



**OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM**

**BOARD MEETING AGENDA**

Friday January 31, 2022 9:00 A.M.		PERS 11410 SW 68 <sup>th</sup> Parkway Tigard, OR
ITEM	PRESENTER	
<b>A. Administration</b>		
1. <a href="#">December 3, 2021 Board Meeting Minutes</a>	SHENOY	
2. <a href="#">Director's Report</a>	OLINECK	
a. <a href="#">Forward-Looking Calendar</a>		
b. <a href="#">OPERF Investment Report</a>		
c. <a href="#">Budget Execution Report</a>		
d. <a href="#">Annual Report of Director's Financial Transactions</a>	STANLEY	
<b>B. Administrative Rulemaking</b>		
1. <a href="#">Notice of Oregon Savings Growth Plan Rules</a>	VAUGHN	
2. <a href="#">Notice of Salary and Contribution Limits Rules</a>		
3. <a href="#">Notice of Document Submission Requirements Rules</a>		
4. <a href="#">First Reading of Rules to Implement SB 112</a>		
5. <a href="#">Adoption of 2021 Legislative Implementation Rules</a>		
6. <a href="#">Adoption of Benefits-In-Force Earnings Crediting Rule</a>		
<b>C. Action and Discussion Items</b>		
1. <a href="#">Legislative Preview/Update</a>	CASE	
2. <a href="#">SB 1049 Update</a>	ELLEDGE-RHODES	
3. <a href="#">SB 1566 Reporting Requirements</a>	SOSNE	
4. <a href="#">Reporting and Funding Overpayments to Members with Data Verification</a>	PARIS, MARBLE	
5. <a href="#">Equal to or Better Than Testing</a>	WINSHIP	
6. <a href="#">Preliminary 2021 Earnings Crediting and Reserving</a>	HORSFORD, MARBLE	
7. <a href="#">Update Reflecting on Earnings through December 31, 2021</a>	MILLIMAN	

*PERS Board members will be attending this meeting remotely. The public will not be able to attend the meeting in person. Visit <https://www.oregon.gov/pers/Pages/Board/PERS-Board-Information.aspx> for listening options. This meeting will be recorded. An audio recording of the meeting will be available on the PERS website following the meeting.*

*Public testimony will be taken on action items at the Chair's discretion. Please submit written testimony to [PERS.Board@state.or.us](mailto:PERS.Board@state.or.us) (three days in advance of the meeting is preferred.)*

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

**2022 Meetings: March 28\*, May 27, July 22\*, September 30, December 2\***  
**\*Audit Committee planned for post-Board meeting**

## Administration

1. December 3, 2021 Board Meeting Minutes
2. Director's Report
  - a. Forward-Looking Calendar
  - b. OPERF Investment Report
  - c. Budget Execution Report
  - d. Annual Report of Director's Financial Transactions

# OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING MINUTES

December 3, 2021

## **Board members present:**

Chair Sadhana Shenoy, Vice Chair Lawrence Furnstahl, Jardon Jaramillo, Stephen Buckley, and John Scanlan attended virtually.

## **Staff present:**

Kevin Olineck, Jason Stanley, Sam Paris, Heather Case, Jake Winship, Jordan Masanga, Katie Brogan, Katie Davis, Michiru Farney, Chris Geier, Richard Horsford, Stephanie Vaughn, Suzie Bodman, Shawn Dempewolf, Melanie Chandler, Matthew Graves, Amanda Marble, Neil Jones, Alyse Greer, Shane Perry, Daniel Rivas, Janice Richards, Phuongnam Tran, Anne Marie Vu, Jonathan Yost, Colin Campi, Louise Plata and Yvette Elledge-Rhodes attended virtually.

## **Others present:**

Matt Larrabee, Scott Preppernau, Jacob Arnold, Craig Ashford, John Kevin Balaod, Kenny Bao, Gay Lynn Bath, Maurizio Bottalico, Nancy Brewer, Robert Burket, Tan Cao, Nate Carter, Tim Collier, Tina Dixon, Tahni Fagerberg, Kevin Graine, Jeff Gudman, John Hershey, Jason Hitzert, Sam Hutchison, Kristi Jenkins, Courtney Johnson, Jennifer Jones, Katie Kicza, Rex Kim, Karl Koenig, Kali Leinenbach, Aruna Masih, Twylla Miller, Janice Ness, Will Norris, David Randall, Carol Samuels, Abraham Shadbeh, Shauna Tobiasson, Trudy Vidal, Glenda Villamar, Scott Winkels, Yong Yang, Kady Strode, Deborah Tremblay attended virtually.

Chair Shenoy called the meeting to order at 9:05 a.m.

## **ADMINISTRATION**

### **A.1. MEETING MINUTES OF OCTOBER 1, 2021**

Vice Chair Furnstahl moved to approve the minutes as presented from the October 1, 2021, PERS Board meeting. Board Member Buckley seconded the approval of the minutes. The motion passed unanimously.

### **A.2. DIRECTOR'S REPORT**

Director Kevin Olineck presented the Director's Report. The Director's Report contains information on other activities that the organization is working on that do not appear on the agenda. Olineck noted the agency is working towards having staff coming back to the office so the agency can reopen to the public on January 3. Ultimately, the majority of staff will continue to work remotely. He recognized the fact that Board Member Buckley and Chair Shenoy were just re-appointed for an additional three year term, Board Member Buckley for his third term and for Chair Shenoy, her second term. He also recognized that this may be Vice Chair Furnstahl's last meeting as he has served three terms with the board.

Olineck presented the forward looking calendar. The dates for the 2022 meetings are included on the calendar with a scheduled start time of 9:00 a.m. Audit Committee dates also are listed.

The Oregon Public Employees Retirement Fund (OPERF) returns, for the period ending October 31, 2021, were 17.30%.

Operating expenditures for September, October, and preliminary expenditures for November are \$8,957,681, \$4,247,725 and \$4,198,367 respectively. Final expenditures for November will close in the Statewide Financial Management System on December 17 and will be included in the January 2022 report to the board.

Through November 12, 2021, the agency has expended a total of \$20,857,819 or 16.9% of PERS' legislatively approved operations budget of \$123,378,866. At this time, the agency's projected variance is \$2,899,882.

Olineck reviewed the meeting agenda.

### A.3. OSGP ADVISORY COMMITTEE APPOINTMENTS

Sam Paris, Chief Operations Officer presented.

ORS 243.505 provides an advisory committee for OSGP that consists of seven members with knowledge of deferred compensation plans. The committee needs three new members to be appointed to the Oregon Savings Growth Plan (OSGP) Advisory Committee to fill expiring vacancies.

Board Member Buckley moved to accept the recommendations to appoint Jeff Gibbs and Kyle Niemeyer to fill expired vacancies with an immediate effective date of 1/1/2022 and term expiration date of 6/30/22. Additionally, he moved to accept Zechariah Heck to fill an unexpired vacancy with an immediate effective date of 1/1/2022 and term expiration date of 6/30/2022. Board Member Scanlan seconded. The motion passed unanimously.

### A.4. BOARD SCORECARD REPORT ON AGENCY PERFORMANCE MEASURES

Matt Rickard of PERS' Outcome-Based Management System Council presented the Board Scorecard Report for the third quarter 2021. The next report will be presented at the May 27, 2022 meeting, showing the scorecard results for the first quarter 2022.

## ADMINISTRATIVE RULEMAKING

Stephanie Vaughn, Policy Analysis and Compliance Section Manager, presented.

### B.1. ADOPTION OF DISABILITY RULES

Vaughn presented notice of Rulemaking for Disability Rules: 459-015-0001, Definitions, 459-015-0005, Eligibility for Disability Retirement Allowances, 459-015-0010, Criteria for Granting and Denying Disability Retirement Allowances, 459-015-0025, Application Processing – Independent Examinations and Appeals, 459-015-0050, Periodic Reviews, 459-076-0001, Definitions, 459-076-0005, Eligibility for Disability Benefits, 459-076-0010, Criteria for Granting and Denying Disability Benefits, 459-076-0025, Application Processing – Independent Examinations and Appeals and 459-076-0050, Periodic Reviews.

No rulemaking hearing was held because the PERS building was closed to the public. The public comment period ended on October 25, 2021 at 5:00 p.m. One public comment was received.

Board Member Jaramillo moved to adopt the disability rules, as presented. Vice Chair Furnstahl seconded. The motion passed unanimously.

### B.2. NOTICE OF 2021 LEGISLATIVE IMPLEMENTATION

Vaughn presented notice of Rulemaking for Rules to Implement 2021 Legislation: OAR 459-005-0560, Required Minimum Distributions, Generally, OAR 459-009-0130, Employee Contributions for Prior Periods, OAR 459-005-0020, Determination of Employee or Non-Employee Status, OAR 459-010-0030, Determination of Employee Status, OAR 459-010-0032, Determination of Independent Contractor Status, OAR 459-013-0310, Payment of Increased Benefits under ORS 238.372 to 238.384, OAR 459-014-0045, Valid Request for Distribution of Pre-Retirement Death Benefits and OAR 459-080-0020, Withdrawal of Individual Accounts was presented.

No rulemaking hearing will be held because the PERS building is closed to the public. The public comment period ends on December 23, 2021, at 5:00 p.m.

No board action was required.

### B.3. NOTICE OF BENEFITS-IN-FORCE EARNINGS CREDITING RULES

Vaughn presented notice of Rulemaking for Benefits-In-Force Earnings Crediting Rule: OAR 459-007-0005, Annual Earnings Crediting was presented.

No rulemaking hearing will be held because the PERS building is closed to the public. The public comment period ends on December 23, 2021, at 5:00 p.m.

No board action was required.

## ACTION AND DISCUSSION ITEMS

### C.1. SB 1049 IMPLEMENTATION UPDATE

Yvette Elledge-Rhodes, Deputy Director presented.

Elledge-Rhodes reviewed the ongoing activities of the individual projects that make up the SB 1049 Implementation Program. She highlighted program activities that have been completed, or are in process, since the last board meeting. PERS staff will continue to update the board as project implementation continues throughout the next year.

Program health will remain in yellow status as Member Redirect is scheduled past the end of the 2021-2023 biennium. The open projects are in green status.

No board action was required.

### C.2. EQUAL TO OR BETTER THAN TESTING

Jake Winship, Actuarial Manager presented.

Winship discussed the “equal to or better” (ETOB) study process for those police and fire employers who do not participate in PERS that are required to provide retirement benefits that are “equal to or better.”

Board Member Buckley motioned to affirm OAR 459-030 as the basis for “equal to or better” (ETOB) testing; direct staff to submit a Request for Quote to Independent Actuaries, Inc., Summit Benefit & Actuarial Services, Inc., and Bartel Associates, LLC, to conduct ETOB testing; and to approve the proposed timeline with the amendment that January 2022 will contain the deadline for response to the request for quote and staff will recommend the firm to select at the January 31, 2022 PERS Board Meeting. Board Member Scanlan seconded. The motion passed unanimously.

### C.3. 2020 VALUATION UPDATE AND FINANCIAL MODELING RESULTS

Scott Preppernau and Matt Larrabee of Milliman presented.

The presentation reviewed long-term financial modeling projections reflecting published investment results through September 30, 2021. The preliminary year-end 2021 investment results will be available for the January 31, 2022 board meeting.

### C.4. ADOPTION OF ACTUARIAL EQUIVALENCY FACTOR TABLES

Board Member Buckley moved to adopt the Actuarial Equivalency Factor Tables, as prepared by Milliman, based on the board adopted changes to the actuarial methods and assumptions as

presented by Milliman in the 2020 Experience Study, including setting the assumed rate at 6.9%.  
Chair Shenoy seconded. The motion passed unanimously.

Chair Shenoy adjourned the board meeting at 11:02 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin Olineck", is centered on the page.

Kevin Olineck, Director

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# Director's Report

## OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

Kevin Olineck, Director



## Overview

This Director's Report tries to encapsulate, at a high level, noteworthy changes that have taken place since the last board meeting, while highlighting staff accomplishments.

### A year in retrospect

In July of 2021, PERS celebrated its 75th Anniversary as an entity responsible for the administration of the PERS' benefits. I thought it may be a good idea to reflect on the board activities over 2021 and where PERS, the system, stands at this time.

To provide an appropriate perspective, it's important to reinforce the distinct governance role of the PERS Board. In total, three entities, working together, play critical roles in the PERS System, ensuring it runs efficiently and effectively:

- **The Legislature** — the Plan Sponsor — the Legislature sets the rules that govern the retirement system in which public employees participate. The laws that the Legislature makes define who a PERS member is, what benefits a member can receive at retirement, retirement eligibility criteria, and so on.
- **Oregon State Treasury** — especially the Oregon Investment Council — invests and manages assets within the Oregon Public Employees Retirement Fund (OPERF), which is the source of PERS pensions.
- **PERS Board** — responsible for ensuring the PERS System has long-term sustainable funding, including setting the actuarial methods and assumptions.

Simply put, the board is responsible for formulating policies that govern the administration of the Public Employees Retirement Fund and system, approving actuarial valuation results and resultant employer contribution rates, as well as approving required changes to plan rules.





The board members, in fulfilling their roles, do so as fiduciaries of the system. This role is encapsulated within Oregon Statute Section 238.601 as follows:

**Legislative Findings and Intent; Administration of System** The Legislative Assembly finds that the maintenance of a solid, affordable public employees retirement plan is essential to providing effective, efficient services to the citizens of Oregon by allowing the state and political subdivisions of the state to hire and retain employees who are committed to providing those services. It is the intent of the Legislative Assembly that the Public Employees Retirement Board, in performing its duties as trustee of the Public Employees Retirement Fund, recognize that the continued stability and viability of the Public Employees Retirement System depends on the ability of public employers and taxpayers to pay the costs of the system. Consistent with this intent, the board shall administer the system to create and maintain long-term stability and viability in the system, and shall act to achieve full funding for the benefits provided by the system, giving equal consideration to the interests of the public employer and the employee to the extent that treatment does not violate the fiduciary duties of the board. Nothing in this section shall be construed to impose a fiduciary duty on the board to consider the interests of public employers, and the board shall consider the interests of public employers only with respect to matters unrelated to the board's fiduciary duties as trustee of the fund.

The one element that sticks out when I read this particular section is that the board “shall act to achieve full funding for the benefits provided by the system, giving equal consideration to the interests of the public employer and the employee to the extent that treatment does not violate the fiduciary duties of the board.”

This inherent tension related to the need for **equal consideration** is recognized within the board's Funding Policy where it lays out its guiding principles that ensure the system will, ultimately, achieve full funding. These principles are as follows:



*Oregon Statute Section 238.601 says the PERS Board must give equal consideration to employer and employee interests when acting to achieve full funding for the pension system.*

- Transparency
- Predictable and stable rates
- Protection of funded status
- Equitability across generations
- Actuarial soundness
- GASB compliance

This fiduciary role, and the need to take an even-handed approach to balance these inherent tensions, were on full display over the course of 2021 as the board worked through the adoption of new actuarial assumptions and methodologies. In fact, the focus on these efforts kicked off in 2020 as the board began its review of the rate collaring methodology. As the board worked with our consulting actuaries, Milliman, it took its fiduciary role to heart and formulated new actuarial methods and assumptions that, in my opinion, appropriately balanced the guiding principles, gave equal consideration to all parties, and laid a solid framework for achieving full funding over the actuarial funding valuation cycle.

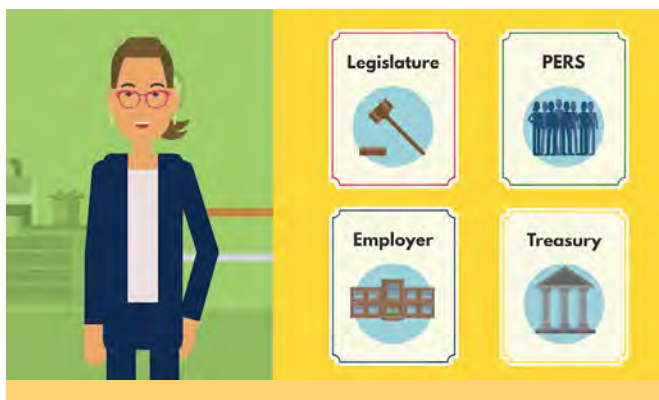
The adoption of a 6.9% assumed rate of return by the PERS Board is an example of taking a balanced, measured approach. According to NASRA, of the 131 public sector pension plans measured, the median assumed rate of return as of November 2021 is 7.0%. There are currently 94, or 70% of the 131 plans, with an assumed rate at 7.0% or higher, with over half of all plans reducing their assumed rate in the last three years. Additionally, the 2020 funded status of the plan was in

line with the average funded status of plans measured, at 71% funded. While the assumed rate of return is a long-term assumption, with our built-in, two-year actuarial review cycle, the board can continue to monitor and adjust actuarial assumptions and methodologies to reflect both short and long-term demographic and economic conditions.

The financial modeling scenarios provided by Milliman at the December 2021 meeting provided strong evidence that the rate collaring approach adopted will also benefit the long-term funding structure of the system. Milliman endorsed the robustness of the board's decision to adopt the 6.90% assumed rate in combination with collar policy changes limiting the ability for payroll rates to decline, and pointed to those two items leading to better overall results.

While the last portion of 2021 provided significant volatility to the markets, the overall returns for 2021 are substantially above the assumed rate of return. These favorable returns will act to moderate the published 2023-2035 contribution rates. Milliman will provide an initial estimate of the funded status of the system at this meeting; the final results will be calculated, including the actual 2023-2025 contribution rates requiring adoption by the board, later this year.

When it comes to governance and how PERS, the system, works, we know that there is confusion among our members. To better help them understand the roles each of the interdependent groups play in how the

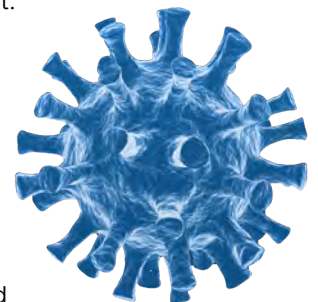


PERS created an animated video to explain the different roles interdependent groups play in the public pension system.

pension system works, we recently produced a new [animated video](#) that explains these relationships and responsibilities.

**Senate Bill 1049 (SB 1049)** Work is now complete on the Work After Retirement project. The Member Redirect and Technical Debt Projects continue. More detailed SB 1049 implementation reports on these and other projects will be provided in the board packet.

**Reopening to the Public** While PERS was positioned to reopen to the public January 3, on December 17, it was determined that, due to the rise of the Omicron variant, reopening of state agencies would be postponed indefinitely.



It continues to be the agency's plan to focus on ensuring the safety of our staff and visitors, when we do reopen. We also will be adhering to a few key principles, as previously noted:

1. We will be working to align with the state's reopening guidelines and are reimagining how work gets done, now that the nature of how we work has changed significantly.
2. We will try, as best possible, to honor staff members' work location preferences, while always keeping business needs at the forefront.
3. We will employ a growth mindset by regularly reviewing, adapting, and adopting new methods of doing business as we continue moving forward.

When we find out our reopening date, staff will be moving back in phases, with member-facing staff being the first to return, followed by those who either have to or have chosen to work at least three days per week in the office. We have also made the decision to move the staff who are working at the Tualatin office to the Headquarters building as part of the reopening process. Consequently, in all likelihood, we will not be extending the Tualatin lease when it comes up for renewal. We will have more than enough space in Headquarters for both those

working full time, as well as those who will be working in a hybrid capacity (working at both Headquarters and at home). At this time, based on staff and management input, we will ultimately have approximately 65% of staff working remotely on a full-time basis, 10% working in Headquarters three days or more per week, and the remaining 25% working in a hybrid model, coming into the office two days per week or fewer.

Coordinating Council, a confederation of the National Association of State Retirement Administrators (NASRA), the National Conference on Public Employee Retirement Systems (NCPERS), and the National Council on Teacher Retirement (NCTR). Additionally, as noted in the October Director's Report, for the 30th consecutive year, we were awarded a Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association for the 2020 ACFR.

# Highlights

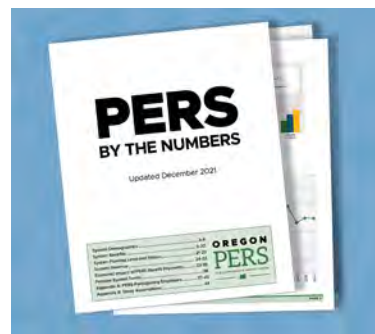
The following are accomplishments that deserve to be highlighted, with staff publicly acknowledged for their efforts.

## Agency initiatives and accomplishments

I want to continue to highlight where PERS staff have not only made great progress with standard operational activities, but also made significant advancements on strategic initiatives. The following are accomplishments that deserve to be recognized, with staff publicly acknowledged for their efforts.

**Annual Comprehensive Financial Report (ACFR)** Our [2021 Annual Comprehensive Financial Report](#) (ACFR) was published on December 16. The ACFR represents a significant effort by the agency, as it truly lives up to its descriptor of "comprehensive." The agency is proud to win, for the 18th year running, the 2021 Public Pension Standards Award for Funding and Administration related to our 2020 ACFR, as recognized by the Public Pension

**PERS by the Numbers** At the end of 2021, PERS also published its latest [PERS by the Numbers](#) report on



December 21. This document is a great resource for both internal staff, as well as external stakeholders, as it provides up-to-date, pertinent legislative and financial information.

**Employee of the Year Award** This year, we launched the first PERS Employee of the Year Award. Using a superhero theme, staff had the opportunity to nominate a fellow employee that best exemplifies the attributes of the ideal employee. This award was an opportunity to recognize the employee who embodies specific attributes such as commitment, collaboration, agility, problem-solving, and transparency; someone who enables PERS to be successful. We received 23 nominations for 12 employees. The selection committee chose Matt Graves from the Financial Service Division as the inaugural winner.



**Manager of the Year Award** We also launched the first PERS Manager of the Year Award. Staff had the opportunity to nominate a manager whose impressive efforts best exemplify the attributes of the ideal manager. Attributes included commitment, clear communications, problem-solving, flexibility, innovation, and providing regular feedback, all while being supportive of new ideas and staff. We received 39 nominations with 17 managers nominated. The selection committee chose Brandon Armatas from the Operations Division as the inaugural winner of this award.



**All-Staff Meeting** We held our semiannual, all-staff meeting on December 9; the theme of this meeting focused on answering the question, *Where is PERS headed over the next two years?* Vice-Chair Furnstahl attended the meeting and provided welcoming remarks and comments on behalf of the board; his participation was appreciated by all in attendance. In addition to covering topics related to the meeting theme, the Employee and Manager of the Year Award nominees and winners, noted above, were also announced.

**Supporting our Community** Along with many smaller individual and group efforts, there was an agency-wide initiative to support less fortunate members of the community this past holiday season. In particular, PERS continued a long-standing tradition of supporting the Marine Corps Reserve Toy Drive, this year doing so virtually.



*PERS employees did their part to support the 2021 Marine Corps Reserve Toy Drive, which was virtual this year, as staff purchased toys online in lieu of in-person donations.*



## PERS Board Meeting Forward-Looking Calendar

### Monday, March 28, 2022\*

Final Earnings Crediting  
Board Approval to File Legislative Concepts  
Legislative Update  
Agency Budget Preview  
Oregon Investment Council Performance Review  
Oregon Savings Growth Plan Report Out

### Friday, May 27, 2022

PERS Health Insurance Program (PHIP) Renewals and Rates  
Agency Budget Development  
POBMS Presentation  
PHIP Report Out  
Review Board Education Policy and Training

### Friday, July 22, 2022\*

Approval to Submit Agency Request Budget  
CEM Benchmarking Presentation

### Wednesday, September 7, 2022 (Joint Meeting with OIC at Treasury)

Results of Asset/Liability Study

### Friday, September 30, 2022

Board Adoption of Actual Employer Rates  
Legislative Update (if needed)  
2023-28 Strategic Plan Preview  
Member and Employer Survey Results

### Friday, December 2, 2022\*

Presentation of Legislative Concept Drafts before Filing  
POBMS Presentation  
2023-28 Strategic Plan Approval

*\*Audit Committee planned for post-board meeting*

Returns for periods ending NOV-2021

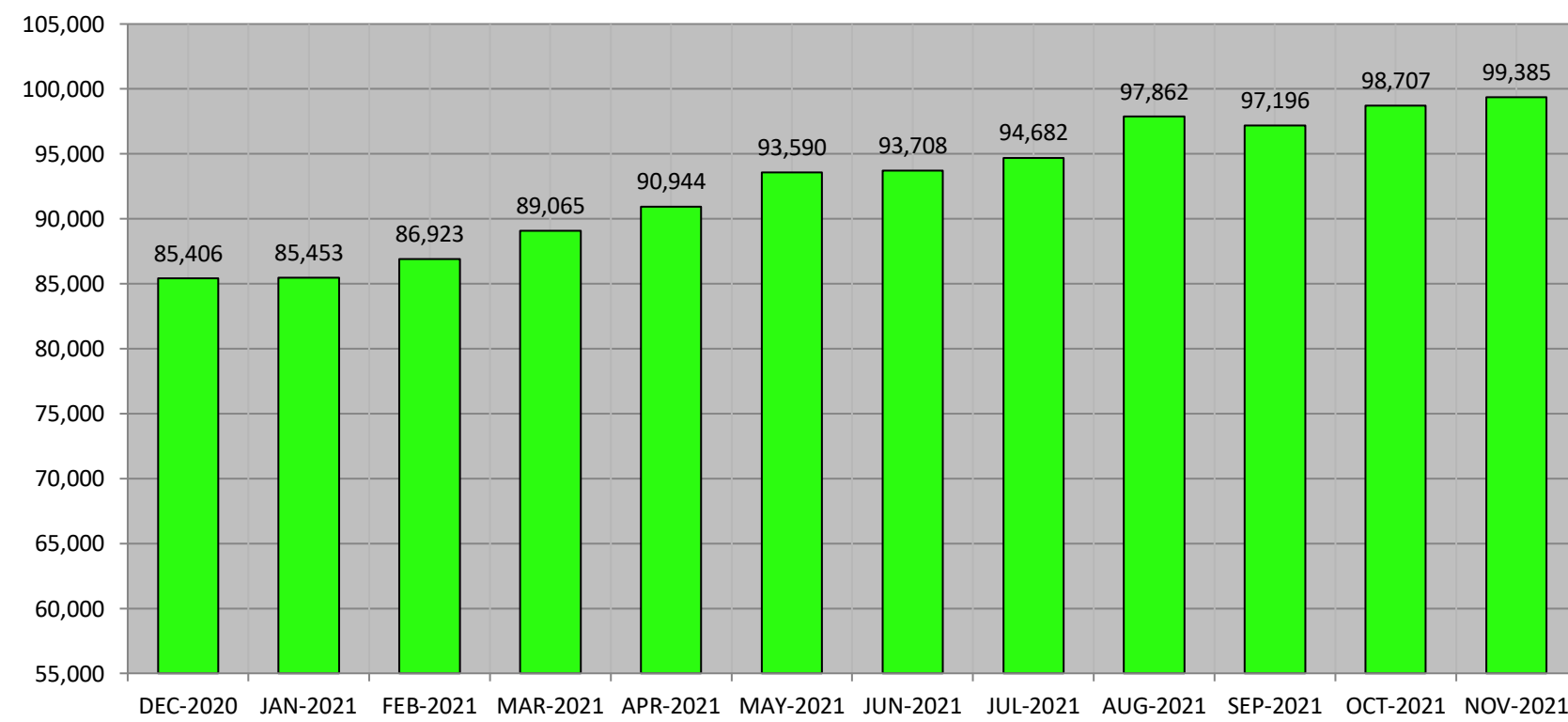
Oregon Public Employees Retirement Fund

OPERF	Regular Account				Historical Performance (Annual Percentage)							
	Policy <sup>1</sup>	Target <sup>1</sup>	\$ Thousands <sup>2</sup>	Actual	Year-To-Date <sup>3</sup>	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	7 YEARS	10 YEARS
Public Equity	25.0-35.0%	30.0%	\$ 25,089,418	26.2%	14.25	20.17	15.41	14.33	10.05	12.95	9.72	11.47
Private Equity	15.0-27.5%	20.0%	\$ 25,540,094	26.7%	44.06	42.57	27.57	22.29	20.99	20.91	16.23	15.33
<b>Total Equity</b>	<b>45.0-55.0%</b>	<b>50.0%</b>	<b>\$ 50,629,511</b>	<b>53.0%</b>								
Opportunity Portfolio	0-5%	0%	\$ 2,222,654	2.3%	21.52	25.34	16.22	12.16	10.74	10.87	8.77	10.23
<b>Total Fixed</b>	<b>15-25%</b>	<b>20.0%</b>	<b>\$ 20,485,202</b>	<b>21.4%</b>	<b>(0.74)</b>	<b>(0.46)</b>	3.42	5.56	4.01	3.94	3.24	3.87
Risk Parity	0.0-3.5%	2.5%	\$ 2,233,525	2.3%	11.60	16.14						
Real Estate	7.5-17.5%	12.5%	\$ 10,504,280	11.0%	15.86	16.22	9.06	8.36	8.40	9.26	9.07	10.26
Real Assets	2.5-10.0%	7.5%	\$ 6,092,537	6.4%	19.03	18.73	8.23	4.36	4.77	5.53	3.80	3.26
Diversifying Strategies	2.5-10.0%	7.5%	\$ 3,392,691	3.5%	5.84	9.41	(3.93)	(2.81)	(4.84)	(2.00)		
Cash w/Overlay	0-3%	0%	\$ 53,830	0.1%	0.10	0.13	0.93	1.74	1.77	1.68	1.42	1.28
<b>TOTAL OPERF Regular Account</b>		<b>100.0%</b>	<b>\$ 95,614,230</b>	<b>100.0%</b>	18.49	20.43	13.64	12.34	10.07	11.36	9.03	9.90
OPERF Policy Benchmark					13.42	16.27	13.76	12.51	10.44	11.69	9.39	10.43
Value Added					5.07	4.17	(0.12)	(0.17)	(0.37)	(0.33)	(0.36)	(0.53)
<b>Target Date Funds</b>			<b>3,343,509</b>									
<b>TOTAL OPERF Variable Account</b>			<b>\$ 426,898</b>		14.05	19.71	17.32	16.05	11.51	14.09	10.32	11.76

Asset Class Benchmarks:

RUSSELL 3000	20.90	26.34	22.63	20.20	16.35	17.51	13.92	15.95
OREGON MSCI ACWI EX US IMI NET	4.21	10.06	9.95	10.33	5.29	9.48	5.74	7.00
MSCI ACWI IMI NET	13.71	19.36	16.99	15.71	11.15	13.72	9.93	11.38
RUSSELL 3000+300 BPS QTR LAG	35.45	39.83	27.05	20.37	20.30	21.48	17.41	18.15
CPI + 5%	11.56	12.12	9.13	8.47	8.17	7.99	7.46	7.18
OREGON CUSTOM FI BENCHMARK	(0.63)	(0.40)	3.27	5.31	3.83	3.70	2.93	3.38
S&P Risk Parity - 12% Target Volatility	14.82	20.34	15.02	16.91	12.14	12.74	9.22	10.25
OREGON CUSTOM REAL ESTATE BENCHMARK	8.87	8.97	4.80	4.84	5.53	6.03	7.59	8.70
CPI +4%	10.59	11.06	8.10	7.44	7.14	6.97	6.44	6.16
HFRI FOF: CONSERVATIVE INDEX	6.85	9.77	7.21	6.23	4.78	4.70	3.61	3.95
91 DAY TREASURY BILL	0.04	0.05	0.43	1.05	1.24	1.15	0.87	0.63

**Total OPERF NAV**  
(includes Variable Fund assets)  
One year ending NOV-2021  
(\$ in Millions)



<sup>1</sup>OIC Policy revised June 2021. Beginning October 1, 2021, the Alternatives Portfolio has been split up into two new portfolios: Real Assets and Diversifying Strategies.

<sup>2</sup>Includes impact of cash overlay management.

<sup>3</sup>For mandates beginning after January 1 (or with lagged performance), YTD numbers are "N/A". Performance is reflected in Total OPERF. YTD is not annualized.

