paid prior to their effective retirement date

WITHDRAWALS

Withdrawal applications have been on a steady downward glide-path for the entire year. This is probably related to the demographics of the aging Chapter 238 members (Tier One and Tier Two) becoming eligible to retire. The volume of IAP withdrawals for OPSRP members is expected to grow faster than those for members of the Chapter 238 programs. In 2011, the Stage 2b deployment (for the new computer system) and additional functionality for qualifying/non qualifying employment increased the length of processing time while staff and employers came up to speed. This caused the “pending” numbers to rise slightly.

The entire withdrawal cycle is cyclical. Typically, it increases after member account annual statements are mailed in May. The backlog for the Chapter 238 withdrawals remains in normal status.

The next Quarterly Board Report, reflecting the results from the first calendar quarter of 2012, is scheduled to be presented at the May 18, 2012 Board meeting.

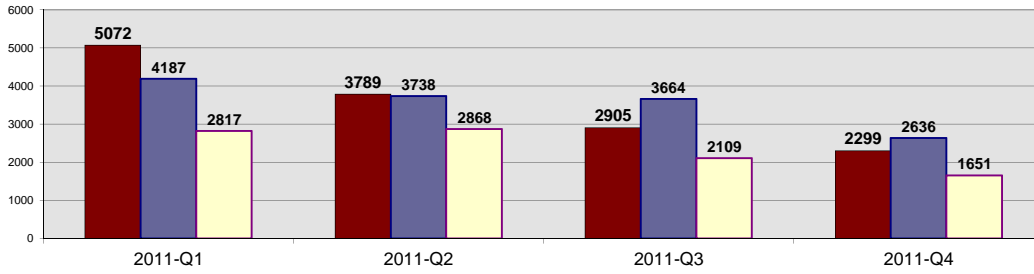
Attachment: Quarterly Report of Member Transactions (Through Fourth Quarter 2011)

Quarterly Report of Member Transactions

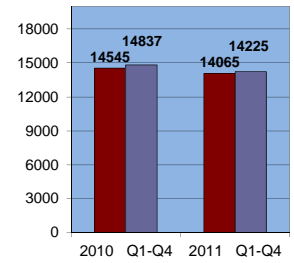
Thru Quarter Q4 2011

Run Date: 3/1/2012

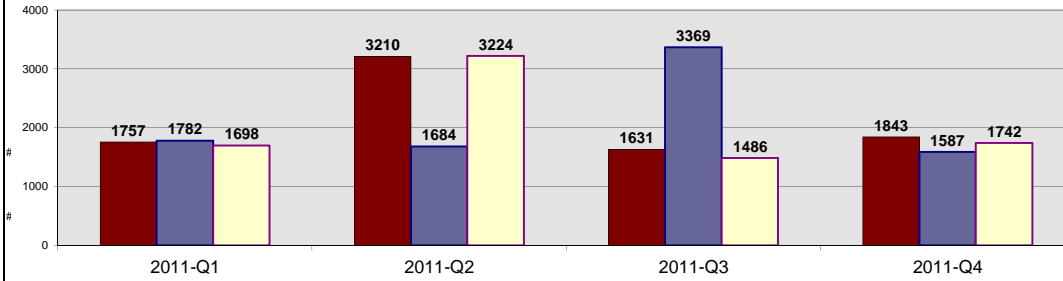
Estimates



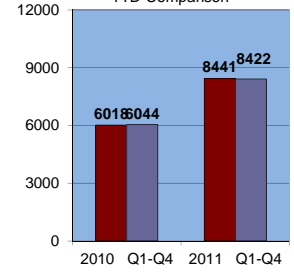
YTD Comparison



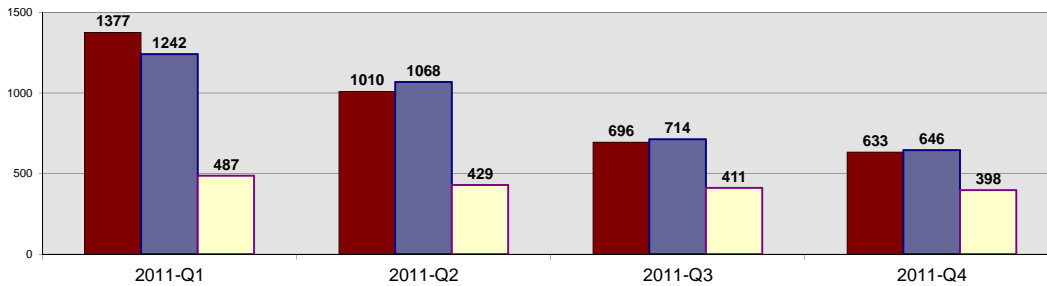
Retirements



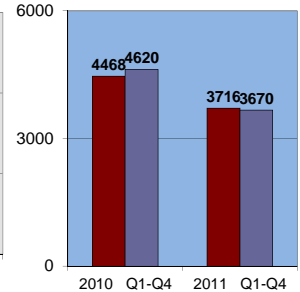
YTD Comparison



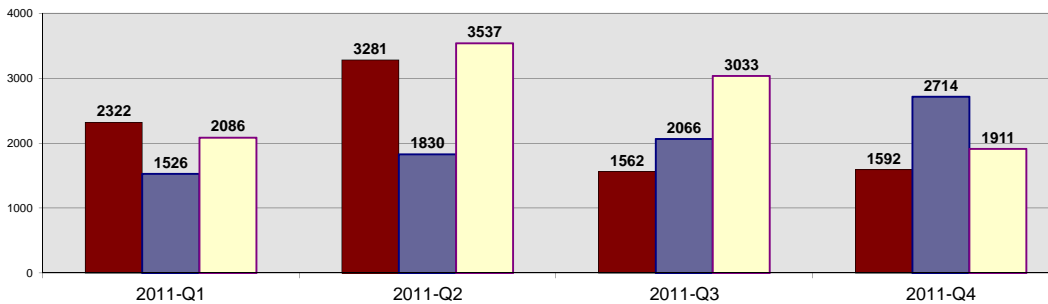
Withdrawals



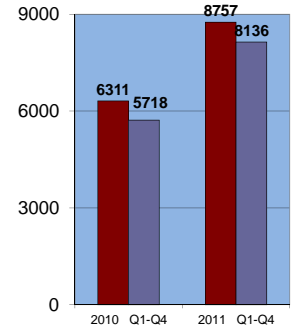
YTD Comparison



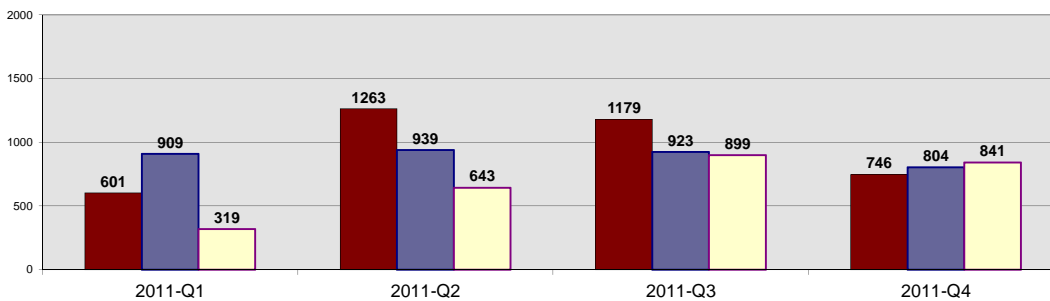
IAP Retirements



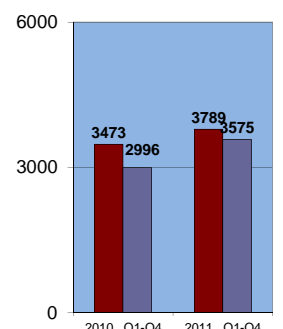
YTD Comparison



IAP Withdrawals



YTD Comparison



Incoming

Completed

Pending





Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board
FROM: Joseph O'Leary, Policy, Planning & Legislative Analysis Division
SUBJECT: Conclusion of 2012 Legislative Session

2012 Session Wrap-Up

Oregon's first regular session in an even-numbered year adjourned *sin die* on Monday March 5, 2012. About a dozen policy measures relating to PERS administration were introduced in the session, but only two are heading to the Governor. The first is the tax reconnect bill, SB 1531. The other, SB 1528, changes terminology with respect to OLCC liquor enforcement inspectors without altering pension rights or expanding the definition of Police and Fire for pension purposes. The legislature also passed a bill, HB 4110, restricting investments in the PERF with respect to companies doing business in the energy sector of Iran.

On the budget side, the rebalance bill, SB 5701, imposes a \$750,000 Other Fund reduction on the agency's operating budget for the current biennium. This amount represents an approximately 1.3% of the personal services appropriated for the 2011-2013 biennium. The committee report on the bill specifies that this reduction is "to capture the agency's share of the statewide effort to restructure state government business operations and management of agency programs." A budget note to the bill directs PERS and other agencies affected by SB 5701 reductions to work with Legislative Fiscal to "identify specific management and other positions to be eliminated as part of a restructuring of business operations aimed at making permanent changes to the management of agency programs and services." The note directs agencies to report on the status of these efforts to the Emergency Board in May 2012 and states that no positions recommended for elimination as a result of this plan are to be included in the Governor's Recommended Budget for 2013-15.

Another bill that will impact agency management is HB 4131, which requires state agencies with more than 100 employees to attain a ratio of 11 to 1 of employees who are non-supervisory to supervisory by October 31, 2012. The measure requires agencies that have not attained this ratio to increase their ratio by one every year until reaching the goal. Agencies that do not do so are prohibited from filling supervisory positions until either the incremental or final ratio goal is achieved.

New PERS Board Members Confirmed

The 2012 session delivered Senate confirmation of Governor Kitzhaber's two nominees to serve on the PERS Board as independent members, Rhoni Wiswall and John Thomas, who step into the seats of outgoing members Mike Pittman and Eva Kripalani. The new members' terms were effective March 1, 2012.

A Look Ahead to 2013

Agency legislative concepts for consideration in the 2013 session are due to DAS by May 1, 2012. After consultation with operations staff and representatives of the Legislative Advisory Committee, staff is recommending not moving forward with any policy bills related to plan administration for the 2013 session.

It is anticipated that versions of the School Savings Act, HB 4104 (2012), and the annuitization rate measure, SB 1593 (2012), will be introduced in the 2013 session. Since there was little time for the Legislative Advisory Committee to analyze these measures in February's short session, staff recommends that the Committee be utilized to more fully evaluate those measures.

All 60 House seats and 16 of the 30 Senate seats will be on the November ballot.



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Notice of Rulemaking for OSGP Roth 457 Account rules:
OAR Division 50

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Establish within the Oregon Savings Growth Plan (OSGP) a Roth 457 account as provided in HB 2113 (2011) to conform to a change in federal law.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

The federal Small Business Jobs Act of 2010 added a qualified Roth contribution program option to governmental 457 plans. The 2011 Oregon Legislative Assembly passed House Bill 2113 (chapter 722, Oregon Laws 2011), which became effective on August 5, 2011. The bill amended the statutes governing the Oregon Savings Growth Plan (OSGP) to allow that plan to offer the Roth account program and conform to the change in federal law. Except as otherwise noted in this memo, the changes and edits made to Division 50 of the OSGP administrative rules are to implement that Roth 457 account option as authorized by HB 2113.

SUMMARY OF MODIFICATIONS TO RULES

Two new defined terms—“Designated Roth Account” and “Designated Roth Contribution”—were added to the rules, and the term “Plan and Agreement” was replaced by a more descriptive term, “Enrollment Form.”

Rules with the most substantive modifications to implement the Roth account are:

- 459-050-0075 (distributions during employment),
- 459-050-0077 (loan program),
- 459-050-0090 (direct rollover and trustee-to-trustee transfer),
- 459-050-0120 (self-directed brokerage option),
- 459-050-0150 (unforeseeable emergency withdrawal), and
- 459-050-0300 (required minimum distribution requirements).

The changes to these rules deal mostly with adding the Roth option to the existing rules and providing directions on the order with which money may be distributed first from either the regular deferred compensation account or the Roth account during a distribution event like an unforeseeable emergency withdrawal, a loan, or a required minimum distribution.

Also, some additional technical changes unrelated to the Roth account were made to OAR 459-050-0090. The definitions for “Distributing Plan,” “Eligible Retirement Plan,” “Eligible Rollover Distribution,” and “Recipient Plan” were broadened to encompass all the rollovers and trustee-to-trustee transfers covered by the rule.

Other minor technical edits were made throughout the Division 50 rules: capitalization of defined terms that were not previously capitalized, exchanging the use of the term “Deferred Compensation Plan” for “Deferred Compensation Program” where appropriate, and adding references to the newly defined terms like “Designated Roth Account.”

Lastly, a new rule, OAR 459-050-0076, was created to cover in-plan Roth conversion. The rule deals with circumstances under which a plan participant, a spouse, or alternative payee may roll their existing deferred compensation account balance into the Designated Roth Account in accordance with IRS Code 402A.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on April 25, 2012 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on April 30, 2012 at 5:00 p.m.

LEGAL REVIEW

The attached draft rules were 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 bill does not compel rulemaking, but new rules and rule modifications should be adopted to accommodate the provisions of HB 2113.

Impact: Adds Roth 457 account to Oregon Savings Growth Plan (OSGP).

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

RULEMAKING TIMELINE

February 15, 2012	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
March 1, 2012	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
March 22, 2012	PERS Board notified that staff began the rulemaking process.
April 25, 2012	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
April 30, 2012	Public comment period ends at 5:00 p.m.
May 18, 2012	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A hearing will be held on April 25, 2012 at PERS Headquarters in Tigard. The rules are scheduled to be brought before the PERS Board for adoption at the May 18, 2012 Board meeting.

- B.1. Attachment 1 – 459-050-0000
- B.1. Attachment 2 – 459-050-0001
- B.1. Attachment 3 – 459-050-0005
- B.1. Attachment 4 – 459-050-0030
- B.1. Attachment 5 – 459-050-0050
- B.1. Attachment 6 – 459-050-0060
- B.1. Attachment 7 – 459-050-0070
- B.1. Attachment 8 – 459-050-0075
- B.1. Attachment 9 – 459-050-0076
- B.1. Attachment 10 – 459-050-0077
- B.1. Attachment 11 – 459-050-0080
- B.1. Attachment 12 – 459-050-0090
- B.1. Attachment 13 – 459-050-0120
- B.1. Attachment 14 – 459-050-0150
- B.1. Attachment 15 – 459-050-0200
- B.1. Attachment 16 – 459-050-0210
- B.1. Attachment 17 – 459-050-0230
- B.1. Attachment 18 – 459-050-0250
- B.1. Attachment 19 – 459-050-0300



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

1 **459-050-0000**

2 **Purpose and Authority**

3 (1) The Deferred Compensation Program is established within PERS for the
4 administration of deferred compensation plans under ORS 243.401 to 243.507 pursuant to
5 Section 457 and Section 402A of the Internal Revenue Code. *[ORS 243.401(5) defines a*
6 *deferred compensation plan as a plan established by the state or a local government that*
7 *has as its purpose the deferral of compensation payable to eligible employees of the state*
8 *or local government and the deferral of income taxation on the deferred compensation.]*

9 (2) In accordance with ORS 243.435, the Deferred Compensation Program shall be
10 administered by the Public Employees Retirement Board (Board), and under the policies
11 established by the Board. Such policies are limited to all technical and administrative
12 aspects of the program management, but *[shall]* may not include investment policy for
13 and the investment of the Deferred Compensation Fund.

14 (3) In accordance with ORS 243.421, Oregon Investment Council (OIC) shall
15 establish and maintain an investment program and policies for the state deferred
16 compensation moneys consistent with the requirement of ORS 293.701 to 293.820, and to
17 the extent practicable the needs of the Deferred Compensation Program.

18 (4) Because the duties and powers of the Board and the OIC with respect to the
19 Deferred Compensation Program are complementary, there is a need for coordination and
20 cooperation between the two agencies.

21 Stat. Auth: ORS 243.470

22 Stats. Implemented: ORS 243.401 - ORS 243.507



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

1 **459-050-0001**

2 **Definitions**

3 The words and phrases used in this Division have the same meaning given them in
4 ORS 243.401 - 243.507 and ORS 293.701 - 293.820. Specific and additional terms are
5 defined as follows unless the context requires otherwise.

6 (1) “Advisory Committee” means the committee established pursuant to ORS
7 243.505 and appointed by the Board.

8 (2) “Alternate Payee” shall have the same meaning as provided in ORS
9 243.507(9)(a).

10 (3) “Alternate Payee Account” means a separate account created under ORS 243.507
11 in the name of an alternate payee pursuant to a court order.

12 (4) “Alternate Payee’s Award” is the portion of a participant’s Deferred
13 Compensation *[a]* Account, Designated Roth Account, or a combination of both,
14 awarded to an alternate payee by a court order, and includes the creation of *[a]* separate
15 account(s) in the fund in the name of the alternate payee.

16 (5) “Alternate Payee Release” means a written statement signed by the alternate
17 payee and received by the Deferred Compensation Program. An alternate payee release
18 may pertain to any of the matters set forth in subsections (5)(a) through (5)(c) *[below]* of
19 this rule, may authorize the release of information, and direct the Deferred
20 Compensation Program to send information to a named person at a specified address.

21 (a) Pertaining to the alternate payee’s interest in the participant’s *[d]* Deferred
22 *[c]* Compensation *[a]* Account and the Designated Roth Account;

1 (b) Pertaining to the alternate payee’s account(s) and distribution(s) if *[a]* separate
2 account(s) *[has]* have been created in the name of the alternate payee; or

3 (c) Pertaining to award information contained in any draft or final court order in
4 regard to the alternate payee on record with the Deferred Compensation Program.

5 (6) “Board” shall have the same meaning as provided in ORS 243.401(1).

6 (7) “Committee” shall have the same meaning as provided in section (1) of this rule.

7 (8) “Court Order” means a court decree or judgment of dissolution of marriage,
8 separation, or annulment, or the terms of any court order or court approved marital
9 property settlement agreement, incident to any court decree or judgment of dissolution of
10 marriage, separation, or annulment.

11 (9) “Deferred Compensation Account” means the participant’s individual account in
12 the Deferred Compensation *[Program]* Plan as defined in ORS 243.401(5) that is made
13 up of pre-tax employee contributions and earnings.

14 (10) “Deferred Compensation Advisory Committee” shall have the same meaning as
15 provided in section (1) of this rule.

16 (11) “Deferred Compensation Contract” shall have the same meaning as provided in
17 ORS 243.401(3).

18 (12) “Deferred Compensation Investment Program” shall have the same meaning as
19 provided in ORS 243.401(4).

20 (13) “Deferred Compensation Manager” means the person appointed by the Director
21 to serve as the Manager of the Deferred Compensation Program of the Public Employees
22 Retirement System.

1 (14) “Deferred Compensation Plan” shall have the same meaning as provided in
2 ORS 243.401(5).

3 (15) “Deferred Compensation Program” means a program established by the State of
4 Oregon and administered under policies established by the Public Employees Retirement
5 Board that has as its purposes the deferral of compensation to eligible employees *[and the*
6 *deferral of income taxation on the deferred compensation]*.

7 (16) “Designated Roth Account” means a participant’s individual account in the
8 Deferred Compensation Program that is made up of Designated Roth
9 Contributions, eligible rollovers and earnings.

10 (17) “Designated Roth Contribution” means any elective deferral which would
11 otherwise be excludable from gross income of an employee under section 457(b) of
12 the Internal Revenue Code and the employee designates as not being so excludable
13 under section 402A of the Internal Revenue Code.

14 ~~[(16)]~~(18) “Disclosure Statement” means the statement, required by ORS 243.450,
15 that describes the probable income and probable safety of money deferred.

16 ~~[(17)]~~(19) “Domestic Relations Order” means a judgment, decree or court order
17 made pursuant to a state’s domestic relations law that creates or recognizes the existence
18 of an alternate payee’s right, or assigns to an alternate payee the right, to receive all or a
19 portion of a participant’s ~~[d]D~~erred ~~[c]C~~ompensation ~~[a]A~~ccount, Designated Roth
20 Account, or a combination of both, or benefit payments.

21 ~~[(18)]~~(20) “Draft Court Order” means an Order as described in section (8) *[above]*
22 of this rule which contains proposed language for the division of a Deferred
23 Compensation Account, Designated Roth Account, or a combination of both, and has

1 been prepared but not approved or signed by the court or has not been filed with the court
2 clerk.

3 ~~[(19)]~~(21) “Eligible Employee” shall have the same meaning as ORS 243.401(6) for
4 an employee of the state, or as provided in the plan description of a local government
5 deferred compensation plan, and shall exclude persons who are inmates of any prison or
6 detention facility operated by the state or local government, and persons who are
7 employed by contract with a private sector business.

8 **(22) “Enrollment Form” means a contract between the eligible employee and**
9 **the plan sponsor which defines the circumstance, responsibilities and liabilities of**
10 **both parties relating to the participation of the employee in the Deferred**
11 **Compensation Program.**

12 ~~[(20)]~~(23) “Estimate” means a projection of distributions prepared by staff. An
13 estimate is not a guarantee or promise of actual distributions that eventually may become
14 due and payable.

15 ~~[(21)]~~(24) “Final Court Order” means a court order or judgment that has been signed
16 by a judge and shows the stamp of the court clerk or trial court administrator, indicating
17 the order is a certified copy of the original record on file with the court.

18 ~~[(22)]~~(25) “Fund” shall have the same meaning as provided in ORS 243.401(7).

19 ~~[(23)]~~(26) “Local Government” shall have the same meaning as provided in ORS
20 243.401(8).

21 ~~[(24)]~~(27) “Local Government Deferred Compensation Contract” means a written
22 contract between a local government and an eligible employee of that local government

1 that provides for deferral of income for service currently rendered, as defined in the
2 established policy of the local government.

3 ~~[(25)]~~(28) “Local Government Deferred Compensation Plan” shall have the same
4 meaning as provided in ORS 243.401(9).

5 ~~[(26)]~~(29) “Manager” shall have the same meaning as provided in section (13) of
6 this rule.

7 ~~[(27)]~~(30) “OIC” means the Oregon Investment Council created by ORS 293.706.

8 ~~[(28)]~~(31) “Participant” means a person defined in either ORS 243.401(10) or
9 243.401(13) participating in one or more deferred compensation plans under ORS
10 243.401 to 243.507, either through current or past deferrals or compensation.

11 ~~[(29)]~~(32) “Participant’s Release” means a written statement signed by a deferred
12 compensation plan participant and received by the Deferred Compensation Program. A
13 participant’s release may pertain to any of the matters set forth in subsections ~~[(29)]~~(a)
14 through ~~[(29)]~~(c) ~~[below]~~ of this section, may authorize the release of information, and
15 direct the Deferred Compensation Program to send information to a named person at a
16 specified address.