OPERF	Regular Account				Historical Performance (Annual Percentage)							
	Policy <sup>1</sup>	Target <sup>1</sup>	\$ Thousands <sup>2</sup>	Actual	Year-To-Date <sup>3</sup>	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS	7 YEARS	10 YEARS
Public Equity	25.0-35.0%	30.0%	\$ 25,734,656	26.7%	20.01	20.01	16.28	19.20	10.97	13.54	10.69	12.09
Private Equity	15.0-27.5%	20.0%	\$ 24,811,036	25.7%	41.78	41.78	26.43	21.10	20.35	19.74	15.88	15.77
<b>Total Equity</b>	<b>45.0-55.0%</b>	<b>50.0%</b>	<b>\$ 50,545,693</b>	<b>52.4%</b>								
Opportunity Portfolio	0-5%	0%	\$ 2,364,484	2.4%	22.92	22.92	16.36	12.86	11.06	10.94	8.95	10.44
<b>Total Fixed</b>	<b>15-25%</b>	<b>20.0%</b>	<b>\$ 20,494,824</b>	<b>21.2%</b>	<b>(0.92)</b>	<b>(0.92)</b>	3.28	5.10	3.87	3.84	3.25	3.74
Risk Parity	0.0-3.5%	2.5%	\$ 2,276,298	2.4%	13.74	13.74						
Real Estate	7.5-17.5%	12.5%	\$ 10,835,224	11.2%	19.07	19.07	10.56	9.45	9.09	9.28	9.17	10.46
Real Assets	2.5-10.0%	7.5%	\$ 6,203,882	6.4%	19.01	19.01	8.01	4.69	4.75	5.46	3.94	3.36
Diversifying Strategies	2.5-10.0%	7.5%	\$ 3,483,088	3.6%	8.66	8.66	(2.26)	(1.83)	(4.34)	(1.99)	(0.48)	1.52
Cash w/Overlay	0-3%	0%	\$ 333,305	0.3%	0.08	0.08	0.82	1.64	1.74	1.66	1.43	1.28
<b>TOTAL OPERF Regular Account</b>		<b>100.0%</b>	<b>\$ 96,536,798</b>	<b>100.0%</b>	<b>20.05</b>	<b>20.05</b>	<b>13.69</b>	<b>13.65</b>	<b>10.20</b>	<b>11.22</b>	<b>9.27</b>	<b>10.17</b>
<b>OPERF Policy Benchmark</b>					<b>15.08</b>	<b>15.08</b>	<b>13.72</b>	<b>13.81</b>	<b>10.52</b>	<b>11.53</b>	<b>9.68</b>	<b>10.79</b>
Value Added					4.97	4.97	(0.03)	(0.17)	(0.32)	(0.31)	(0.41)	(0.61)

Target Date Funds

3,406,363

TOTAL OPERF Variable Account

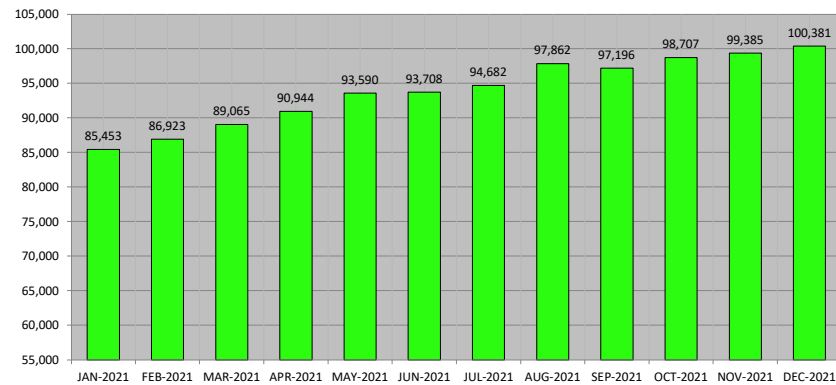
\$ 438,217

18.60	18.60	17.57	20.53	12.15	14.49	11.19	12.22
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Asset Class Benchmarks:

RUSSELL 3000	25.66	25.66	23.25	25.79	17.19	17.97	14.55	16.30
OREGON MSCI ACWI EX US IMI NET	8.53	8.53	9.81	13.62	5.74	9.83	6.87	7.57
MSCI ACWI IMI NET	18.22	18.22	17.23	20.20	11.79	14.12	10.81	11.84
RUSSELL 3000+300 BPS QTR LAG	35.74	35.74	26.79	19.44	19.84	20.31	17.32	20.06
CPI + 5%	12.36	12.36	9.35	8.69	8.27	8.05	7.60	7.23
OREGON CUSTOM FI BENCHMARK	(0.88)	(0.88)	3.11	4.80	3.66	3.59	2.94	3.23
S&P Risk Parity - 12% Target Volatility	18.22	18.22	15.72	19.48	12.64	12.57	10.11	10.28
OREGON CUSTOM REAL ESTATE BENCHMARK	9.92	9.92	5.11	4.96	5.64	5.85	7.34	8.45
CPI +4%	11.29	11.29	8.31	7.66	7.24	7.03	6.57	6.21
HFRI FOF: CONSERVATIVE INDEX	7.38	7.38	6.92	6.71	4.77	4.64	3.62	4.03
91 DAY TREASURY BILL	0.05	0.05	0.36	0.99	1.21	1.14	0.87	0.63

Total OPERF NAV  
(includes Variable Fund assets)  
One year ending DEC-2021  
(\$ in Millions)



<sup>1</sup>OIC Policy revised June 2021. Beginning October 1, 2021, the Alternatives Portfolio has been split up into two new portfolios: Real Assets and Diversifying Strategies.

<sup>2</sup>Includes impact of cash overlay management.

<sup>3</sup>For mandates beginning after January 1 (or with lagged performance), YTD numbers are "N/A". Performance is reflected in Total OPERF. YTD is not annualized.



# Oregon

Kate Brown, Governor

## Public Employees Retirement System

Headquarters:  
11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
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Tigard, OR 97281-3700  
888-320-7377  
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[www.oregon.gov/pers](http://www.oregon.gov/pers)

January 31, 2022

TO: Members of the PERS Board  
FROM: Gregory R. Gabriel, Budget Officer  
SUBJECT: January 2022 Budget Report

### 2021-23 OPERATING BUDGET

Operating expenditures for November, December, and preliminary expenditures for January are \$4,135,005, \$4,477,216 and \$5,353,453 respectively. Final expenditures for January will close in the Statewide Financial Management System on February 18 and will be included in the March 2022 report to the PERS Board.

- Through January 9, 2022, the agency has expended a total of \$29,381,120 or 23.8% of PERS' legislatively approved operations budget of \$123,378,866.
- At this time, the agency's projected variance is \$1,884,337.
- Core Retirement Systems Applications (CRSA) expenditures for November, December, and preliminary expenditures for January are \$1,084,964, \$978,567 and \$1,038,564 respectively. As of January 9, the agency has expended \$5,165,363 of the legislatively approved budget of \$23,614,797.
- At this time the CRSA projected variance is \$6,496,999.

### 2019-21 OPERATING BUDGET

Operating expenditures paid July through December 2021 were \$1,016,780. The final variance is \$7,869,662 or approximately 6.7% of the operations budget.

To date, the Agency has expended a total of \$108,571,944 or 93.3% of PERS' legislatively approved operations budget of \$116,441,606. This concludes reporting on appropriation year 2021.



2021-23 NON-LIMITED BUDGET

The adopted budget includes \$12,886,613,593 in total estimated non-limited expenditures. Non-limited expenditures include benefit payments, health insurance premiums, and third-party administration payments for both the PERS Health Insurance Program (PHIP) and the Individual Account Program (IAP).

- Non-Limited expenditures through January 9, 2022, are \$2,712,144,913.

A.2.c. Attachment – *2021-23, 2019-21, CRSA Agency-wide Budget Execution Summary Analysis*

# PERS Monthly Budget Report

2021-23 Agency-wide Budget Execution  
Preliminary Summary for the Month of January 2022

## Limited - Operating Budget

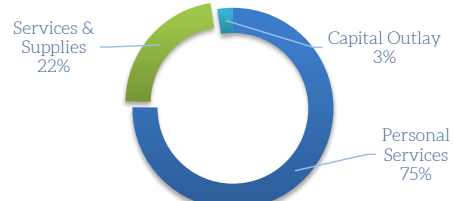
### 2021-23 Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expenditures	2021-23 LAB	Variance
Personal Services	20,867,491	69,243,408	90,110,899	87,815,865	(2,295,034)
Services & Supplies	8,492,184	20,547,145	29,039,329	34,094,093	5,054,764
Capital Outlay	21,445	2,322,856	2,344,301	1,468,908	(875,393)
Unscheduled				0	0
<b>Total</b>	<b>29,381,120</b>	<b>92,113,409</b>	<b>121,494,529</b>	<b>123,378,866</b>	<b>1,884,337</b>

### Actual Expenditures



### Projected Expenditures



### Monthly Summary

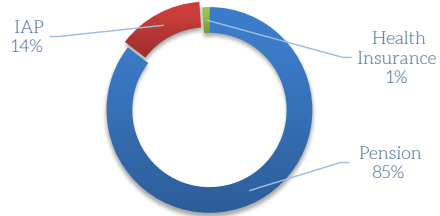
Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Monthly Projected Exp.
Personal Services	3,648,304	3,780,626	132,322	3,436,491	3,010,583
Services & Supplies	1,675,234	1,735,994	60,759	2,063,418	893,354
Capital Outlay	29,915	31,000	1,085	7,148	100,994
<b>Total</b>	<b>5,353,454</b>	<b>5,547,620</b>	<b>194,166</b>	<b>5,507,057</b>	<b>4,004,931</b>

## Non-Limited Budget

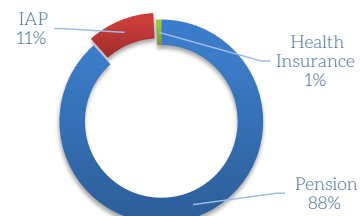
### 2021-23 Biennial Summary

Programs	Actual Exp To Date	Projected Expenditures	Total Est. Expenditures	Non-Limited LAB	Variance
Pension	2,316,595,799	8,857,380,061	11,173,975,860	11,215,517,678	41,541,818
IAP	365,186,290	990,781,550	1,355,967,841	1,298,603,848	(57,363,993)
Health Insurance	30,362,824	76,478,730	106,841,554	372,492,067	265,650,513
<b>Total</b>	<b>2,712,144,913</b>	<b>9,924,640,342</b>	<b>12,636,785,255</b>	<b>12,886,613,593</b>	<b>249,828,338</b>

### Actual Expenditures



### Projected Expenditures



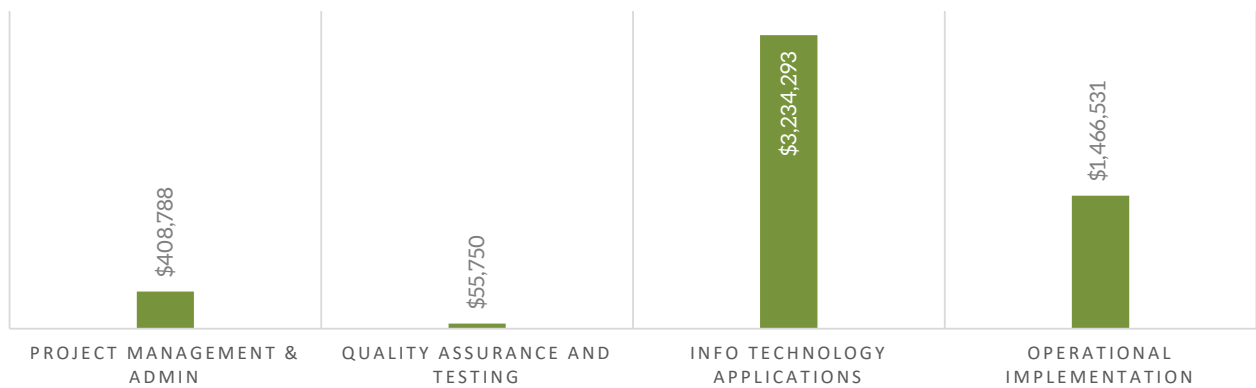
# Core Retirement Systems Application

## Summary Budget Analysis Preliminary for the Month of January 2022

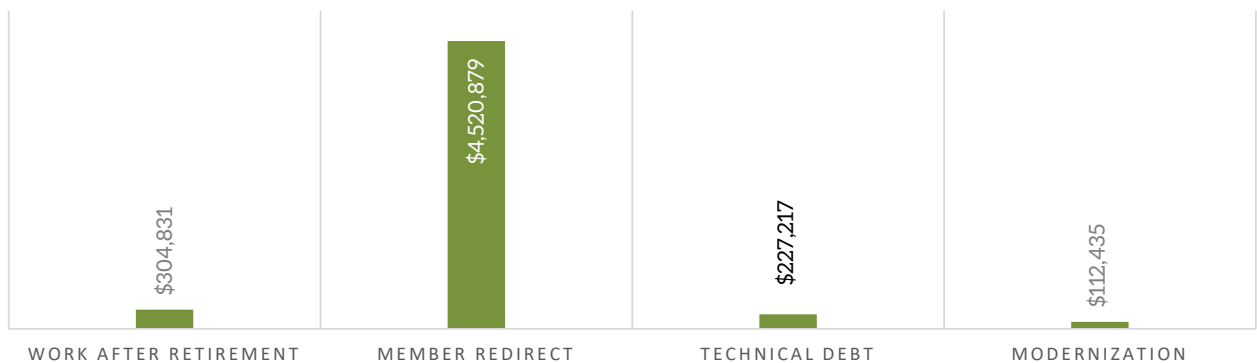
### Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2021-23 LAB	Variance
Personal Services	1,337,352	5,429,507	6,766,859	6,003,697	(763,162)
Services & Supplies	3,828,011	6,522,928	10,350,939	17,556,100	7,205,161
Capital Outlay				55,000	55,000
<b>Total</b>	<b>5,165,363</b>	<b>11,952,435</b>	<b>17,117,798</b>	<b>23,614,797</b>	<b>6,496,999</b>

### EXPENDITURES BY PACKAGE



### EXPENDITURES BY PROJECT



# PERS Monthly Budget Report

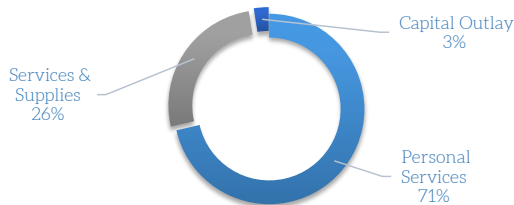
2019-21 Agency-wide Budget Execution  
Final Summary for Appropriation Year 2021

## Limited - Operating Budget

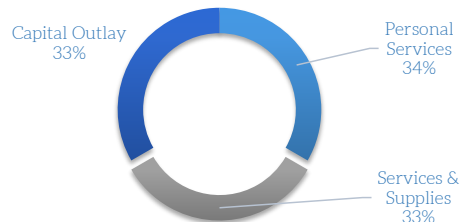
### 2019-21 Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expenditures	2019-21 LAB	Variance
Personal Services	77,523,345	0	77,523,345	81,510,947	3,987,602
Services & Supplies	28,325,828	0	28,325,828	32,757,328	4,431,500
Capital Outlay	2,722,771	0	2,722,771	2,173,331	(549,440)
<b>Total</b>	<b>108,571,944</b>	<b>0</b>	<b>108,571,944</b>	<b>116,441,606</b>	<b>7,869,662</b>

### Actual Expenditures



### Projected Expenditures



### July - December Summary

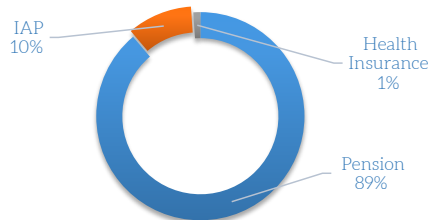
Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Monthly Projected Exp.
Personal Services	74,466	74,000	(466)	3,523,788	3,465,769
Services & Supplies	(261,199)	0	261,199	1,287,538	1,464,410
Capital Outlay	1,203,513	1,200,000	(3,513)	123,762	165,598
<b>Total</b>	<b>1,016,780</b>	<b>1,274,001</b>	<b>257,221</b>	<b>4,935,088</b>	<b>5,095,778</b>

## Non-Limited Budget

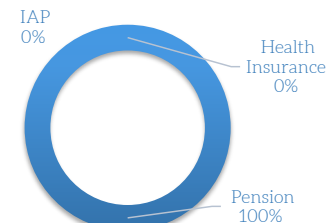
### 2019-21 Biennial Summary

Programs	Actual Exp To Date	Projected Expenditures	Total Est. Expenditures	Non-Limited LAB	Variance
Pension	10,386,216,906	0	10,386,216,906	10,347,780,673	(38,436,233)
IAP	1,181,026,808	0	1,181,026,808	1,423,365,167	242,338,359
Health Insurance	127,105,368	0	127,105,368	733,481,352	606,375,984
<b>Total</b>	<b>11,694,349,082</b>	<b>0</b>	<b>11,694,349,082</b>	<b>12,504,627,192</b>	<b>810,278,110</b>

### Actual Expenditures



### Projected Expenditures





# Oregon

Kate Brown, Governor

## Public Employees Retirement System

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

January 31, 2022

TO: Members of the PERS Board

FROM: Jason Stanley, Chief Compliance, Audit, and Risk Officer

SUBJECT: Review the Annual Report of Financial Transactions of the PERS Director for the fiscal year ended June 30, 2021

### REQUESTED ACTION

In accordance with PERS policy and procedure, the Chair of the Audit Committee has reviewed the summary of salary, benefits, personnel expenses, travel, and other financial charges incurred by PERS Director Kevin Olineck in the aggregate amount of \$301,188. This amount covers the period of July 1, 2020, through June 30, 2021. Details of this amount were provided at the December 3, 2021 Audit Committee meeting. The financial records supporting this summary are maintained in the Fiscal Services Division (FSD).

### BACKGROUND

Oregon Accounting Manual (OAM) policy number 10.90.00.PO requires boards and commissions to establish a formal structure to ensure the proper review and approval of the agency head's financial transactions. This is supported by PERS policy number 1.01.02.00.001.POL.

The policy requires the Chief Compliance, Audit, and Risk Officer or Deputy Director to review and approve all financial transactions of the Director, including monthly timesheets, travel claims (both in-state and out-of-state), Small Purchase Order Transaction System (SPOTS) card purchases, etc. The policy also requires that the Chair of the Audit Committee report to the Audit Committee, and the PERS Board, annually, that they have reviewed the Director's financial transactions, and that their review and approval be documented in the board meeting minutes.

I reviewed the detailed transactions (payroll time reports, travel expense reimbursement claims, and SPOTS card purchases) of the PERS Director for the period of July 1, 2020, through fiscal year ended June 30, 2021, and found no exceptions or inappropriate transactions.

The PERS Board minutes for this meeting will reflect receipt of this report on the Director's financial transactions for the fiscal year ended June 30, 2021, as submitted by the Chief Compliance, Audit, and Risk Officer, in compliance with OAM 10.90.00 PO.

## Administrative Rulemaking

1. Notice of Oregon Savings Growth Plan Rules
2. Notice of Salary and Contribution Limits Rules
3. Notice of Document Submission Requirements Rules
4. First Reading of Rules to Implement SB 112
5. Adoption of 2021 Legislative Implementation Rules
6. Adoption of Benefits-In-Force Earnings Crediting Rule



# Oregon

John A. Kitzhaber, M.D., Governor

## Public Employees Retirement System

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January 31, 2022

TO: Members of the PERS Board

FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section

SUBJECT: Notice of Oregon Savings Growth Plan (OSGP) rules:  
 OAR 459-050-0001, *Definitions*  
 OAR 459-050-0025, *Deferred Compensation Advisory Committee*  
 OAR 459-050-0030, *Deferred Compensation Administrator*  
 OAR 459-050-0037, *Trading Restrictions*  
 OAR 459-050-0050, *Eligibility and Enrollment*  
 OAR 459-050-0060, *OSGP Designation of Beneficiary*  
 OAR 459-050-0070, *Catch-Up Programs*  
 OAR 459-050-0072, *Military Leave Catch-up*  
 OAR 459-050-0075, *Distributions During Employment*  
 OAR 459-050-0077, *Loan Program*  
 OAR 459-050-0080, *Distribution of Funds After a Severance of Employment*  
 OAR 459-050-0150, *Unforeseeable Emergency Withdrawal*  
 OAR 459-050-0240, *Deferred Compensation Program Notifications*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Revision to rules within the Oregon Savings Growth Plan (OSGP) to provide clarity and better reflect the current administration of the program.
- Policy Issue: No policy issues have been identified.

### BACKGROUND

It has been several years since staff performed a comprehensive review of the OSGP administrative rules. Modifications to the administrative rules are being proposed to better reflect existing administrative practices.

Most of the modifications are housekeeping, such as deleting defined terms that are not used in the administrative rules, removing processes that no longer exist, removing a reference to an investment option that no longer exists, updating form submission processes to reflect electronic form and submission options, reflecting that lump sum distributions may be made by direct deposit, and updating requirements for participation in catch up programs.

Other modifications are small alterations to administrative practices, such as increasing the loan fee from \$50 to \$75, removing the prohibition on participation for six months after receipt of an allowable distribution while employed with a participating employer, and increasing the distribution increments from \$5 to \$200.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held remotely on February 22, 2022, at 2:00 p.m. The public comment period ends March 1, 2022, at 5:00 p.m.

### LEGAL REVIEW

The attached 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.

Impact: Edits to clarify the administration of the OSGP for members and staff.

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

### RULEMAKING TIMELINE

January 28, 2022	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 31, 2022	PERS Board notified that staff began the rulemaking process.
February 1, 2022	Secretary of State publishes the Notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
February 22, 2022	Rulemaking hearing to be held remotely at 2:00 p.m.
March 1, 2022	Public comment period ends at 5:00 p.m.
March 28, 2022	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

### NEXT STEPS

A rulemaking hearing will be held remotely on February 22, 2022. The rules are scheduled to be brought before the PERS Board for adoption at the March 28, 2022 board meeting.

- B.1. Attachment 1 - OAR 459-050-0001, *Definitions*
- B.1. Attachment 2 - OAR 459-050-0025, *Deferred Compensation Advisory Committee*
- B.1. Attachment 3 - OAR 459-050-0030, *Deferred Compensation Administrator*
- B.1. Attachment 4 - OAR 459-050-0037, *Trading Restrictions*
- B.1. Attachment 5 - OAR 459-050-0050, *Eligibility and Enrollment*
- B.1. Attachment 6 - OAR 459-050-0060, *Designation of Beneficiary*
- B.1. Attachment 7 - OAR 459-050-0070, *Catch-Up Programs*
- B.1. Attachment 8 - OAR 459-050-0072, *Military Leave Catch-up*
- B.1. Attachment 9 - OAR 459-050-0075, *Distributions During Employment*



Notice – OSGP Rules

01/31/22

Page 3 of 3

B.1. Attachment 10 - OAR 459-050-0077, *Loan Program*

B.1. Attachment 11 - OAR 459-050-0080, *Distribution of Funds After a Severance of Employment*

B.1. Attachment 12 - OAR 459-050-0150, *Unforeseeable Emergency Withdrawal*

B.1. Attachment 13 - OAR 459-050-0240, *Deferred Compensation Program Notifications*

**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 Account, Designated Roth Account, or a combination of both, awarded to  
14 an alternate payee by a court order, and includes the creation of separate account(s) in the  
15 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) of this rule,  
19 may authorize the release of information, and direct the Deferred Compensation Program  
20 to send information to a named person at a specified address.

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

1 (b) Pertaining to the alternate payee’s account(s) and distribution(s) if separate  
2 account(s) 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 Plan as defined in ORS 243.401(5) that is made up of pre-tax  
13 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.

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

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

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

15           (19) “Domestic Relations Order” means a judgment, decree or court order made  
16           pursuant to a state’s domestic relations law that creates or recognizes the existence of an  
17           alternate payee’s right, or assigns to an alternate payee the right, to receive all or a  
18           portion of a participant’s Deferred Compensation Account, Designated Roth Account, or  
19           a combination of both, or benefit payments.

20           (20) “Draft Court Order” means an Order as described in section (8) of this rule  
21           which contains proposed language for the division of a Deferred Compensation Account,  
22           Designated Roth Account, or a combination of both, and has been prepared but not  
23           approved or signed by the court or has not been filed with the court clerk.

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

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

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

13 ~~[(24)]~~(23) “Final Court Order” means a court order or judgment that has been signed  
14 by a judge and shows the stamp of the court clerk or trial court administrator, indicating  
15 the order is a certified copy of the original record on file with the court.

16 ~~[(25)]~~(24) “Fund” shall have the same meaning as provided in ORS 243.401(7).

17 ~~[(26)]~~(25) “Local Government” shall have the same meaning as provided in ORS  
18 243.401(8).

19 *[(27) “Local Government Deferred Compensation Contract” means a written*  
20 *contract between a local government and an eligible employee of that local government*  
21 *that provides for deferral of income for service currently rendered, as defined in the*  
22 *established policy of the local government.]*

1 ~~[(28)](26)~~ “Local Government Deferred Compensation Plan” shall have the same  
2 meaning as provided in ORS 243.401(9).

3 ~~[(29)](27)~~ “Manager” shall have the same meaning as provided in section (13) of  
4 this rule.

5 ~~[(30)](28)~~ “OIC” means the Oregon Investment Council created by ORS 293.706.

6 ~~[(31)](29)~~ “Participant” means a person defined in either ORS 243.401(10) or  
7 243.401(13) participating in one or more deferred compensation plans under ORS  
8 243.401 to 243.507, either through current or past deferrals or compensation.

9 ~~[(32)](30)~~ “Participant’s Release” means a written statement signed by a deferred  
10 compensation plan participant and received by the Deferred Compensation Program. A  
11 participant’s release may pertain to any of the matters set forth in subsections (a) through  
12 (c) of this section, may authorize the release of information, and direct the Deferred  
13 Compensation Program to send information to a named person at a specified address.

14 (a) Pertaining to the participant’s Deferred Compensation Account and Designated  
15 Roth Account;

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

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

19 ~~[(33)](31)~~ “Participating Local Government” shall have the same meaning as  
20 provided in ORS 243.401(11).

21 ~~[(34)](32)~~ “Payroll Disbursing Officer” means:

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

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

3 ~~[(35)]~~(33) “PERS” shall have the same meaning as provided in ORS 243.401(14).

4 ~~[(36)]~~(34) “Plan Sponsor” means a public employer that establishes an eligible  
5 deferred compensation plan as defined in Section 457 of the Internal Revenue Code and  
6 which enters into an agreement with PERS to participate in the Deferred Compensation  
7 Program.

8 ~~[(37)]~~(35) “Program” shall have the same meaning as provided in section (15) of  
9 this rule.

10 ~~[(38)]~~(36) “Public Employees Retirement Board” shall have the same meaning as  
11 provided in ORS 243.401(1).

12 ~~[(39)]~~(37) “Public Employer” means the state or a local government as defined in  
13 ORS 243.401(8).

14 ~~[(40)]~~(38) “Qualified Domestic Relations Order” or “QDRO” means a domestic  
15 relations order that has been reviewed and determined to be qualified by the Deferred  
16 Compensation Program Manager.

17 ~~[(41)]~~(39) “Solicitation of Offers from Vendors” means a notice to potential vendors  
18 of investment services prepared by the OIC informing the potential vendor of the needs  
19 of the Deferred Compensation Investment Program and notice that the OIC will accept  
20 offers from qualified vendors to sign a contract with the State of Oregon providing for the  
21 vendors’ acceptance of deposits under the terms and conditions of the contract.

22 ~~[(42)]~~(40) “Staff” means any employee of the Public Employees Retirement System,  
23 who has been appointed in accordance with ORS 238.645.

1        ~~[(43)]~~(41) “State Agency” means every state officer, board, commission, department  
2 or other activity of state government.

3        ~~[(44)]~~(42) “State Deferred Compensation Plan” shall have the same meaning as  
4 provided in ORS 243.401(12).

5        ~~[(45)]~~(43) “Vendor” means an entity offering investment or other service related to  
6 investment of deferred compensation pursuant to a contract with the State of Oregon.

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

8 Stat. Auth.: ORS 243.470

9 Stats. Implemented: ORS 243.401 - ORS 243.507



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

1 **59-050-0025**

2 **Deferred Compensation Advisory Committee**

3 (1) The seven members of the Deferred Compensation Advisory Committee  
4 provided for under ORS 243.505, shall be subject to the following qualifications and  
5 limitations:

6 (a) Each member shall be a participant in a deferred compensation plan established  
7 under ORS 243.401 to 243.507, and shall have knowledge of the Program.

8 (b) Four members shall be participants in the state deferred compensation plan.

9 (c) Two members shall be participants in a local government deferred compensation  
10 plan.

11 (d) One member shall be a retired deferred compensation plan participant.

12 (e) No two members may be employed by the same state agency or local government  
13 except that a member who transfers employment to the employer of another member may  
14 continue to serve on the Advisory Committee, but only for the balance of the term of  
15 appointment of the transferring member.

16 (f) No member may serve more than two consecutive full terms.

17 (g) No member may be an employee of PERS during the term of appointment.

18 (2) The Advisory Committee shall study and advise the Board on all aspects of the  
19 Program, including but not limited to:

20 (a) The Program fee structure and procedures;

21 (b) State and federal legislative issues relative to the administration of deferred  
22 compensation plans;

1 *[(c) The administration of the catch-up and the financial hardship provisions in*  
2 *Section 457 of the Internal Revenue Code;]*

3 *[(d)](c)* Ways and means to inform and educate eligible employees about the  
4 Program;

5 *[(e)](d)* The expressed desires of eligible employees as to the Program; and

6 *[(f)](e)* The actuarial characteristics of eligible employees.

7 (3) Upon the request of the OIC, the Advisory Committee shall study and advise the  
8 Board on the following:

9 (a) Investment programs, including options and providers; and

10 (b) Information furnished by the OIC or the State Treasurer concerning the types of  
11 available investments, the respective balance of risk and return of each investment, and  
12 the administrative costs associated with each investment.

13 (4) The Advisory Committee shall meet at least four times during a calendar year.

14 (5) A majority of the Advisory Committee shall constitute a quorum for transacting  
15 business. However, the Advisory Committee may establish such other procedures for  
16 conducting business that it deems necessary.

17 (6) Pursuant to the Public Meetings Law, ORS 192.610 to 192.690, the Deferred  
18 Compensation Manager shall distribute to the Advisory Committee, and other interested  
19 parties, an agenda for a regular meeting a reasonable time prior to the meeting.

20 (7) Nominations of candidates for the Advisory Committee shall be made as follows:

21 (a) Notice of a position on the Advisory Committee expected to become vacant upon  
22 the expiration of a term of appointment shall be published not later than April 15 of each  
23 calendar year.

1 (b) Persons interested in serving on the Advisory Committee must apply in writing  
2 to the Manager not later than May 15 following the publication of a vacancy.

3 (c) The Manager shall review the written applications of interested persons for  
4 completeness, accuracy, and satisfaction of the minimum requirements of the vacant  
5 position on the Advisory Committee.

6 (d) A committee consisting of the Manager and two members of PERS executive or  
7 managerial staff designated by the PERS Executive Director shall review the acceptable  
8 applications and recommend to the Board candidates for appointment to the Advisory  
9 Committee that:

10 (A) Reflect a cross section of state agencies, participating local governments, and  
11 classification levels;

12 (B) Reflect a mixture of expertise, knowledge, and experience useful to the Advisory  
13 Committee;

14 (C) Appear to have a sincere interest in the Program; and

15 (D) Appear to be willing and able to work in a group setting to review and  
16 recommend policies governing the Program.

17 (e) In the event of a vacancy for an unexpired term, the Manager may select  
18 applications from the most recent list of interested persons established under subsection  
19 (c) of this section and the applications of other persons as deemed appropriate for  
20 consideration. A committee consisting of the Manager and two members of PERS  
21 executive or managerial staff designated by the PERS Executive Director shall review the  
22 selected applications and recommend to the Board candidates for appointment to the  
23 Advisory Committee. The appointment shall be immediately effective for the remainder

1 of the unexpired term. If no candidate is recommended or appointed, the vacancy must be  
2 filled under the provisions of subsections (a) through (d) of this section.

3 Stat. Auth.: ORS 243.470

4 Stats. Implemented: ORS 243.505

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

1 **459-050-0030**

2 **Deferred Compensation** *[Administrator]* Manager

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.

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

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

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

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

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

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

15 “Statements about the relative risk and returns of investment options do not represent  
16 predictions of how the investments will perform in the future, but rather provide only a  
17 general description of the current investment and how it has performed in the past. The  
18 disclosure statement and other information provided by the state is not intended to  
19 provide individualized investment counseling, but only general information. Employees  
20 who participate in the Deferred Compensation Program will be entitled only to the funds  
21 that are lawfully credited to their Deferred Compensation and Designated Roth Accounts  
22 when those funds are distributed. Participants assume the risk that, at time of such  
23 distribution, the deferred compensation investments related to their Deferred

1 Compensation and Designated Roth Accounts may have decreased in value or become  
2 valueless.”

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

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

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

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

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

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

22 (a) The effectiveness of and any substantial problems with the administration of the  
23 Program, including but not limited to the method of accepting deposits from the payroll

1    disbursing officer, preparing disclosure forms, making investments and deposits of funds  
2    as consistent with the request of participants as possible, maintaining accounts and  
3    records of deposits and the costs and fees associated with the administration of individual  
4    plans, communications with and education of participants, participant elections of  
5    investment options and changes in their elections, participants' elections of payment  
6    method upon withdrawal from service or retirement, and problems with participants'  
7    creditors;

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

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

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

13       Stat. Auth.: ORS 243.470

14       Stats. Implemented: ORS 243.401 - 243.507



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

1 **459-050-0037**

2 **Trading Restrictions**

3 The purpose of this rule is to establish criteria under which a participant may make  
4 trades in the Deferred Compensation Program. The Program is designed for long-term  
5 investment and periodic adjustment of asset allocation. Restrictions upon trades are  
6 necessary to protect participants and the Program from adverse financial impact  
7 attributable to frequent trading. Frequent trading by some participants can lower returns  
8 and increase transaction costs for all participants. Frequent trading can trigger the  
9 imposition of redemption fees and restrictions by mutual funds within the Program and  
10 may cause the Program to be eliminated as an allowable investor in an investment fund.

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

12 (a) “Investment Option” means an investment alternative made available under ORS  
13 243.421.

14 (b) “Trade” means a purchase or redemption in an investment option for the purpose  
15 of moving monies between investment options.

16 (2) Restrictions.

17 (a) The following restrictions apply to all participants:

18 (A) A participant may not make a trade that exceeds \$100,000.

19 (B) A purchase that is attributable to a trade may not be redeemed from the  
20 International Stock Option for a period of 30 days following the date of the trade.

21 (C) No trade may move monies directly from the Stable Value Option to *[the Short-*  
22 *Term Fixed Income Option or]* the Self-Directed Brokerage Option.

1            (b) Trades to the Self-Directed Brokerage Option are subject to subsection (a) of this  
2 section and the limitations established in OAR 459-050-0120.

3            (3) The Deferred Compensation Manager, if necessary to comply with trading  
4 restrictions imposed by a participating mutual fund or the Securities and Exchange  
5 Commission, may establish additional temporary trading restrictions.

6            (4) The Deferred Compensation Manager, in the event of extraordinary market  
7 conditions, may temporarily suspend any or all trading restrictions established by this  
8 rule.

9            (5) Any action taken by the Deferred Compensation Manager under sections (3) or  
10 (4) of this rule must be presented to the Board at its next scheduled meeting. The Board  
11 may take action as authorized by ORS 243.401 to 243.507. If the Board does not act, the  
12 action(s) taken by the Deferred Compensation Manager shall expire on the first business  
13 day following the date of the meeting.

14           (6) The provisions of this rule are not applicable to trades attributable to the  
15 operation of an automatic account rebalancing function offered by the Program.

16           (7) The trading restrictions provided in this rule are not exclusive. The Board may  
17 establish additional restrictions or sanctions as authorized by ORS 243.401 to 243.507.

18           Stat. Auth.: ORS 243.470

19           Stats. Implemented: ORS 243.401 - 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, 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) of this section, an eligible employee may enroll to participate in the Deferred  
10 Compensation Program by entering into a written agreement as specified herein with the  
11 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 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) of this section must be satisfied.

18 (b) In order for an eligible employee to be enrolled, *[the following forms]* an  
19 enrollment form, as defined in OAR 459-050-0001 and provided by the Deferred  
20 Compensation Program, must be properly completed and filed with the Deferred  
21 Compensation Program.

22 *[(A) An enrollment form, as defined in OAR 459-050-0001, and which is also an*  
23 *eligible employee's written acknowledgement that the employee understands the terms of*

1 *the enrollment form and is an eligible employee’s election of investment option*  
2 *preferences; and]*

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

4 (c) If the form[s are] is incomplete, does not comply with plan provisions in any  
5 manner whatsoever, or the Plan is unable to process the application, then staff will notify  
6 the eligible employee within 30 calendar days from the date the enrollment form[s are] is  
7 received with the reasons the Deferred Compensation Program cannot accept the  
8 enrollment as submitted.

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

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

19 **(4) Investment option preference(s): Except for account balances invested in the**  
20 **Self-Directed Brokerage Option as provided under OAR 459-050-0120, Plan**  
21 **participants may only invest their account balances by choosing from investment**  
22 **options provided by the plan sponsor.**

1 (5) Disclosure statement. Before the deferral of any part of an eligible employee’s  
2 salary, the employee shall be provided information about the investment options  
3 including, but not limited to, the probable income and safety of the moneys deferred.  
4 Statements about the relative risk and returns of investment options do not represent  
5 predictions of how the investments will perform in the future, but rather provide only a  
6 general description of the current investment and how it has performed in the past. The  
7 Deferred Compensation Program does not provide investment advice, fund analysis or  
8 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 Program. The amount of the salary  
12 reduction may not be less than the minimum per month established by the plan sponsor  
13 and may not exceed the maximum applicable allowable contribution to a Deferred  
14 Compensation Plan as defined in section 457(b)(2) of the Internal Revenue Code.

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

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

21 Stat. Auth.: ORS 243.470

22 Stats. Implemented: ORS 243.401 - 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);

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

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

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

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

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

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

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

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

22 (6) Effective date of designation of beneficiary. A designation of beneficiary is not  
23 effective until a properly completed designation on a form supplied by the Deferred

1 Compensation Program is filed with the Deferred Compensation Program. In the event a  
2 designation of beneficiary is incomplete staff will provide notification within 30 days  
3 explaining why the form is incomplete.

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

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

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

19 (a) If the program is unable to locate the designated beneficiaries or the executor,  
20 personal representative, or administrator of the estate by December 31 of the calendar  
21 year following the participant’s death, the amount in the deceased’s account on that date  
22 shall be credited to the Deferred Compensation Fund. The amount credited may be used  
23 for the payment of administrative expenses of the Deferred Compensation Program.



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

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 **459-050-0070**

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]* **For** purposes  
7 of this rule, “normal retirement age” shall be:

8 **(a) For employers that do not sponsor another deferred compensation plan**  
9 **under IRC 457(b), the earlier of:**

10 **(A) Age 65; or**

11 **(B) [t]The normal retirement age for non-police and fire employees established in**  
12 **the [plan sponsor’s retirement plan] employer’s defined benefit pension plan or**  
13 **money purchase pension plan.**

14 **(b) For employers additionally sponsoring another deferred compensation plan**  
15 **under IRC 457(b) with a 3-Year Catch-Up Program, for purposes of this rule,**  
16 **“normal retirement age” shall have the same meaning as defined in the plan**  
17 **provisions of the other deferred compensation plan. If the other plan does not define**  
18 **normal retirement age, normal retirement age shall be determined as outlined in**  
19 **subsection (1)(a) of this rule.**

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

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

4 (2) 50-Plus Catch-Up Program. Pursuant to the conditions of this rule, eligible  
5 employees who are 50 years of age and older may elect to contribute an additional  
6 amount under section 414(v) of the Internal Revenue Code in excess of the maximum  
7 regular contribution allowed.

8 (a) Conditions for *[enrollment]* participation: An eligible employee must be 50  
9 years of age or older on December 31 of the calendar year in which the eligible employee  
10 begins to participate in the 50-Plus Catch-Up Program.

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

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

16 *[(b) Application for enrollment. An eligible employee choosing to participate must*  
17 *enroll by entering into a written agreement with the plan sponsor. The written agreement*  
18 *must specify the amount of the additional annual deferral, including whether any portion*  
19 *of the additional deferral should be a Designated Roth Contribution, and that the*  
20 *additional deferral will be divided equally by the available months for the calendar year,*  
21 *and that the amount is in addition to the eligible employee's regular maximum deferral.]*

1        *[(A) An eligible employee may enter into a written agreement to participate in the*  
2 *50-Plus Catch-Up Program on or before the first day of employment or anytime while*  
3 *employed.]*

4        *[(B) A properly completed 50-Plus Catch-Up Program enrollment form provided by*  
5 *the Deferred Compensation Program must be filed with and approved by the Deferred*  
6 *Compensation Program.]*

7        *[(C) If the form is incomplete or does not comply with 50-Plus Catch-Up Program*  
8 *conditions of enrollment, then the Deferred Compensation Program will notify the*  
9 *eligible employee within 30 calendar days from the date the enrollment form is received*  
10 *of the reasons the enrollment cannot be accepted.]*

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

15        *[(d)]* **(b)** Additional deferral amounts. The additional deferral may be an amount  
16 elected by an eligible employee, but may not exceed the maximum additional deferral  
17 amount allowed under section 414(v) of the Internal Revenue Code, 26 USC 414(v). An  
18 eligible employee may change the amount of additional contributions deferred within the  
19 maximum additional deferral amount allowed. Changes may be made at any time *[on*  
20 *forms or]* by **using online account access or** other *[approved]* methods *[prescribed]*  
21 **approved** by the Deferred Compensation Program. *[Additional contributions may be*  
22 *deferred for any calendar month by salary reduction only if an agreement providing for*

1 *the deferral has been entered into before the first day of the month in which the*  
2 *compensation is paid or made available.]*

3 *[(e) Cancellation of Participation in the 50-Plus Catch-Up Program. An eligible*  
4 *employee may cancel participation in the 50-Plus Catch-Up Program at any time on*  
5 *forms or by other approved methods prescribed by the Deferred Compensation Program.*  
6 *The cancellation will be effective for any calendar month only if an agreement providing*  
7 *for the cancellation has been entered into before the first day of the month in which the*  
8 *compensation is paid or made available. An eligible employee who has cancelled*  
9 *participation may later re-apply to begin participation in the 50-Plus Catch-Up*  
10 *Program.]*

11 (3) 3-Year Catch-Up Program. An eligible employee may elect to contribute an  
12 additional amount under section 457 of the Internal Revenue Code, in excess of the  
13 maximum regular contribution allowed, for one or more of the three consecutive calendar  
14 years of employment before attaining normal retirement age, if in previous years the  
15 eligible employee did not contribute the maximum regular contribution amount.

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

19 (A) Contributions over the maximum allowable regular contribution limit are  
20 permitted only to the extent of the unused portions of the maximum allowable regular  
21 contribution for previous calendar years during which the eligible employee contributed  
22 less than the maximum allowable regular contribution or did not make contributions to  
23 the Deferred Compensation Program.

1 (B) Calendar years during which contributions were made under the 50-Plus Catch-  
2 Up Program may not be included in the calculation to determine the maximum allowable  
3 contribution under the 3-Year Catch-Up Program.

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

6 (D) An eligible employee must designate a proposed retirement date upon  
7 application. The designated proposed retirement date shall be used for the purpose of  
8 determining the catch-up period only. The catch-up period so determined may not include  
9 the year of the designated proposed retirement date. An eligible employee who retires  
10 during the catch-up period may contribute the maximum allowable amount for the year of  
11 the employee's retirement.

12 (E) Pursuant to section 457(b) of the Internal Revenue Code, an eligible employee  
13 who is 70½ years of age or older may not participate in the 3-Year Catch-Up Program.

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

18 (b) Application for enrollment. An eligible employee may participate in the 3-Year  
19 Catch-Up Program by entering into a written agreement with the plan sponsor. The  
20 written agreement must specify the eligible employee's designated proposed retirement  
21 date, the month in which to begin the 3-Year Catch-Up Program contributions and the  
22 number of years the eligible employee plans to participate in the 3-Year Catch-Up  
23 Program.

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

3 (B) A properly completed 3-Year Catch-Up Program enrollment form provided by  
4 the Deferred Compensation Program must be filed with and approved by the Deferred  
5 Compensation Program. Wage or salary information must be submitted for previous  
6 calendar years during which an eligible employee either did not participate in the  
7 Deferred Compensation Program or did not contribute the maximum regular contribution  
8 amount. An eligible employee *[must]* may be requested to submit:

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

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

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

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

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

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

9            (B) An eligible employee may change the amount of additional contributions  
10 deferred within the minimum and maximum additional deferral amounts allowed.  
11 Changes may be made at any time *[on forms or]* by using online account access or other  
12 *[approved]* methods *[prescribed]* approved by the Deferred Compensation Program and  
13 will be effective for any calendar month only if an agreement providing for the deferral  
14 has been entered into before the first day of the month in which the compensation is paid  
15 or made available.

16            (e) Cancellation of Participation in the 3-Year Catch-Up Program. An eligible  
17 employee may cancel participation in the 3-Year Catch-Up Program at any time *[on*  
18 *forms or]* by using online account access or other *[approved]* methods *[prescribed]*  
19 approved by the Deferred Compensation Program. The cancellation will be effective for  
20 any calendar month only if an agreement providing for the cancellation has been entered  
21 into before the first day of the month in which the compensation is paid or made  
22 available. An election to cancel participation is irrevocable.

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



1 Stat. Auth.: ORS 243.470

2 Stats. Implemented: ORS 243.401 - 243.507

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

1 **459-050-0072**

2 **Military Leave Catch-up**

3 The purpose of this rule is to establish the criteria and procedures to comply with the  
4 Uniformed Services Employment and Reemployment Rights Act (USERRA) as codified  
5 in 38 USC 4301-433, and with 23 USC 414(u) and 457 for an eligible employee who has  
6 been absent from employment because of military service and who has elected to catch  
7 up contributions to the Deferred Compensation Program that would have been permitted  
8 had the eligible employee remained in employment with the participating employer  
9 during the qualifying period of military service.

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

11 (a) “Military service” means the performance of duty on a voluntary or involuntary  
12 basis in a uniformed service under competent authority and includes:

13 (A) Active duty;

14 (B) Active duty for training;

15 (C) Initial active duty for training;

16 (D) Inactive duty training;

17 (E) Full-time National Guard duty;

18 (F) A period for which an individual is absent from a position of employment for the  
19 purpose of an examination to determine the fitness of the person to perform any of the  
20 above types of duty; or

21 (G) A period for which an individual is absent from employment for the purpose of  
22 performing funeral honors duty as authorized by 10 USC 12503 or 32 USC 115.

1 (b) “Uniformed services,” means the Army, Navy, Air force, Marine Corps, Coast  
2 Guard, Army National Guard, the Air National Guard, Commissioned corps of the Public  
3 Health Service, and any other category of persons designated by the President in time of  
4 war or national emergency.

5 (2) Eligibility for enrollment: An eligible employee shall be entitled to make  
6 Military Catch-Up contributions if:

7 (a) The eligible employee leaves employment to perform military service and returns  
8 to employment with the same participating employer after other than dishonorable  
9 discharge from the uniformed services and within the time limits specified in USERRA.

10 (b) The eligible employee’s cumulative length of absence from employment with the  
11 participating employer for military service does not exceed the limits set forth in  
12 USERRA.

13 (c) The eligible employee meets all other eligibility requirements under USERRA.

14 (d) Submits a timely and complete application.

15 (3) Application for enrollment: An eligible employee who meets the eligibility  
16 criteria for enrollment may apply to catch-up deferred compensation contributions that  
17 would have been permitted had the eligible employee remained in employment with the  
18 participating employer during the period of military service as provided by USERRA.

19 (a) Upon reemployment following qualifying military service, an eligible employee  
20 may enter into a written agreement to participate in the Military Leave Catch-Up  
21 Program to defer an amount annually in addition to the eligible employee’s maximum  
22 deferral amount.

1 (b) In order for an eligible employee to be enrolled, a properly completed Military  
2 Leave Catch-Up Contributions enrollment form provided by the Deferred Compensation  
3 Program must be filed with and accepted by the Deferred Compensation Program.

4 (c) If the application for enrollment is incomplete, if documentation is missing or  
5 information is not legible, or if the application does not comply with the Military Leave  
6 Catch-Up Program eligibility for enrollment in section 2 above, then staff will notify the  
7 eligible employee within 30 calendar days from the date the enrollment documents are  
8 received with the reasons the Deferred Compensation Plan cannot accept the enrollment.

9 (d) After receipt of the properly completed enrollment form and required  
10 information, Deferred Compensation Program staff will notify an eligible employee of  
11 the amount of maximum additional contributions that may be deferred.

12 (4) Military Leave Catch-Up Contributions. The additional military leave catch-up  
13 contributions shall not exceed the 26 USC 457 maximum annual allowable contributions  
14 that would have been permitted had the eligible employee remained in employment with  
15 the participating employer during the period of military service. The military leave catch-  
16 up contributions are in addition to the maximum allowable contribution limit.

17 (a) The maximum allowable military leave catch-up contribution for any calendar  
18 year during military service is available only to the extent of unused portions of the  
19 maximum allowable contribution for the calendar years during which the eligible  
20 employee contributed less than the maximum amount allowable.

21 (b) Salary for military leave catch-up purposes shall be based on the compensation  
22 the eligible employee would have received had the eligible employee remained actively  
23 employed during the period of military service, including any increases that would have

1    been awarded the eligible employee based on longevity of employment or seniority of  
2    position.

3            (c) Military Leave Catch-Up Contributions are to be made through payroll  
4    deductions.

5            (d) Eligible employees may change the amount of additional contributions deferred  
6    not to exceed the maximum amounts allowable.

7            (e) Eligible employees may cancel Military Leave Catch-Up Contributions at any  
8    time.

9            (f) Military Leave Catch-up Contributions may be made for a period that begins on  
10   the date of reemployment and whose length is the lesser of:

11            (A) Three times the period of qualified military service; or

12            (B) Five years.

13            (5) IRC [*code*] limitations. Eligibility for and limitations to the maximum amount of  
14   Military Leave Catch-Up contributions shall be made in accordance with the  
15   requirements under USERRA, 38 USC 4301–4333 and 26 USC 414(u)(2) and 457.

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

17            Stat. Auth.: ORS 243.470

18            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  
15 Program in the two-year period before the date of distribution; and

16 (d) Participant has *[submitted an application]* **applied** for a de minimis distribution  
17 *[on forms provided by,]* **by using online account access** or other methods approved by  
18 the Deferred Compensation Program. No distribution will be paid unless a complete  
19 application is filed with, and approved by, the 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  
23 employment and as defined in OAR 459-050-0150. A participant must apply for an

1 unforeseeable emergency withdrawal by using *[forms provided by,]* online account  
 2 access or other methods approved by *[,]* the Deferred Compensation Program as provided  
 3 for in OAR 459-050-0150*[(4)]*.

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

10 (4) Trustee-to-Trustee Transfers. A Trustee-to-Trustee Transfer for the purpose of  
 11 purchasing permissive service credit as described in Code Section 415(n) or a Trustee-to-  
 12 Trustee Transfer that meets the requirements of 26 CFR 1.457.10(b)(4) may be made  
 13 while a participant is still employed.

14 (5) Funds available for in-service distribution. Funds contributed to the Deferred  
 15 Compensation Program, and earnings on those contributions may be distributed in a de  
 16 minimis distribution or unforeseeable emergency withdrawal. Any funds directly  
 17 transferred or rolled over to the Deferred Compensation Program from any plan other  
 18 than an IRC 457 deferred compensation plan may not be distributed for a de minimis  
 19 distribution or an unforeseeable emergency withdrawal.

20 *[(6) Prohibitions on elective deferrals after an in-service distribution. A participant*  
 21 *who receives a de minimis distribution, an unforeseeable emergency withdrawal, or a*  
 22 *military distribution may not make elective deferrals and employee contributions to the*

1 *Deferred Compensation Program for a period of six consecutive months from the date of*  
2 *distribution.]*

3 ~~[(7)]~~(6) Notwithstanding any other sections of this rule, a participant who self-  
4 certifies through a process provided by the Deferred Compensation Program as a  
5 “qualified individual” as that term is defined in the Coronavirus Aid, Relief, and  
6 Economic Security Act of 2020, may take an in-service distribution of no more than  
7 \$100,000 during calendar year 2020.

8 (a) A qualified individual means an individual:

9 (A) Who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019  
10 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;

11 (B) Whose spouse or dependent (as defined in section 152 of the Internal Revenue  
12 Code of 1986) is diagnosed with such virus or disease by such a test; or

13 (C) Who experiences adverse financial consequences as a result of being  
14 quarantined, being furloughed or laid off or having work hours reduced due to such virus  
15 or disease, being unable to work due to lack of child care due to such virus or disease,  
16 closing or reducing hours of a business owned or operated by the individual due to such  
17 virus or disease, or other factors as determined by the Secretary of the Treasury (or the  
18 Secretary’s delegate).

19 (b) A distribution taken under this section, or any portion thereof, may be  
20 redeposited by the plan participant back into the participant’s Deferred Compensation  
21 Account within three years beginning on the day after the date of the withdrawal.

22 Stat. Auth.: ORS 243.470

23 Stats. Implemented: ORS 243.401 - 243.507 & Pub. L. No. 116-136



**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 Compensation Account” means the account described in OAR 459-  
7 050-0001, but does not include any amount in the Self-Directed Brokerage Option.

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

10 (d) “Loan balance” means the outstanding principal and accrued interest due on the  
11 loan.

12 (e) “Participant Loan” means a loan that affects the Deferred Compensation  
13 Account, Designated Roth Account, or a combination of both, of a participant.

14 (f) “Promissory note” means the agreement of loan terms between the Program and a  
15 participant.

16 (g) “Third Party Administrator (TPA)” means the entity providing record keeping  
17 and administrative services to the Program.

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

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

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

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

5 (4) Loan Types:

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

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

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

19 (6) Loan Fees: A loan fee of [~~\$50.00~~] \$75.00 shall be assessed when the loan is  
20 approved. The fee shall be deducted from a participant's deferred compensation account  
21 on a pro-rata basis from existing investments.

22 (7) Loan Limitations:

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

1            (A) \$50,000; or  
2            (B) One-half of the combined value of the participant’s Deferred Compensation  
3 Account and the Designated Roth Account on the date the loan is made.

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

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

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

8            (8) Source of Loan: The loan amount will be deducted from a participant’s Deferred  
9 Compensation Account, Designated Roth Account, or a combination of both.

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

11           (b) Loan amounts will be deducted pro-rata from existing investments in a  
12 participant’s account(s).

13           (c) A participant may not transfer a loan to or from another retirement or deferred  
14 compensation plan.

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

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

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

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

8            (d) Partial payment of a scheduled payment and partial prepayment or advance  
9 payment of future payments may not be permitted.

10           (e) Loan payments will be allocated in a participant’s account(s) in the same manner  
11 as the participant’s current contribution allocation. If, for any reason, the allocation is not  
12 known, the payment will be allocated to the Stable Value Option.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (11) Tax Reporting.

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

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

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

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

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

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

4 (12) Default.

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

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

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

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

16 (13) Notwithstanding any other sections of this rule, a participant who self-certifies  
17 through a process provided by the Deferred Compensation Program as a “qualified  
18 individual” as that term is defined in the Coronavirus Aid, Relief, and Economic Security  
19 Act of 2020, will have any repayment due date between March 27 and December 31,  
20 2020 delayed for one year.

21 (a) A qualified individual means an individual:

22 (A) Who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019  
23 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;

1 (B) Whose spouse or dependent (as defined in section 152 of the Internal Revenue  
2 Code of 1986) is diagnosed with such virus or disease by such a test; or

3 (C) Who experiences adverse financial consequences as a result of being  
4 quarantined, being furloughed or laid off or having work hours reduced due to such virus  
5 or disease, being unable to work due to lack of child care due to such virus or disease,  
6 closing or reducing hours of a business owned or operated by the individual due to such  
7 virus or disease, or other factors as determined by the Secretary of the Treasury (or the  
8 Secretary’s delegate).

9 (b) Interest will continue to accrue on the outstanding balance of the loan during the  
10 period of repayment delay.

11 Stat. Auth.: ORS 243.470

12 Stats. Implemented: ORS 243.401 – 243.507 & Pub. L. No. 116-136



**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 if the  
16 participant was born before July 1, 1949, or age 72 if the participant was born after June  
17 30, 1949; or

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

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

1 (2) Manner of distribution. Subject to the provisions of sections (3) through (5) set  
2 out below, a participant, surviving beneficiary, or alternate payee may elect a manner of  
3 distribution, designate one or more beneficiaries, and change beneficiaries at any time.  
4 The total amount distributed may not exceed the total account value. The following  
5 manners of distribution are available:

6 (a) Total distribution of the account value in a lump sum [*A lump-sum distribution*  
7 *is not eligible for direct deposit*];

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

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

18 (d) Periodic specified dollar amount distribution. This distribution may be paid  
19 annually, semiannually, quarterly or monthly, and may be paid in specific dollar amounts  
20 in [~~\$5~~] \$200 increments. Any funds remaining after each periodic payment shall continue  
21 to receive earnings or losses based on the performance of investment option(s) in which  
22 the funds are held. The amount of each periodic distribution will remain the same

1 throughout the withdrawal period. However, the withdrawal period may vary depending  
2 on the earnings or losses experienced;

3 (e) Required minimum distribution, which will provide an annual distribution of the  
4 minimum amount required in IRC section 401(a)(9), 26 U.S.C. 401(a)(9). This manner of  
5 distribution is available only to those who defer distribution to age 70-1/2 [years of age]  
6 if the participant was born before July 1, 1949, or age 72 if the participant was born after  
7 June 30, 1949 (no later than April of the year following the year reaching 70-1/2 years of  
8 age or 72 years of age) or a participant who continues to work and severs employment  
9 after 70-1/2 years of age if the participant was born before July 1, 1949, or age 72 if the  
10 participant was born after June 30, 1949. Funds not distributed shall continue to receive  
11 earnings or losses based on the performance of investment option(s) in which funds are  
12 held; or

13 (f) Mandatory single lump-sum distribution of an account balance of less than  
14 \$1,000. This distribution shall be made to any participant or alternate payee with an  
15 account balance of less than \$1,000 within one year of the participant's severance of  
16 employment.

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

21 (a) An application for distribution or to change the manner of distribution will be  
22 considered filed in a timely manner if it is received in writing or other method approved  
23 by the Deferred Compensation Program at least 30 days before the requested

1 commencement date. The commencement date may be no earlier than the second  
2 calendar month following the month of severance of employment.

3 (b) An application for distribution or to change the manner of distribution may be  
4 made by a participant, surviving beneficiary, or alternate payee or the authorized  
5 representative of a participant, surviving beneficiary or alternate payee. A valid document  
6 appointing an authorized representative such as a power of attorney, guardianship or  
7 conservatorship appointment, must be submitted to the Deferred Compensation Program.  
8 The Deferred Compensation Program retains the discretion to determine whether the  
9 document is valid for purposes of this rule.

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

19 (d) When direct deposit is permitted under the Deferred Compensation Program, a  
20 request for periodic distributions to be transmitted to a financial institution for direct  
21 deposit must be made using a Deferred Compensation Program Automatic Deposit  
22 Agreement.

1 (e) Distribution of deferred compensation funds will occur no later than five days  
2 following the date funds necessary for a specified payment were liquidated. Liquidation  
3 of funds will be done on a pro-rata basis determined by the investment allocation of an  
4 account at the time the funds are liquidated or from the Stable Value account, at the  
5 participant's election. The election must be filed before the participant begins receiving  
6 distributions. If the participant elects distribution from the Stable Value account and there  
7 are insufficient funds in that account on the date of each distribution (whether monthly,  
8 quarterly, semi-annually, or annually), the distribution will be done on the pro-rata basis  
9 described above regardless of the participant's election.

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

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

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

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

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

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

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

8 Stat. Auth.: ORS 243.470

9 Stats. Implemented: ORS 243.401 - 243.507, OL 2007 Ch. 54 & Pub. L. No. 116-

10 136

**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 Compensation Account” means the account described in OAR 459-  
8 050-0001, but does not include any amount in the Self-Directed Brokerage Option.

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

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

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

20 (2) Eligibility for emergency withdrawals. Only a participant who established a  
21 deferred compensation account as an eligible employee and has not terminated from  
22 employment with their plan sponsor may apply to receive an unforeseeable emergency



1 withdrawal. An alternate payee of a participant may not be eligible to receive an  
2 emergency withdrawal.

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

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

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

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

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

2 (i) Usual and customary tax obligations.

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

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

11 (b) Liquidation of the participant’s assets, to the extent the liquidation of such assets  
12 would not itself cause severe unforeseeable emergency; or

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

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

19 (a) The application *[form]* may be obtained from the Deferred Compensation  
20 Program or the third party administrator (TPA) retained to administer a portion of the  
21 Deferred Compensation Program.

22 (b) The completed application, financial information, and related documentation  
23 shall be submitted by *[use of the United State Postal Service or by private express carrier]*

1 *as defined in ORS 293.660(2) for initial review* using online account access or other  
 2 methods approved by the Deferred Compensation Program.

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

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

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

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

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

21 (11) A participant may appeal a denial of an emergency withdrawal to the  
 22 Unforeseeable Emergency Withdrawal Appeals Committee as provided in OAR 459-050-  
 23 0040. The appeal shall be in writing and must include:

1        (a) A request for review by the Unforeseeable Emergency Withdrawal Appeals  
2 Committee;

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

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

6        (12) Number of emergency withdrawal requests. The number of times a participant  
7 may apply for an emergency withdrawal is unlimited and is unaffected by previous  
8 applications.

9        Stat. Auth.: ORS 243.470

10       Stats. Implemented: ORS 243.401 - 243.507

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

1 **459-050-0240**

2 **Deferred Compensation Program Notifications**

3 (1) Notification responsibility. The Deferred Compensation Program is a separate  
4 entity from other public employer retirement plans and deferred compensation plans, and  
5 notification to other plans does not constitute notice to the Deferred Compensation  
6 Program. Similarly, the Deferred Compensation Program is not responsible for notifying  
7 other plans of changes in participant or alternate payee information, such as changes in  
8 address, the receipt of an application for distribution, or the death of a Deferred  
9 Compensation Program participant or an alternate payee.

10 (2) Receipt of a final court order. Deferred Compensation Program shall send written  
11 notification acknowledging receipt of a final court order to the submitting party and shall  
12 send a copy of the acknowledgment to the other persons named in the court order if  
13 mailing addresses are provided.

14 (3) Tax reporting. The Deferred Compensation Program shall issue the applicable  
15 tax reporting forms directly to the recipient of any funds that are issued by the Deferred  
16 Compensation Program pursuant to a final court order for domestic relations purposes,  
17 and in a manner consistent with the Internal Revenue Code and Oregon law.

18 (4) ~~[Quarterly]~~ **Annual** statements. All alternate payees who are awarded a separate  
19 account in the Deferred Compensation Program shall be sent ~~[a quarterly]~~ **an annual**  
20 statement on their account. Such statement will be sent to their last known address.