17 (a) Pertaining to the participant’s ~~[d]~~Deferred ~~[c]~~Compensation ~~[a]~~Account and

18 Designated Roth Account;

19 (b) Pertaining to the participant’s distribution(s); or

20 (c) Pertaining to award information contained in any draft or final court order in
21 regard to the participant on record with the Deferred Compensation Program.

22 ~~[(30)]~~(33) “Participating Local Government” shall have the same meaning as
23 provided in ORS 243.401(11).

1 ~~[(31)]~~(34) “Payroll Disbursing Officer” means:

2 (a) The person authorized by the state to disburse moneys in payment of salaries and
3 wages of employees of a state agency; or

4 (b) The person authorized by a local government to disburse money in payment of
5 salaries and wages of employees of that local government.

6 ~~[(32)]~~(35) “PERS” shall have the same meaning as provided in ORS 243.401(14).

7 ~~[(33)]~~ *“Plan and Agreement” means a contract between the eligible employee and*
8 *the plan sponsor which defines the circumstance, responsibilities and liabilities of both*
9 *parties relating to the participation of the employee in the Deferred Compensation*
10 *Program.]*

11 ~~[(34)]~~(36) “Plan Sponsor” means a public employer that establishes an eligible
12 deferred compensation plan as defined in Section 457 of the Internal Revenue Code and
13 which enters into an agreement with PERS to participate in the Deferred Compensation
14 Program.

15 ~~[(35)]~~(37) “Program” shall have the same meaning as provided in section (15) of
16 this rule.

17 ~~[(36)]~~(38) “Public Employees Retirement Board” shall have the same meaning as
18 provided in ORS 243.401(1).

19 ~~[(37)]~~(39) “Public Employer” means the state or a local government as defined in
20 ORS 243.401(8).

21 ~~[(38)]~~(40) “Qualified Domestic Relations Order” or “QDRO” means a domestic
22 relations order that has been reviewed and determined to be qualified by the Deferred
23 Compensation Program Manager.

1 ~~[(39)]~~(41) “Solicitation of Offers from Vendors” means a notice to potential vendors
 2 of investment services prepared by the OIC informing the potential vendor of the needs
 3 of the Deferred Compensation Investment Program and notice that the OIC will accept
 4 offers from qualified vendors to sign a contract with the State of Oregon providing for the
 5 vendors’ acceptance of deposits under the terms and conditions of the contract.

6 ~~[(40)]~~(42) “Staff” means any employee of the Public Employees Retirement System,
 7 who has been appointed in accordance with ORS 238.645.

8 ~~[(41)]~~(43) “State Agency” means every state officer, board, commission, department
 9 or other activity of state government.

10 ~~[(42)]~~(44) “State Deferred Compensation Plan” shall have the same meaning as
 11 provided in ORS 243.401(12).

12 ~~[(43)]~~(45) “Vendor” means an entity offering investment or other service related to
 13 investment of deferred compensation pursuant to a contract with the State of Oregon.~~[""]~~

14 [Publications: Publications referenced are available from the agency.]

15 Stat. Auth: ORS 243.470

16 Stats. Implemented: ORS 243.401 - ORS 243.507



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

1 **459-050-0005**

2 **Policy and Goals of Deferred Compensation Program**

3 The Deferred Compensation Program shall be administered to provide the maximum
4 opportunity for eligible employees to participate in a deferred compensation plan which
5 allows participants to defer a portion of their compensation[, and thus their federal and
6 state income tax, on the amount deferred,] until a time when the participant seeks to
7 withdraw the funds as a supplement to the participant’s other retirement and pension
8 benefits. To this end, the Program shall:

9 (1) Establish and administer an effective and efficient program of administration,
10 either directly, or by contract, that provides for billing service, participant enrollment
11 services, participant accounts, data processing, record keeping and other related services,
12 and which gives due consideration not only to the services provided but also the cost to
13 the participants;

14 (2) Provide eligible employees, [prior to] before their participation in a deferred
15 compensation plan under the Program, with a written disclosure statement that contains,
16 for that plan, all of the relevant information, including the probable income and probable
17 safety of the moneys deferred;

18 (3) Offer general education to participants on how to make personally-based
19 investment choices based on their preferences of the investment options available through
20 the investment program;

21 (4) Permit eligible employees who participate in a deferred compensation plan to
22 make changes, when permitted by law and the deferred compensation investment

1 program, to withdraw the deferred compensation and any earnings on deposit, and, when
2 eligible under a plan, to select and transfer those funds to other accounts or annuity
3 instruments;

4 (5) Identify the expressed desires of the diverse group of eligible employees who are
5 deferring compensation until retirement, consistent with the statutory requirements of the
6 Program and communicate those investment needs to the OIC; and

7 (6) Provide cooperation with and assistance to the OIC and staff of the State
8 Treasurer in structuring, monitoring, and revising an investment program that reasonably
9 meets the needs of eligible employees.

10 Stat. Auth: ORS 243.470

11 Stats. Implemented: ORS 243.401 - ORS 243.507

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

1 **459-050-0030**

2 **Deferred Compensation Administrator**

3 (1) The Deferred Compensation Manager (Manager) shall administer the Deferred
4 Compensation Program (Program) established pursuant to ORS 243.401 to 243.507
5 consistent with the laws and administrative rules applicable thereto and on the best
6 possible basis with relation to both the welfare of eligible employees and the State of
7 Oregon. To this end, the Manager may contract for services necessary to the
8 administration of the Program, either independently or in a joint agreement with the OIC
9 or the Oregon State Treasurer.

10 (2) The Manager shall prepare and maintain standard forms necessary to the
11 administration of the Program.

12 (3) The Manager shall provide forms and procedures for promptly communicating
13 participating employee requests for deferral of compensation to the appropriate public
14 officers.

15 (4) The Manager shall provide forms and procedures for promptly communicating
16 employees' requests for types of investment or deposit of funds to the investments record
17 keeper for each investment option selected.

18 (5) The Manager shall provide for settlement agreement with employees
19 participating in the deferred compensation program that provides for distributions to
20 those employees or their designated beneficiaries, upon conditions which are consistent
21 with maintaining the tax exempt status of the Program.

1 (6) The Manager shall approve or deny all applications for a financial hardship
2 distribution as provided in OAR 459-050-0150.

3 (7) The Manager shall select members of the Financial Hardship Committee
4 established under OAR 459-050-0040.

5 (8) The Manager shall obtain disclosure statements concerning the probable safety
6 and probable return of investment of deferred compensation funds for distribution to
7 participants. These disclosure statements shall be given to all employees expressing
8 interest in participating in the deferred compensation program or in changing investments
9 under the Program and shall include, at a minimum:

10 (a) The probable income and probable safety of the monies deferred, based upon the
11 historical performance of the investment option; and

12 (b) The fees and costs associated with each investment option or plan, including
13 related administrative costs, insofar as the information is known.

14 (9) The Manager shall provide with the disclosure statements a general comparison
15 of investments under the Program, using standard units of comparison, and the following
16 disclaimer:

17 “Statements about the relative risk and returns of investment options do not represent
18 predictions of how the investments will perform in the future, but rather provide only a
19 general description of the current investment and how it has performed in the past. The
20 disclosure statement and other information provided by the state is not intended to
21 provide individualized investment counseling, but only general information. Employees
22 who participate in the Deferred Compensation Program will be entitled only to the funds
23 that are lawfully credited to their *[d]*Deferred *[c]*Compensation and Designated Roth

1 [a]Accounts when those funds are distributed. Participants assume the risk that, at time
2 of such distribution, the deferred compensation investments related to their [d]Deferred
3 [c]Compensation and Designated Roth [a]Accounts may have decreased in value or
4 become valueless.”

5 (10) The Manager shall undertake a continuing agenda of educating participants
6 regarding the goals and objectives of the Program. As part of this education, the Manager
7 shall prepare and distribute to eligible employees a written general description of
8 available investment options, including their expected relative risks and returns. This
9 document shall also include a general description of disclosure statements and their
10 purpose in assisting employees in evaluating deferred compensation investments.

11 (11) The Manager shall assure that there are regular audits of the Program, consistent
12 with generally accepted accounting principles.

13 (12) The Manager shall monitor the performance of all deferred compensation
14 investment options offered to eligible employees under the Program.

15 (13) The Manager shall obtain information concerning pending legislation and such
16 advice as appears necessary to comply with state and federal laws, and administrative
17 rules or regulations applicable to the administration of the Program.

18 (14) Unless excused by the Director of the Public Employees Retirement System, the
19 Manager shall attend all meetings of the Board and of the Advisory Committee. The
20 Manager shall supply the Board and the Advisory Committee with such information and
21 assistance as they may request.

22 (15) The Manager shall prepare an annual report to the Board and the Advisory
23 Committee concerning:

1 (a) The effectiveness of and any substantial problems with the administration of the
2 Program, including but not limited to the method of accepting deposits from [the](#) payroll
3 disbursing officer, preparing disclosure forms, making investments and deposits of funds
4 as consistent with the request of participants as possible, maintaining accounts and
5 records of deposits and the costs and fees associated with the administration of individual
6 plans, communications with and education of participants, participant elections of
7 investment options and changes in their elections, participants' elections of payment
8 method upon withdrawal from service or retirement, and problems with participants'
9 creditors;

10 (b) The status of state and federal legislation and laws that may affect the program or
11 require action by the Board;

12 (c) The performance of all deferred compensation investment options; and

13 (d) The results of the latest reported audit(s) of the deferred compensation plan(s),
14 and the Deferred Compensation Program.

15 Stat. Auth: ORS 243.470

16 Stats. Implemented: ORS 243.401 - ORS 243.507

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

1 **459-050-0050**

2 **Eligibility and Enrollment**

3 The purpose of this rule is to establish eligibility criteria and the process for an
4 eligible employee to enroll in the Deferred Compensation Plan established in accordance
5 with section 457 of the Internal Revenue Code and ORS chapter 243.

6 (1) Eligible employee. Eligible employee shall have the same meaning as in OAR
7 459-050-0001~~[(19)]~~, and as defined by section 457 of the Internal Revenue Code.

8 (2) Application for enrollment. Subject to the requirements of subsections (a)
9 through (c) ~~[below]~~ of this section, an eligible employee may enroll to participate in the
10 Deferred Compensation Program by entering into a written agreement as specified herein
11 with the plan sponsor. The written agreement must specify that a portion of the eligible
12 employee's future compensation will be reduced each month, the amount of the
13 reduction, and that the amount of the reduction will be contributed to ~~[an]~~ account(s)
14 established for the employee in the Deferred Compensation Plan.

15 (a) An eligible employee may enter into an agreement to participate in the plan on or
16 before the first day of employment or anytime while employed; provided, however, that
17 the requirements of subsection (b) ~~[set out below]~~ of this section must be satisfied.

18 (b) In order for an eligible employee to be enrolled, the following forms provided by
19 the Deferred Compensation Program must be properly completed and filed with the
20 Deferred Compensation Program:

21 (A) An ~~[Plan and Agreement]~~ Enrollment Form, as defined in OAR 459-050-
22 0001~~[(33)]~~, and which is also an eligible employee's written acknowledgement that

1 the employee understands the terms of the Enrollment Form and is an eligible
2 employee's election of investment option preferences; and

3 *[(B) An Acknowledgement Form and Designation of Investment Options, which is an*
4 *eligible employee's written acknowledgement that the employee understands the terms of*
5 *the Plan and Agreement and is an eligible employee's election of investment option*
6 *preferences; and]*

7 *[(C)]* **(B)** A Designation of Beneficiary form, as provided in OAR 459-050-0060.

8 (c) If the forms are incomplete, do not comply with plan provisions in any manner
9 whatsoever, or the Plan is unable to process the application, then staff will notify the
10 eligible employee within 30 calendar days from the date the enrollment forms are
11 received with the reasons the Deferred Compensation Program cannot accept the
12 enrollment as submitted.

13 (3) Deferral effective date. The Deferred Compensation Program must receive an
14 application for enrollment and be able to determine that the application is complete and
15 may be processed no later than the 25th day of any calendar month for salary reduction of
16 future earnings to begin from compensation paid for services performed during the
17 calendar month following receipt of enrollment.

18 (4) Investment option preference(s). All or any portion of a participant's account
19 may be, but *[shall]* **is** not be required to be, invested by the plan sponsor in the
20 investment options designated by the participant. The plan sponsor shall have absolute
21 and uncontrolled discretion with respect to the option or options in which the account
22 shall be invested.

1 (5) Disclosure statement. *[Prior to]* **Before** the deferral of any part of an eligible
2 employee’s salary, the employee shall be provided information about the investment
3 options including, but not limited to, the probable income and safety of the moneys
4 deferred. Statements about the relative risk and returns of investment options do not
5 represent predictions of how the investments will perform in the future, but rather provide
6 only a general description of the current investment and how it has performed in the past.
7 The Deferred Compensation Program does not provide investment advice, fund analysis
8 or research. Investment options are not guaranteed nor FDIC insured.

9 (6) Deferral amount. A participant’s salary shall be reduced each pay period in an
10 amount or percentage specified by the participant for the purpose of contribution to the
11 participant’s account(s) in the Deferred Compensation *[Plan]* **Program**. The amount of
12 the salary reduction *[shall]* **may** not be less than the minimum per month established by
13 the plan sponsor and *[shall]* **may** not exceed the maximum applicable allowable
14 contribution to a Deferred Compensation Plan as defined in section 457(b)(2) of the
15 Internal Revenue Code.

16 (a) A new participant who enrolls after the first pay period in a calendar year may
17 elect to defer the maximum allowable contribution for the year from future compensation
18 for the remainder of the year.

19 (b) The participant’s maximum deferral limit is determined without regard to
20 amounts rolled over from an eligible retirement plan to the participant’s Deferred
21 Compensation account.

22 Stat. Auth: ORS 243.470

23 Stats. Implemented: ORS 243.401 - ORS 243.507



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

1 **459-050-0060**

2 **OSGP Designation of Beneficiary**

3 The purpose of this rule is to establish the criteria and process that must be used to
4 designate a beneficiary. The provisions in this rule apply to participants, a participant’s
5 surviving beneficiaries, alternate payees and an alternate payee's surviving beneficiaries.

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

7 (a) “Administrator” means the person appointed by a probate court to handle the
8 distribution of property of someone who has died without a will, or with a will that fails
9 to name someone to carry out this task.

10 (b) “Conservator” means the person who has been appointed by a court to manage
11 the property and financial affairs of an incapacitated person.

12 (c) “Executor” means the person named in a will to handle the property of someone
13 who has died. The executor must collect and manage the property, pay debts and taxes,
14 and distribute the remaining assets as specified in the will. In addition, the executor
15 handles any probate court. Executors are also called personal representatives.

16 (d) “Personal Representative” means the person named in a will to handle the
17 property of someone who has died. Personal representatives are also called executors.

18 (2) Designation of Beneficiary. When a participant in the Deferred Compensation
19 Program dies, the benefit of the participant’s account shall be paid to the beneficiaries
20 designated by the participant. For purposes of this rule, a participant may designate any
21 of the following as a primary or contingent beneficiary:

22 (a) Any natural person(s);

1 (b) The personal representative or executor of the estate of the participant;

2 (c) A charity or other non-profit organization; or

3 (d) A trust that is valid under Oregon state law.

4 (A) If a living trust is designated, the trust must be legally in existence before the
5 participant makes the designation.

6 (B) If a designated trust fails to satisfy the requirements in OAR 459-050-
7 0300(1)(c)(B), payment to the trust shall be made as provided in OAR 459-050-0300(11).

8 (3) Surviving beneficiary or alternate payee. Any surviving beneficiary designated
9 under section (2) of this rule or an alternate payee may designate a beneficiary in the
10 same manner as a participant.

11 (4) Power of attorney. The agent shall submit a copy of the Power of Attorney
12 document with the filing of the designation of beneficiary form. The Deferred
13 Compensation *[Plan]* Program may, but is not required to, accept a beneficiary
14 designation made by an agent or attorney-in-fact appointed under a Power of Attorney
15 document. If the Deferred Compensation Program is satisfied that a Power of Attorney
16 document is valid, has not been revoked, and empowers the agent or attorney-in-fact to
17 designate a beneficiary, the program shall accept a beneficiary designation made by the
18 agent or attorney-in-fact appointed under the Power of Attorney document.

19 (5) Conservator. The Deferred Compensation Program shall accept a beneficiary
20 designation made by a conservator for the participant provided that the conservator
21 submit a certified copy of the letters of conservatorship or other court order appointing a
22 conservator with the designation of beneficiary form.

1 (6) Effective date of designation of beneficiary. A designation of beneficiary is not
2 effective until a properly completed designation on a form supplied by the Deferred
3 Compensation Program is filed with the Deferred Compensation Program. In the event a
4 designation of beneficiary is incomplete staff will provide notification within 30 days
5 explaining why the form is incomplete.

6 (7) Revocation of designation of beneficiary. A participant, alternate payee or
7 surviving beneficiary may revoke any and all previous beneficiary designations by filing
8 a new designation on a properly completed form supplied by the Deferred Compensation
9 Program. This designation must be in accordance with section (2) of this rule.

10 (8) Dissolution of marriage. A participant's designation of beneficiary may be
11 revoked or nullified by a decree of divorce, decree of annulment, or other similar
12 circumstance effective upon the entry of a judgment that revokes the designation of the
13 beneficiary.

14 (9) No Designated Beneficiary. If the designated primary and contingent
15 beneficiaries on file with the Deferred Compensation Program have predeceased the
16 deceased participant, surviving beneficiary, or alternate payee who made the designation,
17 or if the program is otherwise unable to administer the designation, the Deferred
18 Compensation *[Plan]* Program shall distribute the benefit of the deceased's account to
19 the executor, personal representative, or administrator of the deceased's estate.

20 (a) If the program is unable to locate the designated beneficiaries or the executor,
21 personal representative, or administrator of the estate by December 31 of the calendar
22 year following the participant's death, the amount in the deceased's account on that date

1 shall be credited to the Deferred Compensation Fund. The amount credited may be used
2 for the payment of administrative expenses of the Deferred Compensation Program.

3 (b) If the designated beneficiaries or the executor, personal representative, or
4 administrator of the estate is later located or other future successful claim is filed,
5 payment will be made in an amount not to exceed the balance in the deceased's account
6 credited to the Deferred Compensation Fund in subsection ~~[(9)]~~(a) of this section.

7 Stat. Auth: ORS 243.470

8 Stats. Implemented: ORS 243.401 - 243.507

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

1 **459-050-0070**

2 **Catch-Up Programs**

3 The purpose of this rule is to establish the criteria and process to allow an eligible
4 employee to contribute additional amounts, in excess of the regular applicable maximum
5 allowable contributions, to the eligible employee’s account.

6 (1) Except as provided in subsections (a) and (b) of this section, for purposes of this
7 rule, “normal retirement age” shall be the normal retirement age established in the plan
8 sponsor’s retirement plan.

9 (a) “Normal retirement age” for members of the Public Employees Retirement
10 System shall be as provided in ORS 238.005, 238.280(3), 238A.160, or 238.535.

11 (b) If an eligible employee continues to work beyond normal retirement age,
12 “normal retirement age” shall be that date or age designated by the eligible employee but
13 may not be later than 70-1/2 years of age.

14 (2) 50-Plus Catch-Up Program. Pursuant to the conditions of this rule, eligible
15 employees who are 50 years of age and older may elect to contribute an additional
16 amount under section 414(v) of the Internal Revenue Code in excess of the maximum
17 regular contribution allowed.

18 (a) Conditions for enrollment: An eligible employee must be 50 years of age or older
19 on December 31 of the calendar year in which the eligible employee begins to participate
20 in the 50-Plus Catch-Up Program.

1 (A) An eligible employee may participate in the 50-Plus Catch-Up Program during
2 years either before or after participation in the 3-Year Catch-Up Program, but may not
3 participate in both programs during the same calendar year.

4 (B) An eligible employee may participate in the 50-Plus Catch-Up Program during
5 the calendar year containing the employee's retirement date.

6 (b) Application for enrollment. An eligible employee choosing to participate must
7 enroll by entering into a written agreement with the plan sponsor. The written agreement
8 must specify the amount of the additional annual deferral, including whether any
9 portion of the additional deferral should be a Designated Roth Contribution, and
10 that the additional deferral will be divided equally by the available months for the
11 calendar year, and that the amount is in addition to the eligible employee's regular
12 maximum deferral.

13 (A) An eligible employee may enter into a written agreement to participate in the 50-
14 Plus Catch-Up Program on or before the first day of employment or anytime while
15 employed.

16 (B) A properly completed 50-Plus Catch-Up Program enrollment form provided by
17 the Deferred Compensation Program must be filed with and approved by the Deferred
18 Compensation Program.

19 (C) If the form is incomplete or does not comply with 50-Plus Catch-Up Program
20 conditions of enrollment, then the Deferred Compensation Program will notify the
21 eligible employee within 30 calendar days from the date the enrollment form is received
22 of the reasons the enrollment cannot be accepted.

1 (c) 50-Plus Catch-Up Program deferral effective date. 50-Plus Catch-Up Program
2 contributions may be deferred for any calendar month by salary reduction only if an
3 agreement providing for the deferral has been entered into before the first day of the
4 month in which the compensation is paid or made available.

5 (d) Additional deferral amounts. The additional deferral may be an amount elected
6 by an eligible employee, but *[shall]* **may** not exceed the maximum additional deferral
7 amount allowed under section 414(v) of the Internal Revenue Code, 26 USC 414(v). An
8 eligible employee may change the amount of additional contributions deferred within the
9 maximum additional deferral amount allowed. Changes may be made at any time on
10 forms or by other approved methods prescribed by the Deferred Compensation Program.
11 Additional contributions may be deferred for any calendar month by salary reduction
12 only if an agreement providing for the deferral has been entered into before the first day
13 of the month in which the compensation is paid or made available.

14 (e) Cancellation of Participation in the 50-Plus Catch-Up Program. An eligible
15 employee may cancel participation in the 50-Plus Catch-Up Program at any time on
16 forms or by other approved methods prescribed by the Deferred Compensation Program.
17 The cancellation will be effective for any calendar month only if an agreement providing
18 for the cancellation has been entered into before the first day of the month in which the
19 compensation is paid or made available. An eligible employee who has cancelled
20 participation may later re-apply to begin participation in the 50-Plus Catch-Up Program.

21 (3) 3-Year Catch-Up Program. An eligible employee may elect to contribute an
22 additional amount under section 457 of the Internal Revenue Code, in excess of the
23 maximum regular contribution allowed, for one or more of the three consecutive calendar

1 years of employment *[prior to]* before attaining normal retirement age, if in previous
2 years the eligible employee did not contribute the maximum regular contribution amount.

3 (a) Conditions for enrollment. The earliest date to begin participation in the 3-Year
4 Catch-Up Program is in the three calendar years immediately preceding the year in which
5 an eligible employee reaches normal retirement age.

6 (A) Contributions over the maximum allowable regular contribution limit are
7 permitted only to the extent of the unused portions of the maximum allowable regular
8 contribution for previous calendar years during which the eligible employee contributed
9 less than the maximum allowable regular contribution or did not make contributions to
10 the Deferred Compensation Program.