21 Stat. Auth.: ORS 243.470

22 Stats. Implemented: ORS 243.401 - 243.507

## Administrative Rulemaking

1. Notice of Oregon Savings Growth Plan Rules
2. Notice of Salary and Contribution Limits Rules
3. Notice of Document Submission Requirements Rules
4. First Reading of Rules to Implement SB 112
5. Adoption of 2021 Legislative Implementation Rules
6. Adoption of Benefits-In-Force Earnings Crediting Rule



# Oregon

Kate Brown, Governor

## Public Employees Retirement System

Headquarters:  
11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
Mailing Address:  
P.O. Box 23700  
Tigard, OR 97281-3700  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

January 31, 2022

TO: Members of the PERS Board

FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section

SUBJECT: Notice of Rulemaking for Salary and Contribution Limits Rules:  
OAR 459-005-0525, *Ceiling on Compensation for Purposes of Contributions and Benefits*  
OAR 459-005-0545, *Annual Addition Limitation*  
OAR 459-017-0060, *Reemployment of Retired Members*  
OAR 459-080-0400, *Employee Pension Stability Account (EPSA)*  
OAR 459-080-0500, *Limitation on Contributions*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Update rules to reflect the 2022 Internal Revenue Code (IRC), Social Security, salary limit, and monthly salary threshold for the Employee Pension Stability Account (EPSA).
- Policy Issue: None identified.

### BACKGROUND

The Internal Revenue Service revises various dollar limits annually based on cost-of-living adjustments. These revisions are used throughout the PERS plan's statutes and rules, but revisions to the limits must be adopted by the legislature or PERS Board to be effective.

The proposed rule modifications to OAR 459-005-0545 and 459-080-0500 incorporate these federal adjustments for calendar year 2022 and are necessary to ensure compliance with the federal limits on the amount of contributions. In addition, the proposed modifications to OAR 459-017-0060 adopt the 2022 Social Security earnings limitations.

Also, under ORS 238.005, 238A.005 and 238A.330, as amended by SB 1049 (2019), on January 1 of each year, the PERS Board shall adjust the overall salary limit, and the salary threshold for Employee Pension Stability Account (EPSA) contributions to reflect cost of living increases from the previous year, based on the Consumer Price Index (CPI) for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor. As of December 2021, this CPI was 6.4%. The amendments to OAR 459-005-0525 update the 2022 calendar year salary limit to \$210,582.

For the monthly threshold for contributions to the EPSA, HB 2906 (2021) provides that, if the monthly salary of an IAP member does not exceed \$3,333, the PERS Board shall credit all employee contributions made by the member to the employee account and credit no employee contributions made by the member to the EPSA. The amendments to OAR 459-080-0400 update the monthly threshold for contributions to the EPSA to \$3,333 for calendar year 2022. This amount will be adjusted annually by the same CPI as the annual salary limit.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held remotely on February 22, 2022, at 2:00 p.m. The public comment period ends March 1, 2022, at 5:00 p.m.

LEGAL REVIEW

The attached 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: Yes, statute requires the PERS Board to update its rules to reflect revisions by the IRS and Social Security Administration and to update its rules to reflect cost of living increases from the previous year for salary limit and EPSA contributions salary threshold.

Benefit: Clarifies the limits for contributions and benefits under federal law for calendar year 2022 and clarifies salary limit and EPSA contributions salary threshold for calendar year 2022.

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

RULEMAKING TIMELINE

January 28, 2022	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 31, 2022	PERS Board notified that staff began the rulemaking process.
February 1, 2022	Secretary of State publishes the Notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
February 22, 2022	Rulemaking hearing to be held remotely at 2:00 p.m.
March 1, 2022	Public comment period ends at 5:00 p.m.
March 28, 2022	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A rulemaking hearing will be held remotely on February 22, 2022. The rule is scheduled to be brought before the PERS Board for adoption at the March 28, 2022 board meeting.

- B.2. Attachment 1 - 459-005-0525, *Ceiling on Compensation for Purposes of Contributions and Benefits*
- B.2. Attachment 2 - 459-005-0545, *Annual Addition Limitation*
- B.2. Attachment 3 - 459-017-0060, *Reemployment of Retired Members*
- B.2. Attachment 4 - 459-080-0400, *Employee Pension Stability Account (EPSA)*
- B.2. Attachment 5 - 459-080-0500, *Limitation on Contributions*



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

1 **459-005-0525**

2 **Ceiling on Compensation for Purposes of Contributions and Benefits**

3 (1) This administrative rule shall be construed consistently with the requirements of  
4 the Internal Revenue Code (IRC) Section 401(a)(17) relating to the limitation on annual  
5 compensation allowable for determining contribution and benefits under ORS Chapters  
6 238 and 238A.

7 (2) For purposes of this rule:

8 (a) “Annual compensation” means “salary,” as defined in ORS 238.005 and 238.205  
9 with respect to Chapter 238 and in 238A.005 with respect to Chapter 238A paid to the  
10 member during a calendar year or other 12-month period, as specified in this rule.

11 (b) “Eligible participant” means a person who first becomes a member of PERS  
12 before January 1, 1996.

13 (c) “Employer” means a “public employer” as defined in ORS 238.005, for the  
14 purposes of this rule as it applies to Chapter 238. For the purposes of this rule as it  
15 applies to Chapter 238A, an “employer” means a “participating public employer” as  
16 defined in 238A.005.

17 (d) “Noneligible participant” means a person who first becomes a member of PERS  
18 after December 31, 1995.

19 (e) “Participant” means an active or inactive member of PERS.

20 (3) For eligible participants, the limit set forth in IRC Section 401(a)(17) shall not  
21 apply for purposes of determining the amount of employee or employer contributions that  
22 may be paid into PERS, and for purposes of determining benefits due under ORS

1 Chapters 238 and 238A. The limit on annual compensation for eligible participants shall  
2 be no less than the amount which was allowed to be taken into account for purposes of  
3 determining contributions or benefits under former ORS 237.001 to 237.315 as in effect  
4 on July 1, 1993, for calendar years before 2020. Beginning in ~~[2021]~~ 2022, the limit on  
5 annual compensation taken into account for purposes of determining contributions or  
6 benefits under ORS Chapter 238 or 238A for eligible participants shall be measured on a  
7 calendar year basis, and shall not exceed ~~[\$197,730]~~ \$210,582 per calendar year.

8 (4) For noneligible participants, the annual compensation taken into account for  
9 purposes of determining contributions or benefits under ORS Chapters 238 and 238A  
10 shall be measured on a calendar year basis, and shall not exceed ~~[\$197,730]~~ \$210,582 per  
11 calendar year beginning in ~~[2021]~~ 2022.

12 (5) A participant employed by two or more agencies or instrumentalities of a PERS  
13 participating employer in a calendar year, whether concurrently or consecutively, shall  
14 have all compensation paid by the employer combined for determining the allowable  
15 annual compensation under this rule.

16 (6) PERS participating employers shall monitor annual compensation and  
17 contributions to assure that reports and remitting are within the limits established by this  
18 rule and IRC Section 401(a)(17).

19 (7) For a participant, Final Average Salary under ORS 238.005 with respect to  
20 Chapter 238 and under 238A.130 with respect to Chapter 238A shall be calculated based  
21 on the amount of compensation that is allowed to be taken into account under this rule.

22 (8) With respect to ORS Chapter 238, creditable service, as defined in 238.005, shall  
23 be given for each month that an active member is paid salary or wages and allowable

1 contributions have been remitted to PERS, or would be remitted but for the annual  
2 compensation limit in this rule. With respect to Chapter 238A, retirement credit as  
3 determined in 238A.140, shall be given for each month that an active member is paid  
4 salary or wages and allowable contributions have been remitted to PERS, or would be  
5 remitted but for the annual compensation limit in this rule.

6 (9) Beginning in 2020, the limitation on annual compensation under sections (3) and  
7 (4) of this rule will be indexed by cost-of-living adjustments in subsequent years as  
8 provided in the Consumer Price Index for All Urban Consumers, West Region (All  
9 Items), as published by the Bureau of Labor Statistics of the United States Department of  
10 Labor.

11 Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450

12 Stats. Implemented: ORS 238.005 & 238A.005

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

1 **459-005-0545**

2 **Annual Addition Limitation**

3 (1) This administrative rule shall be construed consistently with the requirements of  
4 the Internal Revenue Code (IRC) Section 415(c) and the Treasury regulations and  
5 Internal Revenue Service rulings and other interpretations issued thereunder.

6 (2) Except as otherwise provided in this rule, a member’s annual additions to PERS  
7 for any calendar year after ~~2020~~ 2021 may not exceed ~~[\$58,000]~~ \$61,000 (as adjusted  
8 under IRC Section 415(d)).

9 (3) For purposes of this rule, the term “annual additions” has the same meaning as  
10 under IRC Section 415(c)(2).

11 (4) The following special rules shall apply with respect to purchases of permissive  
12 service credit, as defined in OAR 459-005-0540, Permissive Service Credit:

13 (a) If a member’s after-tax contributions to purchase permissive service credit are  
14 included in the member’s annual additions under section (3) of this rule, the member  
15 shall not be treated as exceeding the limitation under section (2) of this rule solely  
16 because of the inclusion of such contributions.

17 (b) With respect to any eligible participant, the annual addition limitation in section  
18 (2) of this rule shall not be applied to reduce the amount of permissive service credit to an  
19 amount less than the amount that could be purchased under the terms of the plan as in  
20 effect on August 5, 1997. As used in this subsection, the term “eligible participant”  
21 includes any individual who became an active member before January 1, 2000.

1            (5) If a member makes a payment to PERS to purchase retirement credit for service  
2 in the Armed Forces pursuant to 238.156(3)(c) or 238A.150 and the service is covered  
3 under Internal Revenue Code Section 414(u), the following special rules shall apply for  
4 purposes of applying the annual addition limitation in section (2) of this rule:

5            (a) The payment shall be allocated as an annual addition to the calendar year to  
6 which it relates; and

7            (b) The member shall be treated as having received the following amount of  
8 compensation for the period of service in the Armed Forces to which the payment relates:

9            (A) The amount of compensation the member would have received from a  
10 participating employer had the member not been in the Armed Forces; or

11           (B) If the amount in paragraph (A) of this subsection is not reasonably certain, the  
12 member's average compensation from the participating employer during the 12-month  
13 period immediately preceding the period of service in the Armed Forces (or, if shorter,  
14 the period of employment immediately preceding the period of service in the Armed  
15 Forces).

16           (6) The provisions of this rule are effective on January 1, 2004.

17           Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450

18           Stats. Implemented: ORS 238.005 - 238.715, 238A.370

**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:

4 (a) “Bona fide retirement” means that the retired member has been absent from  
5 service with all participating employers and all employers in a controlled group with a  
6 participating employer for at least six full calendar months between the effective date of  
7 retirement and the date of hire.

8 (b) “Retired member” means a member of the PERS Chapter 238 Program who is  
9 retired for service.

10 (2) A retired member may be employed under ORS 238.082 by a participating  
11 employer without loss of retirement benefits provided:

12 (a) The period or periods of employment with one or more participating employers  
13 total less than 1,040 hours in a calendar year; or

14 (b) If the retired member is receiving retirement, survivors, or disability benefits  
15 under the federal Social Security Act, the period or periods of employment total less than  
16 either 1,040 hours in a calendar year, or the total number of hours in a calendar year that,  
17 at the retired member’s specified hourly rate of pay, would cause the annual  
18 compensation of the retired member to exceed the following Social Security annual  
19 compensation limits, whichever is greater.

20 (A) For retired members who have not reached full retirement age under the Social  
21 Security Act, the annual compensation limit is ~~[\$18,960]~~ \$19,560; or

1            (B) For the calendar year in which the retired member reaches full retirement age  
2 under the Social Security Act and only for compensation for the months before reaching  
3 full retirement age, the annual compensation limit is ~~[\$50,520]~~ \$51,960.

4            (3) The limitations on employment in section (2) of this rule do not apply if the  
5 retired member has reached full retirement age under the Social Security Act.

6            (4) The limitations on employment in section (2) of this rule do not apply if:

7            (a) The retired member meets the requirements of ORS 238.082(4), (5), (6), (7), or  
8 (8), and did not retire at a reduced benefit under the provisions of ORS 238.280(1), (2), or  
9 (3);

10           (b) The retired member retired at a reduced benefit under ORS 238.280(1), (2), or  
11 (3), is employed in a position that meets the requirements of ORS 238.082(4), the date of  
12 hire is more than six months after the member’s effective retirement date, and the  
13 member’s retirement otherwise meets the standard of a bona fide retirement;

14           (c) The retired member is employed by a school district or education service district  
15 as a speech-language pathologist or speech-language pathologist assistant and:

16           (A) The retired member did not retire at a reduced benefit under the provisions of  
17 ORS 238.280(1) or (3); or

18           (B) The retired member retired at a reduced benefit under the provisions of ORS  
19 238.280(1) or (3), but is not employed by any participating employer until more than six  
20 months after the member’s effective retirement date, and the member’s retirement  
21 otherwise meets the standard of a bona fide retirement;

22           (d) The retired member meets the requirements of section 2, chapter 499, Oregon  
23 Laws 2007, as amended by section 1, chapter 108, Oregon Laws 2015;

1 (e) The retired member meets the requirements of section 2, chapter 475, Oregon  
2 Laws 2015;

3 (f) The retired member is employed for service during a legislative session under  
4 ORS 238.092(2);

5 (g) The retired member meets the requirements of ORS 238.088(2), and did not  
6 retire at a reduced benefit under the provisions of ORS 238.280(1), (2), or (3); or

7 (h) The retired member is on active state duty in the organized militia and meets the  
8 requirements under ORS 399.075(8).

9 (i) The retired member is employed as a special campus security officer  
10 commissioned by a public university and meets the requirements under section 5, chapter  
11 152, Oregon Laws 2019.

12 (j) The retired member is employed as a security officer for a community college and  
13 meets the requirements under section 5, chapter 152, Oregon Laws 2019.

14 (k) The retired member is employed by Harney County Health District as a person  
15 licensed, registered or certified to provide health services and meets the requirements  
16 under section 2, chapter 496, Oregon Laws 2019.

17 (5) For purposes of population determinations referenced by statutes listed in this  
18 rule, the latest federal decennial census shall first be operative on the first day of the  
19 second calendar year following the census year.

20 (6) For purposes of ORS 238.082(6), a retired member replaces an employee if the  
21 retired member:

22 (a) Is assigned to the position of the employee; and

23 (b) Performs the duties of the employee or duties that might be assigned to an  
24 employee in that position.



1            (7) If a retired member is reemployed subject to the limitations of ORS 238.082 and  
2 section (2) of this rule, the period or periods of employment subsequently exceed those  
3 limitations, and employment continues into the month following the date the limitations  
4 are exceeded:

5            (a) If the member has been retired for six or more calendar months:

6            (A) PERS will cancel the member’s retirement.

7            (i) If the member is receiving a monthly service retirement allowance, the last  
8 payment to which the member is entitled is for the month in which the limitations were  
9 exceeded.

10           (ii) If the member is receiving installment payments under ORS 238.305(4), the last  
11 installment payment to which the member is entitled is the last payment due on or before  
12 the last day of the month in which the limitations were exceeded.

13           (iii) If the member received a single lump sum payment under ORS 238.305(4) or  
14 238.315, the member is entitled to the payment provided the payment was dated on or  
15 before the last day of the month in which the limitations were exceeded.

16           (iv) A member who receives benefits to which he or she is not entitled must repay  
17 those benefits to PERS.

18           (B) The member will reestablish active membership the first of the calendar month  
19 following the month in which the limitations were exceeded.

20           (C) The member’s account must be rebuilt in accordance with the provisions of  
21 section (9) of this rule.

22           (b) If the member has been retired for less than six calendar months:

23           (A) PERS will cancel the member’s retirement effective the date the member was  
24 reemployed.

1            (B) All retirement benefits received by the member must be repaid to PERS in a  
2 single payment.

3            (C) The member will reestablish active membership effective the date the member  
4 was reemployed.

5            (D) The member account will be rebuilt as of the date that PERS receives the single  
6 payment. The amount in the member account must be the same as the amount in the  
7 member account at the time of the member's retirement.

8            (8) For purposes of determining period(s) of employment in section (2) of this rule:

9            (a) Hours of employment are hours on and after the retired member's effective  
10 retirement date for which the member receives wages, salary, paid leave, or other  
11 compensation.

12            (b) Hours of employment that are performed under the provisions of section (4) of  
13 this rule on or after the later of January 1, 2004, or the operative date of the applicable  
14 statutory provision, are not counted.

15            (9) If a member has been retired for service for more than six calendar months and is  
16 reemployed in a qualifying position by a participating employer under the provisions of  
17 238.078(1):

18            (a) PERS will cancel the member's retirement effective the date the member is  
19 reemployed.

20            (b) The member will reestablish active membership on the date the member is  
21 reemployed.

22            (c) If the member elected a benefit payment option other than a lump sum option  
23 under ORS 238.305(2) or (3), the last monthly service retirement allowance payment to  
24 which the member is entitled is for the month before the calendar month in which the

1 member is reemployed. Upon subsequent retirement, the member may choose a different  
2 benefit payment option.

3 (A) The member’s account will be rebuilt as required by ORS 238.078 effective the  
4 date active membership is reestablished.

5 (B) Amounts from the Benefits-In-Force Reserve (BIF) credited to the member’s  
6 account under the provisions of paragraph (A) of this subsection will be credited with  
7 earnings at the BIF rate or the assumed rate, whichever is less, from the date of retirement  
8 to the date of active membership.

9 (d) If the member elected a partial lump sum option under ORS 238.305(2), the last  
10 monthly service retirement allowance payment to which the member is entitled is for the  
11 month before the calendar month in which the member is reemployed. The last lump sum  
12 or installment payment to which the member is entitled is the last payment due before the  
13 date the member is reemployed. Upon subsequent retirement, the member may not  
14 choose a different benefit payment option unless the member has repaid to PERS in a  
15 single payment an amount equal to the lump sum and installment benefits received and  
16 the earnings that would have accumulated on that amount.

17 (A) The member’s account will be rebuilt as required by ORS 238.078 effective the  
18 date active membership is reestablished.

19 (B) Amounts from the BIF credited to the member’s account under the provisions of  
20 paragraph (A) of this subsection, excluding any amounts attributable to repayment by the  
21 member, will be credited with earnings at the BIF rate or the assumed rate, whichever is  
22 less, from the date of retirement to the date of active membership.

23 (e) If the member elected the total lump sum option under ORS 238.305(3), the last  
24 lump sum or installment payment to which the member is entitled is the last payment due

1 before the date the member is reemployed. Upon subsequent retirement, the member may  
2 not choose a different benefit payment option unless the member has repaid to PERS in a  
3 single payment an amount equal to the benefits received and the earnings that would have  
4 accumulated on that amount.

5 (A) If the member repays PERS as described in this subsection the member's  
6 account will be rebuilt as required by ORS 238.078 effective the date that PERS receives  
7 the single payment.

8 (B) If any amounts from the BIF are credited to the member's account under the  
9 provisions of paragraph (A) of this subsection, the amounts may not be credited with  
10 earnings for the period from the date of retirement to the date of active membership.

11 (f) If the member received a lump sum payment under ORS 238.315:

12 (A) If the payment was dated before the date the member is reemployed, the member  
13 is not required or permitted to repay the benefit amount. Upon subsequent retirement:

14 (i) The member may choose a different benefit payment option.

15 (ii) The member's retirement benefit will be calculated based on the member's  
16 periods of active membership after the member's initial effective retirement date.

17 (B) If the payment was dated on or after the date the member is reemployed, the  
18 member must repay the benefit amount. Upon subsequent retirement:

19 (i) The member may choose a different benefit payment option.

20 (ii) The member's retirement benefit will be calculated based on the member's  
21 periods of active membership before and after the member's initial effective retirement  
22 date.

23 (iii) The member's account will be rebuilt as described in ORS 238.078(2).

1            (g) A member who receives benefits to which he or she is not entitled must repay  
2 those benefits to PERS.

3            (10) If a member has been retired for less than six calendar months and is  
4 reemployed in a qualifying position by a participating employer under the provisions of  
5 238.078(2):

6            (a) PERS will cancel the member’s retirement effective the date the member is  
7 reemployed.

8            (b) All retirement benefits received by the member must be repaid to PERS in a  
9 single payment.

10           (c) The member will reestablish active membership effective the date the member is  
11 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           (e) Upon subsequent retirement, the member may choose a different benefit payment  
16 option.

17           (11) Upon the subsequent retirement of any member who reestablished active  
18 membership under ORS 238.078 and this rule, the retirement benefit of the member must  
19 be calculated using the actuarial equivalency factors in effect on the effective date of the  
20 subsequent retirement.

21           (12) The provisions of paragraphs (9)(c)(B), (9)(d)(B), and (9)(e)(B) of this rule are  
22 applicable to retired members who reestablish active membership under ORS 238.078  
23 and this rule and whose initial effective retirement date is on or after March 1, 2006.

1 (13) A participating employer that employs a retired member must notify PERS in a  
2 format acceptable to PERS under which statute the retired member is employed.

3 (a) Upon request by PERS, a participating employer must certify to PERS that a  
4 retired member has not exceeded the number of hours allowed under ORS 238.082 and  
5 section (2) of this rule.

6 (b) Upon request by PERS a participating employer must provide PERS with  
7 business and employment records to substantiate the actual number of hours a retired  
8 member was employed.

9 (c) Participating employers must provide information requested under this section  
10 within 30 days of the date of the request.

11 (14) Accumulated unused sick leave reported by an employer to PERS upon a  
12 member's retirement, as provided in ORS 238.350, may not be made available to a  
13 retired member returning to employment under sections (2) or (9) of this rule.

14 (15) Subsections (4)(c) and (4)(d) of this rule are repealed effective January 2, 2026.

15 (16) Subsection (4)(e) of this rule is repealed effective June 30, 2023.

16 (17) A member who is retired for service maintains their status as a retired member  
17 of the system, and does not accrue additional benefits during the period of employment.  
18 A retired member may not participate in the pension program or the Individual Account  
19 Program as an active member, except as provided by ORS 238.092(1) or 237.650.

20 (18) For calendar years 2020 through 2024, a public employer employing a retired  
21 member shall apply the employer's *[net]* contribution rate for its covered payroll to the  
22 wages paid to the retired member. The public employer shall make a payment to the  
23 Public Employees Retirement Fund in that amount. This payment is in addition to the  
24 employer's contribution required under ORS 238.225, and will be applied to the

1 employer’s liabilities, including pension benefit costs and retiree medical benefit costs. If  
2 the employer is a member of a pool established under ORS 238.227, the additional  
3 payment will be applied to the employer’s rate pool’s liabilities.

4 (19) For calendar years 2020 through 2024, the limitations on employment in section  
5 (2) of this rule do not apply to a retired member unless the member retired under the  
6 provisions of ORS 238.280(1), (2), or (3), and does not have a bona fide retirement.

7 (20) For calendar years 2020 through 2024, if the member retired under the  
8 provisions of ORS 238.280(1), (2), or (3), and does not have a bona fide retirement, the  
9 member is subject to the limitations on employment in section (2) of this rule.

10 (21) Sections (18), (19), and (20) of this rule are repealed effective January 2, 2025.

11 Stat. Auth.: ORS 238.650 & ORS 238.630

12 Stats. Implemented: ORS 238.078, ORS 238.082, ORS 238.088, ORS 238.092, ORS  
13 399.075, 2007 OL Ch. 499 & 774, 2015 OL Ch. 108 & 475, 2018 OL Ch. 48 & 2019 OL  
14 Ch. 355

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 080 – OPSRP INDIVIDUAL ACCOUNT PROGRAM**

1   **459-080-0400**

2   **Employee Pension Stability Account (EPSA)**

3       (1) The Employee Pension Stability Account (EPSA) is a member account under the  
4   IAP as established in ORS 238A.353. A portion of the member contributions is credited  
5   to the member's EPSA when the member's monthly salary exceeds the threshold amount  
6   and the system funded status is below 90%.

7       (2) The monthly salary threshold amount:

8       (a) Is [*\$2,535 for calendar year 2021*] **\$3,333 for calendar year 2022;**

9       (b) Includes salary from all PERS covered employment during the calendar month;

10   and

11       (c) Is determined based on the date the salary is paid except for retroactive salary  
12   payments, which are allocated to the period when the salary was earned or would have  
13   been earned.

14       (3) Though part of the IAP, EPSA funds are not invested in target date funds. EPSA  
15   funds are held in a separate member account that will be credited annually with earnings  
16   or losses in accordance with OAR 459-007-0005. There is no guaranteed rate of return on  
17   a member's EPSA.

18       (4) Unless withdrawn prior to earliest retirement age, a member's EPSA will be  
19   applied to the cost of the member's retirement or other pension benefit attributable to  
20   service on and after July 1, 2020. The portion of the member's benefit attributable to  
21   service on and after July 1, 2020 will be determined by dividing the number of months of  
22   service after July 1, 2020 by the total months of service.



1           (5) If the amount in the EPSA exceeds the cost of the pension or other retirement  
2 benefits that are payable to the member or the member’s beneficiary determined  
3 according to section (4) of this rule, the board shall pay the excess amounts in a lump  
4 sum to the member or the member’s IAP beneficiary.

5           Stat. Auth.: ORS 238A.450

6           Stats. Implemented: ORS 238A.050, [238A.330, OL 2021, Ch. 298](#), OL 2019, Ch.  
7 355, Sec. 2, & OL 2018, Ch. 118

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 080 – OPSRP INDIVIDUAL ACCOUNT PROGRAM**

1   **459-080-0500**

2   **Limitation on Contributions**

3       (1) For purposes of this rule, “annual addition” has the same meaning given the term  
4   in 26 U.S.C. 415(c)(2).

5       (2) Except as otherwise provided in this rule, the annual addition to a member  
6   account for any calendar year may not exceed [~~\$58,000~~] \$61,000 effective January 1,  
7   ~~[2021]~~ 2022.

8       (3) If a payment of employee contributions for a period of military service is made  
9   under OAR 459-080-0100:

10      (a) The payment shall be allocated as an annual addition to the calendar year(s) of  
11   military service to which it relates; and

12      (b) For the purpose of determining the amount of the payment under this section, the  
13   member’s compensation shall be determined under OAR 459-080-0100(3)(d).

14      Stat. Auth.: ORS 238A.450

15      Stats. Implemented: ORS 238A.370

## Administrative Rulemaking

1. Notice of Oregon Savings Growth Plan Rules
2. Notice of Salary and Contribution Limits Rules
3. Notice of Document Submission Requirements Rules
4. First Reading of Rules to Implement SB 112
5. Adoption of 2021 Legislative Implementation Rules
6. Adoption of Benefits-In-Force Earnings Crediting Rule



# Oregon

Kate Brown, Governor

## Public Employees Retirement System

Headquarters:  
11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
Mailing Address:  
P.O. Box 23700  
Tigard, OR 97281-3700  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

January 31, 2022

TO: Members of the PERS Board  
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section  
SUBJECT: Notice of Rulemaking for Document Submission Requirements Rules:  
OAR 459-005-0210, *Transmittal of Reports and Documents*  
OAR 459-001-0010, *Filing Papers* (repeal)

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Modify rule to incorporate additional methods for submission of appeals documents.
- Policy Issue: None identified.

### BACKGROUND

OAR 459-001-0010 provides guidance on how filing papers such as petitions, written requests, or other documents related to the appeal of a staff or board action may be submitted to PERS. The rule has not been updated since 2000, and does not allow the submission of appeals documents by fax or email, even though PERS current practice does allow for such methods of transmittal. The proposed repeal of OAR 459-001-0010 and amendments to 459-005-0210 align the rules with PERS current practice.

OAR 459-005-0210 provides guidance on the acceptable methods of transmitting information, reports and documents. The proposed rule amendments clarify that filing papers related to an appeal of a staff or board action under OAR 459-001-0030, 459-001-0032, or 459-001-0035 are included as “documents” covered under the rule. However, subpoenas, garnishments, summons, and other legal documents that require service on PERS continue to be excluded as “documents” under the rule. Service of such documents remain subject to applicable law.

The proposed amendments also address staff concerns related to the submission of unsolicited emails to PERS that could contain confidential information. PERS discourages email submissions that contain confidential information and the rule provides information on protected disclosures and warns members of potential risks from email transmissions, and inadvertent public record disclosures.

OAR 459-001-0010 is being repealed because it becomes redundant with the amendments to OAR 459-005-0210.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held remotely on February 22, 2022, at 2:00 p.m. The public comment period ends March 1, 2022, 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 board need not adopt the rule modifications.

Benefit: Members and staff will benefit from the updated submission requirements for filing documents.

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

RULEMAKING TIMELINE

January 28, 2022	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 31, 2022	PERS Board notified that staff began the rulemaking process.
February 1, 2022	Secretary of State publishes the Notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
February 22, 2022	Rulemaking hearing to be held remotely at 2:00 p.m.
March 1, 2022	Public comment period ends at 5:00 p.m.
March 28, 2022	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A rulemaking hearing will be held remotely on February 22, 2022. The rule is scheduled to be brought before the PERS Board for adoption at the March 28, 2022 board meeting.

B.3. Attachment 1 - 459-005-0210, *Transmittal of Reports and Documents*

B.3. Attachment 2 - 459-001-0010, *Filing Papers* (repeal)

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

1 459-005-0210

2 *[Transmittal]* Transmission of Information, Reports, and Documents

3 (1) As used in this rule:

4 (a) “Deferred Compensation Program” means the Oregon Savings Growth Plan  
5 (OSGP), the PERS Board as Trustee of the OSGP, the PERS Director as  
6 Administrator of the OSGP, and any OSGP staff member.

7 (b) “Document” means any document that is not specifically excluded under  
8 sections (3) and (8) of this rule, including, but not limited to, any petition, written  
9 request, or other document related to the appeal of a staff or Board action under  
10 OAR 459-001-0030, 459-001-0032, or 459-001-0035.

11 (c) “PERS” means the PERS Board, the PERS Director, the PERS Health  
12 Insurance Program which is administered by PERS under ORS Chapter 238, and  
13 any PERS staff member.

14 *[Except for the transmission of a remittance, a payment, a remittance advice or a*  
15 *payment advice as provided in OAR 459-005-0215, reports and documents sent to PERS*  
16 *shall be transmitted as follows:]*

17 *[(1)]* (2) Unless otherwise provided for in this rule, information, reports, or  
18 documents may be transmitted to PERS or the Deferred Compensation Program [in]by  
19 personal delivery or by use of:

20 (a) The United States Postal Service (USPS);

21 (b) A private express carrier as defined in ORS 293.660(2);

22 (c) Telephonic facsimile communication (fax);

1 (d) Electronic mail through the Internet (email); or

2 (e) *[By use of the]* PERS' Online Member Services (OMS) *[web site on the*  
3 *Internet]*;

4 (f) Other sources approved by the Director for the transmission of reports or  
5 documents.

6 ~~[(2)]~~(3) The following original documents shall be accepted by PERS or the Deferred  
7 Compensation Program only if transmitted in person, or by use of USPS or by private  
8 express carrier:

9 (a) Contracts and Agreements pertaining to the merger or integration of other  
10 retirement systems into PERS.

11 (b) Any request by a member for confidential information under provisions of ORS  
12 192.355(12).

13 (c) Subpoenas, garnishments, summons, and other legal documents that require  
14 service on PERS. These documents will not be accepted unless they are served in  
15 accordance with applicable law.

16 ~~[(3)]~~(4) The following standards shall be observed when transmitting any  
17 information, report, or document to PERS or the Deferred Compensation Program by fax  
18 or email. Failure to comply with these standards shall result in the PERS or the Deferred  
19 Compensation Program not accepting the information, report, or document:

20 (a) The quality of the original hard copy shall be clear and dark enough to transmit  
21 legibly.

22 (b) Any information, report, or document requiring signature shall be signed prior to  
23 being transmitted.

1 (c) If PERS or the Deferred Compensation Program requests the transmission of  
2 a specific form, the transmission *[Any report or document transmitted]* shall be on forms  
3 furnished by PERS or the Deferred Compensation Program or substitute forms previously  
4 approved by PERS or the Deferred Compensation Program, respectively.

5 (d) Any PERS or Deferred Compensation Program report or form shall be completed  
6 as required in PERS instructions.

7 (e) If PERS or the Deferred Compensation Program requests the transmission of  
8 a report or document that is part of a longer report or document, or contains  
9 multiple pages, then *[T]* the entire text of the report or document must be transmitted.

10 Both sides of any two-sided PERS or Deferred Compensation Program form are to be  
11 transmitted.

12 (f) For a report or document that requires accompanying documentation, all  
13 components shall be transmitted together as one transmission.