11 (B) Calendar years during which contributions were made under the 50-Plus Catch-
12 Up Program *[shall]* may not be included in the calculation to determine the maximum
13 allowable contribution under the 3-Year Catch-Up Program.

14 (C) An eligible employee may not participate in the 3-Year Catch-Up Program and
15 the 50-Plus Catch-Up Program during the same calendar year.

16 (D) An eligible employee must designate a proposed retirement date upon
17 application. The designated proposed retirement date shall be used for the purpose of
18 determining the catch-up period only. The catch-up period so determined *[shall]* may not
19 include the year of the designated proposed retirement date. An eligible employee who
20 retires during the catch-up period may contribute the maximum allowable amount for the
21 year of *[his]* the employee's retirement.

22 (E) Pursuant to section 457(b) of the Internal Revenue Code, an eligible employee
23 who is 70-1/2 years of age or older may not participate in the 3-Year Catch-Up Program.

1 (F) An eligible employee may participate only once in the 3-Year Catch-Up
2 Program, regardless of whether participation in the 3-Year Catch-Up Program is for less
3 than three calendar years or whether the eligible employee participates in an eligible plan
4 after retirement.

5 (b) Application for enrollment. An eligible employee may participate in the 3-Year
6 Catch-Up Program by entering into a written agreement with the plan sponsor. The
7 written agreement must specify the eligible employee’s designated proposed retirement
8 date, the month in which to begin the 3-Year Catch-Up Program contributions and the
9 number of years the eligible employee plans to participate in the 3-Year Catch-Up
10 Program.

11 (A) An eligible employee may enter into a written agreement to participate in the 3-
12 Year Catch-Up Program at any time while employed.

13 (B) A properly completed 3-Year Catch-Up Program enrollment form provided by
14 the Deferred Compensation Program must be filed with and approved by the Deferred
15 Compensation Program. Wage or salary information must be submitted for previous
16 calendar years during which an eligible employee either did not participate in the
17 Deferred Compensation Program or did not contribute the maximum regular contribution
18 amount. An eligible employee must submit:

19 (i) Legible copies of W-2 Wage and Tax Statement forms for each relevant calendar
20 or tax year; or

21 (ii) Legible copies of final pay stubs showing gross and taxable salary for each
22 relevant calendar year.

1 (C) If the application for enrollment is incomplete, if wage or salary information is
2 incomplete or illegible, or if the application does not comply with the 3-Year Catch-Up
3 Program conditions of enrollment, then the Deferred Compensation Program will notify
4 the eligible employee within 30 calendar days from the date the enrollment documents
5 are received of the reasons the Deferred Compensation Program cannot accept the
6 enrollment.

7 (c) 3-Year Catch-Up Program deferral effective date. 3-Year Catch-Up Program
8 contributions may be deferred for any calendar month by salary reduction only if an
9 agreement providing for the deferral has been entered into before the first day of the
10 month in which the compensation is paid or made available.

11 (d) Additional Deferral Amount. After receipt of a properly completed 3-Year
12 Catch-Up Program enrollment form and required wage or salary information, the
13 Deferred Compensation Program will notify the eligible employee of the maximum
14 amount of additional contributions that may be deferred.

15 (A) The amount of the 3-Year Catch-Up Program salary reduction may not be less
16 than the minimum additional contribution amount established by the plan sponsor and
17 may not exceed the maximum allowable contribution under section 457(b)(3) of the
18 Internal Revenue Code.

19 (B) An eligible employee may change the amount of additional contributions
20 deferred within the minimum and maximum additional deferral amounts allowed.
21 Changes may be made at any time on forms or by other approved methods prescribed by
22 the Deferred Compensation Program and will be effective for any calendar month only if

1 an agreement providing for the deferral has been entered into before the first day of the
2 month in which the compensation is paid or made available.

3 (e) Cancellation of Participation in the 3-Year Catch-Up Program. An eligible
4 employee may cancel participation in the 3-Year Catch-Up Program at any time on forms
5 or by other approved methods prescribed by the Deferred Compensation Program. The
6 cancellation will be effective for any calendar month only if an agreement providing for
7 the cancellation has been entered into before the first day of the month in which the
8 compensation is paid or made available. An election to cancel participation is irrevocable.

9 [Publications: Publications referenced are available from the agency.]

10 Stat. Auth.: ORS 243.470

11 Stats. Implemented: ORS 243.401 - 243.507



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

1 **459-050-0075**

2 **Distributions During Employment**

3 The purpose of this rule is to describe the types of distributions available to a
4 participant who has not had a severance of employment. Distributions made while a
5 participant is still employed are in-service distributions.

6 (1) De minimis distribution. A de minimis distribution is an in-service distribution of
7 the entire balance of a small account before the date a participant has a severance of
8 employment. A de minimis distribution may be made if all of the following conditions
9 are satisfied:

10 (a) No prior de minimis distribution was made to the participant;

11 (b) The total balance of the participant's account (s) within the Deferred
12 Compensation Program do[es] not exceed the limitations in the Internal Revenue Code
13 Section (IRC) 457(e)(9)(A), which is \$5,000;

14 (c) Participant has not made any contributions to the Deferred Compensation [Plan]
15 Program in the two-year period before the date of distribution; and

16 (d) Participant has submitted an application for a de minimis distribution on forms
17 provided by, or other methods approved by the Deferred Compensation Program. No
18 distribution will be paid unless a complete application is filed with, and approved by, the
19 Deferred Compensation Program.

20 (2) Unforeseeable emergency withdrawal. An unforeseeable emergency withdrawal
21 is an in-service distribution made to a participant due to an unforeseeable emergency.

22 This withdrawal may be made before the date a participant has a severance of

1 employment and as defined in OAR 459-050-0150. A participant must apply for an
2 unforeseeable emergency withdrawal using forms provided by, or other methods
3 approved by, the Deferred Compensation Program as provided for in OAR 459-050-
4 0150(4).

5 (3) Military distribution. A participant is treated as having been severed from
6 employment during any period the participant is performing service in the uniformed
7 services while on active duty for a period of more than 30 days for the purposes of the
8 limitation on in-service distributions. For purposes of this rule, “uniformed services” has
9 the same meaning as given in OAR 459-050-0072. This section applies to distributions
10 made on or after January 1, 2009.

11 (4) Trustee-to-~~[t]~~Trustee ~~[t]~~Transfers. A ~~[t]~~Trustee-to-~~[t]~~Trustee ~~[t]~~Transfer for the
12 purpose of purchasing permissive service credit as described in Code Section 415(n)
13 or a Trustee-to-Trustee Transfer that meets the requirements of 26 CFR
14 1.457.10(b)(4) may be made while a participant is still employed, except no Designated
15 Roth Account balance may be transferred for the purpose of purchasing permissive
16 service credit as described in Code Section 415(n).

17 (5) Funds available for in-service distribution. ~~[Only f]~~Funds contributed to ~~[a]~~ the
18 ~~[d]~~Deferred ~~[c]~~Compensation ~~[plan]~~ Program, ~~[as defined in IRC 457,]~~ and earnings on
19 those contributions may be distributed in a de minimis distribution or unforeseeable
20 emergency withdrawal. Any funds directly transferred or rolled over to the Deferred
21 Compensation Program from any plan other than an IRC 457 deferred compensation plan
22 ~~[shall]~~ may not be distributed for a de minimis distribution or an unforeseeable
23 emergency withdrawal.

1 (6) Prohibitions on elective deferrals after an in-service distribution. A participant
2 who receives a de minimis distribution, an unforeseeable emergency withdrawal, or a
3 military distribution may not make elective deferrals and employee contributions to the
4 Deferred Compensation Program for a period of [6] six consecutive months from the date
5 of distribution.

6 [Publications: Publications referenced are available from the agency.]

7 Stat. Auth: ORS 243.470

8 Stats. Implemented: ORS 243.401 - 243.507



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

1 459-050-0076

2 In-Plan Roth Conversion

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

4 (a) “Code” means the Internal Revenue Code of 1986, as amended.

5 (b) “Distributee” means:

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

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

10 (C) The surviving spouse of a deceased participant; or

11 (D) The spouse or former spouse who is the alternate payee under a domestic
12 relations order that satisfies the requirements of ORS 243.507.

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

15 (c) “In-Plan Roth Conversion” means the payment of an eligible rollover
16 distribution by OSGP directly from the Deferred Compensation Account to the
17 Designated Roth Account as instructed by the Distributee and in compliance with
18 Code Section 402A(c)(4) and meets the otherwise applicable rollover requirements
19 of Code Section 457(e)(16).

20 (2) Limitations.

21 (a) If a Distributee elects an In-Plan Roth Conversion, the Distributee may not
22 roll the money back to the Deferred Compensation Account at a later date.

1 (b) Once completed, all balances from any Roth In-Plan Conversion shall be
2 accounted for individually and separately within the Designated Roth Account.

3 (3) 402(f) Notice and Election Procedure.

4 (a) The Deferred Compensation Program staff shall provide each Distributee
5 with a written explanation of the direct rollover rules for any eligible distribution, as
6 required by Code Section 402(f).

7 (b) An In-Plan Roth Conversion election shall be in writing and must be signed
8 by the Distributee or by his or her authorized representative pursuant to a valid
9 power of attorney. The election must be on forms furnished by the Deferred
10 Compensation Program.

11 Stat. Auth.: ORS 243.470

12 Stats. Implemented: ORS 243.462

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

1 **459-050-0077**

2 **Loan Program**

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

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

6 (b) “Deferred ~~[c]~~C~~ompensation~~ ~~[a]~~A~~ccount~~” means the account described in OAR
7 459-050-0001~~[(9)]~~, but does not include any amount in the Self-Directed Brokerage
8 Option.

9 **(c) “Designated Roth Account” means the account described in OAR 459-050-**
10 **0001, but does not include any amount in the Self-Directed Brokerage Option.**

11 ~~[(c)]~~**(d)** “Loan balance” means the outstanding principal and accrued interest due on
12 the loan.

13 ~~[(d)]~~**(e)** “Participant Loan” means a loan that ~~[only]~~ affects the ~~[d]~~D~~eferred~~
14 ~~[c]~~C~~ompensation~~ ~~[a]~~A~~ccount~~, **Designated Roth Account, or a combination of both,** of
15 a participant.

16 ~~[(e)]~~**(f)** “Promissory note” means the agreement of loan terms between the Program
17 and a participant.

18 ~~[(f)]~~**(g)** “Third Party Administrator (TPA)” means the entity providing record
19 keeping and administrative services to the Program.

20 (2) Eligibility for loan. Participants who are currently employed by a Plan Sponsor
21 that has agreed to participate in a Participant Loan program are eligible for a Participant

1 Loan. Retired participants, participants separated from employment, designated
2 beneficiaries, and alternate payees are not eligible.

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

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

7 (b) If a participant is deceased before the disbursement of the proceeds of a loan, the
8 participant's loan application shall be void as of the date of death.

9 (4) Loan Types:

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

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

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

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

4 (7) Loan Limitations:

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

6 (A) \$50,000; or

7 (B) One-half of the combined value of the participant's ~~[d]~~Deferred
8 ~~[c]~~Compensation ~~[a]~~Account and the Designated Roth Account on the date the loan is
9 made.

10 (b) The minimum loan amount is \$1,000.

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

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

14 (8) Source of Loan: The loan amount will be deducted from a participant's
15 ~~[d]~~Deferred ~~[c]~~Compensation ~~[a]~~Account, Designated Roth Account, or a
16 combination of both.

17 (a) Loan amounts will be deducted first from the Deferred Compensation
18 Account.

19 ~~[(a)](b)~~ Loan amounts will be deducted pro-rata from existing investments in a
20 participant's ~~[deferred compensation]~~ account(s).

21 ~~[(b)](c)~~ A participant may not transfer a loan to or from another retirement or
22 deferred compensation plan.

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

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

10 (b) A participant is responsible for loan repayment even if the employer fails to
11 deduct or submit payments as directed under the payroll deduction agreement. To avoid
12 defaulting on a loan by reason of the employer’s failure to deduct or submit a payment a
13 participant may submit a loan payment by sending a money order or certified check to the
14 Third Party Administrator.

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

17 (d) Partial payment of a scheduled payment and partial prepayment or advance
18 payment of future payments *[shall]* may not be permitted.

19 (e) Loan payments will be allocated in a participant’s *[deferred compensation]*
20 account(s) in the same manner as the participant’s current contribution allocation. If, for
21 any reason, the allocation is not known, the payment will be allocated to the Short-Term
22 Fixed Income Option.

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

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

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

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

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

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

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

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

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

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

21 (B) Loan payments by payroll deduction must resume upon the participant’s return
22 to work.

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

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

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

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

14 (11) Tax Reporting.

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

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

1 (c) If a participant dies before the loan balance being repaid, and the participant's
2 beneficiary does not repay the loan balance in a single payment within 90 days of the
3 participant's death, the loan balance will be reported as a taxable distribution to the estate
4 of the participant.

5 (d) If a participant is eligible to receive a distribution under the Program, the
6 reporting of a loan balance as a taxable distribution under this section will cancel the loan
7 at the time the taxable distribution is reported. A canceled loan is a distribution and is no
8 longer outstanding in a participant's account.

9 (e) If a participant is not eligible to receive a distribution under the Program, a loan
10 balance reported as a taxable distribution under this section will be a deemed distribution
11 for tax reporting purposes. A loan deemed distributed may not be canceled until the loan
12 balance is repaid or the participant becomes eligible to receive a distribution. The loan
13 balance will remain outstanding in the participant's account and will continue to accrue
14 interest until repaid or canceled.

15 (12) Default.

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

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

20 (c) If a participant with a loan in default resumes loan payments by payroll deduction
21 before the end of the cure period, the default will be cured. The participant must pay any
22 missed payments and accrued interest before the end of the loan repayment period.

1 (d) Except as provided in subsection (c) of this section, if the participant does not
2 cure a default by repaying the loan balance before the end of the cure period, the loan
3 balance will be reported as a taxable distribution to the participant as provided in section
4 (11) of this rule.

5 Stat. Auth.: ORS 243.470

6 Stats. Implemented: ORS 243.401 – 243.507

**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
5 employment as defined herein. Distribution under the Deferred Compensation Program
6 shall be made in accordance with any minimum distribution or other limitations required
7 by Internal Revenue Code (IRC) section 401(a)(9), 26 U.S.C. 401(a)(9) and related
8 regulations.

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

10 (a) "Commencement date" means the month and year that a participant will begin
11 receiving a distribution(s) from the Deferred Compensation Program, whether by
12 operation of the participant's election or under the terms of the plan. The commencement
13 date is not the date that the necessary funds are liquidated for distribution.

14 (b) "Date of distribution" means the date funds are distributed to the participant,
15 alternate payee, beneficiary, or other recipient in accordance with the plan, regardless of
16 the mechanism by which those funds are distributed.

17 (c) "Intention to return to work" means a written or oral, formal or informal
18 agreement has been made with the plan sponsor to return to work on a full time, part time
19 or temporary basis at the time the severance is effective. If a participant returns to work
20 with the plan sponsor within 30 calendar days of severance, then a rebuttable
21 presumption exists that the participant intended to return to work as of the date of
22 severance.

1 (d) “Liquidation date” means the date the Deferred Compensation Program
2 designates for liquidation of funds. Generally, the liquidation date will not be earlier than
3 the 25th day of the calendar month preceding the commencement date. The Deferred
4 Compensation Program may determine the liquidation date based on normal business
5 practices. The Deferred Compensation Program is not liable to a participant for failure to
6 liquidate an investment on a specified date.

7 (e) “Liquidation of funds” means the conversion of the necessary funds from the
8 investments in the Deferred Compensation Program into cash for payment under a
9 specified manner of distribution.

10 (f) “Manner of distribution” means the manner elected by the participant, alternate
11 payee, or beneficiary in accordance with the terms of the plan, in which a distribution is
12 to be paid out of the Deferred Compensation Program.

13 (g) “Required beginning date” means April 1 of the calendar year following the later
14 of:

15 (A) The calendar year in which the participant reaches 70-1/2 years of age; or

16 (B) The calendar year in which the participant retires.

17 (h) “Severance of Employment” means a participant has ceased rendering services as
18 an employee or an independent contractor of a plan sponsor for a minimum of 30
19 consecutive days, including services as a temporary employee, and has no intention to
20 return to work for the plan sponsor.

21 (2) Manner of distribution. Subject to the provisions of sections (3) through (5) set
22 out below, a participant, surviving beneficiary, or alternate payee may elect a manner of
23 distribution, designate one or more beneficiaries, and change beneficiaries at any time.

1 The total amount distributed may not exceed the total account value. The following
2 manners of distribution are available:

3 (a) Total distribution of the account value in a lump sum. A lump-sum distribution is
4 not eligible for direct deposit;

5 (b) Single distribution of a portion of the account value in a lump sum. This form of
6 lump-sum distribution is not eligible for direct deposit. Funds not distributed shall
7 continue to receive earnings or losses based on the performance of investment option(s)
8 in which funds are held;

9 (c) Systematic withdrawal distribution for a specific number of years, which may be
10 paid annually, semiannually, quarterly or monthly. Any funds remaining after each
11 periodic payment shall continue to receive earnings or losses based on the performance of
12 investment option(s) in which the funds are held. The remaining number of periodic
13 distributions ~~shall~~ may not change. However, the amount of distributions shall be
14 adjusted depending on the earnings or losses experienced;

15 (d) Periodic specified dollar amount distribution. This distribution may be paid
16 annually, semiannually, quarterly or monthly, and may be paid in specific dollar amounts
17 in \$5 increments. Any funds remaining after each periodic payment shall continue to
18 receive earnings or losses based on the performance of investment option(s) in which the
19 funds are held. The amount of each periodic distribution will remain the same throughout
20 the withdrawal period. However, the withdrawal period may vary depending on the
21 earnings or losses experienced;

22 (e) Required minimum distribution, which will provide an annual distribution of the
23 minimum amount required in IRC section 401(a)(9), 26 U.S.C. 401(a)(9). This manner of

1 distribution is available only to those who defer distribution to age 70-1/2 years of age
2 (no later than April of the year following the year reaching 70-1/2 years of age) or a
3 participant who continues to work and severs employment after 70-1/2 years of age.

4 Funds not distributed shall continue to receive earnings or losses based on the
5 performance of investment option(s) in which funds are held; or

6 (f) Mandatory single lump-sum distribution of an account balance of less than
7 \$1,000. This distribution shall be made to any participant or alternate payee with an
8 account balance of less than \$1,000 within one year of the participant's severance of
9 employment.

10 (3) Application Requirements. Application shall be made on forms provided by, or
11 other methods approved by, the Deferred Compensation Program. No distribution may be
12 paid unless a timely and complete application is filed with the Deferred Compensation
13 Program as follows:

14 (a) An application for distribution or to change the manner of distribution will be
15 considered filed in a timely manner if it is received in writing or other method approved
16 by the Deferred Compensation Program at least 30 days before the requested
17 commencement date. The commencement date may be no earlier than the second
18 calendar month following the month of severance of employment.

19 (b) An application for distribution or to change the manner of distribution may be
20 made by a participant, surviving beneficiary, or alternate payee or the authorized
21 representative of a participant, surviving beneficiary or alternate payee. A valid document
22 appointing an authorized representative such as a power of attorney, guardianship or
23 conservatorship appointment, must be submitted to the Deferred Compensation Program.

1 The Deferred Compensation Program retains the discretion to determine whether the
2 document is valid for purposes of this rule.

3 (c) Except in the case of a qualified distribution as defined in section 402A(d)(2)
4 of the Internal Revenue Code, [T]the participant, surviving beneficiary, or alternate
5 payee must file a tax-withholding certificate with the Deferred Compensation Program at
6 least 30 days before the requested commencement date. If the certificate is not filed, the
7 Deferred Compensation Program shall withhold state income taxes based on a marital
8 status of single and no dependents and federal income taxes based on a marital status of
9 married and 3 dependents, or other federally mandated tax withholding requirements. A
10 new certificate may be filed at any time, and will be applied to distributions paid on and
11 after the first calendar month following the date received or as soon as reasonably
12 possible.

13 (d) When direct deposit is permitted under the Deferred Compensation *[Plan]*
14 Program, a request for periodic distributions to be transmitted to a financial institution
15 for direct deposit must be made using a Deferred Compensation Program Automatic
16 Deposit Agreement.

17 (e) Distribution of deferred compensation funds will occur no later than five days
18 following the date funds necessary for a specified payment were liquidated. Liquidation
19 of funds will be done on a pro-rata basis determined by the investment allocation of an
20 account at the time the funds are liquidated or from the Stable Value account, at the
21 participant's election. The election must be filed before the participant begins receiving
22 distributions. If the participant elects distribution from the Stable Value account and there
23 are insufficient funds in that account on the date of each distribution (whether monthly,

1 quarterly, semi-annually, or annually), the distribution will be done on the pro-rata basis
2 described above regardless of the participant’s election.

3 (4) Denial of distribution election. The Deferred Compensation Program may deny
4 any distribution election if that denial is required to maintain the status of the Deferred
5 Compensation Program under the Internal Revenue Code and regulations adopted
6 pursuant to the Internal Revenue Code and ORS Chapter 243.

7 (5) Changing the manner of distribution. A participant, surviving beneficiary or
8 alternate payee may change or discontinue the manner of distribution only as follows and
9 subject to the requirements of section (3) above:

10 (a) Manners of distribution under sections (2)(c), (2)(d) and (2)(e) of this rule may
11 be changed at any time upon application as required under section (3) of this rule.

12 (b) Distributions under sections (2)(c) and (2)(d) of this rule may be discontinued
13 upon written notification or by other methods approved by the Deferred Compensation
14 Program. The participant, surviving beneficiary, or alternate payee must submit an
15 application, as required in section (3) of this rule, to restart distributions and elect a
16 manner of distribution for the remaining account.

17 (c) Subject to the requirements of this rule, a participant, surviving beneficiary or
18 alternate payee who has commenced receiving a required minimum distribution may
19 apply under the requirements of section (3) of this rule:

20 (A) For one or more additional distributions in a lump sum not to exceed the total
21 value of the account; and

22 (B) To change the manner of distribution so long as future distributions will be
23 continuous and equal to or greater than the minimum distribution required.

1 [Publications: Publications referenced are available from the agency.]

2 Stat. Auth: ORS 243.470

3 Stats. Implemented: ORS 243.401 - 243.507, OL 2007 Ch. 54



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

1 **459-050-0090**

2 **Direct Rollover and Trustee-to-Trustee Transfer**

3 The purpose of this rule is to establish the criteria and processes for *[d]***D**irect
4 *[r]***R**ollovers between the Deferred Compensation Program and an *[e]***E**ligible
5 *[r]***R**etirement *[p]***P**lan and *[t]***T**rustee-to-*[t]***T**rustee *[t]***T**ransfers between the Deferred
6 Compensation Program and either a defined benefit governmental plan or a deferred
7 compensation plan described in Code Section 457(b) that is maintained by a state,
8 political subdivision of a state, or any agency or instrumentality of a state or political
9 subdivision of a state.

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

11 (a) “Code” means the Internal Revenue Code of 1986, as amended.

12 (b) “Direct Rollover” means:

13 (A) The payment of an eligible rollover distribution by the Deferred Compensation
14 *[Plan]* **P**rogram to an *[e]***E**ligible *[r]***R**etirement *[p]***P**lan specified by the *[d]***D**istributee;
15 or

16 (B) The payment of an eligible rollover distribution by an *[e]***E**ligible *[r]***R**etirement
17 *[p]***P**lan to the Deferred Compensation Program.

18 (c) “Distributee” means an individual who has requested a distribution under one of
19 the following criteria:

20 (A) A Deferred Compensation *[Plan]* **P**rogram participant who has a severance of
21 employment;

1 (B) A Deferred Compensation *[Plan]* **Program** participant who is approved for a de
2 minimis distribution under OAR 459-050-0075(1);

3 (C) The surviving spouse of a deceased participant;

4 (D) The spouse or former spouse who is the alternate payee under a domestic
5 relations order that satisfies the requirements of ORS 243.507 and OAR 459-050-0200 to
6 459-050-0250; or

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

9 (F) A plan participant who has requested a *[t]***T**rustee-to-*[t]***T**rustee *[t]***T**ransfer for
10 the purpose of purchasing permissive service credit as described in Code Section 415(n).

11 (d) “Distributing Plan” means an *[e]***E**ligible *[r]***R**etirement *[p]***P**lan that is
12 designated to distribute a direct rollover **or send a Trustee-to-Trustee Transfer** to
13 another eligible plan (recipient plan).

14 (e) “Eligible Retirement Plan” means any one of the following *[that accepts the*
15 *distributee’s eligible rollover distribution]*:

16 (A) An individual retirement account or annuity described in Code Section 408(a) or
17 (b), including a Roth IRA as described in Code Section 408(A);

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

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

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

21 (E) An eligible deferred compensation plan described in Code Section 457(b), **which**
22 **may include a qualified Roth contribution program defined in Code Section 402A,**

1 **and** that is maintained by a state, political subdivision of a state, or any agency or
2 instrumentality of a state or political subdivision of a state; or

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

4 (f) “Eligible Rollover Distribution” means **any** distribution of all or **any** portion of *[a*
5 *distributee’s Deferred Compensation account]* **a person’s account in an Eligible**

6 **Retirement Plan**. An *[e]***E**ligible *[r]***R**ollover *[d]***D**istribution *[shall]* **may** not include:

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

9 *[d]***D**istributee or the joint lives (or life expectancies) of the *[d]***D**istributee and the

10 *[d]***D**istributee’s designated beneficiary, or for a specified period of *[ten]* **10** years or

11 more;

12 (B) A distribution that is a required or minimum distribution under Code Section
13 401(a)(9);

14 (C) An amount that is distributed due to an unforeseen emergency under OAR 459-
15 050-0075(2).

16 (g) “Recipient Plan” means an *[e]***E**ligible *[r]***R**etirement *[p]***P**lan that is designated
17 by a *[d]***D**istributee to receive a *[d]***D**irect *[r]***R**ollover **or Trustee-to-Trustee Transfer**.

18 (h) “Trustee-to-Trustee Transfer” means a transfer either:

19 (A) By the Deferred Compensation Program to:

20 (i) A governmental defined benefit plan (within the meaning of Code Section

21 414(d)) for the purchase of permissive service credit as described in Code Section 415(n);

22 or

1 (ii) A deferred compensation plan described in Code Section 457(b) that is
2 maintained by a state, political subdivision of a state, or any agency or instrumentality of
3 a state or political subdivision of a state.

4 (B) To the Deferred Compensation Program from a deferred compensation plan
5 described in Code Section 457(b) that is maintained by a state, political subdivision of a
6 state, or any agency or instrumentality of a state or political subdivision of a state.

7 (2) Direct rollover to an *[e]Eligible [r]Retirement [p]Plan*. The *[d]Direct*
8 *[r]Rollover* of an *[e]Eligible [r]Rollover [d]Distribution* by the Deferred Compensation
9 Program to an *[e]Eligible [r]Retirement [p]Plan* shall be interpreted and administered in
10 accordance with Code Section 457(d)(1)(C), 402A(c)(3) and all applicable regulations. A
11 *[d]Distributee* may elect to have an *[e]Eligible [r]Rollover [d]Distribution* paid by the
12 Deferred Compensation Program directly to an *[e]Eligible [r]Retirement [p]Plan*
13 specified by the *[d]Distributee*.

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

17 (b) A *[d]Distributee's* right to elect a *[d]Direct [r]Rollover* is subject to the
18 following limitations:

19 (A) A *[d]Distributee* may elect to have an *[e]Eligible [r]Rollover [d]Distribution*
20 paid as a *[d]Direct [r]Rollover* to only one *[e]Eligible [r]Retirement [p]Plan*.

21 (B) A *[d]Distributee* may elect to have part of an *[e]Eligible [r]Rollover*
22 *[d]Distribution* be paid directly to the *[d]Distributee*, and to have part of the distribution

1 paid as a [d]Direct [r]Rollover only if the [d]Distributee elects to have at least \$500
2 transferred to the [e]Eligible [r]Retirement [p]Plan.

3 (C) A Distributee of the Designated Roth Account may elect to have a Direct
4 Rollover only to a Roth IRA as described in Code Section 408A or another qualified
5 Roth contribution program as described in Code Section 402A.

6 (c) A [d]Direct [r]Rollover election shall be in writing and must be signed by the
7 [d]Distributee or by his or her authorized representative pursuant to a valid power of
8 attorney. The [d]Direct [r]Rollover election may be on forms furnished by the Deferred
9 Compensation Program, or on forms submitted by the [r]Recipient [p]Plan which must
10 include:

- 11 (A) The [d]Distributee’s full name;
- 12 (B) The [d]Distributee’s social security number;
- 13 (C) The [d]Distributee’s account number with the [r]Recipient [p]Plan, if available;
- 14 (D) The name and complete mailing address of the [r]Recipient [p]Plan; and
- 15 (E) If the [d]Distributee is a non-spouse beneficiary of the member, the title of the
16 recipient IRA account.

17 (d) The [d]Distributee is responsible for determining that the [r]Recipient [p]Plan’s
18 administrator will accept the [d]Direct [r]Rollover for the benefit of the [d]Distributee.
19 Any taxes or penalties that are the result of the [d]Distributee’s failure to ascertain that
20 the recipient plan will accept the direct rollover shall be the sole liability of the
21 [d]Distributee.

22 (3) Trustee-to-[t]Trustee [t]Transfer to another deferred compensation plan or
23 governmental defined benefit plan.

1 (a) A [t]Trustee-to-[t]Trustee [t]Transfer request shall be in writing and must be
2 signed by the [d]Distributee or by his or her authorized representative pursuant to a valid
3 power of attorney. The [t]Trustee-to-[t]Trustee [t]Transfer request may be on forms
4 furnished by the Deferred Compensation Program, or on forms submitted by the
5 [r]Recipient [p]Plan which must include:

- 6 (A) The [d]Distributee's full name;
- 7 (B) The [d]Distributee's social security number;
- 8 (C) The [d]Distributee's account number with the [r]Recipient [p]Plan, if available;
- 9 (D) The name and complete mailing address of the [r]Recipient [p]Plan; and
- 10 (E) If the transfer is for the purpose of purchasing service credit under a
11 governmental defined benefit plan, the exact amount to be transferred.

12 (b) The [d]Distributee is responsible for determining that the [r]Recipient [p]Plan's
13 administrator will accept the [t]Trustee-to-[t]Trustee [t]Transfer for the benefit of the
14 participant. Any taxes or penalties that are the result of the [d]Distributee's failure to
15 ascertain that the [r]Recipient [p]Plan will accept the [t]Trustee-to-[t]Trustee
16 [t]Transfer shall be the sole liability of the [d]Distributee.

17 (4) Direct [r]Rollover from an [e]Eligible [r]Retirement [p]Plan. The Deferred
18 Compensation Program may accept rollover contributions from participants and direct
19 rollovers of distributions from an eligible retirement plan on behalf of a participant. This
20 section shall be interpreted and administered in accordance with Code Section 402(c) and
21 all applicable regulations.

22 (a) The Deferred Compensation Program [shall only] may accept both pre-tax and
23 after-tax [assets] money. The only [A] after-tax [employee] [contributions] money

1 eligible for rollover into the Deferred Compensation Program is from another
2 qualified Roth contribution program as described in Code Section 402A. [are not]
3 eligible for rollover into the Deferred Compensation Program.]

4 (b) A [d]Direct [r]Rollover from an [e]Eligible [r]Retirement [p]Plan must be an
5 [e]Eligible [r]Rollover [d]Distribution. It is the participant's responsibility to determine
6 that the assets qualify for rollover treatment. Any taxes or penalties that are the result of
7 the participant's failure to ascertain that the distributing plan assets qualify for a direct
8 rollover to a deferred compensation plan described in Code Section 457(b), shall be the
9 sole liability of the participant.

10 (c) Subject to the requirements of subsections (4)(c)(A) and (B) below, [e]Eligible
11 [r]Rollover [d]Distribution(s) shall be credited to the participant's Deferred
12 Compensation [a]Account and/or Designated Roth Account established pursuant to the
13 [Plan and Agreement] Enrollment Form on file with the Deferred Compensation
14 Program and shall be subject to all the terms and provisions of the [Plan and Agreement]
15 Enrollment Form. Account assets received from the [d]Distributing [p]Plan will be
16 invested by the Deferred Compensation [Plan] Program record keeper in accordance
17 with the terms and conditions of the Deferred Compensation Program according to the
18 asset allocation the participant has established for monthly contributions unless instructed
19 otherwise in writing on forms provided by the Deferred Compensation Program.

20 (A) Assets from an [e]Eligible [r]Retirement [p]Plan other than a [D]deferred
21 [C]compensation [P]plan described in Code Section 457(b) will be segregated into a
22 separate account established by the Deferred Compensation Program for tax purposes
23 only, but not for investment purposes. For investment purposes, the participant's assets

1 are treated as a single account. If a participant changes the allocation of existing assets
2 among investment options within the plan, the transfer or reallocation shall apply to and
3 will occur in all accounts automatically.

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

8 (5) ~~Trustee-to-Trustee~~ Transfer from another deferred compensation plan. The
9 Deferred Compensation Program may accept ~~Trustee-to-Trustee~~ Transfers from
10 other eligible deferred compensation plans described in Code Section 457(b), which may
11 include a qualified Roth contribution program defined in Code Section 402A. Assets
12 transferred from an eligible deferred compensation plan will be aggregated with the
13 participant's accumulated Deferred Compensation ~~Plan~~ Program account(s).

14 Stat. Auth: ORS 243.470

15 Stats. Implemented: ORS 243.401 - 243.507

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

1 **459-050-0120**

2 **Self-Directed Brokerage Option**

3 (1) For purposes of this rule:

4 (a) “Core Investment Option” means an investment alternative made available under
5 ORS 243.421, but does not include the Self-Directed Brokerage Option.

6 (b) “Self-Directed Brokerage Option” means an investment alternative made
7 available under ORS 243.421 that permits a participant to establish a brokerage account
8 and participate in investment products other than core investment options.

9 (c) “Trade” has the same meaning as in OAR 459-050-0037.

10 (2) A participant may initiate participation in the Self-Directed Brokerage Option
11 only by a trade from core investment options.

12 (a) The participant’s combined [d]Deferred [c]Compensation and Designated
13 Roth [a]Accounts balance must be at least \$20,000 on the date of the trade.

14 (b) The amount of the trade may not exceed 50 percent of the participant’s
15 combined [d]Deferred [c]Compensation and Designated Roth [a]Accounts balance on
16 the date of the trade.

17 (3) A participant in the Self-Directed Brokerage Option may not:

18 (a) Contribute to the Self-Directed Brokerage Option by any means other than a
19 trade from a core investment option.

20 (b) Make a trade from a core investment option to the Self-Directed Brokerage
21 Option if:

1 (A) The participant’s balance in the Self-Directed Brokerage Option exceeds the
2 balance in the participant’s core investment options on the date of the trade; or

3 (B) The trade would cause the participant’s balance in the Self-Directed Brokerage
4 Option to exceed the participant’s balance in the core investment options on the date of
5 the trade.

6 (4) The Self-Directed Brokerage Option may not be included in any automatic
7 account rebalancing function offered by the Program.

8 (5) Notwithstanding OAR 459-050-0080, funds in the Self-Directed Brokerage
9 Option are not available for distribution.

10 (a) Funds in the Self-Directed Brokerage Option must be traded to a core investment
11 option to be available for distribution under OAR 459-050-0080.

12 (b) A participant, beneficiary, or alternate payee subject to Required Minimum
13 Distributions, as described in OAR 459-050-0300, must maintain a balance in the core
14 investment options that will accommodate the timely distribution of the required amount.

15 (c) A participant, beneficiary, or alternate payee who fails to comply with subsection
16 (b) of this section is solely responsible for any tax, penalty, or cost imposed by reason of
17 a delayed or partial required minimum distribution.

18 (6) The Deferred Compensation Manager, if necessary to comply with restrictions
19 imposed by a participating mutual fund, a contracted broker, or the Securities and
20 Exchange Commission, may establish additional temporary restrictions for the Self-
21 Directed Brokerage Option.

22 (7) Any action taken by the Deferred Compensation Manager under section (6) of
23 this rule must be presented to the Board at its next scheduled meeting. The Board may

1 take action as authorized by ORS 243.401 to 243.507. If the Board does not act, the
2 action(s) taken by the Deferred Compensation Manager shall expire on the first business
3 day following the date of the meeting.

4 (8) The restrictions provided in this rule are not exclusive. The Board may establish
5 additional restrictions or sanctions as authorized by ORS 243.401 to 243.507.

6 Stat. Auth.: ORS 243.470

7 Stats. Implemented: ORS 243.401 - 243.507



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

1 **459-050-0150**

2 **Unforeseeable Emergency Withdrawal**

3 The purpose of this rule is to establish the criteria and process for a participant to
4 obtain a distribution of deferred compensation funds before separation from employment
5 due to an unforeseeable emergency.

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

7 (a) “Deferred [c]Compensation [a]Account” means the account described in OAR
8 459-050-0001[(9)], but does not include any amount in the Self-Directed Brokerage
9 Option.

10 **(b) “Designated Roth Account” means the account described in OAR 459-050-**
11 **0001, but does not include any amount in the Self-Directed Brokerage Option.**

12 [(b)](c) “Emergency withdrawal” means a payment to the participant from the
13 participant’s [d]Deferred [c]Compensation [a]Account, **Designated Roth Account, or a**
14 **combination of both,** in an amount directly related to and reasonably necessary to satisfy
15 a financial obligation attributable to an unforeseeable emergency.

16 [(c)](d) “Unforeseeable emergency” or “Unforeseen emergency” means a severe
17 financial hardship to a participant resulting from a sudden and unexpected illness or
18 accident of the participant or of a dependent of the participant as defined in 26 CFR
19 1.152-1, a loss of the participant’s property due to casualty or other similar extraordinary
20 and unforeseeable circumstance beyond the control of the participant.

21 (2) Eligibility for emergency withdrawals. Only a participant who established a
22 deferred compensation account as an eligible employee and has not terminated from

1 employment with their plan sponsor may apply to receive an unforeseeable emergency
 2 withdrawal. An alternate payee of a participant *[shall]* **may** not be eligible to receive an
 3 emergency withdrawal.

4 (3) A participant must, if eligible, apply for a loan under the provisions of OAR 459-
 5 050-0077 before application for an unforeseen emergency withdrawal unless, as
 6 determined by the Deferred Compensation Manager, the participant would suffer
 7 additional financial hardship by complying with the loan application requirement.

8 **(4) Source of emergency withdrawals. The amount of an emergency withdrawal**
 9 **will be deducted first from the participant’s Deferred Compensation Account unless**
 10 **otherwise indicated by the participant on the emergency withdrawal application.**

11 ~~(4)~~**(5)** Circumstances that do not constitute an unforeseeable emergency. An
 12 emergency withdrawal *[shall]* **may** not be approved for any reason other than an
 13 unforeseeable emergency. Circumstances that do not constitute an unforeseeable
 14 emergency include, but are not limited to:

- 15 (a) Participant or dependent school expenses;
- 16 (b) The purchase of a home or costs associated with a voluntary relocation of
 17 housing;
- 18 (c) The reduction of personal credit liabilities not associated with an unforeseeable
 19 emergency;
- 20 (d) Expenses associated with a legal separation or the dissolution of a marriage;
- 21 (e) Expenses associated with medical procedures that are elective or not medically
 22 required;
- 23 (f) Expenses associated with establishing or managing a personal business;

1 (g) Recreational expenses;

2 (h) Travel expenses not associated with an unforeseeable emergency; and

3 (i) Usual and customary tax obligations.

4 ~~[(5)]~~(6) Limitations on amount of emergency withdrawal. The amount of an
5 emergency withdrawal may not exceed the combined balance of the participant's ~~[d]~~
6 Deferred [c]Compensation [a]Account and Designated Roth Account. The maximum
7 amount that may be approved as an emergency withdrawal shall be limited to what is
8 reasonably needed to satisfy the immediate financial obligation related to the
9 unforeseeable emergency, including taxes anticipated on the distribution. The amount of
10 the emergency withdrawal shall be limited to the extent that the financial obligation can
11 or may be satisfied by:

12 (a) Reimbursement or compensation by insurance or otherwise;

13 (b) Liquidation of the participant's assets, to the extent the liquidation of such assets
14 would not itself cause severe unforeseeable emergency; or

15 (c) Cessation of participant contributions to the Deferred Compensation Program.

16 ~~[(6)]~~(7) Application for an emergency withdrawal. A participant must submit a
17 completed emergency withdrawal application and financial information and related
18 documentation sufficient to satisfy the provisions of this rule. The emergency withdrawal
19 application may be returned if incomplete or if insufficient financial information or
20 related documentation is submitted.

21 (a) The application form may be obtained from the Deferred Compensation Program
22 or the third party administrator (TPA) retained to administer a portion of the Deferred
23 Compensation Program.

1 (b) The completed application, financial information, and related documentation
2 shall be submitted by use of the United State Postal Service or by private express carrier
3 as defined in ORS 293.660(2) for initial review.

4 ~~[(7)]~~(8) Cancellation of future contributions. Contributions by a participant to the
5 Deferred Compensation Program shall immediately be cancelled upon receipt of an
6 application for an emergency withdrawal from the participant.

7 (a) A participant who receives approval for an emergency withdrawal shall be
8 prohibited from making elective deferrals and contributions to the Deferred
9 Compensation Program for a period of six consecutive months from the date of
10 distribution.

11 (b) A participant who receives a denial for an emergency withdrawal may enroll to
12 make elective deferrals and contributions to the Deferred Compensation Program at any
13 time.

14 ~~[(8)]~~(9) Approval or denial notification. The Deferred Compensation Manager or an
15 authorized designee shall approve or deny a request for an emergency withdrawal within
16 three working days after receipt of an accepted application. The participant will be
17 notified by mail within ~~[ten]~~ 10 days after a decision is made.

18 ~~[(9)]~~(10) Release of payment upon approval of an emergency withdrawal. The
19 Deferred Compensation Manager or an authorized designee shall determine the method
20 of payment. The Deferred Compensation Program shall immediately notify the TPA to
21 release the requested funds.

1 ~~[(10)]~~**(11)** A participant may appeal a denial of an emergency withdrawal to the
2 Unforeseeable Emergency Withdrawal Appeals Committee as provided in OAR 459-050-
3 0040. The appeal shall be in writing and must include:

4 (a) A request for review by the Unforeseeable Emergency Withdrawal Appeals
5 Committee;

6 (b) A short statement of the facts that are the basis of the appeal; and

7 (c) Any additional information or documentation to support the request for an
8 emergency withdrawal.

9 ~~[(11)]~~**(12)** Number of emergency withdrawal requests. The number of times a
10 participant may apply for an emergency withdrawal is unlimited and is unaffected by
11 previous applications.

12 Stat. Auth: ORS 243.470

13 Stats. Implemented: ORS 243.401 - 243.507



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

1 **459-050-0200**

2 **Court Orders**

3 The purpose of this rule is to describe the procedures for the administration of a
4 court order and the requirements for a court order to be approved as a Qualified Domestic
5 Relations Order.

6 (1) Legal requirements. A final court order or judgment must clearly specify the
7 amount awarded to an alternate payee from the participant’s Deferred Compensation
8 **[a] Account, Designated Roth Account, or a combination of both**, and the language
9 must be administrable under ORS Chapter 243.507 and OAR chapter 459, **[d] Division**
10 **[o] 50**. Subject to the requirements of the Internal Revenue Code and Oregon law,
11 including these administrative rules, the Deferred Compensation Program will segregate
12 an alternate payee’s award from a participant’s account once it has determined that the
13 court order meets the requirements of a Qualified Domestic Relations Order (QDRO).

14 (2) Requirements of a QDRO. The Deferred Compensation Program may approve a
15 court order as a Qualified Domestic Relations Order (QDRO), if the following conditions
16 are satisfied:

- 17 (a) The Deferred Compensation Program office has received the QDRO;
- 18 (b) The QDRO includes a specific percentage or dollar amount to be awarded to the
19 alternate payee from the participant’s account; and
- 20 (c) The QDRO directs the Deferred Compensation Program to segregate the
21 participant’s account or otherwise assign the amount of the award from the participant’s

1 account, and deposit the award amount in a separate account in the name of the alternate
2 payee as of a date specified in the order.

3 (3) Final court order. A final court order is required. The Deferred Compensation
4 Program *[shall]* may not divide a participant’s *[Deferred Compensation]* account(s) or
5 make a payment to or on behalf of an alternate payee upon receipt of a draft court order.
6 The Deferred Compensation Program will divide the account(s) so long as the other
7 requirements under the Internal Revenue Code and Oregon law including these rules have
8 been met, upon subsequent receipt of *[the following:]*

9 *[(a) C]* a certified copy of a final court order that specifies the action(s) required by
10 the Deferred Compensation Program concerning the alternate payee’s award.

11 (a) All certified copies must be subsequently reviewed and approved by staff as
12 administrable pursuant to ORS 243.507, and OAR chapter 459, division 050, before the
13 Deferred Compensation Program shall disburse funds from an account to which a QDRO
14 applies or an order is currently under review for determination of QDRO status.

15 (b) Staff shall provide a written explanation to the participant and the alternate
16 payee(s) as soon as practicable setting out the Deferred Compensation Program’s
17 determination whether a final court order can be administered by the Deferred
18 Compensation Program as a QDRO.