14 (g) The first sheet of the transmission shall indicate the number of pages being  
15 transmitted, and shall contain a telephone number to call if there are problems with the  
16 transmission.

17 (h) Neither the original nor any additional copies of the facsimile filings should be  
18 filed with PERS.

19 (i) The sender shall maintain the original of the document with the original  
20 notarization or signature affixed, as well as proof of fax transmission.

21 *[(4)](5)* PERS or the Deferred Compensation Program may require the original, or a  
22 certified copy of the original, where a question of authenticity arises.

23 *[(5)](6)* State regulations require encrypted messaging systems for  
24 communicating confidential information such as date of birth, Social Security



1 number, or personal medical information. Because email communications for PERS  
2 and the Deferred Compensation Program are not encrypted, it is PERS' policy to not  
3 use email for sharing confidential information. Only *[requests for]* information,  
4 reports, or documents *[regarding PERS or the Deferred Compensation Program,]* not  
5 otherwise protected under the provisions of ORS 192.355, which do not contain  
6 confidential information, may be transmitted by email *[through the Internet]*. If  
7 confidential information is transmitted by email to PERS or the Deferred  
8 Compensation Program, PERS cannot guarantee that such information may not be  
9 intercepted and read by other parties besides the person to whom it is addressed.

10 (7) Information, reports, or documents submitted to PERS or the Deferred  
11 Compensation Program may become a public record. Public records may be subject  
12 to public inspection and copying, if not otherwise protected by federal or state law.

13 (8) This rule does not address the transmission of a remittance, a payment, a  
14 remittance advice or a payment advice, which is addressed in OAR 459-005-0215.

15 Stat. Auth.: ORS 238.650

16 Stats. Implemented: ORS 192.355, 238.005 - 238.750, 243.435, and 243.470

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

1 ***[459-001-0010***

2 ***Filing Papers***

3 *(1) Notwithstanding OAR 459-005-0210, all petitions, written requests, documents*  
4 *or other papers, related to the appeal of a staff or Board action, that are required to be*  
5 *filed with, or which a person desires to submit to, the Board or the Director, shall be*  
6 *personally delivered or mailed to the Director of the Public Employees Retirement*  
7 *System, 11410 SW 68th Parkway, Tigard, OR 97223-8680, or P.O. Box 23700, Tigard,*  
8 *OR 97281-3700.*

9 *(2) A filing shall be effective upon personal service or actual receipt in the office of*  
10 *the Director in accordance with OAR 459-005-0220.*

11 *Stat. Auth.: ORS 183.341 & 238.650*

12 *Stats. Implemented: ORS 238.005 - 238.715 & 237.410 - 237.620]*

## Administrative Rulemaking

1. Notice of Oregon Savings Growth Plan Rules
2. Notice of Salary and Contribution Limits Rules
3. Notice of Document Submission Requirements Rules
4. First Reading of Rules to Implement SB 112
5. Adoption of 2021 Legislative Implementation Rules
6. Adoption of Benefits-In-Force Earnings Crediting Rule



# Oregon

Kate Brown, Governor

## Public Employees Retirement System

Headquarters:  
11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
Mailing Address:  
P.O. Box 23700  
Tigard, OR 97281-3700  
888-320-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

January 31, 2022

TO: Members of the PERS Board

FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section

SUBJECT: First Reading of Rules to Implement SB 112 (2021):  
OAR 459-005-0020, *Determination of Employee or Non-Employee Status*  
OAR 459-010-0030, *Determination of Employee Status (repeal)*  
OAR 459-010-0032, *Determination of Independent Contractor Status (repeal)*

### OVERVIEW

- Action: None. This is first reading of the SB 112 rules.
- Reason: Implement 2021 legislation impacting PERS.
- Policy Issue: None identified.

### BACKGROUND

Senate Bill (SB) 112 became effective on June 1, 2021. It is a PERS-sponsored bill to establish that common-law employees are included within the definition of “employee” under ORS 238.005(8) and “eligible employee” under ORS 238A.005(4). As promised during legislative committee hearings, PERS convened a work group of interested employee and employer stakeholders to address the agency’s implementation of SB 112 and associated rulemaking.

The proposed rule seeks to accomplish three things. First, PERS currently has two administrative rules regarding determination of employee or independent contractor status. The existing rules, OAR 459-010-0030 and 459-010-0032, are part of Division 10, which is generally applicable to the Chapter 238 Programs, and therefore does not explicitly apply to OPSRP members. The proposed rulemaking repeals these existing rules and combines them into one new rule in Division 5 (Administration), which covers all programs. The combining of the rules is appropriate because a single legal standard applies to determining whether a person is an employee or independent contractor.

Second, in determining whether an individual is an employee for PERS purposes, PERS uses the current IRS standard for analyzing employment status under common law, but the current rules contain an outdated description of the IRS standard used. The proposed rule updates the categories and factors to be considered in this analysis to align with current IRS standards.

Third, the proposed rule establishes standards for presuming employment status based on employer tax reporting and also establishes a framework for how PERS will review claims of employment misclassification.

The proposed rule, OAR 459-005-0020, incorporates stakeholder feedback received through the work group. PERS has subsequently received public comments expressing concern with the work group process and noting that the proposed rule does not necessarily reflect a consensus of

the work group. Based on these comments, staff will reconvene the work group for further review, feedback, and refinement of the proposed rule as needed before seeking adoption by the PERS Board.

#### PUBLIC COMMENT AND HEARING TESTIMONY

No rulemaking hearing was held because the PERS building is closed to the public. The first public comment period ended on December 23, 2021, at 5:00 p.m. In an email dated December 23, 2021, PERS received public comments on behalf of the PERS Coalition. The comments expressed concern about the workgroup process and noted that the proposed rule did not reflect a consensus of the workgroup. As a result, staff seek to reconvene the workgroup to continue development of these rules before adoption by the board. Due to additional rule modifications, the public comment period has been extended until March 7, 2022, 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: Yes, changes are necessary to bring the rules in line with changes or additions to statute made by the 2021 legislature.

Benefit: Updates the rules to reflect recent legislative changes and provides clarification on the agency's administration of the plan.

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

#### RULEMAKING TIMELINE

December 1, 2021	Staff began the rulemaking process by filing a Notice of Rulemaking with the Secretary of State.
December 1, 2021	Secretary of State published the Notice in the Oregon Administrative Rules Database. Notice was sent to employers, legislators, and interested parties. Public comment period began.
December 3, 2021	PERS Board notified that staff began the rulemaking process.
December 23, 2021	First public comment period ended at 5:00 p.m.
January 28, 2022	Staff extended the public comment period by filing a second Notice of Rulemaking with the Secretary of State.
January 31, 2022	First reading of the rules.
March 7, 2022	Second public comment period ends at 5:00 p.m.

March 28, 2022

Board may adopt the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

The extended public comment period will end on March 7, 2022. The rules are scheduled to be brought before the PERS Board for adoption at the March 28, 2022 board meeting.

B.4. Attachment 1 - 459-005-0020, *Determination of Employee or Non-Employee Status*

B.4. Attachment 2 - 459-010-0030, *Determination of Employee Status* (repeal)

B.4. Attachment 3 - 459-010-0032, *Determination of Independent Contractor Status* (repeal)

B.4. Attachment 4 - Public Comment Email from PERS Coalition

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

1 459-005-0020

2 Determination of Employee or Non-Employee Status

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

4 (a) “Employee” means:

5 (A) For a Tier One or Tier Two member, an individual who meets the definition  
6 of “employee” provided in ORS 238.005 and OAR 459-005-0001(14), and includes  
7 an individual who has the status of a common-law employee of a public employer,  
8 under the usual common law rules applicable in determining the employer-  
9 employee relationship.

10 (B) For an OPSRP member, an individual who meets the definition of “eligible  
11 employee” provided in ORS 238A.005 and OAR 459-005-0001(14), and includes an  
12 individual who has the status of a common-law employee of a public employer,  
13 under the usual common law rules applicable in determining the employer-  
14 employee relationship.

15 (b) “Independent contractor” means an individual or business entity providing  
16 services to a public employer where the public employer has the right to control or  
17 direct only the result of the labor or service, and not the means and manner of  
18 providing the labor or service.

19 (c) “Non-employee” means an individual who does not meet the “employee”  
20 definition provided in this rule, even though they may provide services to a public  
21 employer, because they are not subject to the public employer’s control as to the  
22 means and manner of providing the labor or service. “Non-employee” includes an

1 “independent contractor,” or an individual who is an employee of a third-party firm  
2 or service provider.

3 (d) “Third-party firm or service provider” means a business that provides  
4 individuals to a public employer who provide services to the public employer as part  
5 of a service contract.

6 (2) Reporting Requirement. Public employers shall report all employees to  
7 PERS as required under OAR 459-070-0100.

8 (3) Determination of whether an individual is an employee eligible for PERS  
9 benefits, or a non-employee not eligible for PERS benefits, is made under common-  
10 law rules.

11 (a) An individual is presumed to be an employee of a public employer if the  
12 public employer reports the individual’s wage and tax information to the Internal  
13 Revenue Service via Form W-2.

14 (b) An individual is presumed to be a non-employee if the public employer does  
15 not report the individual’s wage and tax information to the Internal Revenue  
16 Service via Form W-2.

17 (A) A non-employee is presumed to be an independent contractor of a public  
18 employer if the public employer reports payments for the individual or business  
19 entity’s services to the Internal Revenue Service via Form 1099.

20 (B) A non-employee is presumed to be an employee of a third-party firm or  
21 service provider if a third-party firm or service provider reports the individual’s  
22 wage and tax information to the Internal Revenue Service via Form W-2.



1 (4) PERS will rely on a public employer’s worker classification of an individual  
2 based upon sections (2) and (3) of this rule. However, if a claim of worker  
3 misclassification is raised in a dispute under ORS 238.285, a dispute under ORS  
4 238.450, an appeal by an individual under OAR 459-001-0030, or an appeal by an  
5 employer under OAR 459-001-0032, a public employer, or the individual who  
6 provided services to a public employer, may rebut the presumption of employee or  
7 non-employee status in section (3) of this rule by providing to PERS the following  
8 documentary evidence:

9 (a) A judgment, court order, Internal Revenue Service Form SS-8  
10 determination, or other Internal Revenue Service ruling that concludes that the  
11 appropriate classification for the individual who provided services to a public  
12 employer differs from the presumptions in section (3) of this rule;

13 (b) Other records satisfactory to PERS that establish that the appropriate  
14 classification for the individual who provided services to a public employer differs  
15 from the presumptions in section (3) of this rule.

16 (5) If a public employer, or the individual who provided services to a public  
17 employer, submits documentary evidence to rebut the presumption of employee or  
18 independent contractor status as required under section (4) of this rule, PERS shall  
19 evaluate such evidence to determine whether an individual is an employee or non-  
20 employee of the public employer under common-law rules.

21 (6) To determine an individual’s worker classification, PERS shall follow the  
22 three-category common-law analysis, in accordance with standards established by

1 the Internal Revenue Service. The three categories of evidence of control or  
2 independence are:

3 (a) Behavioral control. This category examines facts that show whether a public  
4 employer has a right to direct and control the work performed by the individual,  
5 even if that right is not exercised. Facts to be considered in evaluating behavioral  
6 control include, but are not limited to:

7 (A) Instructions. This includes the type, degree, and frequency of instructions  
8 given to the individual concerning when, where, and how the work is performed.

9 Relevant factors may include, but are not limited to:

10 (i) Setting hours of work;

11 (ii) Requiring full-time work;

12 (iii) Setting the order or sequence of work;

13 (iv) Requiring that the work be performed on the public employer’s premises;

14 and

15 (v) Requiring the services to be rendered personally by the individual, and  
16 restricting the individual’s ability to hire, supervise, or pay assistants to complete  
17 the work.

18 (B) Evaluation systems. This includes the type, degree, and frequency of  
19 evaluations. Relevant factors may include, but are not limited to:

20 (i) Requiring the individual to submit regular oral or written reports to the  
21 public employer;

22 (ii) Whether evaluation systems are used to measure how the work is done, or  
23 only the final work product (without regard to how the work is done); and

1 (iii) Whether the public employer or a third-party is performing the evaluation.

2 (C) Training. This includes the type, degree, and frequency of training an  
3 individual receives from the public employer. Relevant factors may include, but are  
4 not limited to:

5 (i) Providing training on how to do the job, or other training opportunities;

6 (ii) Frequency of training opportunities;

7 (iii) Whether the public employer or a third-party is providing the training; and

8 (iv) The source of funding for the training.

9 (b) Financial control. This category examines facts that show whether a public  
10 employer has the right to control the economic aspects of the individual's labor or  
11 services. Facts to be considered in evaluating financial control include, but are not  
12 limited to:

13 (A) Whether the public employer furnishes the tools and equipment used to  
14 perform the work;

15 (B) Whether the public employer is responsible for obtaining all assumed  
16 business registrations, professional occupation licenses, or certificates required by  
17 state or local government ordinances for the individual to conduct business;

18 (C) Whether the individual is reimbursed for business and/or travel expenses;

19 (D) The extent to which the individual can realize a personal profit or loss;

20 (E) Whether the individual's services are available to the public;

21 (F) Whether the individual may provide labor or services to more than one  
22 employer at a time; and

1 (G) Whether the public employer pays the individual wages on a regular  
2 schedule, upon completion of a job, on a lump-sum or straight commission basis, or  
3 on an annual or periodic retainer basis.

4 (c) Relationship of the parties. This category examines facts that show how the  
5 individual and public employer perceive their relationship to each other. Facts to be  
6 considered in evaluating the relationship of the parties include, but are not limited  
7 to:

8 (A) The terms of any written contracts that describe whether the employer has  
9 the legal right to control both the method and the result of the labor or service.  
10 Other important factors include who can modify the contracts, and how  
11 modifications are made to such contracts;

12 (B) Whether the public employer provides employee benefits to the individual;

13 (C) Whether the individual provides services on an ongoing basis, or whether  
14 the relationship ends once the labor or services are completed;

15 (D) The extent to which the individual is integrated into the public employer's  
16 business activities;

17 (E) Whether the individual's services are a key activity of the public employer's  
18 business; and

19 (F) Whether the public employer or the individual have the right to discipline,  
20 discharge, or terminate the relationship before services are completed, and the  
21 consequences of discipline, discharge, or termination.

22 (7) Other important considerations.

1        (a) Standard of review. The employee or non-employee determination will be  
2 based upon the totality of the circumstances. The degree and importance of each  
3 factor will vary depending on the labor or services to be performed, and the context  
4 in which the labor or services are performed.

5        (b) If, under the common-law rules, PERS determines that there is an  
6 employee/employer relationship, it is immaterial how the relationship is described  
7 by the parties. The substance of the relationship, not the label, governs the  
8 individual’s status for PERS purposes. PERS will disregard any contractual  
9 designation of the individual as an “independent contractor” or “non-employee” if  
10 the facts demonstrate an employee/employer relationship.

11       (c) A non-employee who provides services to a public employer shall be  
12 reported to PERS as a common-law employee of the public employer if an analysis  
13 under this rule results in the finding of an employee/employer relationship between  
14 the individual and the public employer.

15       (A) If an employee of a third-party firm or service provider is determined to be  
16 a common-law employee of a public employer, the third-party firm or service  
17 provider shall disclose all information regarding an employee’s wages that is  
18 reasonably necessary to enable a public employer to make PERS contributions.

19       (B) If a public employer is not able to obtain information regarding the  
20 employee’s wages from the third-party firm or service provider, the employee shall  
21 submit to the board any payroll and tax records relating to the services provided to  
22 the public employer and the board shall fix a wage which shall be the basis for  
23 computing the amounts of the contributions. If the employee provided services to

1 multiple employers, adjustments will be made to reflect the actual hours of service  
2 provided to the public employer responsible for the PERS contributions.

3 (d) For purposes of determining whether an individual provides services as an  
4 independent contractor, the creation or use of a business entity, such as a  
5 corporation or limited liability company, by an individual for the purpose of  
6 providing services does not, by itself, establish that the individual provides services  
7 as an independent contractor. When the individual provides services through a  
8 business entity, such as a corporation or a limited liability company, services as an  
9 independent contractor may be satisfied by the individual or the business entity.

10 Stat. Auth.: ORS 238.650

11 Stats. Implemented: ORS 238.005

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

1 **[459-010-0030]**

2 **[Determination of Employee Status ]**

3 *[(1) The term "employee" shall have the same meaning as provided in ORS 238.005 and*  
4 *OAR 459-005-0001(14).]*

5 *[(2) Determination of whether an individual is an employee is made under common-law*  
6 *rules. Under common-law rules, every individual who performs labor or services subject to the*  
7 *direction and control of an employer, both as to what must be done and how it must be done, is*  
8 *an employee. It does not matter that the employer allows the employee discretion and freedom of*  
9 *action, so long as the employer has the legal right to control both the method and the result of*  
10 *the labor or services, resulting in an employee/employer relationship.]*

11 *[(3) If, under the common-law rules, there is an employee/employer relationship, it makes*  
12 *no difference how it is described. It is not controlling whether the employee is called an*  
13 *employee. It is not controlling how the payments are measured, how they are made, or what they*  
14 *are called. It is not controlling whether the individual is employed full time or part time. There is*  
15 *no distinction made between classes of employees. Superintendents, executives, managers,*  
16 *supervisors, and other supervisory personnel are all employees.]*

17 *[(4) In applying the common-law rules, the 20-factor test as described in Internal Revenue*  
18 *Service Ruling 87-41 shall be used in determining whether or not an individual is an employee.*  
19 *The degree of importance of each factor varies depending on the labor or services to be*  
20 *performed and the context in which the labor or services are performed. The 20 factors are:]*

21 *[(a) Instructions;]*

22 *[(b) Training;]*

- 1 *[(c) Integration;]*
- 2 *[(d) Services Rendered Personally;]*
- 3 *[(e) Hiring, Supervising, and Paying Assistants;]*
- 4 *[(f) Continuing Relationship;]*
- 5 *[(g) Set Hours of Work;]*
- 6 *[(h) Full Time Required;]*
- 7 *[(i) Doing Work on Employer's Premises;]*
- 8 *[(j) Order of Sequence Set;]*
- 9 *[(k) Oral or Written Reports;]*
- 10 *[(l) Payment by Hour, Week, Month;]*
- 11 *[(m) Payment of Business and/or Traveling Expenses;]*
- 12 *[(n) Furnishing of Tools and Materials;]*
- 13 *[(o) Significant Investment;]*
- 14 *[(p) Realization of Profit or Loss;]*
- 15 *[(q) Working for More than One Employer at a Time;]*
- 16 *[(r) Making Service Available to General Public;]*
- 17 *[(s) Right to Discharge; and]*
- 18 *[(t) Right to Terminate.]*
- 19 *[Stat. Auth.: ORS 238.650]*
- 20 *[Stats. Implemented: ORS 238.005(7)]*



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

1 **[459-010-0032**

2 ***Determination of Independent Contractor Status]***

3 *[(1) An individual who qualifies as an employee under OAR 459-010-0030 is not an*  
4 *independent contractor. Unless it is clearly established under this rule that a person is an*  
5 *independent contractor, that person shall be deemed to be an employee.]*

6 *[(2) An individual or business entity is an independent contractor if the employing entity has*  
7 *the right to control or direct only the result of the labor or service and not the means and*  
8 *methods accomplishing the labor or services. The terms of the contract and the actual*  
9 *arrangement under which labor or services are performed will determine whether an individual*  
10 *or a business entity is subject to direction and control. When the elements of direction and*  
11 *control are present in determining the means and methods of performing labor or service as*  
12 *provided in OAR 459-010-0030, any disclaimers to the contrary are not binding for the purpose*  
13 *of determining an employee/employer relationship by the system.]*

14 *[(3) In determining whether or not an individual is an independent contractor, the following*  
15 *factors shall be considered. The degree of importance of each factor varies depending on the*  
16 *labor or service to be performed and the context in which the labor or service are performed:]*

17 *[(a) Labor or service are performed only pursuant to written contracts;]*

18 *[(b) The individual or business entity assumes financial responsibility for defective*  
19 *workmanship or for service not provided as evidenced by the ownership of performance bonds,*  
20 *warranties, errors and omission insurance, or liability insurance relating to the labor or services*  
21 *to be provided;]*

1        *[(c) The individual or business entity providing labor or service furnishes the tools,*  
2 *equipment, and supplies necessary for performance of the contracted labor or services; or has a*  
3 *significant investment in the facilities used in performing the labor or services;]*

4        *[(d) Payment for labor or service is made upon completion of the performance of specific*  
5 *portions of the project or is made on the basis of an annual or periodic retainer. Normal*  
6 *expenses incurred as part of providing labor or service are included in the stipulated payment*  
7 *and are not reimbursed by the employing entity as a routine cost of doing business;]*

8        *[(e) The individual or business entity providing labor or services has the authority to hire*  
9 *and fire employees to perform the labor or services. The individual or business entity is not*  
10 *required to perform the labor or services personally; but may subcontract part or all of the labor*  
11 *or service to be performed to another party;]*

12        *[(f) Labor or services are performed for two or more different persons and/or business*  
13 *entities concurrently within a period of one year;]*

14        *[(g) The individual or business entity providing labor or services is responsible for*  
15 *obtaining all assumed business registrations, professional occupation licenses, or certificates*  
16 *required by state or local government ordinances for the individual or business entity to conduct*  
17 *business;]*

18        *[(h) The individual or business entity actively advertises the availability of the labor or*  
19 *services and represents to the public that the labor and services are to be provided by an*  
20 *independently established business. The following are evidence of “actively advertising”:]*

21        *[(A) Commercial advertising or business cards as is customary in operating similar*  
22 *businesses are purchased for the business, or the individual or business entity has a trade*  
23 *association membership;]*

1        *[(B) Telephone listing and service are used for the business that is separate from the*  
2 *personal residence listing and service used by an individual who performs the labor or services.]*

3        *[(i) Federal and state income tax returns in the name of the business or a business Schedule*  
4 *C or farm Schedule F as part of the person income tax return were filed for the previous year if*  
5 *the individual or business entity performed labor or services as an independent contractor in the*  
6 *previous years.]*

7        *[(4) An individual represented as a Professional Corporation or a sole proprietorship shall*  
8 *qualify as an independent contractor providing the criteria of this rule are met and the element*  
9 *of direction and control in OAR 459-010-0030 are not present.]*

10        *[Stat. Auth.: ORS 238.650]*

11        *[Stats. Implemented: ORS 238.005]*

## RIVAS Daniel \* PERS

---

**From:** Aruna Masih <aruna@bennetthartman.com>  
**Sent:** Thursday, December 23, 2021 10:34 AM  
**To:** Chris Geier  
**Subject:** Comments re. OARs Implementing SB 112  
**Attachments:** SB 112 - Legislative History Materials.pdf

Dear Chris,

I write on behalf of the PERS Coalition to provide some comments regarding OAR 459-005-0020 intended to implement SB 112 (2021). The Coalition's concerns relate both to the process followed by PERS to arrive at the version of the OAR included in the notice of rulemaking and to the substance of the rule.

### Process Concerns:

While the PERS Coalition appreciates PERS creating a workgroup to discuss how best to implement SB 112, it is concerning that the draft of the rule shared with the workgroup is significantly different from the version included in the public notice. I see that PERS maintains in the notice that it amended the draft in response to "feedback received through the work group," but PERS failed to share with the workgroup the feedback it received and if/how it intended to incorporate that feedback into the version of the OAR noticed for public comment. A more meaningful and effective workgroup process would have been to bring any feedback received outside the workgroup setting and any intended changes based on that feedback back to the workgroup for additional discussion and input. The agency failed to do that, and therefore, it is important that the PERS Board recognize that the amended version of the rule does not represent the consensus of the workgroup.

### Substantive Concerns:

The rule as amended by PERS without workgroup consensus is problematic in several ways. First, it introduces new terms such as "non-employee" and "third-party firm or service provider" into the OAR that appear nowhere in the statute nor prior agency practice. More importantly, the way the terms are used do not appear to comport with the intent the agency expressed before the legislature which was to bring the agency back to the common law status quo which existed prior to the 2019 EWEB case. *See Attached Materials.* Second, the agency has created a rebuttable presumption based solely on whether the employee receives a W-2 or 1099 which is contrary to the legislative intent that the determination be made based on common law factors. Third, the rule uses vague terminology such as "other records satisfactory to PERS" which provide little guidance to employees or agency personnel involved in any proceeding to rebut the presumption. It is important that PERS rules not be subject to arbitrary administration by the agency.

In short, the PERS Coalition would request that the Board refer the rule back to the Workgroup for additional discussion and revision.

Sincerely,

Aruna Masih



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## Administrative Rulemaking

1. Notice of Oregon Savings Growth Plan Rules
2. Notice of Salary and Contribution Limits Rules
3. Notice of Document Submission Requirements Rules
4. First Reading of Rules to Implement SB 112
5. Adoption of 2021 Legislative Implementation Rules
6. Adoption of Benefits-In-Force Earnings Crediting Rule



# Oregon

Kate Brown, Governor

## Public Employees Retirement System

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January 31, 2022

TO: Members of the PERS Board

FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section

SUBJECT: Adoption of Rules to Implement 2021 Legislation:  
 OAR 459-005-0560, *Required Minimum Distributions, Generally*  
 OAR 459-009-0130, *Employee Contributions for Prior Periods*  
 OAR 459-013-0310, *Payment of Increased Benefits under ORS 238.372 to 238.384*  
 OAR 459-014-0045, *Valid Request for Distribution of Pre-Retirement Death Benefits*  
 OAR 459-080-0020, *Withdrawal of Individual Accounts*

### OVERVIEW

- Action: Adopt rules to implement 2021 legislation.
- Reason: Implement 2021 legislation impacting PERS.
- Policy Issue: None identified.

### BACKGROUND

For the purpose of rulemaking, staff have compiled all the amendments to administrative rules necessary to implement several PERS-related bills enacted during the 2021 Oregon Legislative session.

#### *House Bill 2457*

House Bill (HB) 2457 became effective September 25, 2021. The bill makes amendments to various chapters of the ORS to update connection dates in conformity with the Internal Revenue Code. It also brings PERS statutes in alignment with the new required minimum distribution (RMD) age of 72, as provided by federal SECURE Act of 2019. The new RMD age has been in effect since January 1, 2020.

The proposed revision of OAR 459-005-0560 amends the rule to clarify that members who reached age 70½ before January 1, 2020 are still subject to the original RMD age of 70½, while for members who were not yet 70½ on January 1, 2020, their RMD age is now 72.

The rule was also amended to clarify that a surviving spouse may delay death benefit distributions until the calendar year when the deceased member would have reached the RMD age. The RMD age for the deceased member should be determined as explained above.

#### *House Bill 2875*

HB 2875 became effective September 25, 2021. The bill amends three separate areas of PERS' statutes. First, the bill amended the definition of "firefighter" in ORS Chapters 238 and 238A to

include certain State Fire Marshal employees. Second, the bill amended certain effective dates regarding tax remedy payments. Third, the bill amended loss of membership (LOM) criteria for calendar year 2020 due to the COVID-19 pandemic. Only the tax remedy provisions of the bill require rulemaking.

The proposed revision to OAR 459-013-0310 modifies the effective date for residency status certifications that members may submit to establish eligibility for the tax remedy. The proposed rule also removes references to a December 15 administrative deadline that will be explained in letters provided to affected retirees. Before HB 2875, all residency certifications became effective on January 1 of the calendar year following receipt. After HB 2875, certifications received between January 1 and April 15 of each year are effective no later than the first day of the second calendar month following receipt.

The proposed rule provides that residency certifications received during this period will be effective on the first day of the calendar month following receipt, which is earlier than required by the bill, as staff have determined that this deadline will be the most efficient and feasible to administer. The rule also provides that certifications received on and after April 16 will continue to be effective on January 1 of the calendar year following receipt, as required by statute.

#### *Senate Bill 111*

Senate Bill (SB) 111 is effective January 1, 2022. This is a PERS-sponsored bill that presents revisions to certain provisions of SB 1049 (2019) identified by staff through implementation of that bill, and amends the definition of salary for OPSRP members. In addition, the enacted bill includes amendments addressing the OPSRP salary definition, specifically for Oregon Health & Science University (OHSU) and charter schools, and expands the pre-retirement death benefit option for surviving spouses. Specifically, the bill provides the following changes or clarifications:

- Work after retirement provisions of SB 1049 (2019) – clarifies that all early retirees must be absent from all PERS employment for six months to be eligible to work unlimited hours; removes language from the unlimited hour provisions that requires an hourly limit for Social Security recipients until they attain full Social Security age; and equalizes the unlimited hour standard for Tier One/Tier Two and OPSRP members (Tier One/Tier Two elected officials are still limited under the original SB 1049 language).
  - No administrative rule amendments are necessary for these provisions.
- Member redirect provisions of SB 1049 (2019) - clarify that termination of membership on OPSRP Pension withdrawal applies to all OPSRP members, not just vested members; clarify that the new Employee Pension Stability Account (EPSA) is required to be repaid if a member either elects, or is required, to redeposit their member account; clarifies that a member cannot withdraw their Individual Account Program (IAP) account once they attain earliest retirement age, and; requires the member to have a bona fide separation to be eligible to withdraw their IAP account.
  - To implement the new IAP withdrawal provisions, proposed amendments to OAR 459-080-0020 provide a definition of bona fide separation that is consistent with the current administration of Tier One/Two member account withdrawals and



adds the requirement that the member must not have reached earliest retirement age as of the effective date of withdrawal.

- Employer programs provisions of SB 1049 (2019) - clarifies requirements of application process by removing reference to funds “projected to become” so application cycles can be clearly identified, and removes the misleading “improve the employer’s funded status” from the UAL resolution program language, as pooled employers cannot individually improve their funded status.
  - No administrative rule amendments are necessary for these provisions.
- Coordination of SB 1049 and HB 2417 (both 2019) - clarifies how the new death benefit option provided under HB 2417 will be funded in light of the new EPSA established in SB 1049, and expands the spousal pre-retirement death benefit option to 100% of what the member would receive if the member dies after earliest retirement age.
  - Based on the implementation of the optional spouse death benefit provided for in HB 2417 (2019), staff identified elements of the expanded optional spouse death benefits introduced in SB 111 (2021) that would benefit from clarification in rule. The changes are specific to the benefits provided for in ORS 238 as the OPSRP pre-retirement death benefit is already limited to only spouses and the minimum payment is clearly defined in ORS 238A language.

The proposed rule amendments to OAR 459-014-0045 clarify that in order to be eligible for the optional spouse death benefit under ORS 238.395 the member’s spouse must be the member’s sole beneficiary under ORS 238.390. Additionally, it provides notice to members that PERS will follow the agency’s practice of treating any benefit under \$200/month as an aggregate sum refund.

- Definition of salary for Chapter 238A (OPSRP members) - amends the definition of salary effective January 1, 2020, for OPSRP members so salary earned by a member that is currently non-PERS salary because it is not subject to Oregon State income tax, will still be salary for PERS purposes; specific provisions make the change in salary definition retroactive back to January 1, 2004 for OHSU and charter schools.
  - No administrative rule amendments are necessary for this provision.

### *Senate Bill 113*

SB 113 became effective on June 1, 2021. This is a PERS-sponsored bill that amends ORS 238A.330, 238A.335 and 238A.340 to provide PERS with statutory authority to charge employer earnings on late contributions into the IAP.

The policy and practice of charging employers for earnings on late IAP contributions was formally adopted by the PERS Board upon staff recommendation back in 2006 while establishing rules for the IAP remediation project. However, that adopted policy and practice were not actually reflected in the two administrative rules that were updated at the time (OAR 459-009-0200, Employer Remitting of Employee Contributions and OAR 459-080-0200, IAP Account Adjustments for Earnings or Losses). Additionally, the statutory support for the current agency practice of collecting earnings from employers for late IAP contributions was ambiguous. SB 113 now provides statutory clarity for agency practice.

OAR 459-009-0130 was originally written to only address the administrative process of invoicing employers for required employee contributions under ORS 238.205 and the associated earnings on those contributions due to late payment. The proposed amendments add references to statutory provisions for IAP employee contributions and optional employer contribution. We have also updated the title of this rule from “Employee Contributions for Prior Periods” to “Contributions for Prior Periods” for further clarification.

Lastly, the amendments add a new subsection (2)(b) to address late-submitted contributions under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA). There are special rules for crediting earnings to these contributions and historically PERS has not charged prior-year earnings on late-submitted USERRA contributions. Subsection (2)(b) has been added to make it clear that PERS will also be charging employers for prior-year earnings on late-submitted USERRA contributions for employees returning from uniformed service.

#### PUBLIC COMMENT AND HEARING TESTIMONY

No rulemaking hearing was held because the PERS building is closed to the public. The public comment period ended on December 23, 2021, 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: Yes, changes are necessary to bring the rules in line with changes or additions to statute made by the 2021 legislature.

Benefit: Updates the rules to reflect recent legislative changes and provides clarification on the agency’s administration of the plan.

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

#### RULEMAKING TIMELINE

December 1, 2021	Staff began the rulemaking process by filing a Notice of Rulemaking with the Secretary of State.
December 1, 2021	Secretary of State published the Notice in the Oregon Administrative Rules Database. Notice was sent to employers, legislators, and interested parties. Public comment period began.
December 3, 2021	PERS Board notified that staff began the rulemaking process.
December 23, 2021	Public comment period ended at 5:00 p.m.
January 31, 2022	Board may adopt the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

BOARD OPTIONS

The PERS Board may:

1. Pass a motion to “adopt the rules to implement 2021 legislation, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #1.

B.5. Attachment 1 - 459-005-0560, *Required Minimum Distributions, Generally*

B.5. Attachment 2 - 459-009-0130, *Employee Contributions for Prior Periods*

B.5. Attachment 3 - 459-013-0310, *Payment of Increased Benefits under ORS 238.372 to 238.384*

B.5. Attachment 4 - 459-014-0045, *Valid Request for Distribution of Pre-Retirement Death Benefits*

B.5. Attachment 5 - 459-080-0020, *Withdrawal of Individual Accounts*

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

1 **459-005-0560**

2 **Required Minimum Distributions, Generally**

3 (1) Applicable Law. Distributions under the Public Employees Retirement System  
4 (PERS) shall be made in accordance with Internal Revenue Code (IRC) Section  
5 401(a)(9), including IRC Section 401(a)(9)(G), and the Treasury Regulations and Internal  
6 Revenue Service rulings and other interpretations issued thereunder, including Treasury  
7 Regulation Sections 1.401(a)(9)-1 through 1.401(a)(9)-9. The provisions of this  
8 administrative rule and any other statute or administrative rule reflecting the required  
9 minimum distribution requirements of IRC Section 401(a)(9) shall override any  
10 distribution options that are inconsistent with IRC Section 401(a)(9).

11 (2) Distributions to Members. Each member's entire benefit under PERS shall be  
12 distributed to the member, beginning no later than the required beginning date, over the  
13 member's lifetime (or the joint lives of the member and a designated beneficiary), or over  
14 a period not extending beyond the member's life expectancy (or the joint life expectancies  
15 of the member and a designated beneficiary).

16 (a) Required Beginning Date. For purposes of this section, the "required beginning  
17 date" is April 1 of the calendar year after the later of the following:

18 (A) The calendar year in which the member reaches age 70 1/2 years of age if the  
19 member was born before July 1, 1949, or age 72 if the member was born after June  
20 30, 1949; or

21 (B) The calendar year in which the member retires.

1 (b) Designated Beneficiary. For purposes of this section, a "designated beneficiary"  
2 means any individual designated as a beneficiary by the member. If the member  
3 designates a trust as a beneficiary, the individual beneficiaries of the trust shall be treated  
4 as designated beneficiaries if the trust satisfies the requirements set forth in Treasury  
5 Regulation Section 1.401(a)(9)-4.

6 (c) Calculation of Life Expectancies. For purposes of this section and Chapter 238  
7 benefits and the Pension Program, which are part of the DB component of PERS, life  
8 expectancies shall not be recalculated after the initial determination, unless otherwise  
9 required by Treasury Regulation Section 1.401(a)(9)-5, Q&A-4 and Q&A-5. For  
10 purposes of this section and the Individual Account Program, life expectancies shall be  
11 recalculated but no more frequently than annually, unless otherwise required by Treasury  
12 Regulation Section 1.401(a)(9)-5, Q&A-5.

13 (d) Limitations on Benefit Changes. A retired member who has had a required  
14 beginning date shall not change a beneficiary designation, benefit option election, or any  
15 other designation or election except as permitted under Treasury Regulation Sections  
16 1.401(a)(9)-4 and 1.401(a)(9)-6.

17 (e) Limitations on Conversion of Joint Annuity to Single Life Annuity Following  
18 Divorce. A retired member who has had a required beginning date may elect to convert a  
19 joint and survivor annuity under Option 2A or 3A under Chapter 238 to a single life  
20 annuity by reason of the member's divorce from the joint annuitant, subject to the  
21 provisions of Treasury Regulation Section 1.401(a)(9)-6. This section applies to ORS  
22 Chapter 238 benefits notwithstanding ORS 238.305(5) and 238.325(3).

1 (f) Limitations on Survivor Annuity Elections. Except as otherwise required by a  
2 domestic relation order under ORS 238.465, if a member elects a 100 percent (100%)  
3 joint and survivor annuity (Option 2 or 2A under ORS 238.305(1) and under  
4 238A.190(1)(a)) and designates a nonspouse beneficiary who is more than ten years  
5 younger than the member as calculated under Treasury Regulation Section 1.401(a)(9)-6,  
6 Q&A-2, the benefit shall be actuarially adjusted to provide for a reduced survivor annuity  
7 benefit to the extent necessary to comply with federal requirements for qualified  
8 retirement plans.

9 (g) Limitation on Period-Certain Annuity Election (Chapter 238 only). If a member  
10 elects a 15-year certain option (Option 4 under ORS 238.305(1)), and attains age 85 or  
11 older during the calendar year in which the benefits commence, the benefit shall be  
12 actuarially adjusted to provide for a shorter payout period to the extent necessary to  
13 comply with federal requirement for qualified retirement plans.

14 (h) Limitation on Selection of IAP Benefit Options. Benefit payment options  
15 selected under the Individual Account Program shall be considered as payment options  
16 under a DC plan and must comply with the requirements of Treasury Regulation Section  
17 1.401(a)(9)-5.

18 (3) Distributions to Beneficiaries of Retired Members. If a retired member dies after  
19 annuity benefit payments have begun under Chapter 238 or the Pension Program or other  
20 benefit payments are required to begin under section (2) of this rule, any death benefits  
21 shall be distributed at least as rapidly as under the distribution method being used at the  
22 member's death.

1 (4) Distributions to Beneficiaries of Active and Inactive Members. If an active or  
2 inactive member dies before annuity payments have begun under Chapter 238 or the  
3 Pension Program or other benefit payments are required to begin under section (2) of this  
4 rule, any death benefits shall be distributed by December 31 of the calendar year that  
5 contains the fifth anniversary of the member's death, except as provided in the following:

6 (a) Distributions to Designated Beneficiaries. The five-year rule shall not apply to  
7 any death benefit that is payable to a member's designated beneficiary, if:

8 (A) The benefit is distributed over the designated beneficiary's lifetime or over a  
9 period not extending beyond the designated beneficiary's life expectancy; and

10 (B) The distributions begin no later than December 31 of the calendar year that  
11 contains the first anniversary of the member's death.

12 (b) Distributions to Spouse Designated Beneficiaries. Notwithstanding subsection (a)  
13 of this section, if the designated beneficiary is the member's surviving spouse as defined  
14 by the Internal Revenue Code:

15 (A) The commencement of distributions under subsection (a)(B) of this section may  
16 be delayed until December 31 of the calendar year in which the member would have  
17 reached the age [70 1/2] specified in section (2)(a)(A) of this rule; and

18 (B) If the surviving spouse dies after the member's death but before the distributions  
19 to the spouse have begun, the rules of this section shall apply to any death benefit payable  
20 to any contingent beneficiary as if the spouse were the member. Notwithstanding the  
21 foregoing, however, this subsection shall not apply to any death benefit payable to a  
22 surviving spouse of the deceased member's surviving spouse.

23 (5) The provisions of this rule are effective on January 1, 2003.

1 Stat. Auth.: ORS 238.630, 238.650, 238A.130, 238A.170 & 238A.410

2 Stats. Implemented: ORS 238.005 - 238.715



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

1   **459-009-0130**

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

3       (1) When *[employee ]* contributions under *[(]ORS 238.205[)]*, **ORS 238A.330, ORS**  
4   **238A.335, or ORS 238A.340** are determined by PERS to be required for salary paid in  
5   previous calendar years, or allocated to such years pursuant to ORS 238.005, *[or]*  
6   238A.005 or USERRA, PERS must notify both the employee and the employer of the  
7   amount of contributions required, the pay period and salary for which the contributions  
8   are to be paid, and the information relied upon by PERS in determining that the  
9   contributions are due. The employer must forward the required contributions to PERS.

10       (2) The notice provided under section (1) will also include a determination of the  
11   amount of earnings owed on the contributions, the amount of earnings the employer must  
12   pay, and *[the]* any amount of earnings PERS will pay.

13       (a) In determining the amount of earnings the employer must pay, PERS will not  
14   include earnings attributable to periods after the date the employer submitted the  
15   contributions if:

16       (A) The employer submitted the contributions before PERS sent the notice that they  
17   were owed, and

18       (B) PERS returned or failed to accept the contributions.

19       **(b) Notwithstanding subsection (a) of this section, when an employer is late with**  
20   **a contribution required under USERRA, PERS will charge the employer with**  
21   **earnings that would have been credited to a member's account if the contribution**  
22   **was timely made. For the purpose of applying earnings for prior periods, an**

1 employer is considered late if an employer submits a contribution required under  
2 USERRA after the later of:

3 (A) A date after when contributions are due under 20 CFR §1002.262; or

4 (B) A date after the annual earnings would have been credited to an employee's  
5 account for the calendar year of the member's reemployment.

6 (c) Any earnings paid by PERS will be charged to current year earnings in the year  
7 that the earnings are actually credited to the employee's account.

8 Stat. Auth.: ORS 238.650

9 Stats. Implemented: ORS 238.200 & 238.705

**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 a member, an alternate payee, or a beneficiary.

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

8 (A) The increased benefit percentage(s) for which the member is otherwise  
9 eligible under ORS 238.364, 238.366 and 238.368; and

10 (B) The residency of the beneficiary.

11 (2) PERS will make the following determinations on residency status for the  
12 purpose of determining increased benefit eligibility under ORS 238.372 to 238.384,  
13 based on the yearly Oregon personal income tax return information provided by the  
14 Department of Revenue. Determinations under this section are effective the first day  
15 of the calendar year following receipt of information from the Department of  
16 Revenue.

17 (a) If the Department of Revenue notifies PERS that a person:

18 (A) Filed Oregon personal income tax as a resident, PERS will treat the person as  
19 a resident of Oregon.

20 (B) Filed Oregon personal income tax as a non-resident, PERS will treat the  
21 person as a non-resident of Oregon, except as provided in section (3) below.

1 (C) Did not file Oregon personal income tax, PERS will treat the person as a non-  
2 resident of Oregon, except as provided in section (3) below.

3 (D) Filed Oregon personal income tax as a partial-year resident and the prior year  
4 the person filed personal income tax as a resident, PERS will treat the person as a non-  
5 resident of Oregon, except as provided in section (3) below.

6 (E) Filed Oregon personal income tax as a partial-year resident and the prior year  
7 the person filed personal income tax as a non-resident, PERS will treat the person as a  
8 resident of Oregon.

9 (F) Filed Oregon personal income tax as a partial-year resident and the prior year  
10 the person did not file personal income tax, PERS will treat the person as a resident of  
11 Oregon.

12 (G) Filed Oregon personal income tax as a partial-year resident, and the person  
13 also submitted residency status information on a form provided by PERS and received  
14 by PERS in [between January 1 and December 15 of] the same calendar year, PERS will  
15 determine residency status based on the information provided on the form.

16 (b) If PERS cannot make a residency status determination based on information  
17 provided by the Department of Revenue or the person did not otherwise provide PERS  
18 with residency status information, PERS will treat the person as a non-resident of  
19 Oregon, except as provided in section (3) below.

20 (3) *[Residency status information submitted on a form provided by PERS and*  
21 *received between January 1 and December 15 of the current calendar year will, f]E*or  
22 purposes of determining increased benefit eligibility under ORS 238.372 to 238.384,  
23 residency status information submitted on a form provided by PERS and received

1 **by PERS in the current calendar year will** supersede any Oregon personal income tax  
 2 return information provided by the Department of Revenue pursuant to section (2) of this  
 3 rule.

4 **(4) Residency status forms received by PERS shall be effective as follows:**

5 **(a) The first day of the calendar month following receipt, if received between**  
 6 **January 1 and April 15;**

7 **(b) The first day of the calendar year following receipt, if received on or after**  
 8 **April 16.**

9 ~~[(4)]~~**(5)** Notwithstanding sections (2) and (3) of this rule, PERS will revoke  
 10 increased benefit eligibility and seek repayment if it finds a person has submitted  
 11 fraudulent residency status information under section (2) or (3) of this rule.

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS 238.362, 238.364, 238.366, 238.368 & 238.372 -  
 14 238.384

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 014 – DEATH AND SURVIVOR BENEFITS**

1 459-014-0045

2 Payment of Chapter 238 Pre-Retirement Death Benefits

3 (1) To be eligible for the benefit under ORS 238.395(2), the member's spouse  
4 must be the member's sole beneficiary under ORS 238.390.

5 (2) A beneficiary who elects to receive the optional spouse death benefit under  
6 ORS 238.395(2) will receive actuarially determined monthly payments for life only  
7 when the total monthly amount of their benefit is at least the amount established in  
8 ORS 238.315.

9 Stat. Auth.: ORS 238.650

10 Stats. Implemented: ORS 238.315, 238.390 & 238.395

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 80 – OPSRP INDIVIDUAL ACCOUNT PROGRAM**

1 **459-080-0020**

2 **Withdrawal of Individual Accounts**

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

4 **(a) “Bona fide separation” means a member has been absent from employment**  
5 **with all participating employers, and employers in a controlled group with a**  
6 **participating employer, for at least one full calendar month following the month of**  
7 **separation.**

8 ~~[(a)]~~**(b)** “Controlled group” means a group of employers treated as a single  
9 employer for purposes of maintaining qualified status under federal law.

10 ~~[(b)]~~**(c)** “Effective date of withdrawal” has the same meaning as given the term in  
11 OAR 459-005-0001(10).

12 ~~[(c)]~~**(d)** “Inactive member” has the same meaning given the term in ORS  
13 238A.005(8).

14 ~~[(d)]~~**(e)** “Individual account program” has the same meaning given the term in ORS  
15 238A.005(9).

16 ~~[(e)]~~**(f)** “Individual accounts” means the employee account, Employee Pension  
17 Stability Account, rollover account, and employer account of a member of the Individual  
18 Account Program (IAP) to the extent the member is vested in those accounts under ORS  
19 238A.320.

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

1 (a) The member *[has separated from]* is not employ[ment]ed with *[all]* any  
2 participating employers *[and all]* or any employers in a controlled group with a  
3 participating employer;

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

7 (c) The member has not reached earliest retirement age as of the effective date  
8 of withdrawal;

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

11 *[(d)]* (e) The member complies with the requirements of ORS 238A.375(5).

12 (3) A member may revoke a request for withdrawal of the individual accounts if  
13 PERS receives the member’s written revocation of the request before the earlier of:

14 (a) The date of distribution; or

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

17 (4) A member who withdraws the individual accounts terminates membership in the  
18 IAP as of the effective date of withdrawal.

19 (5) An employer account not included in the withdrawn individual accounts by  
20 reason of the member’s failure to vest in the employer account is permanently forfeited as  
21 of the date of distribution.



1 (6) A member who withdraws the individual accounts *[and is subsequently*  
2 *employed with a participating employer ]* forfeits any service performed by the member  
3 before the separation described in subsection (2)(a) of this rule. Forfeited service will  
4 not be considered for the purpose of vesting in an employer account if subsequently  
5 employed with a participating employer.

6 (7) If a former member who has withdrawn the individual accounts returns to  
7 employment with a participating employer or an employer in a controlled group with a  
8 participating employer before the *[first day of the second calendar month following the*  
9 *month of the separation described in subsection (2)(a) of this rule]* time required for a  
10 bona fide separation, the withdrawal is cancelled and membership is restored. The  
11 member must repay to PERS in a single payment the total amount of all payments  
12 attributable to the withdrawal within 30 days following the effective date of the  
13 employment. Upon receipt by PERS of repayment under this section, account(s) forfeited  
14 under section (5) of this rule and service forfeited under section (6) of this rule are  
15 restored effective the date of distribution. The repayment amount received will be  
16 credited pro rata to the accounts from which the withdrawal amount was derived.

17 (8) If the member fails to repay as provided in section (7) of this rule, PERS shall  
18 take all reasonable steps to recover the repayment amount due, including any interest,  
19 costs, or penalties assessed by PERS, under the provisions of ORS 238.715 and OAR  
20 459-005-0610. Upon receipt by PERS of repayment under this section, account(s)  
21 forfeited under section (5) of this rule, and service forfeited under section (6) of this rule  
22 are restored effective the first day of the month following the date of repayment. The  
23 repayment amount received will be credited pro rata to the accounts from which the

1 withdrawal amount was derived effective the first day of the month following the date of  
2 repayment.

3 Stat. Auth.: ORS 238A.450

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

## Administrative Rulemaking

1. Notice of Oregon Savings Growth Plan Rules
2. Notice of Salary and Contribution Limits Rules
3. Notice of Document Submission Requirements Rules
4. First Reading of Rules to Implement SB 112
5. Adoption of 2021 Legislative Implementation Rules
6. Adoption of Benefits-In-Force Earnings Crediting Rule



# Oregon

Kate Brown, Governor

## Public Employees Retirement System

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11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
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January 31, 2022

TO: Members of the PERS Board  
FROM: Stephanie Vaughn, Manager, Policy Analysis & Compliance Section  
SUBJECT: Adoption of Benefits-In-Force Earnings Crediting Rule:  
OAR 459-007-0005, *Annual Earnings Crediting*

### OVERVIEW

- Action: Adopt Benefits-In-Force earnings crediting rule.
- Reason: Remove cap currently in rule for earnings crediting to the Benefits-In-Force reserve. The OAR is not currently in line with our actual earnings crediting practice.
- Policy Issue: None identified.

### BACKGROUND

The Benefits-In-Force (BIF) Reserve is the reserve established under ORS 238.670(2) and is the reserve from which all Tier One and Tier Two benefits are paid. When a Tier One/Two member retires, staff determines the amount actuarially required to fund the benefit for the member's (and the member's beneficiary, if the member elects a survivorship option) anticipated life expectancy and that amount is transferred to the BIF from the member account and the employer reserves. The current OAR 459-007-0005(16) limits the amount of earnings that can be applied to the BIF to no more than the assumed rate in any given calendar year. This limitation is not required by statute and does not align with our actual earnings crediting practice.

ORS 238.670(2) states that "at the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of periodic actuarial investigations." While the statute provides the board with discretion regarding earnings crediting to the BIF, staff was unable to uncover the origin or purpose of placing a cap on crediting earnings to the BIF.

In order to bring the OAR in line with our practice, the proposed amendment to the rule deletes the words "up to the assumed rate" from the rule to clarify that the application of earnings to the BIF in a calendar year is not limited by the assumed rate.

### PUBLIC COMMENT AND HEARING TESTIMONY

No rulemaking hearing was held because the PERS building is closed to the public. The public comment period ended on December 23, 2021, at 5:00 p.m. We received no public comment on the rule.

### 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.

Benefit: Updates the rule to reflect current practice and provides clarification on the agency’s administrative rule.

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

### RULEMAKING TIMELINE

December 1, 2021	Staff began the rulemaking process by filing a Notice of Rulemaking with the Secretary of State.
December 1, 2021	Secretary of State published the Notice in the Oregon Administrative Rules Database. Notice was sent to employers, legislators, and interested parties. Public comment period began.
December 3, 2021	PERS Board notified that staff began the rulemaking process.
December 23, 2021	Public comment period ended at 5:00 p.m.
January 31, 2022	Board may adopt the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

### BOARD OPTIONS

The PERS Board may:

1. Pass a motion to “adopt the Benefits-In-Force earnings crediting rule, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

### STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #1.

B.6. 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 employer  
15 lump sum payment accounts established under ORS 238.229 shall be credited to the  
16 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 insufficient to  
20 pay for the pro rata share of administrative expenses, those administrative expenses shall  
21 be paid from earnings on other accounts within the Public Employees Retirement Fund  
22 (PERF), if available. If earnings from those accounts within the PERF are insufficient to

1 pay for the administrative expenses, those expenses shall be paid from employer accounts  
2 as required by ORS 238.610. All remaining earnings or losses attributable to the Variable  
3 Annuity Account shall be credited to the participants of that account, as provided under  
4 238.260(6) and (7)(b).

5 (6) Individual Account Program accounts. Earnings on the Individual Account  
6 Program accounts established under ORS 238A.350 shall first be used to pay a pro rata  
7 share of administrative expenses in accordance with ORS 238A.350(1). Losses on  
8 Individual Account Program target date funds shall be increased by a pro rata share of  
9 administrative expenses. After administrative expenses, each Individual Account Program  
10 account established under ORS 238A.350 shall be credited with the earnings or losses of  
11 the specific target date fund to which the account is allocated, except for account balances  
12 allocated to the retirement installments fund, which shall be credited with earnings or  
13 losses on a monthly basis.

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

20 (8) Contingency Reserve.

21 (a) In any year in which total earnings on the Fund equal or exceed the assumed rate,  
22 an amount not exceeding seven and one-half percent of remaining earnings attributable to  
23 Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two regular

1 accounts, judge member regular accounts, the OPSRP Pension Program reserve,  
2 Employee Pension Stability Accounts, the Benefits-in-Force Reserve, employer  
3 contribution accounts, the Capital Preservation Reserve and the Contingency Reserve  
4 shall be credited to the Contingency Reserve to the level at which the Board determines it  
5 is adequately funded for the purposes specified in ORS 238.670(1).

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

9 (9) Tier One Member Rate Guarantee Reserve. All remaining earnings attributable to  
10 Tier One regular accounts, the Tier One Member Rate Guarantee Reserve, judge member  
11 regular accounts, the Benefits-in-Force Reserve, and the Contingency Reserve may be  
12 credited to the Tier One Member Rate Guarantee Reserve established under ORS  
13 238.255(1).

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

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



1 by all remaining earnings attributable to Tier One regular accounts and the Tier One Rate  
2 Guarantee Reserve, then moneys in the Tier One Rate Guarantee Reserve.

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

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

11 (14) Employee Pension Stability Account (EPSA). All remaining earnings or losses  
12 attributable to the EPSAs shall be credited to all active and inactive EPSAs under ORS  
13 238A.353. For administrative expenses:

14 (a) EPSA accounts of Tier One and Tier Two members will be treated as Tier Two  
15 funds.

16 (b) EPSA accounts of OPSRP members will be treated as OPSRP Pension Program  
17 Reserve funds.

18 (15) OPSRP Pension Program Reserve. Remaining earnings attributable to the  
19 OPSRP Pension Program Reserve, the Contingency Reserve, and the Capital Preservation  
20 Reserve may be used to credit the OPSRP Pension Program reserve.

21 (16) Benefits-in-Force Reserve. Remaining earnings attributable to the Benefits-in-  
22 Force Reserve, the Contingency Reserve, the Capital Preservation Reserve and employer  
23 contribution accounts, in that order, shall be used, to the extent available, to credit the

1 Benefits-in-Force Reserve with earnings *[up to the assumed rate]* for that calendar year in  
2 accordance with ORS 238.670(2).

3 (17) Employer contribution accounts. All remaining earnings attributable to  
4 employer contribution accounts shall be credited to employer contribution accounts.

5 (18) Remaining earnings. Any remaining earnings shall be credited to accounts and  
6 reserves in the Fund at the Board’s discretion.

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

8 Stats. Implemented: ORS 238 & 238A.350

## Action and Discussion Items

1. Legislative Preview/Update
2. SB 1049 Update
3. SB 1566 Reporting Requirements
4. Reporting and Funding Overpayments to Members with Data Verification
5. Equal to or Better Than Testing
6. Preliminary 2021 Earnings Crediting and Reserving
7. Update Reflecting on Earnings through December 31, 2021



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Kate Brown, Governor

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January 31, 2022

TO: Members of the PERS Board  
FROM: Heather Case, Senior Policy Advisor  
SUBJECT: Legislative Update/Legislative Concept Preview

### 2022 LEGISLATIVE SESSION

The 2022 legislative session begins Tuesday, February 1, and will end no later than Monday, March 7 without legislative approval to extend. We do not anticipate that PERS will be a topic of discussion, but we're ready to respond, as necessary.

### REPORTING REQUIREMENTS

PERS' latest budget bill, Senate Bill (SB) 5536 (2021), included direction to report to the Joint Committee on Information Management and Technology regarding implementation of SB 1049. This report was submitted and acknowledged by the committee on January 11, 2020. The report contained the following:

- Update on project scope, schedule, budget, and total cost of ownership.
- Identification of costs associated with one-time solutions versus permanent solutions.
- Current project risks, likely impacts, and mitigation strategies.
- Explanation of the delay related to implementing member redirect and associated costs and actuarial impact.
- Independent quality assurance reporting on the project.
- Impact of SB 1049 (2019) information technology project on routine agency operations.
- Whether SB 1049 (2019) is meeting financial objectives.

According to SB 1566 (2018), PERS is also required to submit a report regarding implementation and status of the Employer Incentive Fund (EIF) and the School District Unfunded Actuarial Liability Fund (SDULF). This report will be heard by the Joint Committee on Ways and Means during the 2022 Legislative Session.

Finally, each year, PERS reports to the legislature on board action related to Preliminary Earnings Crediting. PERS will submit this report after that action is taken by the board today. Final Earnings Crediting action taken by the PERS Board on March 28 will also be reported to the legislature.

## 2023 LEGISLATIVE CONCEPTS

State agencies are in the early stages of developing requests for legislation to be considered during the 2023 legislative session. What follows are ideas that PERS is considering, including those across multiple bills. Over the next few months, the agency will:

- Refine the content and/or packaging of requests.
- Develop preferred statutory language for proposed legislation.
- Determine any preliminary fiscal impact to the agency, members, or employers.
- Meet with the Governor's Office and Department of Administrative Services (DAS).
- Present the PERS Board with the option to move forward with requests to draft legislation.

We will hold a meeting with employer and member stakeholders in February to get their feedback regarding these potential legislative concepts. This feedback will be considered while the agency is refining content and developing preferred statutory language.

Upon PERS Board approval at the March meeting, DAS and the Governor's Office will give a final review of the agency's request for legislation and determine which will move forward to Legislative Counsel for drafting. Bill drafts will be developed over the summer and PERS will be able to review these drafts to ensure the bill will achieve the desired intent. Bill drafts will be available for the December board meeting, when we will seek approval to ask the Governor for bill introduction.

What follows are four possible bills, however the content may be refined between now and the March 28 board meeting. The largest of these bills consists of statutory clean-up actions, in order to provide clarification, align standards, and make improvements in advance of the agency's modernization efforts.

### **Four Possible Individual Bills**

1. Modernization Clean-Up Bill
2. Increase to Divorce Decree Processing Fee
3. Automatic Contributions to OSGP
4. Social Security Statutes Clean-Up

### **Modernization Clean-Up Bill**

This is by far the largest bill and may be split into multiple bills in order to enhance readability. The modernization clean-up effort focuses on cleaning up provisions of the system as the agency turns its attention to modernization. To avoid programming inefficient and inconsistent standards into a new technology system, this bill will clarify statutes, align similar standards, and substantively clarify and improve processes.

PERS is continuing to identify and refine specific improvements through stakeholder meetings and internal review. However, currently, the topics identified for improvement are as follows:

- Apply all tax remedy statutory requirements to judge members.

- Add the word “full” to the definition of a qualifying position, to ensure that 600 hours is required in a “full calendar year.”
- Allow a member to withdraw their contributions from their loss of membership account when they again go inactive (and initiate a withdrawal).
- Clarify tax remedy calculation to support current practice.
- Amend definition of salary to clarify employer paid pre-tax contributions (included for final average salary calculations, excluded for the purpose of determining member contributions).
- Align time for police and fire (P&F) unit purchases at retirement to the longer 90 days.
- Clarify judge member beneficiary provisions to align with all members’ ability to designate contingent beneficiaries.
- Clarify judge member withdrawal provisions.
- Align intestate standards between Tier One/Tier Two and OPSRP members.
- Align OPSRP retirement credit and disability retirement credit standards for school employees.
- Allow payout of pre-retirement IAP death benefit to small estates.
- Locking member data (both going forward and, eventually, legacy data).
- Increase time allowed for bereaved spouse to elect an alternate pre-retirement death benefit.
- Allow OPSRP P&F members P&F retirement eligibility as long as required continuous five years in a P&F position was the member’s last PERS-participating employment before retirement.
- Clarify inconsistency between OPSRP disability and early retirement timing.

### **Increase to Divorce Decree Processing Fee**

Currently, Oregon Revised Statute (ORS) 238.465(9) caps the processing fee charged to members who require the agency to process a divorce decree (which involves administering an alternate payee award) at \$300. This amount was originally set in 1993. Since 1996, Oregon Administrative Rule (OAR) 459-045-0090 has provided “The Board has determined that actual and reasonable administrative expenses incurred by PERS for obtaining data and making calculations to administer an alternate payee award will always exceed \$300.” As of 2019, the approximate cost to process a divorce decree was \$1,300.

PERS processes approximately 900 divorce decrees each year. By raising the cap on this fee, PERS can charge members the actual costs of processing their decree up to \$1,000.

### **Automatic Contributions to Oregon Savings and Growth Plan**

This bill will establish automatic contributions to the Oregon Savings and Growth Plan (OSGP), the state’s 457(b) savings plan, which is open to state employees. The automatic contribution

feature would push employees into retirement saving who may otherwise delay or forego this retirement savings vehicle. It would help many employees to better prepare for their retirement. Because the contribution would be automatic, employees would not have to take any additional actions to begin saving for their retirement. OSGP contributions are made pre-tax, out of an employee's paycheck. Employees would of course have the option to opt-out of these automatic contributions. Currently, a percentage amount of automatic contribution has not been chosen.

### **Social Security Statutes Clean-Up**

From 1951 through December 31, 1986, the PERS Director was also the state's social security administrator, and PERS was previously responsible for collecting FICA taxes and remanding them to the federal Social Security Administration. Later, that responsibility was delegated to the IRS. Although amendments were made to the applicable statutes in prior legislative sessions, some references to the fiduciary function of FICA collection by the State Social Security Administration remain in statute. Statute also grants the state authority to sweep the State Social Security account. We no longer have access to this account to sweep it. This bill will delete these references in ORS Chapter 237.

## Action and Discussion Items

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Kate Brown, Governor

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January 31, 2022

TO: Members of the PERS Board  
FROM: Yvette Elledge-Rhodes, Deputy Director  
SUBJECT: SB 1049 Implementation Update

Senate Bill (SB) 1049 was signed into law by the Governor on June 11, 2019. PERS staff continue to focus on completing work in an efficient and effective manner.

### PROGRAM/PROJECT IMPLEMENTATION

The SB 1049 Implementation Program is being managed as one comprehensive program, with the following six individual projects. All projects go through the Enterprise Information Services (EIS) stage gate process.