19 (c) Case-specific award information shall be provided to attorneys or other
20 representatives of a participant or an alternate payee only if a participant release or an
21 alternate payee release has been received by the Deferred Compensation Program, as
22 described in OAR 459-050-0001.

1 (4) The Deferred Compensation Program may, in its discretion, accept or reject any
2 court order, or any portion thereof. The Deferred Compensation Program shall provide a
3 written explanation of any rejection as soon as practicable to the participant and the
4 alternate payee, as well as to their attorneys if a release, as defined in OAR 459-050-
5 0001, has been filed with the Deferred Compensation Program.

6 (5) The Deferred Compensation Program may require a court-approved modification
7 to enable the Deferred Compensation Program to comply with the order and the parties'
8 intent, and so that the Deferred Compensation Program may administer the court order
9 according to applicable Oregon and federal law. For example, if the Deferred
10 Compensation Program determines that a court order is unclear or silent with regard to
11 the alternate payee's right to all or a portion of the participant's Deferred Compensation
12 account, the Deferred Compensation Program *[shall]* **may** not approve the court order
13 until a court order is received that clearly states what comprises the alternate payee's
14 award.

15 (6) The court order must not require the Deferred Compensation Program to:

16 (a) Provide any type or form of distribution or any option not otherwise provided
17 under the plan; and

18 (b) Monitor any designations of beneficiary(s) for compliance with the designation
19 of beneficiary requirements in the court order.

20 (7) An original or certified copy of a final court order must be received by the
21 Deferred Compensation Program, by mail or delivered in person, before the Deferred
22 Compensation Program shall commence paying benefits to or on behalf of an alternate
23 payee. **The** Deferred Compensation Program in its discretion may accept a legible

1 photocopy of a final court order, either by mail or delivered in person, as long as the
2 Deferred Compensation Program can confirm it was filed with the court. If the Deferred
3 Compensation Program cannot confirm that the order was filed with the court, the
4 Deferred Compensation Program shall, within a reasonable time thereafter, notify the
5 party who submitted the order that an original or certified copy of the final court order is
6 required.

7 (8) In the absence of a final court order, a restraining order, injunction, or stay must
8 be filed with the Deferred Compensation Program in order to prevent the distribution of
9 any funds to a participant. Except as may otherwise be allowed by law, a subsequent
10 court order shall be required in order to allow future distributions.

11 (9) If a final court order states that another court order shall follow, a certified copy
12 of the subsequent court order must be received and approved by staff before any payment
13 shall be made pursuant to the court order.

14 (10) Discontinuation of domestic action. A confirmation signed and notarized by
15 both the participant and the alternate payee is received by the Deferred Compensation
16 Program, stating that all divorce or other domestic actions have been dismissed or
17 abandoned, and that no final decree or court order shall be forth-coming. If no restraining
18 order, injunction, or stay is on file with the Deferred Compensation Program, there shall
19 be no further obligation or responsibility on the Deferred Compensation Program to
20 correspond or communicate with any person other than the participant and no distribution
21 may be made to anyone other than the participant or the participant's beneficiary(s).

22 (11) Draft court orders. If the Deferred Compensation Program does not receive a
23 final court order within 12 months after the date the Deferred Compensation Program

1 received the draft court order, the Deferred Compensation Program shall consider that no
2 award was made to an alternate payee from the participant's Deferred Compensation
3 account. There shall be no further obligation or responsibility on the part of the Deferred
4 Compensation Program to correspond or communicate with any person other than the
5 participant and no payment shall be distributed to anyone other than the participant or the
6 participant's beneficiary(s).

7 (12) Review of draft court orders. Upon request, the Deferred Compensation
8 Program may review draft court orders that contain language pertaining to the division of
9 a participant's deferred compensation account. Staff shall provide a written response as
10 soon as practicable to the submitting party and shall send a copy of the response to the
11 other persons named in the draft court order if mailing addresses are provided.

12 (13) The Deferred Compensation Program is not responsible for the safekeeping or
13 return of any court orders, whether draft or final, that are received. The Deferred
14 Compensation Program staff may not modify, return, or sign and return, any documents
15 that are received by the Deferred Compensation Program.

16 (14) Prospective award. If the Deferred Compensation Program has already
17 generated distribution checks to the participant for the first of the month following the
18 date the final court order was received and the court order meets the requirements of this
19 rule, Oregon law, and the Internal Revenue Code, the Deferred Compensation Program
20 shall:

21 (a) Pay distribution to the participant, notwithstanding the court order. The
22 distribution payment shall be deemed by the Deferred Compensation Program as received
23 by the participant.

1 (b) Establish an alternate payee’s award on a prospective basis only and *[shall]* may
2 not pay retroactive distributions of any kind. Payment of future distributions to an
3 alternate payee shall be made as soon as administratively feasible.

4 (15) If a final court order is received after a participant has received a distribution of
5 his or her full account balance, the Deferred Compensation Program *[shall]* may not
6 invoice the participant for any funds that may have been awarded to the alternate payee.

7 Stat. Auth: ORS 243.470

8 Stats. Implemented: ORS 243.401 - ORS 243.507

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

1 **459-050-0210**

2 **Segregation of a Participant Account**

3 The purpose of this rule is to describe the process and criteria the Deferred
4 Compensation Program shall use to segregate an alternate payee’s award from a
5 participant’s *[Deferred Compensation]* account(s), and how the alternate payee’s account
6 is maintained once established.

7 (1) Qualified Domestic Relations Order. Once the Manager or a designated
8 employee has determined that a domestic relations order or another court order is a
9 Qualified Domestic Relations Order as defined under the Internal Revenue Code and
10 Oregon law and in accordance with OAR 459-050-0200, the plan participant’s *[Deferred*
11 *Compensation]* account(s) in the Deferred Compensation Program shall be divided
12 and *[a]* separate account(s) established in the name of the alternate payee as required
13 under the Qualified Domestic Relations Order (QDRO).

14 (2) Effective date of segregation. The QDRO may specify a date between January 1
15 and December 31, on which to calculate the award and segregate the alternate payee’s
16 award from the participant’s *[deferred compensation]* account(s) in the Deferred
17 Compensation Program.

18 *[(a)]* If a date is not specified in a QDRO, the Deferred Compensation Program shall
19 use the date that the QDRO was signed by the court on which to calculate and segregate
20 the alternate payee’s award from a participant’s *[deferred compensation]* account(s).

21 (3) Segregation of Participant Account. If a QDRO directs or otherwise requires the
22 Deferred Compensation Program to segregate the participant’s account based on a certain

1 percentage awarded to the alternate payee, the percentage shall be converted into a dollar
2 amount. The converted dollar amount or the dollar amount stated in the QDRO that is
3 awarded to the alternate payee shall be deposited into a separate account in the name of
4 the alternate payee.

5 (4) Investment of funds. Except as otherwise limited by Oregon statute or
6 administrative rule, the alternate payee shall have the same rights and privileges as a
7 participant concerning the investment of funds under the deferred compensation plan.

8 (5) Fees. The alternate payee’s segregated account shall bear all fees and expenses
9 related to the alternate payee’s segregated account as though the alternate payee were a
10 participant.

11 (6) Designation of beneficiary(s). Subject to the terms and conditions of the Deferred
12 Compensation Plan, the alternate payee shall designate a beneficiary(s) as provided for in
13 OAR 459-050-0060. The designated beneficiary(s) shall receive the alternate payee’s
14 account if:

15 (a) The alternate payee dies before distributions from the account began or were
16 required to begin; or

17 (b) The alternate payee dies and was receiving a distribution that allowed the
18 alternate payee to designate a designation of beneficiary(s) in which case the
19 beneficiary(s) shall receive the balance of the account.

20 (7) The participant or alternate payee is responsible for the filing and maintenance of
21 all designations of beneficiary(s) as may be required pursuant to a court order. Benefits
22 shall be paid only to the designated beneficiary(s) on file with the Deferred
23 Compensation Program.

1 (8) Except as may otherwise be required under applicable Oregon law, a divorce
2 *[shall]* may not revoke a beneficiary designation on file with the Deferred Compensation
3 Program that names the former spouse as the participant's or alternate payee's
4 beneficiary. After a divorce, a participant or an alternate payee is responsible for filing
5 any beneficiary designation changes with the Deferred Compensation Program if a
6 change of beneficiary is desired.

7 (9) Mailing address. An alternate payee shall notify the Deferred Compensation
8 Program of their current mailing address by sending it in writing to the Deferred
9 Compensation Program office whenever a change in mailing address occurs. Such
10 notification is deemed filed when it is received by the Deferred Compensation Program
11 and is effective upon filing.

12 Stat. Auth: ORS 243.470

13 Stats. Implemented: ORS 243.401 - ORS 243.507



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

1 **459-050-0230**

2 **Release of Information**

3 (1) **Written release.** The Deferred Compensation Program must receive a signed
4 written release, as defined in OAR 459-050-0001, from the participant or the alternate
5 payee before the Deferred Compensation Program may provide information pertaining to
6 the participant’s or alternate payee’s [*Deferred Compensation*] account(s), beneficiary
7 designations, distributions, or award information contained in any draft or final court
8 order on record to any person other than the parties to the court order. A written
9 authorization to release information is valid indefinitely, unless a specific end date is
10 provided in the written statement.

11 (2) **Subpoena.** A subpoena for information available from the Deferred
12 Compensation Program must be made out to the State of Oregon, Deferred Compensation
13 Program. The Deferred Compensation Program reserves the right to object to any
14 subpoena on the grounds that the subpoena fails to provide a reasonable time for
15 preparation and travel, is otherwise unreasonable or oppressive, or that service was
16 improper, in addition to any other basis legally available. To facilitate prompt processing,
17 copies of subpoenas should be served at the Deferred Compensation Program office.
18 Faxed subpoenas are not acceptable.

19 Stat. Auth: ORS 243.470

20 Stats. Implemented: ORS 243.401 - ORS 243.507



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

1 **459-050-0250**

2 **Fee for Administration of a Court Order**

3 (1) Fee charged to participant and alternate payee. If the Deferred Compensation
4 Program is required by a court order to segregate a participant’s account and create a
5 separate account for an alternate payee(s), the Deferred Compensation Program shall
6 charge the participant and the alternate payee actual and reasonable administrative
7 expenses and related costs incurred by the Deferred Compensation Program in obtaining
8 data and making calculations.

9 (2) Fee calculation. The Deferred Compensation Program, when collecting
10 administrative expenses and related costs, shall allocate those expenses and costs between
11 the participant and the alternate payee on a pro-rata basis, based on the fraction of the
12 account received by the participant or alternate payee. The Deferred Compensation
13 Program may not charge the participant and alternate payee more than a combined total
14 of \$300.00 for administrative expenses and related costs incurred in obtaining data or
15 making calculations.

16 (3) Collection of fee. The fee shall be deducted out of the participant’s and alternate
17 payee’s *[Deferred Compensation]* account(s) after the accounts have been separated per
18 court order.

19 (4) The fee that shall be charged for dividing the participant’s account *[shall]* may
20 not be contingent on the number of days it takes for the Deferred Compensation Program
21 to complete its review of any type of court order that is received by the Deferred
22 Compensation Program.

DRAFT

DRAFT

DRAFT

DRAFT

DRAFT

DRAFT

1 Stat. Auth: ORS 243.470

2 Stats. Implemented: ORS 243.401 - ORS 243.507

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

1 **459-050-0300**

2 **Required Minimum Distribution Requirements**

3 (1) Definitions. The following definitions apply for the purposes of this rule:

4 (a) “Designated Beneficiary” means:

5 (A) A natural person designated as a beneficiary by the participant, alternate payee,
6 or surviving beneficiary as provided in OAR 459-050-0060; or

7 (B) If a trust is designated as a beneficiary, the individual beneficiaries of the trust
8 will be treated as designated beneficiaries if the trust satisfies the requirements in section
9 (2) of this rule and applicable Treasury Regulations, including but not limited to
10 Proposed Treasury Regulation Section 1.401(a)(9)-1, Q&A-D-5.

11 (C) If the beneficiary is not a person or a trust satisfying these requirements, the
12 participant, alternate payee, or surviving beneficiary will be deemed to have no
13 designated beneficiary only for purposes of required minimum distributions under IRC
14 409(a)(9), and distribution shall be made in accordance with section (11) of this rule.

15 (b) “Life Expectancy” means the length of time a person of a given age is expected
16 to live as set forth in Treasury Regulation Section 1.72-9. Required minimum
17 distributions shall be calculated so as to satisfy the requirements of Section 401(a)(9)
18 using the life expectancy tables provided in Treasury regulations. Life expectancies
19 *[shall]* may not be recalculated after the initial determination, except as otherwise
20 required under Oregon or federal law.

21 (c) “Required Beginning Date” means April 1 of the calendar year following the
22 later of:

1 (A) The calendar year in which the participant reaches 70-1/2 years of age; or

2 (B) The calendar year in which the participant retires.

3 (d) “Required Commencement Date” means the date that the deferred compensation
4 plan must begin to distribute all or part of an account to a surviving beneficiary.

5 (2) A trust as beneficiary. If a trust is designated as a beneficiary, the individual
6 beneficiaries of the trust will be treated as designated beneficiaries as defined in
7 paragraph (1)(c)(B) if by December 31 of the calendar year following the death of a
8 person who designated a trust as beneficiary, the trust satisfies the following conditions:

9 (a) The trust must be irrevocable, or become irrevocable by its terms at the time of
10 the person’s death;

11 (b) The trust’s beneficiaries must be natural persons who are identifiable from the
12 trust instrument; and

13 (c) One of the following must be provided to the Deferred Compensation Program:

14 (A) A list of all beneficiaries of the trust, including contingent beneficiaries, along
15 with a description of the portion to which they are entitled and any conditions on their
16 entitlement, all corrected certifications of trust amendments, and a copy of the trust
17 instrument if requested by the Deferred Compensation Program; or

18 (B) A copy of the trust instrument and copies of any amendments after they are
19 adopted.

20 (3) Applicable law. Distributions under the Deferred Compensation Program shall be
21 made in accordance with Internal Revenue Code (IRC) Section 401(a)(9), Treasury
22 regulations, Internal Revenue Service rulings and other interpretations issued, including
23 Proposed Treasury Regulation Section 1.401(a)(9)-2. IRC Section 401(a)(9) overrides the

1 provisions of this rule and any other statute or rule pertaining to the required minimum
2 distribution requirements and any manners of distributions, if they are found to be
3 inconsistent with IRC Section 401(a)(9).

4 (a) If a participant, alternate payee, or surviving beneficiary has not begun
5 distribution or elected a minimum distribution by the beginning date or commencement
6 date required in this rule and IRC Section 401(a)(9), the Deferred Compensation Program
7 shall begin distribution of the minimum amount required as provided under OAR 459-
8 050-0080(2)(e) or, if required, the entire account. Distribution under this subsection is
9 subject to the provisions of OAR 459-050-0120(5).

10 (b) The required minimum distribution amount may never exceed the entire account
11 balance on the date of distribution.

12 (4) Minimum distribution requirements for participants. Distributions must begin no
13 later than the participant's required beginning date.

14 (a) The participant's entire account balance shall be distributed over the participant's
15 life expectancy or over a period not extending beyond the participant's life expectancy
16 without regard to the designated beneficiary's age unless the designated beneficiary is a
17 spouse who is more than 10 years younger than the participant.

18 (b) If the designated beneficiary is a spouse and is more than 10 years younger than
19 the participant, the entire account balance shall be distributed over the joint lives of the
20 participant and the designated beneficiary.

21 **(c) The participant's entire account(s) balance in the Deferred Compensation**
22 **Program shall be distributed first from the Deferred Compensation Account unless**
23 **the participant indicates otherwise.**

1 (5) Minimum distribution requirements for alternate payees. The minimum
2 distribution requirements applicable to an alternate payee are determined by whether a
3 Qualified Domestic Relations Order (QDRO) allocates a separate account to the alternate
4 payee or provides that a portion of a participant’s benefit is to be paid to the alternate
5 payee.

6 (a) If a separate account is established in the name of the alternate payee under OAR
7 459-050-0210, required minimum distributions to the alternate payee must begin no later
8 than the participant’s required beginning date. The alternate payee’s entire account
9 balance shall be distributed over the alternate payee’s life expectancy or over a period not
10 extending beyond the alternate payee’s life expectancy.

11 (b) If no separate account is established in the name of the alternate payee and the
12 alternate payee is paid a portion of a participant’s benefit, the alternate payee’s portion of
13 the benefit shall be aggregated with the amount distributed to the participant and will be
14 treated, for purposes of meeting the minimum distribution requirement, as if it had been
15 distributed to the participant.

16 (6) Manners of distribution available to surviving designated beneficiaries. A
17 surviving designated beneficiary may choose a manner of distribution and apply for a
18 distribution as provided for in OAR 459-050-0080. If the distribution to a participant or
19 alternate payee has begun in accordance with section 401(a)(9)(A)(ii) and the participant
20 dies before the entire account has been distributed or after distributions are required to
21 begin under section (4) of this rule, distributions to the surviving designated beneficiary
22 must be made at least as rapidly as under the manner of distribution used before the
23 participant’s or alternate payee’s death.

1 (7)(a) Distributions treated as having begun. Distributions from an individual
2 account are not treated as having begun to a participant in accordance with section
3 401(a)(9)(A)(ii) until the participant’s required minimum distribution beginning date,
4 without regard to whether distributions from an individual account have been made
5 before the required beginning date.

6 (b) If distribution has been made before the required beginning date in the form of an
7 irrevocable annuity, the distributions are treated as having begun if a participant dies after
8 the annuity starting date but before the required beginning date. The annuity starting date
9 will be deemed the required minimum distribution beginning date.

10 (8) Required commencement date for a surviving designated beneficiary. If a
11 participant dies before distributions are required to begin or are treated as having begun,
12 the entire account balance must be distributed by December 31 of the calendar year
13 containing the fifth anniversary of the participant’s death, unless the beneficiary makes
14 the following distribution election in the manner prescribed by the Deferred
15 Compensation Plan:

16 (a) Distributions must begin no later than December 31 of the calendar year
17 following the year of the participant’s or alternate payee’s death; and

18 (b) Distribution of payments over the designated beneficiary’s lifetime or over a
19 period not exceeding the designated beneficiary’s life expectancy.

20 (A) The beneficiary’s life expectancy is calculated using the age of the beneficiary in
21 the year following the year of the participant’s death, reduced by one for each subsequent
22 year.

1 (B) If the participant has more than one designated beneficiary as of December 31 of
2 the calendar year following the year of the participant’s death and the account has not
3 been divided into separate accounts for each beneficiary, the beneficiary with the shortest
4 life expectancy is treated as the designated beneficiary.

5 (9) Required commencement date for a spousal beneficiary. If distributions have not
6 begun before the participant’s death and if the sole designated beneficiary is the
7 participant’s surviving spouse, distributions to the surviving spouse must commence on
8 or before the later of the dates set forth in subsections (a) and (b) below:

9 (a) December 31 of the calendar year immediately following the calendar year in
10 which the participant died; or

11 (b) December 31 of the calendar year in which the participant would have attained
12 70-1/2 years of age.

13 (c) The distribution period during the surviving spouse’s life is the spouse’s single
14 life expectancy.

15 (10)(a) Required commencement date for a surviving spouse’s beneficiary. If the
16 surviving spouse dies after the participant’s death but before distributions to the spouse
17 have begun, any death benefits payable to the surviving spouse’s beneficiary will be
18 applied as if the surviving spouse were the participant. The date of death of the surviving
19 spouse will be substituted for the date of death of the participant.

20 (b) A death benefit payable to the surviving spouse of the deceased participant’s
21 surviving spouse shall be distributed as provided in section (8) of this rule. The
22 provisions of section (9) of this rule do not apply to a death benefit payable to a surviving
23 spouse of the deceased participant’s surviving spouse.

1 (11)(a) Required commencement date if no designated beneficiary: If a participant
2 dies before the required beginning date with no designated beneficiary as defined in
3 paragraph (1)(c)(C) of this rule, the total account balance must be distributed as provided
4 for in OAR 459-050-0060, by December 31 of the calendar year containing the fifth
5 anniversary of the participant’s or alternate payee’s death.

6 (b) If a participant dies after the required beginning date with no designated
7 beneficiary as defined in paragraph (1)(c)(C) of this rule, the applicable distribution
8 period must not be longer than the participant’s life expectancy.

9 (12) Determining the designated beneficiary. The designated beneficiary will be
10 determined based on the beneficiary(s) designated as of December 31 of the calendar
11 year following the calendar year of the participant’s, alternate payee’s, or surviving
12 beneficiary’s death.

13 (a) A participant may change beneficiaries after his or her required beginning date.

14 (b) A beneficiary may be changed after a participant’s death, such as by one or more
15 beneficiaries disclaiming benefits.

16 Stat. Auth: ORS 243.470

17 Stats. Implemented: ORS 243.401 - 243.507





Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Notice of Rulemaking for Annual Earnings Crediting Rule:
OAR 459-007-0005, *Annual Earnings Crediting*

OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Address allocation of administrative expenses based on ruling in Murray contested case.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

In a recent court case, *Murray v. Public Employees Retirement Bd.*, 235 Or App 262, 230 P3d 993 (2010), the Court of Appeals held that the PERS Board “erred in concluding that the Variable Account was required in 2001 and 2002 to pay a pro rata share of PERS administrative expenses from principal rather than from interest.”

The *Murray* decision requires the Board to change the way administrative expenses of the Variable Annuity Program are paid in years in which the annual variable earnings are insufficient to cover its expenses. When annual variable earnings are insufficient to cover all or a portion of the variable administrative expense, the expense had been charged to each participant on a pro rata basis. Following the *Murray* decision, any shortfall must be paid from a different source. That source does not need to be determined until the next year in which Variable earnings are less than the expenses of that account.

The amendments to OAR 459-007-0005 reflect the changes required by the *Murray* case. The proposed modifications clarify that the Variable Annuity Program administrative expenses will be paid by deducting from earnings attributable to the Regular Account, if earnings are available. If the earnings from the Regular Account are insufficient to pay for the Variable Annuity Program’s administrative expenses, those expenses will be paid by deductions from the employers’ accounts, as provided in ORS 238.610.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on April 25, 2012 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ends on April 30, 2012 at 5:00 p.m.

LEGAL REVIEW

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

IMPACT

Mandatory: Yes, the Court of Appeals decision requires the Board to change the way administrative expenses of Variable are paid in years in which the earnings in that account are insufficient to cover its expenses.

Impact: Clarify allocation of administrative expenses resulting from the Murray case.

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

RULEMAKING TIMELINE

February 15, 2012	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
March 1, 2012	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
March 22, 2012	PERS Board notified that staff began the rulemaking process.
April 25, 2012	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
April 30, 2012	Public comment period ends at 5:00 p.m.
May 18, 2012	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A hearing will be held on April 25, 2012 at PERS Headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the May 18, 2012 Board meeting.

B.2. Attachment 1 – 459-007-0005, *Annual Earnings Crediting*

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION**

1 **459-007-0005**

2 **Annual Earnings Crediting**

3 (1) For purposes of this rule, “remaining earnings” means earnings available for
4 distribution to a particular account or reserve after deduction of amounts required or
5 authorized by law for other purposes.

6 (2) Except as otherwise specified in this division, earnings on all accounts and
7 reserves in the Fund shall be credited as of December 31 of each calendar year in the
8 manner specified in this rule.

9 (3) Health insurance accounts. All earnings attributable to the Standard Retiree
10 Health Insurance Account (SRHIA), Retiree Health Insurance Premium Account
11 (RHIPA) or Retirement Health Insurance Account (RHIA) shall be credited to the
12 account from which they were derived, less administrative expenses incurred by each
13 account, as provided in ORS 238.410, 238.415 and 238.420, respectively.

14 (4) Employer lump sum payments. All earnings or losses attributable to the
15 employer lump sum payment accounts established under ORS 238.229 shall be credited
16 to the accounts from which they were derived.

17 (5) Member variable accounts. Earnings on the Variable Annuity Account shall first
18 be used to pay a pro rata share of administrative expenses in accordance with ORS
19 238.260(6). If the annual earnings from the Variable Annuity Account are
20 insufficient to pay for the pro rata share of administrative expense, those
21 administrative expenses shall be paid from earnings attributable to the Regular
22 Account for that period. If those earnings from the Regular Account are insufficient

1 to pay for the administrative expenses, those expenses shall be paid from employer
 2 accounts as required by ORS 238.610. *[If the Variable Annuity Account experiences a*
 3 *loss, the loss shall be increased to pay a pro rata share of administrative expenses.]* All
 4 remaining earnings or losses attributable to the Variable Annuity Account shall be
 5 credited to the participants of that account, as provided under 238.260(6) and (7)(b).

6 (6) Individual Account Program accounts. Earnings on the Individual Account
 7 Program accounts shall first be used to pay a pro rata share of administrative expenses in
 8 accordance with ORS 238A.350(1). If the Individual Account Program experiences a
 9 loss, the loss shall be increased to pay a pro rata share of administrative expenses. All
 10 remaining earnings or losses attributable to the Individual Account Program shall be
 11 credited to the participant accounts of that program, as provided under 238A.350.

12 (7) Administrative expenses. Earnings attributable to Tier One regular accounts, the
 13 Tier One Rate Guarantee Reserve, Tier Two member regular accounts, judge member
 14 regular accounts, the OPSRP Pension Program reserve, employer contribution accounts,
 15 the Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation
 16 Reserve shall first be used to pay the system’s remaining administrative expenses under
 17 ORS 238.610.

18 (8) Contingency Reserve.

19 (a) In any year in which total earnings on the Fund equal or exceed the assumed rate,
 20 an amount not exceeding seven and one-half percent of remaining earnings attributable to
 21 Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two regular
 22 accounts, Judge member regular accounts, the OPSRP Pension Program reserve, the
 23 Benefits-in-Force Reserve, employer contribution accounts, the Capital Preservation

1 Reserve and the Contingency Reserve shall be credited to the Contingency Reserve to the
2 level at which the Board determines it is adequately funded for the purposes specified in
3 ORS 238.670(1).

4 (b) The portion of the Contingency Reserve allowed under ORS 238.670(1)(a) for
5 use in preventing a deficit in the fund due to employer insolvency may only be credited
6 using earnings attributable to employer contribution accounts.

7 (9) Tier One Member Rate Guarantee Reserve. All remaining earnings attributable to
8 Tier One regular accounts, the Tier One Member Rate Guarantee Reserve, Judge member
9 regular accounts, the Benefits-in-Force Reserve, and the Contingency Reserve may be
10 credited to the Tier One Member Rate Guarantee Reserve established under ORS
11 238.255(1).

12 (10) Capital Preservation Reserve. Remaining earnings attributable to the Tier Two
13 member regular accounts, Judge member regular accounts, OPSRP Pension Program
14 reserve, employer contribution accounts, the Benefits-in-Force Reserve, the Contingency
15 Reserve and the Capital Preservation Reserve may be credited from those sources to one
16 or more reserve accounts that may be established under ORS 238.670(3) to offset gains
17 and losses of invested capital.

18 (11) Tier One regular accounts. All remaining earnings attributable to Tier One
19 regular accounts and the Tier One Rate Guarantee Reserve shall be credited to Tier One
20 member regular accounts at the assumed rate in any year in which the conditions set out
21 in ORS 238.255 have not been met. Crediting under this subsection shall be funded first
22 by all remaining earnings attributable to Tier One regular accounts and the Tier One Rate
23 Guarantee Reserve, then moneys in the Tier One Rate Guarantee Reserve.

1 (12) Judge member regular accounts. All remaining earnings attributable to Judge
2 member regular accounts shall be credited to all active and inactive Judge member
3 regular accounts at the Judge member rate. Crediting under this subsection shall be
4 funded first by all remaining earnings attributable to the Judge member regular accounts
5 and the Tier One Rate Guarantee Reserve, then moneys in the Tier One Rate Guarantee
6 Reserve.

7 (13) Tier Two member regular accounts. All remaining earnings or losses
8 attributable to Tier Two member regular accounts shall be credited to all active and
9 inactive Tier Two member regular accounts under ORS 238.250.

10 (14) OPSRP Pension Program Reserve. Remaining earnings attributable to the
11 OPSRP Pension Program Reserve, the Contingency Reserve, and the Capital Preservation
12 Reserve may be used to credit the OPSRP Pension Program reserve.

13 (15) Benefits-in-Force Reserve. Remaining earnings attributable to the Benefits-in-
14 Force Reserve, the Contingency Reserve, the Capital Preservation Reserve and employer
15 contribution accounts, in that order, shall be used, to the extent available, to credit the
16 Benefits-in-Force Reserve with earnings up to the assumed rate for that calendar year in
17 accordance with ORS 238.670(2).

18 (16) Employer contribution accounts. All remaining earnings attributable to
19 employer contribution accounts shall be credited to employer contribution accounts.

20 (17) Remaining earnings. Any remaining earnings shall be credited to accounts and
21 reserves in the Fund at the Board’s discretion.

22 Stat. Auth.: ORS 238.650, 238A.450

23 Stats. Implemented: ORS 238, 238A.350



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Tax Remedy Rules
459-013-0310, *Payment of Increased Benefits under ORS 238.375 to 238.385*
459-013-0320, *Payment of Increased Benefits to an Alternate Payee*

OVERVIEW

- Action: Adopt new rules to implement HB 2456 (2011).
- Reason: Implement tax remedy provisions of 2011 legislation impacting PERS.
- Policy Issue: No policy issues have been identified.

BACKGROUND

House Bill 2456 (chapter 653, Oregon Laws 2011), became effective on August 2, 2011. The bill prohibits PERS from paying an increased benefit under the tax remedy provisions of HB 3349 (Chapter 569, Oregon Laws 1995) if a person is not subject to Oregon personal income tax under ORS 316.127(9). The prohibition against payment of the HB 3349 tax remedy does not apply to members who retired before January 1, 2012 and persons who received payments attributable to retirement of a member who retired before January 1, 2012. This bill does not affect the payment of the tax remedy enacted by SB 656 (1991 Session), previously codified at ORS 238.385. Two new rules are needed to implement the tax remedy provisions of HB 2456.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

OAR 459-013-0310:

Subsection (b) of section (1) has been deleted. Sections (2) & (3) of the rule have been deleted while the previous section (4) of the rule is now subsection (c) of section (1), and the previous section (5) of the rule is now section (2).

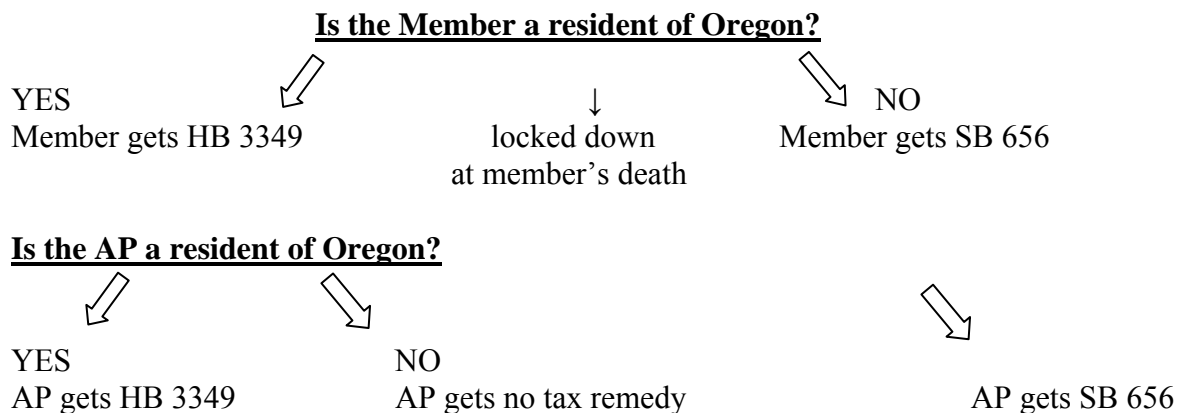
These deletions are proposed because, upon further consideration, staff believes that the statutory provisions of HB 2456 are sufficiently clear about legislative intent and operation: which tax remedy method payable to a member will be determined when the payment application is processed by PERS. Once determined, the tax remedy method may change as a result of changes in the person's residence. A person who is not a resident of the state of Oregon who otherwise qualifies for a HB 3349 remedy may receive only the SB 656 tax remedy. If that person subsequently becomes an Oregon resident after payments begins, and the HB 3349 tax remedy is higher, that person will stop receiving the tax remedy under SB 656 but instead will receive the higher HB 3349 tax remedy. Furthermore, a person who is not a resident of the state of Oregon who otherwise meets the requirements of HB 3349 but does not meet the requirements for a SB 656 remedy will not receive a tax remedy at all. If the person then becomes a resident of the state

of Oregon after payments begin, the person will receive the HB 3349 tax remedy so long as they remain an Oregon resident. As these terms are all laid out with the plain language of the 2011 legislation, the proposed rule was scaled back to avoid duplication.

Lastly, a new subsection (1)(b) has been added to explain the payment of increased benefits to a beneficiary.

OAR 459-013-0320:

When the 2011 Oregon Revised Statutes were published, the tax remedy provisions were re-codified to a new area in Chapter 238. The proposed rule was modified in sections (2) and (3) to reflect the new references. In addition, changes were made in section (2) to clarify that an alternate payee’s eligibility for an increased benefit is initially triggered by the member’s eligibility for the increased benefit as required by ORS 238.465(5). After the member dies, new language was added to section (2) to state how the alternate payee’s tax remedy will be determined. The flow of this determination is illustrated in the diagram below:



PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on February 28, 2012 at 3:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on January 27, 2012 at 3:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No, the bill does not compel rulemaking, but new rules should be adopted to accommodate the provisions of HB 2456.

Impact: Stakeholders will benefit from implementation of the statutory provisions.

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

RULEMAKING TIMELINE

October 14, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
November 1, 2011	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers and interested parties. Public comment period began.
November 18, 2011	PERS Board notified that staff began the rulemaking process.
November 22, 2011	Rulemaking hearing held at 2:00 p.m. in Tigard.
November 29, 2011	Staff extended the public comment period for rules to implement HB 2456 until January 27, 2012.
January 27, 2012	Public comment period ended at Board meeting.
March 22, 2012	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt new rules to implement HB 2456.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Implement tax remedy provisions of 2011 legislation impacting PERS.

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

B.3. Attachment 1 – 459-013-0310, *Payment of Increased Benefits under ORS 238.372 to 238.384*

B.3. Attachment 2 – 459-013-0320, *Payment of Increased Benefits to an Alternate Payee*



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

1 459-013-0310

2 Payment of Increased Benefits under ORS 238.372 to 238.384

3 (1) For purposes of determinations under ORS 238.372 to 238.384:

4 (a) “Person” includes but is not limited to a trust or charitable organization
5 that is a beneficiary.

6 (b) The increased benefit percentage to be added to a benefit paid to a
7 beneficiary under ORS 238.390, 238.395, 238.400, 238.405, or under an optional
8 form of retirement allowance under ORS 238.305 or 238.325 will be determined
9 based on:

10 (A) The increased benefit percentage(s) for which the member is otherwise
11 eligible under ORS 238.364 and 238.366; and

12 (B) The residency of the beneficiary.

13 (c) A payment begins before January 1, 2012 if the effective date of the
14 payment, as described in this chapter, is before January 1, 2012.

15 (2) This rule is effective January 1, 2012.

16 Stat. Auth.: ORS 238.650

17 Stats. Implemented: ORS 238.362, 238.364, 238.366 & 238.372 to 238.384



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

1 459-013-0320

2 Payment of Increased Benefits to an Alternate Payee

3 (1) The provisions of this rule apply to an alternate payee who:

4 (a) Receives retirement benefit payments derived from an “alternate payee
5 account” or a separate benefit option as provided under OAR 459-045-0010(2) or
6 (3)(b); and

7 (b) Has an effective retirement date on or after January 1, 2012.

8 (2) If an alternate payee is eligible to receive increased benefits under ORS
9 238.465(5), the percentage of the increased benefit payable to the member, as
10 determined under ORS 238.364, 238.366, and 238.372 to 238.384, is the increased
11 benefit percentage for which the alternate payee is eligible. If the member predeceases
12 the alternate payee, the increased benefit percentage payable to the member at the
13 time of death remains the increased benefit percentage for which the alternate payee
14 is eligible.

15 (3) Payment of the increased benefit to the alternate payee under ORS 238.372 to
16 238.384 is governed by the residency of the alternate payee.

17 (4) An alternate payee described in section (1) of this rule whose effective
18 retirement date is before January 1, 2012 may receive an increased benefit under
19 ORS 238.364 or 238.366 regardless of the member’s or alternate payee’s residency.

20 (5) This rule is effective January 1, 2012.

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238.362, 238.364, 238.366, 238.465 & 238.372 to 238.384





Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Minimum Retroactive Payment Rule
OAR 459-005-0615, *Minimum Retroactive Payment*

OVERVIEW

- Action: Adopt new rule to set a minimum retroactive payment amount.
- Reason: Set a minimum retroactive payment amount of \$5.00.
- Policy Issue: Should PERS set a minimum retroactive payment amount of \$5.00?

BACKGROUND

PERS may adjust a benefit for a variety of reasons, such as resolving a member's dispute or contested case, or to correct errors made by a member, alternate payee, beneficiary, a participating employer, or PERS. These adjustments may affect the member's salary, service credit, or contributions after a benefit payment has been made, such as a withdrawal, death benefit, or lump sum retirement, or benefits going forward if the recipient is receiving on-going monthly benefits.

These changes are recalculated as of the effective date of the payment and can result in a one-time retroactive payment for any amount that was underpaid and/or adjustments to prospective payments. Currently, PERS issues the retroactive payment no matter how small the amount may be. In 2010, approximately 360 payments were issued for less than \$5.00.

POLICY ISSUE

1) *Should PERS set a minimum retroactive payment amount of \$5.00?*

PERS has examined the costs relative to adjusting benefits, issuing payments and the associated accounting functions. The costs incurred per payment issued are not just the cost of an electronic deposit or the hard costs to generate a paper check but also the setting up of the payment and the accounting functions associated with the reconciliation of the payment. The Oregon Treasury Department projected average costs per check of about \$5 to \$10 per payment. In cases where PERS needs to verify a current address, then set up and verify the payment amount (such as withdrawals or final lump sum payments), the costs in PERS staff time add additional costs estimated at about \$18 to \$25 per payment. Finally, PERS has even received complaints from recipients who have voiced their displeasure at receiving a check for such a small amount and questioned the waste of resources used to generate such a small payment.

Setting a minimum amount for a retroactive payment would not affect plan qualification. Internal Revenue Service Revenue Procedure 2003-44, Employee Plans Compliance Resolution System, Section 6 paragraph (5)(b) "Delivery of Small Benefits," states "If the total corrective distribution

due a participant or beneficiary is \$50.00 or less, the Plan Sponsor is not required to make the corrected distribution if the reasonable direct costs of processing and delivering the distribution to the participant or beneficiary would exceed the amount of the distribution.”

An informal poll of other public retirement systems established that some have set a minimum amount for a retroactive payment:

California Public Employees’ Retirement System	\$ 5.00
California State Teachers’ Retirement System	\$10.00
Canadian Federal Government Employees Pension Plan	\$ 5.00
Illinois Municipal Retirement Fund	\$ 1.00
New York State and Local Retirement System	\$ 1.00
State Teachers Retirement System of Ohio	\$ 1.00
Washington State Department of Retirement Systems	\$ 8.01

Applying a cost/benefit analysis to small retroactive payments and imposing a limitation to avoid relatively high costs and a disproportionate allocation of administrative resources is consistent with the PERS Board’s fiduciary responsibility to maintain a stable and viable system. Setting a minimum amount of \$5.00 for a retroactive payment is both a reasonable and prudent administration of the fund.

If the Board were to establish this minimum payment threshold, the undistributed funds would be allocated to the appropriate account or reserve based on the program to which they are attributable:

- Tier One/Tier Two retirements and withdrawals would be allocated to the Benefits-In-Force Reserve (BIF) as the BIF is used to pay benefits to members.
- Individual Account Program (IAP) withdrawals and retirements would be allocated to the undistributed investment income account for the IAP and increase the earnings available to distribute to IAP members each calendar year.
- OPSRP Pension Program (OPSRP) retirements would be allocated to the OPSRP net assets account for paying pension benefits.

Staff Recommendation: PERS staff recommends adopting the proposed new rule to establish a \$5.00 minimum amount for retroactive payments of underpaid benefits. This threshold would only be applied to one-time, retroactive payments; on-going monthly benefits that need adjusting would still be adjusted to the corrected benefit amount.

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

The rule has not been modified since notice to the Board in January 2012.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on February 28, 2012 at 3:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on March 1, 2012 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: A retroactive payment will not be issued for less than \$5.00. Administrative costs will be reduced and efficiency enhanced. Payment recipients will not experience a material loss.

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

RULEMAKING TIMELINE

December 15, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 3, 2012	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
January 27, 2012	PERS Board notified that staff began the rulemaking process.
February 28, 2012	Rulemaking hearing held at 3:00 p.m. in Tigard.
March 1, 2012	Public comment period ended at 5:00 p.m.
March 22, 2012	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt new Minimum Retroactive Payment rule, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Set a minimum retroactive payment amount of \$5.00.

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



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

1 **459-005-0615**

2 **Minimum Retroactive Payment**

3 **PERS may not issue a retroactive payment for underpaid monthly benefits or**
4 **lump sum distributions if the total amount of the underpayment is less than \$5.**

5 **Stat. Auth.: ORS 238.650 and 238A.450**

6 **Stats. Implemented: ORS 238.601**





Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Earnings Crediting Rules
OAR 459-007-0090, *Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments*
OAR 459-007-0270, *Crediting Earnings upon Tier Two Service Retirement, Two or More Installment Payments*

OVERVIEW

- Action: Adopt modifications to Earnings Crediting rules.
- Reason: Clarify rate used to determine crediting of an installment payment in the year of distribution.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

During a review of the earnings crediting OARs, staff determined that OAR 459-007-0090 and 459-007-0270 currently refer to a proration of the annual rate to determine the crediting of an installment payment in the year of distribution, which is incorrect. The actual term used in performing this calculation is the “latest year-to-date calculation” as of the date of distribution. The proposed modifications correct the misuse of these technical terms, and make other technical corrections.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

No modifications have been made since notice at the January 2012 Board Meeting.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on February 28, 2012 at 3:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on March 1, 2012 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: Members, employers, and staff will benefit from clarification of the proper rate used to determine crediting of installment payments.

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

RULEMAKING TIMELINE

December 15, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 3, 2012	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
January 27, 2012	PERS Board notified that staff began the rulemaking process.
February 28, 2012	Rulemaking hearing held at 3:00 p.m. in Tigard.
March 1, 2012	Public comment period ended at 5:00 p.m.
March 22, 2012	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to Earnings Crediting rules, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Clarify rate used to determine crediting of an installment payment in the year of distribution.

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

B.5. Attachment 1 – 459-007-0090, *Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments*

B.5. Attachment 2 – 459-007-0270, *Crediting Earnings upon Tier Two Service Retirement, Two or More Installment Payments*

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION**

1 **459-007-0090**

2 **Crediting Earnings Upon Tier One Service Retirement, Two or More Installment**
3 **Payments**

4 Notwithstanding [OAR](#) 459-007-0070, if a Tier One member retires and elects to
5 receive installment payments under ORS 238.305(4), earnings shall be credited from the
6 effective date of the last annual rate to the date of distribution of the final installment
7 payment in the manner specified in this rule.

8 (1) Regular account. Earnings shall be credited to the member’s regular account as
9 follows:

10 (a) Prior year earnings. If earnings for the calendar year *[prior to]* [before](#) the
11 effective retirement date have not yet been credited, earnings shall be credited for that
12 year based on the latest year-to-date calculation available for that year.

13 (b) Retirement year earnings. Earnings for the calendar year of the effective
14 retirement date shall be based on the latest year-to-date calculation as of the effective
15 retirement date.

16 (2) Variable account. If the member is participating in the Variable Annuity
17 Account, earnings or losses shall be applied to the member’s variable account as follows:

18 (a) Prior year earnings. If earnings or losses for the calendar year *[prior to]* [before](#)
19 the effective retirement date have not yet been credited to the member’s variable account,
20 earnings or losses for that year shall be credited based on the latest year-to-date
21 calculation available for that year.

1 (b) Retirement year earnings. Earnings or losses for the calendar year of the effective
2 retirement date shall be credited based on the latest year-to-date calculation as of the
3 effective retirement date.

4 (c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as
5 provided in subsections (a) and (b) of this section, and *[prior to]* before the distribution
6 of the first installment, the adjusted balance of the member's variable account shall be
7 transferred to the member's regular account as of the effective retirement date.

8 (3) Initial installment. Earnings shall be credited to the initial installment as follows:

9 (a) If the initial installment is distributed in the same year as the effective retirement
10 date, earnings shall be paid with the initial installment based on the average annualized
11 rate prorated from the effective retirement date to the date of distribution of the initial
12 installment.

13 (b) If the initial installment is distributed in the year following the effective
14 retirement date, earnings shall be paid with the initial installment based on the average
15 annualized rate prorated from January 1 of the year following the effective retirement
16 date to the date of distribution of the initial installment.

17 (4) Annual earnings -- initial year. Earnings from the effective retirement date to
18 December 31 of the year of retirement shall be credited to the member's regular account
19 in the following amount:

20 (a) The member's regular account balance as of December 31 of the year of
21 retirement, excluding the remaining earnings credited to the member's regular account
22 under subsection (1)(b) of this rule and to the member's variable account under
23 subsection (2)(b) of this rule; multiplied by

1 (b) The annual rate for that year less the latest year-to-date calculation as of the
2 effective retirement date.