Project	Effective Date	Project Health and Status (as of 1/10/22)
SB 1049 Program		Program health: Yellow <ul style="list-style-type: none"> <li>Program health will remain in Yellow status as Member Redirect is scheduled past the end of the 2021-23 biennium.</li> <li>Cross Project Effort health has returned to Green and schedule has been baselined.</li> </ul>
Employer Programs Project	Effective 7/1/2019	Project ended 7/16/21.
Salary Limit Project	Effective 1/1/2020	Project ended 5/28/21.
Work After Retirement Project	Effective 1/1/2020	Project health: Green <ul style="list-style-type: none"> <li>Work Package (WP) 4 was successfully deployed on 12/16/21.</li> <li>Closing activities in process; due 2/28/22.</li> </ul>
Member Redirect Project	Effective 7/1/2020	Project health: Green <ul style="list-style-type: none"> <li>User Acceptance Testing for WP4.3 (EPSA CMA) began on 1/10/22; scheduled for 3/24/22 deployment.</li> <li>Construction for WP6.1 (EPSA Retirement) will continue towards the 1/31/2022 completion date.</li> <li>Change request approved for elaboration of SB111A scope and WP8.1 (EPSA Pre-Retirement Death). Business Requirements Document due on 2/14/2022.</li> </ul>
Member Choice Project	Effective 1/1/2021	Project ended 8/4/21.

<p>Technical Debt</p>		<ul style="list-style-type: none"> <li>• Business Functional Testing for WP1 is scheduled for completion on 1/19/22.</li> <li>• Two Change Requests were approved 12/15/21.</li> <li>• WP2 (Benefit Account Transition Status) and WP3 (General Ledger Reversals, Including Side Accounts) will deliver Functional Design Specifications to document as-is conditions of the technical debt areas which are causing errors. Next, a decision will be made whether there is sufficient time and project budget to continue pursuing a solution.</li> <li>• Schedule updates in process to add milestones.</li> </ul>
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**Highlighted activities completed or in progress since early December 2021:**

- Program and project activities
  - iQMS activities
    - Periodic Quality Status Report for November 2021 received 12/3/2021
    - Quarterly QA Status and Improvement report in progress; due 1/18/22
    - Lessons Learned sessions in progress; due early February 2022
- EIS Stage Gate process requirements
  - PERS received a Non-Stage Gate Endorsement Memo for the Technical Debt project on 9/23/21
- Budget reporting
  - Continuing monthly meetings with the Chief Financial Office, Legislative Fiscal Office, and the Governor’s Office
  - Gartner (iQMS vendor) contract amended to extend through the end of the biennium
  - Work order contracts approved for new Technical Debt project work packages
- Communications
  - 2022 Salary Limit increase and Member Redirect threshold increase
    - January [Employer News](#) articles
    - GovDelivery sent to all employers 12/21/21
  - Employer Advisory Group meeting is scheduled for 1/14/22

**PROGRAM/PROJECT BUDGET**

The high-level budget information is contained within Page 2 of the attachment to agenda item A.3.c. The detailed budget can be viewed in the attached Monthly Status Report.

PERS staff will continue to update the board as program implementation continues throughout the year.

C.2. Attachment 1 – *Monthly Project Status Report and Roadmap*

### Program information:

**Program start:** July 1, 2019 | **Program end:** June 19, 2024

### Subprojects:

#### Project 1: Employer Programs

- Project start: July 1, 2019 | Project end: July 16, 2021
- Project status: **Complete**

#### Project 2: Work After Retirement (WAR)

- Project start: July 1, 2019 | Project end: February 28, 2022
- Project status: **Green**

#### Project 3: Salary Limit

- Project start: July 1, 2019 | Project end: May 28, 2021
- Project status: **Complete**

### Program statement:

SB 1049 is comprehensive legislation intended to address the increasing cost of funding Oregon's Public Employees Retirement System (PERS), reduce system Unfunded Actuarial Liability (UAL) obligations, and provide relief to escalating contribution rate increases for public employers. Implementation will occur across five subprojects.

#### Project 4: Member Redirect

- Project start: July 1, 2019 | Project end: April 25, 2024
- Project status: **Green**

#### Project 5: Member Choice

- Project start: October 23, 2019 | Project end: August 4, 2021
- Project status: **Complete**

#### Project 6: Technical Debt

- Project start: June 22, 2021 | Project end: August 31, 2022
- Project status: **Green**

For details regarding individual project status, please refer to the respective project section(s) below.

### Overall program status: **Yellow**

The program status continues to be yellow. Member Redirect has activities that continue into the 2023-2025 biennium, and that budget has neither been requested nor approved.

The WAR, Member Redirect, and Technical Debt projects all continue to progress on schedule, and all three projects are in a green status.

- The WAR project successfully deployed their final work package to production on 12/16/2021, and project closing activities are in process. The project is planned to be closed by 2/28/2022.
- The Member Redirect project has started User Acceptance Testing for their next production release on 3/24/2022 and the initial test results look good.
- The SB 1049 Technical Debt project has begun working on their two new work packages to document the "as-is" system design for WP2 Benefit Account Status Transition and WP3 General Ledger and Side Account Reversals. The schedule for this new work is in review and will soon be baselined.

# SB 1049 Implementation Program

## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

**Budget health: Yellow**

Work is planned for Member Redirect beyond the 2021-2023 biennium, but that budget has not been requested/approved yet.

29560- SB 1049 Implementation Program by Project					
Other Funds Lmt	21-23 Budget	Actual to Date	Projections	21-23 Total	Variance
Work After Retirement	\$ 1,127,741	\$ 311,460	\$ 620,368	\$ 931,828	\$ 195,913
Member Redirect	\$ 18,896,315	\$ 4,537,353	\$ 8,233,948	\$ 12,771,301	\$ 6,125,014
Technical Debt	\$ 2,790,741	\$ 336,682	\$ 706,674	\$ 1,043,356	\$ 1,747,385
				\$ -	\$ -
<b>Total</b>	<b>\$ 22,814,797</b>	<b>\$ 5,185,495</b>	<b>\$ 9,560,990</b>	<b>\$ 14,746,485</b>	<b>\$ 8,068,312</b>

29560- SB 1049 Implementation Program by POP					
Other Funds Lmt	21-23 Budget	Actual to Date	Projections	21-23 Total	Variance
Project Management & Admin	\$ 2,044,800	\$ 442,788	\$ 1,189,212	\$ 1,632,000	\$ 412,800
Quality Assurance and Testing	\$ 812,500	\$ 55,750	\$ 868,250	\$ 924,000	\$ (111,500)
Info Technology Applications	\$ 13,337,000	\$ 3,358,712	\$ 2,629,324	\$ 5,988,035	\$ 7,348,965
Operational Implementation	\$ 6,620,497	\$ 1,328,245	\$ 4,874,204	\$ 6,202,449	\$ 418,048
<b>Total</b>	<b>\$ 22,814,797</b>	<b>\$ 5,185,495</b>	<b>\$ 9,560,990</b>	<b>\$ 14,746,485</b>	<b>\$ 8,068,312</b>

**Schedule health: Green**

All projects have a schedule health of green and are on track to deliver required functionality according to their schedules.

**Scope health: Green**

The program and project scope are understood and have been incorporated into program-level plans and schedules.

Quality Assurance activities:

- iQMS Deliverable 4.1.8 Quarterly QA Status and Improvement Report started 12/6/2021, due 2/22/2022.
- iQMS Deliverable 2.6.1 started on 1/4/2022, due date TBD.
- The Gartner SB 1049 IQMS Amendment #1 to WOC 1667-19 has been executed.

Emerging concerns/needs/impacts:

- The Production Data Center Migration (PDCM) project is ramping up and their activities overlap with ongoing SB 1049 activities, potentially impacting technical and staff resources and causing delays to SB 1049. The full schedule for the PDCM project is being developed.
- Resource allocation analysis across SB 1049 and non-SB 1049 work continues. Results indicate there are SB 1049 resource concerns in the mid-2022 timeframe that need to be resolved for Product Owners, Associate Product Owners, and Subject Matter Experts. Activities are in process to address and mitigate these concerns.
- Lack of agency Project Portfolio Management across multiple PERS projects running concurrent with SB 1049 is putting SB 1049 resources and schedule at some risk. The SB 1049 program is actively identifying, documenting, and proactively mitigating this risk to minimize potential impacts to SB 1049.

# SB 1049 Implementation Program

## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

### Program Risks and Mitigation

Listed below are the most critical risks for this project.

For the complete Risk Log, please see the Risk Log tab in the most recent weekly status report: [SB 1049 Program Weekly Status Report](#)

#	Risk Description	Mitigation and/or Contingency Plan	Notes
81	<b>Technology Risk:</b> Complexity and fragility of jClarety system.	➤ Some or all the SB 1049 projects may require attention to fixing technical debt or finding appropriate work arounds.	
39	<b>Critical Resources Allocated to non-SB 1049 Work:</b> Critical SB 1049 resources are allocated to non-SB 1049 work, impacting availability for SB 1049 work and causing schedule delays.	<ul style="list-style-type: none"> <li>➤ Assess project and resource plans for any new work effort to determine impact to SB 1049</li> <li>➤ Proactively manage any identified resource constraints and work with managers to mitigate SB 1049 impact.</li> </ul>	Non-SB 1049 work efforts include, but are not limited to: <ul style="list-style-type: none"> <li>• M365/O365</li> <li>• Production Data Center Migration (PDCM)</li> <li>• W-4 Tax Form Project</li> <li>• Maintenance and Enhancements</li> </ul>
63	<b>Lack of Project Agency Portfolio Management:</b> Lacking a comprehensive project portfolio tool hampers our ability to confidently prepare and assign resources.	➤ SB 1049 Program resource allocations are regularly reviewed. The Project Management Office has also commenced regular meetings to evaluate resource enterprise impacts of projects in the agency portfolio.	PERS has also initiated the Enterprise Portfolio Management (EPM) project that, once implemented, will facilitate better management of multiple concurrent projects.
20	<b>Internal Staffing:</b> Resource shifting, competing priorities, or over allocation impact the availability of dedicated project resources	➤ The Project Management Office has created cross-project bi-weekly meetings to discuss resource allocations across all PERS projects.	The issue reported in previous status reports of technical resources being diverted from CPE WP6 IAP Balance Comparison Tool to address critical M365/O365 issues has been resolved.

### Program Issues and Action Plans

Listed below are the most critical issues for this project.

For the complete Issue Log, please see the Issue Log tab in the most recent weekly status report: [SB 1049 Program Weekly Status Report](#)

No	Issue	Resolution / Notes	Estimated Resolution Date
	No Current Issues		

# SB 1049 Implementation Program

## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

### Program information: Cross Project Effort

Start: May 28, 2020 | End: April 12, 2024  
Project Manager: Susan K. Mundell

### Cross Project Effort objective:

The Cross Project Effort is focused on technical tools, and extracts that are used across multiple SB 1049 projects. Originally, these efforts were included as Work Packages within the individually impacted projects. The scope of this effort has not changed, but the work has been restructured to ensure it receives an appropriate level of coordination and ensure the success of the necessary inter-project integrations.

### Overall status: **Yellow**

**Narrative:** The schedule for Cross Project Effort (CPE) has been rebaselined with all known work packages which put CPE status back into Green for a week. Unfortunately, a delay in the Office 365 deployment has caused the project to go Yellow due to a schedule concern for Work Package 3 (WP3): IAP Divorce tool. This tool is currently in Business Functional Testing (BFT) in an Office 365 environment. The delay to the deployment of Office 365 may require the technical team to redevelop the tool in a non-upgraded environment which will cause a delay in the current schedule. WP5.2 Prior Year Earnings Invoicing tool is in elaboration until the Business Requirements Document is complete on 3/18/2022. The technical review for WP6: Individual Account Program (IAP) Balance Comparison tool completed on 1/18/2022. Development for WP6 will begin after the final two dependent activities are complete. Two reports from Voya, PERS Third Party Administrator, are being added to PERS Central Data Management warehouse and should be in place before development of WP6 begins on 1/28/2022.

## Schedule Deliverables and Milestones

Milestones Schedule				
Milestone	Percent Complete	Baseline Finish Date	Actual / Forecast Finish Date*	Status/ Notes
WP6: iClarety IAP Out of Balance Freeze Flag	100%	12/16/2021	12/16/2021	
WP3: IAP Divorce Tool Deployed	0%	2/22/2022	2/22/2022	
WP5.2: Prior Year Earnings Invoice Tool Deployed	0%		5/20/2022	
WP4.2: IAP Adjustment Calculator Deployed	0%		6/01/2022	
WP6: IAP Balance Comparison Tool	0%		9/06/2022	
WP7.3: Payouts Actuarial Extract	0%		2/22/2024	
Cross Project Effort Closure	0%		4/12/2024	

\*Finish Date Color: Green = on Schedule, Yellow = in Jeopardy, Red = Late



# SB 1049 Implementation Program

Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen



## Senate Bill (SB) 1049 Implementation Road Map 2019-2021 Biennium

	2019						2020						2021											
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
<b>Employer Programs</b>	<ul style="list-style-type: none"> <li>7/1/19 – Effective Date</li> <li>9/3/19 – Employer Incentive Fund (EIF) Application #1 Opens</li> <li>11/27/19 – EIF Application #1 Closes</li> <li>12/2/19 – EIF Application #2 Opens</li> </ul>												<ul style="list-style-type: none"> <li>8/6/20 – Employer Rate Projection Tool (ERPT) Assessment Complete</li> <li>12/1/20 – EIF Application #2 Closes</li> <li>3/30/21 – Work Package (WP) 1 Migrate and Adapt ERPT →</li> <li>6/30/21 – WP2 ERPT Stakeholder Acceptance and Deployment →</li> </ul>											
<b>Salary Limit</b>							<ul style="list-style-type: none"> <li>12/24/19 – Work Package (WP) 1 – Short Term</li> <li>1/1/20 – Effective Date</li> <li>1/24/20 – WP2 Post 2020 Salary Limit – Long Term</li> </ul>						<ul style="list-style-type: none"> <li>11/19/20 – WP3 User Screens to Record Annual Salary Limit – Long Term</li> <li>5/13/21 – WP4 Proration Reports and Workflow – Long Term →</li> <li>5/28/21 – Project Close →</li> </ul>											
<b>Work After Retirement</b>							<ul style="list-style-type: none"> <li>12/19/19 – Work Package (WP) 1 Retiree Wages Suspended – Short Term</li> <li>1/1/20 – Effective Date</li> </ul>						<ul style="list-style-type: none"> <li>11/19/20 – WP2 New Wage Codes with General Ledger (GL) Integration – Long Term</li> <li>5/13/21 – WP3 Retro Rate Change – Long Term →</li> </ul>											
<b>Member Redirect</b>	<ul style="list-style-type: none"> <li>6/18/20 – Work Package (WP) 1 Employee Pension Stability Account Set Up/Batch/General Ledger – Short Term →</li> </ul>						<ul style="list-style-type: none"> <li>7/1/20 – Effective Date →</li> <li>1/21/21 – WP5.2 Online Member Services User Interface – Long Term →</li> <li>1/26/21 – WP2 TIED SSIS – Non-jClarety – Long Term →</li> <li>6/24/21 – WP4.2 EPSA Display, and WP12 Full EPSA Set up Screen – Long Term →</li> </ul>						<ul style="list-style-type: none"> <li>9/22/20 – Voluntary Contributions Initial Functionality – Long Term</li> <li>10/30/20 – WP2.2 IAP Forecaster Tool – non-jClarety – Long Term</li> <li>11/19/20 – Voluntary Contributions Final Functionality Release – Long Term</li> <li>3/23/21 – WP3 EPSA Earnings – Long Term</li> </ul>											
<b>Member Choice</b>	<ul style="list-style-type: none"> <li>10/23/19 – Project Kick Off</li> <li>5/15/20 – Member Annual Statements (MAS) Flyer Communication →</li> </ul>						<ul style="list-style-type: none"> <li>8/19/20 – Member Choice Notification →</li> <li>8/20/20 – Work Package (WP) 1 Online Member Services (OMS) Changes Deployed</li> <li>9/1-30/20 – Election Period</li> <li>3/23/21 – WP2 OMS &amp; jClarety Enhancements – Long Term →</li> <li>5/1/21 – Member Choice reflected in MAS →</li> <li>6/24/21 – WP3 Online Member Services (OMS) Election and Bugs →</li> </ul>						<ul style="list-style-type: none"> <li>1/1/21 – Effective Date</li> </ul>											
<b>PROGRAM INITIATIVE</b>																								
<b>Cross Project Effort</b>	<ul style="list-style-type: none"> <li>1/26/21 – WP2.1 IAP Payment Recon (short-term) →</li> <li>3/18/21 – WP1.2 IAP Validator Tool (long-term) →</li> <li>4/27/21 – WP2.2 IAP Payment Recon (long-term) →</li> <li>5/13/21 – WP7.2 Employer Information Actuarial Extract →</li> <li>6/18/21 – WP5.1 PYE Invoicing Tool →</li> <li>6/24/21 – WP7.1 Non-Retired Census Actuarial Extract →</li> <li>6/28/21 – WP4.1 IAP Adjustment Calculator →</li> </ul>																							



# SB 1049 Implementation Program

Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen



## Senate Bill (SB) 1049 Implementation Road Map

2021-2023 Biennium

	2021						2022						2023										
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY
<b>Employer Programs</b>	• 7/16/21 – Project Close																						
<b>Work After Retirement</b>							• 12/16/21 – WP4 Side Account Credit Allocation																
<b>Member Redirect</b>							• 10/14/21 – WP5 Voluntary Contribution Maintenance – Long Term						• 7/21/22 – WP6.1 EPSA Retirement – Long Term										
<b>Member Choice</b>	• 8/4/21 – Project Close						Jan. 21						• 2/23/23 – WP9.1 EPSA Withdrawal – Long Term → • • 2/23/23 – WP9.2 Alter OPSRP Withdrawal – Long Term → •										
<b>Technical Debt</b>	• 7/1/21 – Project Kickoff						• 3/31/22 – WP2 Benefit Account Transition Status – Functional Design Specification Completed						• 4/30/22 – WP3 General Ledger Reversals, Including Side Accounts – Functional Design Specification Completed										
<b>PROGRAM INITIATIVE</b>							• 2/22/22 – WP3 IAP Divorce Tool						• 7/21/22 – WP1 Employer Statements										
<b>Cross Project Effort</b>							• 5/20/22 – WP5.2 PYE Invoicing Tool						• 6/1/22 – WP4.2 IAP Adjustment Calculator										
													• 10/5/22 – WP6 IAP Balance Comparison Tool										

### 2023-2025 Biennium

PROJECTS	2023						2024						2025										
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY
<b>Member Redirect</b>	• 7/20/23 – WP8.1 EPSA Pre-Retirement Death – Long Term						• 3/28/24 – Migration Finalization																
	• 7/20/23 – WP10 Backlog Implementation – Long Term						• 4/25/24 – Project Close																
							• 12/21/23 – WP11.1 Reemployment – Long Term																
							• 12/21/23 – WP11.2 Excess EPSA – Long Term																
							• 3/28/24 – WP12.2 Final Backlog Implementation – Long Term																
<b>PROGRAM INITIATIVE</b>																							
<b>Cross Project Effort</b>							• 2/22/24 – WP7.3 Tier One/Tier Two/OPSRP Payouts Actuarial Extract																

## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

### Project information: Work After Retirement (WAR)

Project start: July 1, 2019 | Project end: 2/28/2022

Project Manager: Susan K. Mundell

### Project objective:

Effective January 1, 2020, the Work After Retirement (WAR) sections of SB 1049 allow most service retirees to work unlimited hours for PERS participating employers in calendar years 2020-2024 while retaining their retirement benefit. It also requires employers to pay employer contributions on retirees' salary during that period.

Overall project status: **Green**

### Project Narrative:

All WAR production deployments are complete and project closing activities are in process. The automated Side Account Wash Job worked as anticipated on 12/20/2021 which is an indicator that WAR WP4 successfully delivered its functionality.

The team has completed the project retrospective. The project closeout report is in development. The budget closing activities will begin after the final invoice is paid and recorded.

### Work Packages:

#### Work Package 1: Suspend DTL2-07 Retiree Wage Codes - Short-term

- Production Deployment Date: 12/19/2019 (Complete)

#### Work Package 2: New Wage Codes with General Ledger Integration - Long-term

- Production Deployment Date: 11/19/2020 (Complete)

#### Work Package 3: Retro Rate Change - Long-term

- Production Deployment Date: 5/13/2021 (Complete)

#### Work Package 4: Side Account Credit Allocation

- Production Deployment Date: 12/16/2021 (Complete)

# SB 1049 Implementation Program

**Status Report for January 21, 2022**

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

**Budget health: Green**

29560 SB1049 - Work After Retirement (WAR) Project					
Expenses	Budget	Actual to Date	Projections	Total	Variance
*Personal Services - PERS	\$ 280,000	\$ 213,757	\$ 66,243	\$ 280,000	\$ -
Personal Services - SB1049	\$ 200,000	\$ 68,767	\$ 131,233	\$ 200,000	\$ -
Office Expenses	\$ 100,000	\$ 1,417	\$ -	\$ 1,417	\$ 98,583
Professional Services	\$ 485,741	\$ 71,693	\$ 362,828	\$ 434,520	\$ 51,221
IT Professional Services	\$ 337,000	\$ 169,583	\$ 126,308	\$ 295,891	\$ 41,109
IT Expendable Property	\$ 5,000		\$ -	\$ -	\$ 5,000
SB 1049 Total Expenses	\$ 1,127,741	\$ 311,460	\$ 620,368	\$ 931,828	\$ 195,913
<b>Project Total</b>	<b>\$ 1,407,741</b>	<b>\$ 525,217</b>	<b>\$ 686,611</b>	<b>\$ 1,211,828</b>	<b>\$ 195,913</b>
Average Monthly Spend (Burn Rate)		\$ 44,494.28	\$ 155,092.02		
*Not included in SB1049 expenses					

**Schedule Health: Green**

All major milestones have been completed.

**Scope health: Green**

The scope for all work packages has been delivered.

Quality Assurance activities:

- A Quality Check Point review was completed on 12/16/2021 for contractual deliverable D3.6.1 Final Work Package Development
- A Quality Check Point review was completed on 12/30/2021 for contractual deliverable D1.0.28 Contractor Support Log
- The Project Closure Quality Gate will be conducted on 2/3/2022
- All contractual deliverables have been completed.

Emerging concerns/needs/impacts:

No emerging concerns

# SB 1049 Implementation Program

## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

### High Level Project Risks and Mitigation

Listed below are the most critical risks for this project.

For the complete Risk Log, please see the Risk Log tab in the most recent weekly status report: [WAR Weekly Status Report](#)

	Risk Description	Mitigation and/or Contingency Plan	Notes
	No Current Risks		

### Project Issues and Action Plans

Listed below are the most critical issues for this project.

For the complete Issue Log, please see the Issue Log tab in the most recent weekly status report: [WAR Weekly Status Report](#)

	Risk Description	Mitigation and/or Contingency Plan	Notes
	No Current Issues		

# SB 1049 Implementation Program

Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

## Project Schedule Deliverables and Milestones

Milestones Schedule				
Milestone	Percent Complete	Baseline Finish Date	Actual / Forecast Finish Date*	Status/ Notes
WP1 - Phase Closure Complete	100%	2/13/2020	2/13/2020	
WP2 - Deployment Complete	100%	10/22/2020	11/19/2020	
WP4 - High Level Estimate Complete	100%	2/25/2021	2/25/2021	
WAR - Baselined Effort Based Project Schedule	100%	3/5/2021	3/5/2021	
WP3 - Business Functional Testing (BFT) Complete	100%	3/19/2021	3/19/2021	
WP3 - Ready for User Acceptance Testing (UAT) Quality Gate	100%	3/29/2021	3/26/2021	
WP3 - User Acceptance Testing Complete	100%	5/7/2021	5/07/2021	
WP3 - Quality Assurance Testing Complete	100%	5/7/2021	5/07/2021	
WP3 - Move to Production Quality Gate Complete	100%	5/12/2021	5/11/2021	
WP3 - Deployment Complete	100%	5/13/2021	5/13/2021	
WAR - Rebaselined Effort Based Project Schedule (WP4)	100%	5/20/2021	5/20/2021	
WP3 - Phase Closure Complete	100%	5/27/2021	5/27/2021	
WP4 - Business Requirements Document Complete	100%	7/12/2021	7/12/2021	
WP4 - Development Complete	100%	10/5/2021	10/5/2021	
WP4 - Business Functional Testing (BFT) Complete	100%	10/26/2021	10/26/2021	
WP4 - User Acceptance Testing (UAT) Complete	100%	12/10/2021	12/10/2021	
WP4 - Deployment Complete	100%	12/16/2021	12/16/2021	
WP4 - Phase Closure Complete	100%	1/4/2021	1/4/2021	
WAR Project Complete	0%	2/28/2021	2/28/2022	

\*Finish Date Color: Green = on Schedule, Yellow = in Jeopardy, Red = Late



## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

### Project information: Member Redirect

Project start: July 1, 2019 | Project end: April 25, 2024

Project Manager: Chris Yu

### Overall project status: **Green**

**Project Narrative:** The overall project health is green, and activities are progressing on schedule. The current technical priority is to proceed with the user acceptance testing for work package 4.3 (EPSA Correct Member Account). The elaboration and requirements gathering for work package 8.1 (EPSA Pre-Retirement Death) and SB111A will continue towards the Business Requirements Document date of 2/14/2022. In addition, the construction for work package 6.1 (Voluntary Contributions Maintenance) will continue towards the 1/31/2021 completion date.

Change Request-008 (Test ID Report) looks to create Test ID reports for in order create a more efficient user acceptance testing process for future work packages. This Change Request is currently being drafted to be considered for approval by the SB 1049 Core Team and SB 1049 Steering Team

### Work Packages:

#### Work Package 4.3 EPSA Correct Member Account - Long-Term

- Production Deployment Date: 3/24/2022
- User Acceptance testing began on 1/10/2022
- User Acceptance Testing will be completed on 3/1/2022

#### Work Package 9.1 EPSA Correct Member Account - Long-Term

- Production Deployment Date: 2/23/2023
- Construction will begin on 3/1/2022
- Business Functional Testing will begin on 10/3/2022

Additional long-term work packages exist. See the Milestones Schedule for a complete list of work packages

### Project objective:

Effective July 1, 2020 this section of the bill redirects a portion of member contributions to a new Employee Pension Stability Account (EPSA) when the funded status of the plan is below 90% and the member's monthly salary is more than \$2,500.

#### Work Package 6.1 EPSA Voluntary Contribution Maintenance- Long-Term

- Production Deployment Date: 7/21/2022
- Construction will be completed on 1/31/2022
- Business Functional Testing will be completed on 3/29/2022
- User Acceptance Testing will be completed on 7/5/2022

#### Work Package 9.2 Alter OPSRP Withdrawal - Long-Term

- Production Deployment Date: 2/23/2023
- Construction will begin on 3/1/2022
- Business Functional Testing will begin on 10/3/2022

# SB 1049 Implementation Program

Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

**Budget health: Green**

There will need to be additional funding for 2023-2025, which will be tracked at the program level.

29560 SB1049 - Member Redirect Project					
Expenses	Budget	Actual to Date	Projections	Total	Variance
*Personal Services - PERS	\$ 1,658,226	\$ 338,736	\$ 1,319,490	\$ 1,658,226	\$ -
Personal Services - SB1049	\$ 5,603,697	\$ 1,216,118	\$ 4,387,579	\$ 5,603,697	\$ -
Services and Supplies	\$ 1,927,618	\$ 231,678	\$ 1,455,282	\$ 1,686,960	\$ 240,658
IT Professional Services	\$ 11,110,000	\$ 3,089,557	\$ 2,391,087	\$ 5,480,644	\$ 5,629,356
IT Expendable Property	\$ 200,000		\$ -	\$ -	\$ 200,000
Data Processing Hardware	\$ 55,000		\$ -	\$ -	\$ 55,000
SB1049 Total Expenses	\$ 18,896,315	\$ 4,537,353	\$ 8,233,948	\$ 12,771,301	\$ 6,125,014
<b>Project Total</b>	<b>\$ 20,554,541</b>	<b>\$ 4,876,089</b>	<b>\$ 9,553,438</b>	<b>\$ 14,429,527</b>	<b>\$ 6,125,014</b>
<b>Average Monthly Spend (Burn Rate)</b>		<b>\$ 648,193.24</b>	<b>\$ 484,349.88</b>		
*Not included in SB1049 Expenses					

**Schedule Health: Green**

The current project tasks are on schedule for all major milestone dates.

**Scope health: Green**

The project scope is understood for all releases.

Quality Assurance activities:

- The Work Package 4.3 (EPSA Correct Member Account) Enter QA and UAT Quality gate was completed on 12/28/2021
- The Work Package 4.3 (EPSA Correct Member Account) QAT Deployment and Construction Verification task was completed on 1/7/2022
- The Work Package 4.3 (EPSA Correct Member Account) QA Regression testing task began on 1/10/2022 and will proceed until the completion date of 3/1/2022
- The Monthly Release Management Report will be submitted for Quality Check Point review on 1/31/2022

Emerging concerns/needs/impacts:

- No emerging concerns

# SB 1049 Implementation Program

## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

### High Level Project Risks and Mitigation

Listed below are the most critical risks for this project.

For the complete Risk Log, please see the Risk Log tab in the most recent weekly status report: [Member Redirect Weekly Status Report](#)

#	Risk Description	Mitigation and/or Contingency Plan	Notes
83	<b>WP8.1 Scope and Size:</b> Based on current progress on the business requirements document, there is a concern that the size and scope of the coding of this work package will not fit within the scheduled timeline	➤ Only the critical requirements will be selected during the backlog refinement task so that the timeline will not be impacted. The other option is to initiate a change request to extend the timeline.	The Business Requirements document for WP8.1 (EPSA Pre-Retirement Death) is due on 2/14/2022. After discussion with the Product Owner, a specific mitigation plan will be determined after the Business Requirements Document is completed and reviewed.
2	<b>Complexity of Effort:</b> The forecasted amount of work, timing, and complexity is inaccurate, or assumptions made that are off base.	➤ The project manager will continue to work with the project team and manage the project schedule and risk log	
4	<b>Internal Staffing:</b> Resource shifting, competing priorities, or over allocation impact the availability of dedicated project resources, or a key resource leaves PERS	➤ The Project Management Office has created cross-project bi-weekly meetings to discuss resource allocations across all PERS projects, including SB 1049 and non-SB 1049 projects	The SB 1049 Project Managers and Product Owners have updated the hours of team resources to mitigate over-allocation

### Project Issues and Action Plans

Listed below are the most critical issues for this project.

For the complete Issue Log, please see the Issue Log tab in the most recent weekly status report: [Member Redirect Weekly Status Report](#)

No	Issue	Resolution / Notes	Estimated Resolution Date
	No current issues		



# SB 1049 Implementation Program

Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

## Project Schedule Deliverables and Milestones

Milestones Schedule				
Milestone	Percent Complete	Baseline Finish Date	Actual / Forecast Finish Date*	Status/ Notes
WP2.1 - Tool for IAP Earnings Data	100%	1/26/2021	1/26/2021	
WP3.1 - EPSA Earnings	100%	3/23/2021	3/23/2021	
WP3.2 - Member Annual Statement Extract	100%	3/23/2021	3/23/2021	
WP4.2 - EPSA Transaction Display	100%	6/24/2021	6/24/2021	
WP12 - Full EPSA Set up screen	100%	6/24/2021	6/24/2021	
WP5.1 - Voluntary Contribution maintenance	100%	10/14/2021	10/14/2021	
WP4.3 - EPSA Correct Member Account	0%	3/24/2022	3/24/2022	
WP6.1 - EPSA Retirement	0%	7/21/2022	7/21/2022	
WP9.1 - EPSA Withdrawal	0%	2/23/2023	2/23/2023	
WP9.2 - Alter OPSRP Withdrawal	0%	2/23/2023	2/23/2023	
WP8.1 - EPSA Pre-Retirement Death	0%	7/20/2023	7/20/2023	
WP10 - Backlog Implementation	0%	7/20/2023	7/20/2023	
WP11.1 - Re-Employment	0%	12/21/2023	12/21/2023	
WP11.2 - Excess EPSA	0%	12/21/2023	12/21/2023	
WP12.2 - Final Backlog Implementation	0%	3/28/2024	3/28/2024	
Migration Finalization	0%	3/28/2024	3/28/2024	
Project Complete	0%	4/25/2024	4/25/2024	

\*Finish Date Color: Green = on Schedule, Yellow = in Jeopardy, Red = Late

## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

### Project information: Technical Debt

**Project start:** June 22, 2021 | **Project end:** August 31, 2022

**Project Manager:** Joli Whitney

### Project objective:

The SB 1049 Technical Debt Project will address areas of technical debt which have been encountered and identified in the SB 1049 Implementation Program and prioritized for resolution. Resolution of technical debt will be limited to those items that are created by SB 1049, are exacerbated by SB 1049, or inhibit PERS' ability to complete SB 1049 requirements.