3 (5) Annual earnings -- subsequent years. Earnings shall be credited to the member's
4 regular account as of December 31 of each calendar year subsequent to the effective
5 retirement date in the manner specified in this section.

6 (a) Earnings from January 1 to the date of distribution of the annual installment shall
7 be credited in the following amount:

8 (A) The member's regular account balance as of the date of distribution of the
9 annual installment; multiplied by

10 (B) The *[annual rate for that year, prorated from January 1 to the date of*
11 *distribution]* **latest year-to-date calculation as of the date of distribution.**

12 (b) Earnings from the date of distribution of the annual installment to December 31
13 shall be credited in the following amount:

14 (A) The member's regular account balance as of December 31; multiplied by

15 (B) The *[annual rate for that year, prorated from the date of distribution to*
16 *December 31]* **latest year-to-date calculation as of the date of distribution.**

17 (6) Final installment. The final installment shall include the remaining balance of the
18 member's regular account as of the date of distribution of the final installment, plus
19 earnings credited as follows:

20 (a) If earnings for the calendar year *[prior to]* **before** the year of the final installment
21 have not yet been credited to the member's regular account, earnings shall be credited
22 based on the latest year-to-date calculation available for that year.

1 (b) Earnings for the calendar year of the final installment shall be credited based on
2 the latest year-to-date calculation as of the date of distribution of the final installment.

3 (7) The provisions of this rule shall be applied retroactively to April 1, 2004.

4 Stat. Auth.: ORS *[238.305(3)(c) &]* 238.650

5 Stats. Implemented: ORS 238.260, 238.300*[,]* [&](#) 238.305 *[& 238.315]*

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION**

1 **459-007-0270**

2 **Crediting Earnings upon Tier Two Service Retirement, Two or More Installment**
3 **Payments**

4 Notwithstanding [OAR](#) 459-007-0250, when a Tier Two member retires and elects to
5 receive installment payments under ORS 238.305(4), earnings shall be credited from the
6 effective date of the last annual rate to the date of distribution of the final installment
7 payment in the manner specified in this rule.

8 (1) Regular account. Earnings shall be credited to the member’s regular account as
9 follows:

10 (a) Prior year earnings. If earnings for the calendar year *[prior to]* [before](#) the
11 effective retirement date have not yet been credited, earnings shall be credited for that
12 year based on the latest year-to-date calculation available for that year.

13 (b) Retirement year earnings. Earnings for the calendar year of the effective
14 retirement date shall be based on the latest year-to-date calculation as of the effective
15 retirement date.

16 (2) Variable account. If the member is participating in the Variable Annuity
17 Account, earnings or losses shall be applied to the member’s variable account as follows:

18 (a) Prior year earnings. If earnings or losses for the calendar year *[prior to]* [before](#)
19 the effective retirement date have not yet been credited to the member’s variable account,
20 earnings or losses for that year shall be credited based on the latest year-to-date
21 calculation available for that year.

1 (b) Retirement year earnings. Earnings or losses for the calendar year of the effective
2 retirement date shall be credited based on the latest year-to-date calculation as of the
3 effective retirement date.

4 (c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as
5 provided in subsections (a) and (b) of this section, and *[prior to]* before the distribution
6 of the first installment, the adjusted balance of the member’s variable account shall be
7 transferred to the member’s regular account as of the effective retirement date.

8 (3) Initial installment. Earnings shall be credited to the initial installment as follows:

9 (a) If the initial installment is distributed in the same year as the effective retirement
10 date, earnings shall be paid with the initial installment based on the average annualized
11 rate prorated from the effective retirement date to the date of distribution of the initial
12 installment.

13 (b) If the initial installment is distributed in the year following the effective
14 retirement date, earnings shall be paid with the initial installment based on the average
15 annualized rate prorated from January 1 of the year following the effective retirement
16 date to the date of distribution of the initial installment.

17 (4) Annual earnings -- initial year. Earnings from the effective retirement date to
18 December 31 of the year of retirement shall be credited to the member’s regular account
19 in the following amount:

20 (a) The member’s regular account balance as of December 31 of the year of
21 retirement, excluding the remaining earnings credited to the member’s regular account
22 under subsection (1)(b) of this rule and to the member’s variable account under
23 subsection (2)(b) of this rule; multiplied by

1 (b) The annual rate for that year less the latest year-to-date calculation as of the
2 effective retirement date.

3 (5) Annual earnings -- subsequent years. Earnings shall be credited to the member's
4 regular account as of December 31 of each calendar year subsequent to the effective
5 retirement date in the manner specified in this section.

6 (a) Earnings from January 1 to the date of distribution of the annual installment shall
7 be credited in the following amount:

8 (A) The member's regular account balance as of the date of distribution of the
9 annual installment; multiplied by

10 (B) The *[annual rate for that year, prorated from January 1 to]* latest year-to-date
11 calculation as of the date of distribution.

12 (b) Earnings from the date of distribution of the annual installment to December 31
13 shall be credited in the following amount:

14 (A) The member's regular account balance as of December 31, multiplied by;

15 (B) The *[annual rate for that year, prorated from]* latest year-to-date calculation
16 as of the date of distribution *[to December 31]*.

17 (6) Final installment. The final installment shall include the remaining balance of the
18 member's regular account as of the date of distribution of the final installment, plus
19 earnings credited as follows:

20 (a) If earnings for the calendar year *[prior to]* before the year of the final installment
21 have not yet been credited to the member's regular account, earnings shall be credited
22 based on the latest year-to-date calculation available for that year.

1 (b) Earnings for the calendar year of the final installment shall be credited based on
2 the latest year-to-date calculation as of the date of distribution of the final installment.

3 Stat. Auth.: ORS *[238.305(3)(c) &]* 238.650

4 Stats. Implemented: ORS 238.260, 238.300[,] & 238.305 [*& 238.315*]



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Reemployment of Retired Members Rule:
OAR 459-017-0060, *Reemployment of Retired Members*

OVERVIEW

- Action: Adopt modifications to Reemployment of Retired Members rule.
- Reason: Update Social Security annual compensation limits and clarify exception to work after retirement limitations for replacing employees called to active military duty.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

Oregon Revised Statutes (ORS) 238.082 allows a Tier One or Tier Two retired member to return to work for a PERS employer for the number of hours the retired member may work without exceeding the Social Security annual compensation limits. The Social Security Administration has announced new compensation limits for calendar year 2012, which are made effective by the PERS Board adopting modifications to OAR 459-017-0060.

Also, ORS 238.082(6) provides that a retired member who did not retire early may be employed to temporarily replace an employee called to federal active military duty. Hours worked under the exception do not count toward the limitations of ORS 238.082. Staff recommends the additional text presented at subsection (4)(h) of the proposed rule to provide guidance in the interpretation and application of this exception. The proposed modification clarifies that, to “replace” an employee under this exception, the employee must be assigned to the position of the absent employee and perform the duties of the absent employee or duties that might normally be assigned to an employee in that position.

Work after retirement limitations and exceptions are applied on a calendar year basis. Staff recommends the modifications to the rule be effective January 1, 2012, to provide consistent standards for the entire calendar year.

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

The rule has not been modified since notice to the Board in January 2012.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on February 28, 2012 at 3:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on March 1, 2012 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: Members, employers, and staff will benefit from clarification of work after retirement limitations and exceptions.

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

RULEMAKING TIMELINE

December 15, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 3, 2012	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
January 27, 2012	PERS Board notified that staff began the rulemaking process.
February 28, 2012	Rulemaking hearing held at 3:00 p.m. in Tigard.
March 1, 2012	Public comment period ended at 5:00 p.m.
March 22, 2012	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to Reemployment of Retired Members rule, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1

- Reason: Update Social Security annual compensation limits and clarify exception to work after retirement limitations for replacing employees called to active military duty.

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

**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) For purposes of this rule, “retired member” means a member of the PERS Chapter
4 238 Program who is retired for service.

5 (2) Reemployment under ORS 238.082. A retired member may be employed under
6 238.082 by a participating employer without loss of retirement benefits provided:

7 (a) The period or periods of employment with one or more participating employers
8 total less than 1,040 hours in a calendar year; or

9 (b) If the retired member is receiving retirement, survivors, or disability benefits under
10 the federal Social Security Act, the period or periods of employment total less than 1,040
11 hours in a calendar year or no more than the total number of hours in a calendar year that,
12 at the retired member’s specified hourly rate of pay, limits the annual compensation of the
13 retired member to an amount that does not exceed the following Social Security annual
14 compensation limits:

15 (A) For retired members who have not reached full retirement age under the Social
16 Security Act, the annual compensation limit is [~~\$14,160~~] \$14,640; or

17 (B) For the calendar year in which the retired member reaches full retirement age
18 under the Social Security Act and only for compensation for the months before reaching
19 full retirement age, the annual compensation limit is [~~\$37,680~~] \$38,880.

20 (3) The limitations on employment in section (2) of this rule do not apply if the retired
21 member has reached full retirement age under the Social Security Act.

22 (4) The limitations on employment in section (2) of this rule do not apply if:

1 (a) The retired member meets the requirements of ORS 238.082(4), (5), (6), (7) or (8),
2 and did not retire at a reduced benefit under the provisions of 238.280(1), (2), or (3);

3 (b) The retired member retired at a reduced benefit under ORS 238.280(1), (2) or (3),
4 is employed in a position that meets the requirements of 238.082(4), the date of
5 employment is more than six months after the member’s effective retirement date, and the
6 member’s retirement otherwise meets the standard of a bona fide retirement;

7 (c) The retired member is employed by a school district or education service district as
8 a speech-language pathologist or speech-language pathologist assistant and:

9 (A) The retired member did not retire at a reduced benefit under the provisions of
10 ORS 238.280(1), (2), or (3); or

11 (B) If the retired member retired at a reduced benefit under the provisions of ORS
12 238.280(1), (2) or (3), the retired member is not so employed until more than six months
13 after the member’s effective retirement date and the member’s retirement otherwise meets
14 the standard of a bona fide retirement;

15 (d) The retired member meets the requirements of section 2, chapter 499, Oregon
16 Laws 2007;

17 (e) The retired member is employed for service during a legislative session under ORS
18 238.092(2); or

19 (f) The retired member is on active state duty in the organized militia and meets the
20 requirements under ORS 399.075(8).

21 (g) For purposes of population determinations referenced by statutes listed in this
22 section, the latest federal decennial census shall first be operative on the first day of the
23 second calendar year following the census year.

1 (h) For purposes of ORS 238.082(6), a retired member replaces an employee if
2 the retired member:

3 (A) Is assigned to the position of the employee; and

4 (B) Performs the duties of the employee or duties that might be assigned to an
5 employee in that position.

6 (5) If a retired member is reemployed subject to the limitations of ORS 238.082 and
7 section (2) of this rule, the period or periods of employment subsequently exceed those
8 limitations, and employment continues into the month following the date the limitations
9 are exceeded:

10 (a) If the member has been retired for six or more calendar months:

11 (A) PERS will cancel the member's retirement.

12 (i) If the member is receiving a monthly service retirement allowance, the last
13 payment to which the member is entitled is for the month in which the limitations were
14 exceeded.

15 (ii) If the member is receiving installment payments under ORS 238.305(4), the last
16 installment payment to which the member is entitled is the last payment due on or before
17 the last day of the month in which the limitations were exceeded.

18 (iii) If the member received a single lump sum payment under ORS 238.305(4) or
19 ORS 238.315, the member is entitled to the payment provided the payment was dated on or
20 before the last day of the month in which the limitations were exceeded.

21 (iv) A member who receives benefits to which he or she is not entitled must repay
22 those benefits to PERS.

1 (B) The member will reestablish active membership the first of the calendar month
2 following the month in which the limitations were exceeded.

3 (C) The member’s account must be rebuilt in accordance with the provisions of
4 section (7) of this rule.

5 (b) If the member has been retired for less than six calendar months:

6 (A) PERS will cancel the member’s retirement effective the date the member was
7 reemployed.

8 (B) All retirement benefits received by the member must be repaid to PERS in a single
9 payment.

10 (C) The member will reestablish active membership effective the date the member
11 was reemployed.

12 (D) The member account will be rebuilt as of the date that PERS receives the single
13 payment. The amount in the member account must be the same as the amount in the
14 member account at the time of the member’s retirement.

15 (6) For purposes of determining period(s) of employment in section (2) of this rule:

16 (a) Hours of employment are hours on and after the retired member’s effective
17 retirement date for which the member receives wages, salary, paid leave, or other
18 compensation.

19 (b) Hours of employment that are performed under the provisions of section (4) of this
20 rule on or after the later of January 1, 2004 or the operative date of the applicable statutory
21 provision are not counted.

1 (7) Reemployment under ORS 238.078(1). If a member has been retired for service
2 for more than six calendar months and is reemployed in a qualifying position by a
3 participating employer under the provisions of 238.078(1):

4 (a) PERS will cancel the member’s retirement effective the date the member is
5 reemployed.

6 (b) The member will reestablish active membership on the date the member is
7 reemployed.

8 (c) If the member elected a benefit payment option other than a lump sum option
9 under ORS 238.305(2) or (3), the last monthly service retirement allowance payment to
10 which the member is entitled is for the month before the calendar month in which the
11 member is reemployed. Upon subsequent retirement, the member may choose a different
12 benefit payment option.

13 (A) The member’s account will be rebuilt as required by ORS 238.078 effective the
14 date active membership is reestablished.

15 (B) Amounts from the Benefits-In-Force Reserve (BIF) credited to the member’s
16 account under the provisions of paragraph (A) of this subsection will be credited with
17 earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement
18 to the date of active membership.

19 (d) If the member elected a partial lump sum option under ORS 238.305(2), the last
20 monthly service retirement allowance payment to which the member is entitled is for the
21 month before the calendar month in which the member is reemployed. The last lump sum
22 or installment payment to which the member is entitled is the last payment due before the
23 date the member is reemployed. Upon subsequent retirement, the member may not choose

1 a different benefit payment option unless the member has repaid to PERS in a single
2 payment an amount equal to the lump sum and installment benefits received and the
3 earnings that would have accumulated on that amount.

4 (A) The member’s account will be rebuilt as required by ORS 238.078 effective the
5 date active membership is reestablished.

6 (B) Amounts from the BIF credited to the member’s account under the provisions of
7 paragraph (A) of this subsection, excluding any amounts attributable to repayment by the
8 member, will be credited with earnings at the BIF rate or the assumed rate, whichever is
9 less, from the date of retirement to the date of active membership.

10 (e) If the member elected the total lump sum option under ORS 238.305(3), the last
11 lump sum or installment payment to which the member is entitled is the last payment due
12 before the date the member is reemployed. Upon subsequent retirement, the member may
13 not choose a different benefit payment option unless the member has repaid to PERS in a
14 single payment an amount equal to the benefits received and the earnings that would have
15 accumulated on that amount.

16 (A) If the member repays PERS as described in this subsection the member’s account
17 will be rebuilt as required by ORS 238.078 effective the date that PERS receives the single
18 payment.

19 (B) If any amounts from the BIF are credited to the member’s account under the
20 provisions of paragraph (A) of this subsection, the amounts may not be credited with
21 earnings for the period from the date of retirement to the date of active membership.

22 (f) If the member received a lump sum payment under ORS 238.315:

1 (A) If the payment was dated before the date the member is reemployed, the member
2 is not required or permitted to repay the benefit amount. Upon subsequent retirement:

3 (i) The member may choose a different benefit payment option.

4 (ii) The member's retirement benefit will be calculated based on the member's periods
5 of active membership after the member's initial effective retirement date.

6 (B) If the payment was dated on or after the date the member is reemployed, the
7 member must repay the benefit amount. Upon subsequent retirement:

8 (i) The member may choose a different benefit payment option.

9 (ii) The member's retirement benefit will be calculated based on the member's periods
10 of active membership before and after the member's initial effective retirement date.

11 (iii) The member's account will be rebuilt as described in ORS 238.078(2)

12 (g) A member who receives benefits to which he or she is not entitled must repay
13 those benefits to PERS.

14 (8) Reemployment under ORS 238.078(2). If a member has been retired for less than
15 six calendar months and is reemployed in a qualifying position by a participating employer
16 under the provisions of 238.078(2):

17 (a) PERS will cancel the member's retirement effective the date the member is
18 reemployed.

19 (b) All retirement benefits received by the member must be repaid to PERS in a single
20 payment.

21 (c) The member will reestablish active membership effective the date the member is
22 reemployed.

1 (d) The member account will be rebuilt as of the date that PERS receives the single
2 payment. The amount in the member account must be the same as the amount in the
3 member account at the time of the member’s retirement.

4 (e) Upon subsequent retirement, the member may choose a different benefit payment
5 option.

6 (9) Upon the subsequent retirement of any member who reestablished active
7 membership under ORS 238.078 and this rule, the retirement benefit of the member must
8 be calculated using the actuarial equivalency factors in effect on the effective date of the
9 subsequent retirement.

10 (10) The provisions of paragraphs (7)(c)(B), (7)(d)(B), and (7)(e)(B) of this rule are
11 applicable to retired members who reestablish active membership under ORS 238.078 and
12 this rule and whose initial effective retirement date is on or after March 1, 2006.

13 (11) Reporting requirement. A participating employer that employs a retired member
14 must notify PERS in a format acceptable to PERS under which statute the retired member
15 is employed.

16 (a) Upon request by PERS, a participating employer must certify to PERS that a
17 retired member has not exceeded the number of hours allowed under ORS 238.082 and
18 section (2) of this rule.

19 (b) Upon request by PERS a participating employer must provide PERS with business
20 and employment records to substantiate the actual number of hours a retired member was
21 employed.

22 (c) Participating employers must provide information requested under this section
23 within 30 days of the date of the request.

1 (12) Sick leave. Accumulated unused sick leave reported by an employer to PERS
2 upon a member's retirement, as provided in ORS 238.350, may not be made available to a
3 retired member returning to employment under sections (2) or (7) of this rule.

4 (13) Subsections (4)(c) and (4)(d) of this rule are repealed effective January 2, 2016.

5 (14) This rule is effective January 1, ~~[2010]~~ 2012.

6 Stat. Auth.: ORS 238.650

7 Stats. Implemented: ORS 238.078, 238.082, 238.092, 399.075, ~~&~~ 2007 OL Ch. 499 &
8 774 ~~[& 2009 OL Ch. 390 & 868]~~





Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
SUBJECT: Adoption of Petition for Reconsideration Rule:
OAR 459-001-0025, *Delegation to Director and Staff*

OVERVIEW

- Action: Adopt modifications to Petition for Reconsideration rule.
- Reason: Clarify petition for reconsideration requirements.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

In 2008, PERS adopted changes to OAR 459-001-0040 relating to reviews of petitions for reconsideration of a final order in a contested case. Those modifications conformed to the Department of Justice (DOJ) Model Rules of Procedure. During that rulemaking, section (2) of 459-001-0040 was deleted, which clarified specific information to be included in a petition for reconsideration. That rulemaking, however, did not modify OAR 459-001-0025, which references the now-deleted section (2) of OAR 459-001-0040.

These proposed modifications delete the outdated citation. Instead, adopting these modifications would delegate from the PERS Board to the Director the authority to deny any petition that does not set forth the specific grounds for reconsideration. This is an admittedly subjective standard and, in practice, staff has broadly accepted petitions for reconsideration even if they do not fit within the criteria that are proposed to be deleted.

SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

No modifications have been made since notice at the January 2012 Board Meeting.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on February 28, 2012 at 3:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on March 1, 2012 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: The rule modifications clarify that the Director may deny any petition for reconsideration that does not set forth specific grounds for reconsideration.

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

RULEMAKING TIMELINE

January 13, 2012	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 27, 2012	PERS Board notified that staff began the rulemaking process.
February 1, 2012	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
February 28, 2012	Rulemaking hearing held at 3:00 p.m. in Tigard.
March 1, 2012	Public comment period ended at 5:00 p.m.
March 22, 2012	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to Petition for Reconsideration rule, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1

- Reason: Clarify petition for reconsideration requirements.

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

B.7. Attachment 1 – 459-001-0025, *Delegation to Director and Staff*

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

1 **459-001-0025**

2 **Delegation to Director and Staff**

3 (1) The Director is hereby authorized to take all action necessary or desirable to administer
4 the system including but not limited to:

5 (a) Design application and other forms;

6 (b) Act on any application for refund of contributions; crediting service, correction of
7 records, retirement for disability or service, and death benefits and allowances;

8 (c) Calculate and authorize payment of refunds, allowances or benefits except as provided in
9 OAR chapter 459, division 15;

10 (d) Require medical, vocational or other professional examinations of disability retirement
11 benefits applicants and recipients;

12 (e) Reinstate persons from disability retirement upon the Director’s determination that
13 disability does not exist; and

14 (f) Initially review, grant or deny petitions for reconsiderations. The Director may deny any
15 petition:

16 (A) Which does not contain *[the information required in OAR 459-001-0040(2)]* specific
17 grounds for reconsideration; or

18 (B) Regarding which there is no bona fide dispute of material fact, the pertinent statutes and
19 rules are clear in their application to the facts and there was no material administrative error.

20 (g) Define and settle administrative and court litigation.

21 (2) The Director may refer any matter to the Board or to an administrative law judge for a
22 contested case or other hearing.

1 (3) The Director is hereby authorized to delegate to subordinates the authority to take any
2 action on the Director's behalf.

3 Stat. Auth.: ORS *[237.263 & 183.600 - 183.690]* 238.650

4 Stats. Implemented: ORS 183.413 - 183.470 & 183.482



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director
Jon DuFrene, Administrator, Fiscal Services Division

SUBJECT: 2011 Final Earnings Crediting and Reserving

OVERVIEW

- Action: Adopt 2011 final earnings crediting decisions.
- Policy Issue: Should a portion of the Contingency Reserve be distributed?

The PERS Board is charged with crediting earnings from the PERS Fund each calendar year. Some of those allocations are directed by statute or rule; the balance is at the PERS Board's discretion. At its January 27, 2012 meeting, the PERS Board adopted preliminary earnings allocations that were duly reported to and acknowledged by the Oregon Legislature. The final 2011 earnings allocations are to be adopted at this meeting.

Final allocations will be presented as a walk-in item at the meeting, as year-end numbers are still being provided to our Financial Reporting Section. The percentages shown below are from the preliminary earnings crediting calculations. Any material changes will be explained in the walk-in packet.

NON-DISCRETIONARY EARNINGS ALLOCATIONS

The following reserves and accounts are allocated earnings by applicable statute or rule. In compliance with these restrictions, the final earnings allocation reflects the following:

- 1. Administrative Expenses:** Administrative costs are funded by earnings when they are sufficient, as they were in 2011 (ORS 238.610(1)). Note that earnings on the Variable Annuity Account were insufficient to pay its pro rata share of administrative expenses (about \$1.4 million). The Oregon Court of Appeals has interpreted the operative statutes to direct that, in such a circumstance, the administrative expenses will be paid out of earnings on the other accounts and reserves in the PERS Fund (*Murray v. PERB*, decided May 12, 2010). Following that direction, the earnings rates stated below reflect paying for the Variable Annuity account administrative expenses out of available earnings.
- 2. Health Insurance Accounts:** These accounts are created as part of the PERS Fund and directed by statute to be credited with actual earnings or losses, less the expense related to the administration of the programs (ORS 238.410(7); 238.415(4); 238.420(4)). For 2011, the preliminary crediting rate for these accounts was 2.95% for RHIA, 1.95% for RHIPA, and 0.50% for SRHIA.

- 3. Employer Lump Sum Payment Accounts:** These accounts are credited with actual earnings or losses less administrative expenses, as authorized by ORS 238.225(10). For 2011, the preliminary rate for these accounts averaged 2.95%.
- 4. Variable Annuity Account and Individual Account Program (IAP):** These accounts are credited with earnings or losses on their portion of the PERS Fund. Preliminary 2011 rates for the variable annuity account were negative 7.81% and for the IAP account were 2.21%.
- 5. Tier One Rate Guarantee Reserve:** This reserve, established under ORS 238.255(1), is used to credit the assumed rate to Tier One member regular accounts. The reserve is currently in deficit from funding the assumed rate crediting for calendar year 2008. As earnings for 2011 did not exceed the assumed rate, another deficit will be created to credit Tier One member regular accounts with the assumed rate for 2011.

POLICY ISSUE

- *Should a portion of the Contingency Reserve be distributed?*

In allocating the 2010 earnings, the Board cited the continued uncertain resolution of pending litigation with substantial risk exposure, as well as the challenging financial picture for government employers, in support of a decision to credit the Contingency Reserve with a proportional share of the 2010 earnings. As a result, an additional \$81.3 million was added to the reserve, so it ended 2010 with a balance of \$734.4 million.

As earnings did not exceed the assumed rate for 2011, the PERS Board cannot credit additional amounts to the Contingency Reserve. In 2011, however, significant litigation was resolved that narrowed the agency's risk exposure. The PERS Board could therefore consider whether a portion of the Contingency Reserve should be distributed.

At its January 27, 2012 meeting, the PERS Board adopted preliminary earnings crediting that distributed a portion of the Contingency Reserve to resolve the balance of the Tier One Rate Guarantee Reserve deficit from 2008. As reported by PERS staff at that meeting, a deficit cannot persist in that reserve for five years, so liquidating that deficit now would relieve that constraint and allow all future earnings on Tier One member regular accounts in excess of the assumed rate to be used to liquidate the new deficit that will be created with the 2011 earnings crediting. Even with this distribution, the Contingency Reserve remaining balance (\$535.3 million) would be about 1% of the PERS Fund, which staff believes to be a reasonable funding level.

Attached to this memo is a letter dated February 22, 2012, from Greg Hartman on behalf of the PERS Coalition. The Coalition requests that the PERS Board make an additional allocation from the Contingency Reserve to Tier Two member accounts of about \$3 million. This represents the proportionate share of earnings from Tier Two accounts previously deposited in the Contingency Reserve that are being used to liquidate the 2008 Tier One Rate Guarantee Reserve. As Mr. Hartman points out, making this distribution to Tier Two member accounts would be consistent with some prior distributions that proportionally allocated excess funds out of the Contingency Reserve.

The Contingency Reserve statute (ORS 238.670(1)(c)) generally defaults to allowing the PERS Board to use the Contingency Reserve "to provide for any other contingency that the board may determine to be appropriate." There is no requirement that the PERS Board proportionally

distribute Contingency Reserve dollars. In the recent past, the Board did a proportional distribution as part of the 2005 earnings allocation to reflect the adoption of new actuarial methods. Also, the PERS Board did non-proportional targeted distributions, in 2006 and 2008, using about \$5 million to fund retroactive member and employer contributions for Lump Sum Vacation Payouts (LSVPs) after the law was changed retroactively.

The PERS Board preliminarily approved this distribution at its January meeting to address a specific need: liquidating the 2008 Tier One Rate Guarantee Reserve deficit. While the PERS Board does have broad discretion, staff's recommendation continues to be a targeted distribution to resolve a particular need, similar to the LSVPs described above. An additional distribution to Tier Two member accounts would not be consistent with that rationale, but is within the Board's broad discretion should it choose to make an additional allocation as the PERS Coalition has requested.

OTHER 2011 EARNINGS ALLOCATIONS

In its preliminary earnings crediting decision, the PERS Board adopted the following discretionary allocations to Judge and Tier Two member regular accounts and OPSRP Pension, Benefits-in-Force, and Employer reserves:

Judge Member Accounts

Credit Judge Member Accounts with the assumed earnings rate (8%).

Tier Two Member Regular Accounts, Benefits In Force and Employer Reserves

Credit Tier Two member regular accounts and the Benefits-In-Force and Employer reserves with the remaining available earnings. The final crediting rate to those accounts would be 2.21%.

BOARD OPTIONS

The Board may:

1. **Adopt an Allocation Distributing a Portion of the Contingency Reserve:** Pass a motion to "adopt the final crediting of earnings for calendar year 2011, and distribute a portion of the Contingency Reserve to liquidate the 2008 deficit in the Tier One Rate Guarantee Reserve."
2. **Adopt an Allocation with no Contingency Reserve Distribution:** Pass a motion to "adopt the final crediting of earnings for calendar year 2011 with no distribution of the Contingency Reserve."
3. **Adopt an Alternative Allocation:** Adopt an alternative final crediting of 2011 earnings.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: This option is consistent with the PERS Board's preliminary allocation that was reviewed by the Oregon Legislature.

Attachment 1: Hartman Letter dated February 22, 2012, on Contingency Reserve and Tier Two



BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

ATTORNEYS AT LAW

GREGORY A. HARTMAN
hartmang@bennethartman.com
Direct Dial: 503-546-9601

SUITE 500
210 S.W. MORRISON STREET
PORTLAND, OREGON 97204-3149
(503) 227-4600
FAX (503) 248-6800
www.bennethartman.com

February 22, 2012

BY EMAIL AND FIRST CLASS MAIL

Paul R. Cleary
Executive Director
Public Employees Retirement System
PO Box 23700
Tigard, OR 97281-3700

Re:
Our File No. 5415-237

Dear Paul:

I am sending this letter on behalf of the PERS Coalition. At the last PERS meeting the board voted preliminarily to distribute approximately \$200 million from the contingency reserve to the Tier One rate guaranty reserve, which would bring that reserve to a zero balance prior to the distribution of 2011 income. This distribution appears to serve two significant goals: the first to reduce the deficiency in the Tier One rate guaranty reserve and the second to forestall a call which would be required if the rate guaranty reserve remained negative for a period of five years. Though the "call" language has been in the statute (ORS 238.255) for many years, PERS has never been required to develop a procedure to require employers to fund a long-term negative reserve account. This is one of those relatively unusual circumstances where a distribution from the contingency reserve benefits both members and employers.

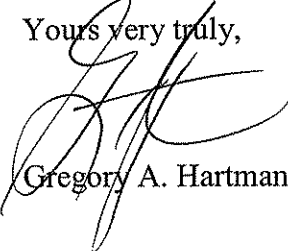
There is a second distribution that the Coalition believes the board should consider when they finalize the distribution of 2011 income at the March meeting. In addition to the distribution to the Tier One reserve we suggest that the board make a distribution to Tier Two employee accounts in the same amount that originally came from Tier Two employee account earnings to fund the contingency reserve. It is my understanding that if the board were to adopt this proposal that the amount that would be distributed to Tier Two accounts would be approximately \$3 million and as a result, Tier Two participants' accounts would increase by approximately 40 basis points. This distribution would not substantially deplete the amount in the contingency reserve which would still be in excess of \$530 million. We recognize that for the vast majority of Tier Two members this increase in their account will not increase their retirement benefit as projections show that virtually all Tier Two members will ultimately retire on full formula. These additional funds in Tier II member accounts will fund that full formula benefit thereby lowering the financial burden on employers. However it is also true that a small number of Tier Two members will receive benefits based on the amount in their account. Those who die during active service and those who withdraw will receive only the amount in

their PERS account. This is a very small group who cannot be identified in advance. Such a distribution to Tier Two member accounts would fully protect the small number of Tier Two participants who either die or withdraw during active service, and will decrease the economic burden on employers for the vast majority of Tier Two participants who will still retire on full formula.

Over the last several years the PERS board has allocated a significant portion of fund earnings to the contingency reserve, given the uncertainties which existed concerning the rights of window retirees. Now that the litigation involving window retirees has been resolved, the board will undoubtedly address the issue of whether there are excess assets in the contingency reserve and if so, how those assets should be deployed. In the past when the board has determined that there are excess assets in a reserve account they have allocated those reserves back to the accounts which generated the earnings used to fund the reserve. This approach had the advantage of avoiding any argument that the earnings from one group of members had improperly been diverted to the benefit of a different group of members, or to the benefit of employers. A distribution to Tier II employee accounts as part of the distribution of 2011 income in March would also avoid any argument that the earnings of one group of members are being used to support another group of members. A distribution to Tier II accounts is clearly consistent with the board's fiduciary obligations to members and in the unique circumstance would decrease the financial burden on employers. It would also give the board the freedom to utilize the remaining funds in the contingency reserve in a manner which will best serve the interests of the system.

We would appreciate your conveying these thoughts to the board in time for the March meeting as we think there may be an opportunity to protect the interests of both Tier One and Tier Two members as well as lowering the financial burden on employers as part of the final distribution of 2011 earnings.

Yours very truly,



Gregory A. Hartman

GAH:kaj

G:\Hartman\AFSCME 5415\237 PERS 2\Cleary 12-02-22.docx

cc: Clients
Steve Rodeman



Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director
Jon DuFrene, Administrator, Fiscal Services Division

SUBJECT: 2011 Final Earnings Crediting and Reserving
Supplemental Walk-in Memo

Final earnings crediting calculations are now completed. The following table shows the 2011 crediting rates for the non-discretionary accounts and reserves:

<u>Account/Reserve</u>	<u>Preliminary Rate</u>	<u>Final Rate</u>
RHIA	2.95%	1.78%
RHIPA	1.95%	.75%
SRHIA	.50%	.50%
Employer Lump Sum Accounts (Average)	2.95%	2.51%
Variable Annuity Account	-7.81%	-7.80%
IAP	2.21%	2.15%
Tier One Member Regular Accounts	8.00%	8.00%

Crediting rates for the following discretionary accounts remains unchanged:

<u>Account/Reserve</u>	<u>Final Rate</u>
Judge Member Accounts	8.00%
Tier Two Member Regular Accounts	2.21%
Benefits-in-Force Reserve	2.21%
Employer Reserves	2.21%

For the reasons previously stated, these rates would not be affected by distributing a portion of the Contingency Reserve to liquidate the 2008 deficit in the Tier One Rate Guarantee Reserve, which staff continues to recommend.

BOARD OPTIONS

The Board may:

1. **Adopt an Allocation Distributing a Portion of the Contingency Reserve:** Pass a motion to “adopt the final crediting of earnings for calendar year 2011 as presented above, and distribute a portion of the Contingency Reserve to liquidate the 2008 deficit in the Tier One Rate Guarantee Reserve.”
2. **Adopt an Allocation with no Contingency Reserve Distribution:** Pass a motion to “adopt the final crediting of earnings for calendar year 2011 with no distribution of the Contingency Reserve.”

3. **Adopt an Alternative Allocation:** Adopt an alternative final crediting of 2011 earnings.

STAFF RECOMMENDATION

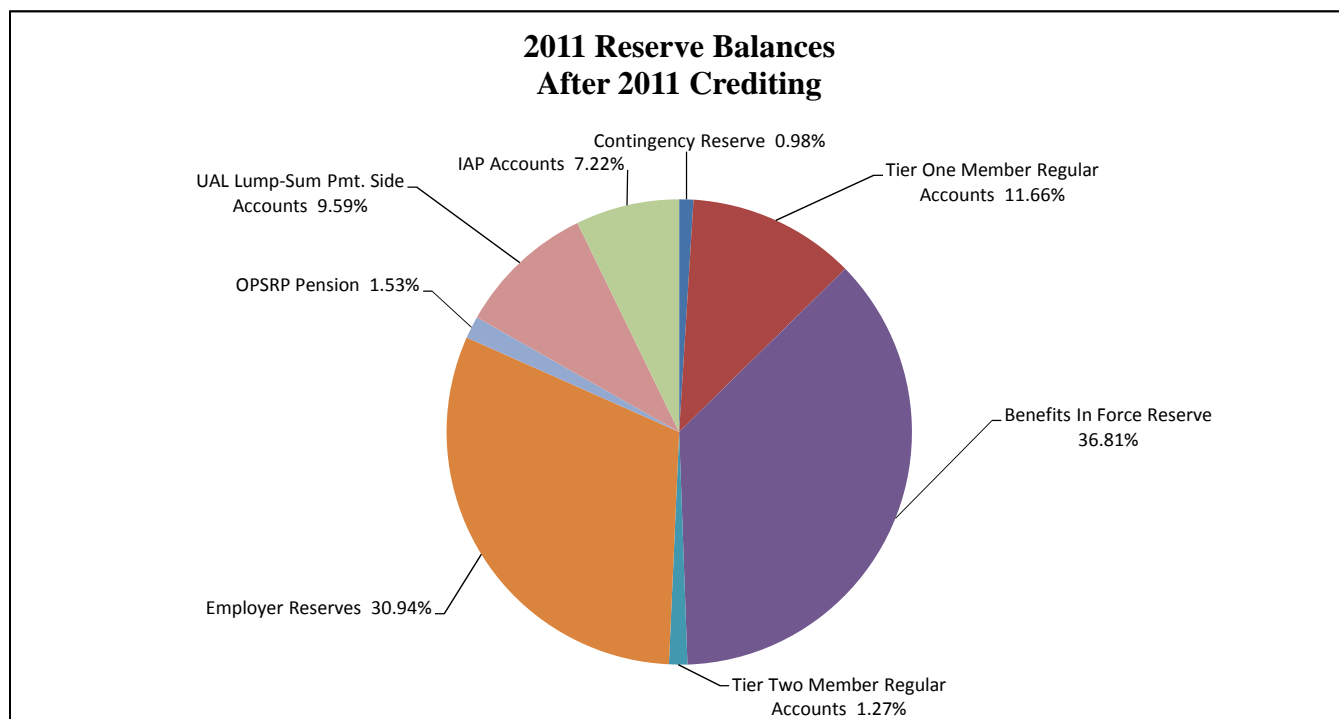
Staff recommends the Board choose Option #1.

- Reason: This option is consistent with the PERS Board's preliminary allocation that was reviewed by the Oregon Legislature.

Attachment 1: Final Earnings Crediting Table and Chart

Oregon Public Employees Retirement System
2011 Crediting and Reserving
Liquidate 2008 Deficit
 (All dollar amounts in millions)

Regular Account Reserve	Reserves Before Crediting	2011 Crediting	Liquidate 2008 Deficit	Reserves After Crediting	2011 Rates
Contingency Reserve	\$734.4	\$0.0	-\$199.1	\$535.3	N/A
Tier One Member Regular Accounts	6,221.7	497.8		6,719.5	8.00%
Tier One Rate Guarantee Reserve	(199.1)	(364.2)	199.1	(364.2)	N/A
Benefits In Force Reserve	19,637.2	435.5		20,072.7	2.21%
Tier Two Member Regular Accounts	677.0	15.0		692.0	2.21%
Employer Reserves	16,507.0	366.1		16,873.1	2.21%
OPSRP Pension	823.0	13.5		836.5	1.64%
*UAL Lump-Sum Pmt. Side Accounts	5,075.5	149.9		5,225.4	Various
*IAP Accounts	3,856.9	82.8		3,939.7	2.15%
Total	\$53,333.6	\$1,196.4	\$0.0	\$54,530.0	



*Informational only. Not affected by Board reserving or crediting decisions.





Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director

SUBJECT: Strunk/Eugene Overpayment Recovery

STATUS UPDATE

The court cases challenging whether the PERS Board could recover the overpayments stemming from the 1999 earnings crediting have been resolved. The last procedural hurdle was entry of a judgment in the Multnomah County Circuit Court dismissing the *Robinson* case on March 12, 2012. With the cases now finally closed, PERS is no longer under the court's direction to refrain from collection activities.

While these cases were proceeding to closure, staff reviewed and verified its project records on benefit recipients and the overpayment amount each received. That database should be completed before its target deadline of April 1, 2012. With that database trued up, collection efforts can proceed.

OVERPAYMENT RECOVERY PROCESS

As a reminder, staff earlier estimated that the remaining workload involves recovering \$156,333,437 in overpayments from 28,042 benefit recipients, spread across the following groups in the stated amounts:

<u>Recipient Type</u>	<u>No.</u>	<u>Total Owed</u>	<u>Average Owed</u>
Monthly Retirements	20,016	\$133,113,164	\$6,650
Lump Sum Retirements	1,372	\$11,458,293	\$8,351
Withdrawals	3,976	\$5,436,780	\$1,367
Police & Fire Unit Accounts	1008	\$403,200	\$400
Deceased Members (Received overpayment prior to death)	912	\$3,648,000	\$4,000
Beneficiaries (A survivor of a deceased person who is or has received benefits)	758	\$2,274,000	\$3,000

Following its established project management methodology, staff drafted a project proposal to consider the best way to effectuate the overpayment recovery. The project proposal reviewed several possible solutions and considered them under our standard criteria of fiduciary, legal, and administrative impacts.

This analysis resulted in the following recommended processes. Note that one process will be followed for recipients who still receive an ongoing monthly benefit and another will be used for recipients who do not.

Ongoing Monthly Benefit Recipients: Each person will receive a letter reminding them of the overpayment amount and presenting them with two options: (1) pay the entire amount in a lump sum or (2) the overpayment can be recovered by a deduction from their ongoing benefit. Those persons who choose to repay in a lump sum will have 30 days to do so and, if they do not, PERS will begin deductions from their next benefit payment. By default, the deduction will be set at 2% of the benefit. On average, that should allow recovery within about 6½ years. Recipients can elect to have a larger percentage deducted from their benefit to repay the overpayment more quickly.

No Ongoing Monthly Benefit: Each person will receive a letter reminding them of the overpayment amount and directing them to contact us within 30 days to arrange for a lump sum payment or to set up a payment plan. If the person does not respond within that time, those who are Oregon residents will be referred to the Department of Revenue, in conformance with the state's debt collection policies and procedures. The DOR has the staff and infrastructure to support payment plan tracking and follow-up. We will work with the DOR to establish similar expectations about the recovery time frame of about 6½ years, rather than their usual one to two year recovery expectation. For benefit recipients that are not currently Oregon residents, PERS will refer those accounts to collection agencies, again in conformance with accounting policies and procedures. We will also direct those agencies to establish a comparable recovery time frame in making payment arrangements.

SUPPLEMENTAL BUDGET REQUEST

The agency's legislatively-approved budget for the 2011-13 biennium did not include position or expenditure authority for the resources necessary to undertake this recovery. Staff recommends preparing a supplemental agency request to be submitted to the Legislative Emergency Board during its May 2012 meeting to procure the budget authority to effectuate recovery. The following elements would be included in the supplemental request:

1. Increase in Personal Services limitation of \$550,000. This increase would fund:
 - Three Limited Duration Revenue Agent 2 positions to coordinate collection efforts with the Department of Revenue and out-of-state collections. The budget approval would only extend for this biennium but PERS would anticipate renewing its request for these positions through the balance of the expected repayment periods.
 - Work Out of Class and overtime for skilled agency staff to conduct project oversight and complete overpayment calculations.
2. Increase in Services & Supplies limitation of \$1,050,000. This increase would fund:
 - Temporary workers retained to field contacts within the original 30 day notice period and establish payment deduction plans for ongoing benefit recipients.
 - Personal Services contract costs for developing system enhancements that maximize automation of the invoice, tracking, and administration of recovery efforts.

This budget request provides the resources necessary for PERS to effectuate recovery of the overpayments without sacrificing current operations. If this budget request were not approved, PERS would have no alternative but to out-source these recovery efforts to third-party collection agencies. Conservatively, those agencies would impose an 18-23% fee on that recovery. With overpayments exceeding \$150 million, the net cost of that alternative could exceed \$30 million.

BOARD OPTIONS

The Board may:

1. Adopt a motion to “authorize PERS staff to request Legislative Emergency Board approval of an increase in the agency’s 2011-13 biennial budget limitation of \$450,000 for Personal Services and \$850,000 for Services & Supplies, and approval of three Limited Duration Revenue Agent 2 positions.”
2. Do not authorize PERS staff to request additional budget limitation to support these recovery efforts, directing instead that these efforts be out-sourced or funded with the agency’s current limitation at the sacrifice of daily operations.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: This option provides the agency the necessary resources to recover the overpayments without impacting current operations or out-sourcing the entire recovery at a greater net cost.





Oregon

John A. Kitzhaber, M.D., Governor

Public Employees Retirement System

Headquarters:
11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
TTY (503) 603-7766
www.oregon.gov/pers

March 22, 2012

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director

SUBJECT: Strunk/Eugene Overpayment Recovery
Supplemental Memo Amending Budget Proposal

The first memo on this agenda item did not include an element of the additional budget limitation we will need to request at the May 2012 Legislative Emergency Board: Third-party collection costs.

Inevitably, a portion of these overpayments will be referred outside of PERS for collection. All benefit recipients will initially be contacted by PERS and the project plan includes streamlining and enhancing our collection processes, including the ability to offer payment plans and to accept payments by check and credit cards, to maximize this initial recovery.

Still, some of these recipients will need to be presented for outside collection as required by ORS 293.231 using the Department of Revenue's Other Agency Account Unit and private collection firms available under the current statewide price agreement through the Department of Administrative Services. When those outside referrals occur, PERS will be charged a percentage of the referral as a collection cost. Our current budget limitation does not include the increased costs that will have to be paid to those outside collectors on those referrals.

Forecasting the associated costs for those outside collectors is not precise, as it depends on how many recipients respond to our initial request and work with us directly, or fail to respond and trigger a required referral. As these external entities' costs are contingent on their recovery rate, cost projections must also consider when those recoveries will occur over the six or seven years that recipients may take to return the overpayment. Given all those predicates, the supplemental budget request presented below includes \$470,000 in additional Services & Supplies limitation for the balance of this biennium. Subsequent biennial budget requests will include the projected costs for those periods until the collection efforts are concluded.

Consequently, staff is amending its proposed board action item below to include collection costs.

BOARD OPTIONS

The Board may:

1. Adopt a motion to "authorize PERS staff to request Legislative Emergency Board approval for an increase in the agency's 2011-13 biennial budget limitation of \$550,000 for Personal Services and \$1,520,000 for Services & Supplies."

Overpayment Recovery Project Outline & Budget Proposal

03/22/12

Page 2 of 2

2. Do not authorize PERS staff to request additional budget limitation to support these recovery efforts, directing instead that these efforts be out-sourced or funded with the agency's current limitation at the sacrifice of daily operations.

Staff continues to recommend that the Board choose Option #1.