### Overall project status: **Green**

**Project Narrative:** Construction of Work Package 1 (WP1 Employer Statements) was completed on 11/16/2021. Business Functional Testing (BFT) began on 11/17/2021 and was scheduled to complete on 1/19/2022. Testing has been delayed due to an unplanned resource absence. This delay is not expected to impact the project's critical path.

Following the addition of two new work packages last month, an amendment to the work order contract to acquire resources to complete the work was executed on 1/4/2022. This work has been added to the project schedule and is currently in review with staff in preparation to rebaseline the inclusion of the new scope of Work Package 2- Benefit Account Status Transition and Work Package- 3 General Ledger and Side Account Reversals. Both Work Packages seek to document the existing technical design in a Functional Design Specification document. Once this information is better understood, the team will evaluate the size of the gaps to determine whether the problems are able to be addressed with the remaining time and budget of the SB 1049 Technical Debt Project or if they are better addressed through a future modernization effort.

A quarterly review of the technical debt priority log was conducted on 1/20/2022. At this meeting new technical debt items were evaluated for priority alongside the existing items. Changes will be directed to the SB 1049 Steering Team for approval.

Note that the project closure date is subject to change as additional items are added into project scope. This is planned and expected.

### Work Packages:

#### Work Package 1: Employer Statements

- Production Deployment Date: 7/21/2022
- Development completed on 11/16/2021
- BFT began on 11/17/2021
- UAT scheduled to begin on 4/25/2022

#### Work Package: 2 Benefit Account Status Transition

- Functional Design Specification Document Complete 3/31/2022

#### Work Package 3: General Ledger and Side Account Reversals

- Functional Design Specification Document Complete 4/30/2022

# SB 1049 Implementation Program

## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

**Budget health: Green**

Technical Debt Project is currently within the budget allocated by the Legislature.

29560 SB1049 - Technical Debt Project					
Expenses	Budget	Actual to Date	Projections	Total	Variance
*Personal Services - PERS	\$ 200,000	\$ 127,745	\$ 72,255	\$ 200,000	\$ -
Personal Services - SB1049	\$ 200,000	\$ 35,730	\$ 164,270	\$ 200,000	\$ -
Office Expenses	\$ 105,000	\$ 1,417	\$ 7,583	\$ 9,000	\$ 96,000
IT Professional Services	\$ 1,985,000	\$ 227,843	\$ 171,993	\$ 211,500	\$ 1,585,164
Professional Services - QA + PM	\$ 485,741	\$ 71,693	\$ 362,828	\$ 434,520	\$ 51,221
IT Expendable Prop	\$ 15,000		\$ -	\$ -	\$ 15,000
SB1049 Expenses	\$ 2,790,741	\$ 336,682	\$ 706,674	\$ 1,043,356	\$ 1,747,385
<b>Project Total</b>	<b>\$ 2,990,741</b>	<b>\$ 464,427</b>	<b>\$ 778,929</b>	<b>\$ 1,055,020</b>	<b>\$ 1,747,385</b>
Average Monthly Spend (Burn Rate)		\$ 48,097.47	\$ 100,953.38		
*Not included in SB1049 Expenses					

**Schedule Health: Green**

The project schedule was baselined on 9/14/2021. This baseline is only for WP1 Employer Statements. Schedule updates are in process and once accepted the schedule will be rebaselined to reflect the two new work packages which were approved through the SB 1049 change request management process.

**Scope health: Green**

The two new work packages are targeted to better understand the scope of the technical debt areas before moving forward with solutions. The SB 1049 change request management process will be utilized to consider additional scope for these items once they are documented.

Quality Assurance activities:

- WP1 Work Package Development documentation was accepted through Quality Check Point review on 12/22/2021
- WP2 Draft Functional Design Specification Document scheduled for Quality Check Point review on 3/31/2022
- WP3 Draft Functional Design Specification Document scheduled for Quality Check Point review on 4/30/2022

Emerging concerns/needs/impacts:

- None.

# SB 1049 Implementation Program

## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

### High Level Project Risks and Mitigation

Listed below are the most critical risks for this project.

For the complete Risk Log, please see the Risk Log tab in the most recent weekly status report: [Technical Debt Weekly Status Report](#)

#	Risk Description	Mitigation and/or Contingency Plan	Notes
1	Competing SB 1049 Resources	Careful coordinated schedule planning and priorities within the program and all projects	We continue to monitor this risk. We anticipate this risk to increase as we prepare for WP1 UAT in April 2022. Resource allocations are being closely reviewed.
3	Internal Staffing - Limited. Loss of or Inexperienced Resources	Hiring or moving knowledgeable staff for replacement, backup or to fill in as additional help.	Although our scheduled BFT completion date has been missed, the project's critical path is expected to be unaffected.
4	Lack of Project Portfolio Management	SB 1049 Program resource allocations are regularly reviewed. The Project Management Office has also commenced regular meetings to evaluate resource enterprise impacts of projects in the agency portfolio. PERS is initiating an Enterprise Portfolio Management Project which, once delivered, will mitigate this risk.	This risk will continue to be monitored with resource allocation reviews.
5	Technology Risk- Complexity and fragility of jClarety system	Iteratively develop more complex code structure; Add necessary technical debt fix to project scope; Regression Test to ensure technical issue does not negatively affect new code.	The project leadership team agreed that this risk was a high-level concern for this project as we wade into the unfamiliar waters of technical debt. It is difficult to see what challenges lie below the surface.

### Project Issues and Action Plans

Listed below are the most critical issues for this project.

For the complete Issue Log, please see the Issue Log tab in the most recent weekly status report: [Technical Debt Weekly Status Report](#)

No	Issue	Resolution / Notes	Estimated Resolution Date
	No current issues	.	

# SB 1049 Implementation Program

Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

## Project Schedule Deliverables and Milestones

Milestones Schedule				
Milestone	Percent Complete	Baseline Finish Date	Actual / Forecast Finish Date*	Status/ Notes
Program CR002- Technical Debt approved by Steering Team	100%	6/22/2021	6/22/2021	
Finalize project charter	100%	6/30/2021	6/30/2021	
Project kick off	100%	7/1/2021	7/1/2021	
Baselined project schedule (WP1 only)	100%	9/14/2021	9/14/2021	
WP1- Development Complete	100%	11/9/2021	11/16/2021	
WP1- Business functional testing (BFT) complete	0%	1/19/2022	1/19/2022	A new finish date is being planned. The missed milestone should not impact the project's critical path.
WP2- Functional Design Specification Document complete	0%	TBD	3/31/2022	
WP3- Functional Design Specification Document complete	0%	TBD	4/30/2022	
WP1- User acceptance testing (UAT) complete	0%	7/5/2022	7/5/2022	
WP1- Release to production Quality Gate complete	0%	7/20/2022	7/20/2022	
WP1- Production deployment complete	0%	7/20/2022	7/20/2022	
WP1- Lessons Learned	0%	8/4/2022	8/4/2022	
Project Closure Quality Gate	0%	8/31/2022	8/31/2022	
Project ends	0%	8/31/2022	8/31/2022	

\*Finish Date Color: Green = on Schedule, Yellow = in Jeopardy, Red = Late

## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

### Project information: Salary Limit

Project start: 7/01/ 2019 | Project end: 5/28/2021

Project Manager: Bruce Rosenblatt

### Project objective:

The Salary Limit Project is necessary because SB 1049 redefined "salary," which changes the calculation method for Final Average Salary, and contributions for members with subject salary greater than \$195,000. This limit is on salary for plan purposes, and is not a salary cap. The Salary Limit was adjusted for the Consumer Price Index, on 1/04/2021. The redefinition impacts the data and business processes used by diverse teams at PERS, including Benefit Calculations, Member Estimates, Data Verifications, Employer Data Reporting, and Account Data Reviews and Reporting.

### Overall project status: Complete

**Project Narrative:** The Salary Limit Project was successfully closed on 5/28/2021.

### Work Packages:

#### Work Package 1: Short-term Minimum Viable Product (MVP)

- Production Deployment Date: 12/24/2019 (Complete)

#### Work Package 2: Annual Implementation of New Salary Limit

- Production Deployment Date: 1/23/2020 (Complete)

#### Work Package 3: Adding self-service screens to jClarety system to record annual changes and effective dates - Long-term

- Production Deployment Date: 11/19/2020 (Complete)

#### Work Package 4 - Enhances proration work processes when partial year calculations may apply - Long-term

- Production Deployment Date: 5/13/2021 (Complete)

### Project information: Employer Programs

**Project start:** July 1, 2019 | **Project end:** July 16, 2021

**Project Manager:** Joli Whitney

### Project objective:

The Employer Programs section of SB 1049 expands the requirements for the Employer Incentive Fund (EIF); and appropriates \$100 million from the General Fund to the Employer Incentive Fund; directs net proceeds from Oregon Lottery Sports betting to the Employer Incentive Fund; allows participating public employers who make larger than \$10 million deposits to side accounts to determine when they wish to have these funds included in their employer rate assessment; and requires all public employers to participate in the Unfunded Actuarial Liability Resolution Program (UALRP).

### Overall project status: Complete

**Project Narrative:** The Employer Programs project was successfully closed on 7/16/2021.

### Work Packages:

#### WP1 Migrate and Adapt ERPT

- Acceptance Quality Gate: 3/23/2021 (this WP was not released to production) (Complete)

#### WP2 ERPT Stakeholder Acceptance and Deployment to Cloud

- Production Deployment Date: 6/3/2021 (Complete)

## Status Report for January 21, 2022

Executive Sponsor: Kevin Olineck  
Program Manager: James Allen

### Project information: Member Choice

Project start: October 23, 2019 | Project end: August 4, 2021

Project Manager: Joli Whitney

### Project objective:

The Member Choice sections of SB 1049 give members a say in how their Individual Account Program (IAP) accounts will be invested. Members' regular IAP accounts are currently allocated to Target-Date Funds (TDF) based on their year of birth. Beginning with calendar year 2021, members will be able to elect a TDF other than the default TDF.

### Overall project status: Complete

Project Narrative: The Member Choice project was successfully closed on 8/4/2021.

### Work Packages:

#### WP1.1 Online Election

- Production Deployment Date: 8/20/2020 (Complete)

#### WP1.2 Voya's updates to website and nightly sweep program

- Production Deployment Date: 1/19/2021 (Complete)

#### WP1.3 PERS paper form election process including workflow

- Production Deployment Date: 8/12/2020 (Complete)

#### WP1.4 Development of new reports (to Voya and internal)

- Production Deployment Date 9/29/2020 (Complete)

#### WP2- Refining TDF Processes - Long-term

##### WP2.1 -Online Member Services and jClarety Enhancements

- Production Deployment Date: 3/23/2021 (Complete)

##### WP2.2 -Central Data Management Reports

- Production Deployment Date: 6/15/2021 (Complete)







#### WP3- Online Member Services Election and Bugs

- Production Deployment Date: 6/24/2021 (Complete)



# Senate Bill (SB) 1049 Implementation Road Map

2019-2021 Biennium

	2019						2020						2021											
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
 <b>Employer Programs</b>	<ul style="list-style-type: none"> <li>7/1/19 – Effective Date</li> <li>9/3/19 – Employer Incentive Fund (EIF) Application #1 Opens</li> </ul>						<ul style="list-style-type: none"> <li>11/27/19 – EIF Application #1 Closes</li> <li>12/2/19 – EIF Application #2 Opens</li> </ul>						<ul style="list-style-type: none"> <li>8/6/20 – Employer Rate Projection Tool (ERPT) Assessment Complete</li> <li>12/1/20 – EIF Application #2 Closes</li> <li>3/30/21 – Work Package (WP) 1 Migrate and Adapt ERPT →●</li> <li>6/30/21 – WP2 ERPT Stakeholder Acceptance and Deployment →●</li> </ul>											
 <b>Salary Limit</b>							<ul style="list-style-type: none"> <li>12/24/19 – Work Package (WP) 1 – Short Term</li> <li>1/1/20 – Effective Date</li> <li>1/24/20 – WP2 Post 2020 Salary Limit – Long Term</li> </ul>						<ul style="list-style-type: none"> <li>11/19/20 – WP3 User Screens to Record Annual Salary Limit – Long Term</li> <li>5/13/21 – WP4 Proration Reports and Workflow – Long Term →●</li> <li>5/28/21 – Project Close →●</li> </ul>											
 <b>Work After Retirement</b>							<ul style="list-style-type: none"> <li>12/19/19 – Work Package (WP) 1 Retiree Wages Suspended – Short Term</li> <li>1/1/20 – Effective Date</li> </ul>						<ul style="list-style-type: none"> <li>11/19/20 – WP2 New Wage Codes with General Ledger (GL) Integration – Long Term</li> <li>5/13/21 – WP3 Retro Rate Change – Long Term →●</li> </ul>											
 <b>Member Redirect</b>							<ul style="list-style-type: none"> <li>6/18/20 – Work Package (WP) 1 Employee Pension Stability Account Set Up/Batch/General Ledger – Short Term</li> <li>7/1/20 – Effective Date</li> </ul>						<ul style="list-style-type: none"> <li>9/22/20 – Voluntary Contributions Initial Functionality – Long Term</li> <li>10/30/20 – WP2.2 IAP Forecaster Tool – non-jClarety – Long Term</li> <li>11/19/20 – Voluntary Contributions Final Functionality Release – Long Term</li> <li>1/21/21 – WP5.2 Online Member Services User Interface – Long Term →●</li> <li>1/26/21 – WP2 TIED SSIS – Non-jClarety – Long Term →●</li> <li>6/24/21 – WP4.2 EPSA Display, and WP12 Full EPSA Set up Screen – Long Term →●</li> <li>3/23/21 – WP3 EPSA Earnings – Long Term</li> </ul>											
 <b>Member Choice</b>	<ul style="list-style-type: none"> <li>10/23/19 – Project Kick Off</li> <li>5/15/20 – Member Annual Statements (MAS) Flyer Communication →●</li> </ul>						<ul style="list-style-type: none"> <li>8/19/20 – Member Choice Notification →●</li> </ul>						<ul style="list-style-type: none"> <li>8/20/20 – Work Package (WP) 1 Online Member Services (OMS) Changes Deployed</li> <li>9/1-30/20 – Election Period</li> <li>3/23/21 – WP2 OMS &amp; jClarety Enhancements – Long Term →●</li> <li>5/1/21 – Member Choice reflected in MAS →●</li> <li>6/24/21 – WP3 Online Member Services (OMS) Election and Bugs →●</li> <li>1/1/21 – Effective Date</li> </ul>											
<b>PROGRAM INITIATIVE</b>																								
 <b>Cross Project Effort</b>	<ul style="list-style-type: none"> <li>1/26/21 – WP2.1 IAP Payment Recon (short-term) →●</li> <li>3/18/21 – WP1.2 IAP Validator Tool (long-term) →●</li> <li>9/17/20 – WP1.1 IAP Validator Tool (short-term) →●</li> <li>4/27/21 – WP2.2 IAP Payment Recon (long-term) →●</li> <li>5/13/21 – WP7.2 Employer Information Actuarial Extract →●</li> <li>6/18/21 – WP5.1 PYE Invoicing Tool →●</li> <li>6/24/21 – WP7.1 Non-Retired Census Actuarial Extract →●</li> <li>6/28/21 – WP4.1 IAP Adjustment Calculator →●</li> </ul>																							

# Senate Bill (SB) 1049 Implementation Road Map

## 2021-2023 Biennium

	2021						2022												2023					
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
<b>Employer Programs</b>	● 7/16/21 – Project Close																							
<b>Work After Retirement</b>							● 12/16/21 – WP4 Side Account Credit Allocation																	
							● 2/28/22 – Project Close																	
<b>Member Redirect</b>							● 10/14/21 – WP5 Voluntary Contribution Maintenance – Long Term																	
							● 3/24/22 – WP4.3 EPSA Transaction Display – Long Term																	
							● 7/21/22 – WP6.1 EPSA Retirement – Long Term																	
							● 2/23/23 – WP9.1 EPSA Withdrawal – Long Term → ●																	
							● 2/23/23 – WP9.2 Alter OPSRP Withdrawal – Long Term → ●																	
<b>Member Choice</b>	● 8/4/21 – Project Close						Jan. 21																	
<b>Technical Debt</b>	● 7/1/21 – Project Kickoff						● 3/31/22 – WP2 Benefit Account Transition Status – Functional Design Specification Completed																	
							● 4/30/22 – WP3 General Ledger Reversals, Including Side Accounts – Functional Design Specification Completed																	
							● 7/21/22 – WP1 Employer Statements																	
<b>PROGRAM INITIATIVE</b>							● 2/22/22 – WP3 IAP Divorce Tool																	
<b>Cross Project Effort</b>							● 5/20/22 – WP5.2 PYE Invoicing Tool																	
							● 6/1/22 – WP4.2 IAP Adjustment Calculator																	
							● 10/5/22 – WP6 IAP Balance Comparison Tool																	

## 2023-2025 Biennium

PROJECTS	2023						2024												2025					
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
<b>Member Redirect</b>	● 7/20/23 – WP8.1 EPSA Pre-Retirement Death – Long Term						● 3/28/24 – Migration Finalization																	
	● 7/20/23 – WP10 Backlog Implementation – Long Term						● 4/25/24 – Project Close																	
							● 12/21/23 – WP11.1 Reemployment – Long Term																	
							● 12/21/23 – WP11.2 Excess EPSA – Long Term																	
							● 3/28/24 – WP12.2 Final Backlog Implementation – Long Term																	
<b>PROGRAM INITIATIVE</b>																								
<b>Cross Project Effort</b>							● 2/22/24 – WP7.3 Tier One/Tier Two/OPSRP Payouts Actuarial Extract																	

## Action and Discussion Items

1. Legislative Preview/Update
2. SB 1049 Update
3. SB 1566 Reporting Requirements
4. Reporting and Funding Overpayments to Members with Data Verification
5. Equal to or Better Than Testing
6. Preliminary 2021 Earnings Crediting and Reserving
7. Update Reflecting on Earnings through December 31, 2021



# Oregon

Kate Brown, Governor

## Public Employees Retirement System

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11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
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January 14, 2022

The Honorable Senator Elizabeth Steiner Hayward, Co-Chair  
The Honorable Representative Dan Rayfield, Co-Chair  
Joint Committee on Ways and Means  
900 Court St NE  
H-178 State Capitol  
Salem, OR 97301-4048

### Nature of the Request

As required by Senate Bill 1566 (2018), PERS is providing the status of the Employer Incentive Fund, the School Districts Unfunded Liability Fund, the Unfunded Actuarial Liability Resolution Program, and extended amortization options for side accounts of \$10 million or more as of December 2021.

### Agency Action

#### *School Districts Unfunded Liability Fund*

The School Districts Unfunded Liability Fund (SDULF) is a pooled side account intended to provide rate relief to all public school districts, public charter schools, and education service districts. The SDULF has four defined revenue sources: interest on unclaimed property from the Department of State Lands, proceeds from estate taxes, proceeds from capital gains taxes and proceeds from debt collection.

- Department of State Lands anticipates transferring \$45,492,147 from interest on unclaimed property to the SDULF in January 2022.
- The Office of Economic Analysis (OEA) forecasts a transfer of \$74,916,000 from Estate taxes will occur in 2023.
- OEA advised no transfer is expected from proceeds of Capital Gains taxes as the growth did not exceed the 10-year trend, as required by statute.
- The Department of Administrative Services advised no transfer is expected from debt collection, due to a significant drop in accounts receivable activity attributed to COVID-19.

As of November 30, 2021, the SDULF has a balance of \$378,550. Despite the anticipated deposits in 2022 and 2023, the funding is not sufficient to provide an offset for the School District Pool. As of the December 31, 2020 valuation, the School Districts Pool has a combined

valuation payroll of \$3,821,900,000; \$535,000,000 is the minimum amount the fund requires to provide a 1% rate offset to the pool.<sup>1</sup>

Proceeds from estate taxes and capital gains taxes as an income source for the SDULF sunset in 2023. The transfer of proceeds from debt collection as an income source for the SDULF sunsets in 2024. The transfer of interest on unclaimed property as an income source for the SDULF sunsets in 2027.

### *Employer Incentive Fund*

The Employer Incentive Fund (EIF) provides a 25% match to employers making a lump sum payment from non-borrowed funds of at least \$25,000. This lump sum payment may be used to establish a new side account or as a payment into an existing side account and is subject to the limitations stated in the statute. The first 90 days of the application period are dedicated to employers whose UAL as a percentage of payroll that exceeds 200%; the application is subsequently open to all employers. Currently the EIF has a balance of \$7,341,407.

During the 2021 Regular Session, the Legislature passed SB 846 requiring PERS to certify the amount of matching funds approved for disbursement to employers but not yet disbursed before allocating sports betting funds to the EIF, rather than the direct allocation of sports betting proceeds. This new requirement presents administrative challenges that may hinder the effectiveness of the program, especially for small employers or employers making the minimum payment. As funding may not be available at the time of employer payment (which may be immediate upon approval of application), PERS will deposit all matching funds as additional payments. In some cases, this may delay the additional rate reduction provided by the matching funds to an employer. In particular, the effect of these funds may not be captured in the same valuation as the initial payments from the employers.

PERS does not anticipate opening the EIF application until the fund reaches a minimum of \$25,000,000. Based on current budget projections, we plan to open the next application period in 2023.

### *Unfunded Actuarial Liability Resolution Program*

Senate Bill 1049 modified the UAL Resolution Program (UALRP) to include the development of funding plans to improve the employers' funded status and to manage contribution rates. The bill also requires all PERS-participating employers to participate in the UALRP, whereas previously this was a requirement for employers only participating in EIF.

In 2021, PERS launched the new Employer Rate Projection Tool. This tool provides greater security, as well as the capability to incrementally add employer requested features. Currently, employers can modify payroll, contribution rates, or the addition of a side account and determine how these changes will affect their contributions over time. Future enhancements, based on the

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<sup>1</sup> The side account minimum reflects both the updated assumed earnings rate of 6.90% and the payroll growth rate of 3.4% per year.

top requested modifications from employers, are the ability to model additional scenarios of earnings and payroll growth rates.

PERS has created a series of guides to help employers understand the fundamentals of the system and provide context to the resources they receive when forecasting and budgeting. Those guides are:

*Guide to Understanding Your Rate*

*Guide to Understanding Your Valuation*

*Guide to Understanding Unfunded Actuarial Liability*

*Guide to Understanding Pooling*

*Guide to Financial Modeling*

*Extended Amortization Options*

Senate Bill 1566 (2018) introduced the option to select a shortened amortization period of six, 10, or 16 years. Since then, nine side accounts have been established with a shorter amortization period by five employers.

Currently one employer, Port of Portland, has opted for the deferred rate offset option, selecting a rate offset date of July 1, 2029 with a 10-year amortization period.

### **Summary**

Employer Programs have been well received by PERS-participating employers despite budgetary uncertainty. Employers appreciate incentives to proactively manage their contribution rates and appreciate the engaged role PERS has had in addressing knowledge gaps.

### **Action Requested**

PERS requests the Committee acknowledge receipt of the report.

### **Legislation Affected**

No legislation is affected by this request.

Sincerely,



Kevin Olineck, Director  
Oregon Public Employees Retirement System

## Action and Discussion Items

1. Legislative Preview/Update
2. SB 1049 Update
3. SB 1566 Reporting Requirements
4. Reporting and Funding Overpayments to Members with Data Verification
5. Equal to or Better Than Testing
6. Preliminary 2021 Earnings Crediting and Reserving
7. Update Reflecting on Earnings through December 31, 2021



## Public Employees Retirement System

Headquarters:  
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<http://oregon.gov/pers>

January 31, 2022

TO: Members of the PERS Board

FROM: Sam Paris, Chief Operations Officer  
Amanda Marble, Financial Reporting Manager

SUBJECT: Reporting and Funding Overpayments to Members with a Completed Data Verification

### OVERVIEW

- Action: Resolve funding issue created by overpayments to members with a completed data verification.
- Reason: Oregon Revised Statute (ORS) 238.285(6)(a) states that PERS is not authorized to collect overpayments made to members with a completed data verification.

### BACKGROUND

Members who are within two years of retirement eligibility may request a verification of their PERS data under ORS 238.285. When PERS issues the data verification, the member's employment, creditable service or retirement credit, salary, and account balance(s)<sup>1</sup> data are locked as of the end of the year specified in the data verification. The member has 60 days to dispute the information in the data verification. If an error is discovered in the member's data after it has been locked, PERS is unable to correct the error. This results in either an underpayment or an overpayment to the member when their benefits are calculated.

As required under ORS 238.715, PERS generally takes action to collect overpayments when a benefit calculation error is discovered. However, statute prohibits recovery of any overpayment that is a result of a completed data verification. Under ORS 238.285(6)(a), "erroneous payments or overpayments paid to or on account of a member based on a verification provided under this section may not be recovered under ORS 238.715 but may be charged to the reserve account established under ORS 238.670(1), or charged as an administrative expense under ORS 238.610."

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<sup>1</sup> This refers to Tier 1 and Tier 2 members' regular and variable accounts under ORS 238.250 and .260. Account balances in the Individual Account Program (IAP) are not verified or locked.



ORS 238.670(1) states that the contingency reserve account “shall be maintained and used by the board to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided in subsection (3) or (4) of this section, other contingency.” Because ORS 238.285(6)(a) states that PERS is not authorized to collect overpayments made to members with a data verification and specifically authorizes the use of the contingency reserve, the Compliance, Audit, and Risk Division (CARD) staff have affirmed that these overpayments meet the criteria for “other contingency,” as described in ORS 238.670(1). Therefore, data verification overpayments are eligible to be funded by the contingency reserve, with board approval. Under OAR 459-005-0040(5), the PERS Board is required to allocate funds to cover these overpayments annually.

The data verification program was established by Senate Bill 897 in 2009 and took effect in July 2011. Following a 2015 Benefit Calculation Audit, PERS has been working across the agency to establish a process to calculate, track, and fund overpayments resulting from a completed data verification. Staff have also worked with Milliman to define the present-day value calculation for each benefit type.

With these processes now in place, PERS has compiled and reviewed all accounts with an error in a locked data verification going back to 2011, identifying eight overpayments we are now seeking to fund. Moving forward, PERS will be reporting any new overpayments to the board on an annual basis.

The attached table, *Overpaid Benefits Resulting from an Error in a Locked Data Verification*, shows the overpayments we are seeking to fund.

### BOARD ACTION

The board’s options include:

1. Pass a motion to “authorize the transfer of Contingency Reserve funds to fund the overpayments, as listed, in the amount of \$48,513.79.”
2. Direct staff to establish a process to charge the overpayments as an administrative expense.

### STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #1.

C.4. Attachment 1 - *Overpayments to Members with a Completed Data Verification*

## Overpayments to Members with a Completed Data Verification

	Retirement Date	Data Verification Locked	Error Discovered	Error Description	Error Category	Impact of Error on Benefit	Monthly Overpayment Amount	Present Day Value of Overpayment
1	11/1/2012	12/31/2011	Employer reporting process	PERS staff established the member's September 1, 1985 contribution start date based on a February 14, 1985 hire date reported by their employer during the Data Verification process. However, the employer also reported a July 3, 1985 termination date with no new employment until September 1, 1985. This break in service was greater than 30 working days and therefore membership edibility requirements were not met.	Staff error	<ul style="list-style-type: none"> <li>• Retirement credit overstated by 6 months</li> <li>• 1985 contributions overstated by \$368.22</li> <li>• 1986 contributions overstated by \$246.06</li> </ul>	\$152.66	\$26,981.13
2	12/1/2014	12/31/2012	Audit process	PERS staff omitted service credit for August and September 1996 based on educational service credit rules. However, a salary breakdown submitted by the employer shows hours worked and salary earned during the months in question, and service credit should not have been removed. The understated service credit resulted in an overstated tax remedy benefit.	Staff error/complex educational service credit rules	<ul style="list-style-type: none"> <li>• Retirement credit understated by 2 months</li> <li>• Tax remedy benefit overstated by \$9.86</li> </ul>	\$9.86	\$1,504.34
3	7/1/2017	12/31/2016	Benefit calculation process	PERS staff incorrectly included two months of educational service credit for July and August 1993, which the member was not entitled to due to being on a leave without pay from May through August 1993.	Staff error/complex educational service credit rules	<ul style="list-style-type: none"> <li>• Retirement credit overstated by 2 months</li> </ul>	\$22.00	\$3,908.96
4	1/1/2019	12/31/2016	Benefit calculation process	The employer reported zero hours for July through November 2006. PERS staff failed to remove service credit for this time period.	Staff error	<ul style="list-style-type: none"> <li>• Retirement credit overstated by 5 months</li> </ul>	\$16.33	\$2,561.20
5	7/1/2019	12/31/2017	Benefit calculation process	The member was on a leave of absence for the major fraction of each month in June 1997, and July through August 1998. PERS staff incorrectly granted educational service credit for these summer months.	Staff error/complex educational service credit rules	<ul style="list-style-type: none"> <li>• Retirement credit overstated by 3 months</li> <li>• Tax remedy benefit overstated by \$29.28</li> </ul>	\$29.28	\$5,424.41
6	1/1/2020	12/31/2014	Estimate calculation process	The Data Verification was issued without contract months being updated for an educational employer. With the system default of 12 months, the member was given educational service credit for July and August 1987. The employer later confirmed the actual contract months should have been 10 months, and no work was performed during July and August 1987. Educational service credit should not have been granted.	Staff error/complex educational service credit rules	<ul style="list-style-type: none"> <li>• Retirement credit overstated by 2 months</li> </ul>	\$22.89	\$4,072.36
7	1/1/2020	12/31/2017	Benefit calculation process	The system granted educational service credit for July through August 2009, prior to the start of the member's six month waiting time. PERS staff failed to override the system to remove service credit for those months.	Staff error/complex educational service credit rules	<ul style="list-style-type: none"> <li>• Retirement credit overstated by 2 months</li> </ul>	\$9.26	\$1,460.77
8	7/1/2021	12/31/2020	Benefit calculation process	The member was hired August 24, 2011 as a School Employee and the system incorrectly granted educational service credit for July and August 2011. PERS staff failed to override the system to correct the waiting time service credit prior to locking the Data Verification.	Staff error/complex educational service credit rules	<ul style="list-style-type: none"> <li>• Retirement credit overstated by 2 months</li> </ul>	\$16.10	\$2,600.63
<b>Total</b>								<b>\$48,513.79</b>

## Action and Discussion Items

1. Legislative Preview/Update
2. SB 1049 Update
3. SB 1566 Reporting Requirements
4. Reporting and Funding Overpayments to Members with Data Verification
5. Equal to or Better Than Testing
6. Preliminary 2021 Earnings Crediting and Reserving
7. Update Reflecting on Earnings through December 31, 2021



# Oregon

Kate Brown, Governor

## Public Employees Retirement System

Headquarters:  
11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
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P.O. Box 23700  
Tigard, OR 97281-3700  
888-320-7377  
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January 31, 2022

TO: Members of the PERS Board  
FROM: Jake Winship, Actuarial Manager  
SUBJECT: Equal to or Better (ETOB) Testing Update

### OVERVIEW

Oregon Administrative Rules 459-030 permit public employers to provide retirement benefits to its police officers and firefighters exempt from the requirement to participate in the Oregon Public Employees Retirement Plan (PERS). The PERS Board has begun the process to determine whether the plan provides benefits equal to or better (ETOB) than those available to PERS members similarly situated, which must take place within the calendar year 2022.

Staff initiated a request for quote (RFQ), an expedited process for procurement. They also finalized the list of impacted plans and prepared an updated timeline. Response from this RFQ, and a resulting recommendation of an actuarial firm to engage, will be presented during the board meeting itself.

### BACKGROUND

Milliman actuaries introduced this topic to the PERS Board at its October 1, 2021. Among the issues covered were the following:

- Scope of testing
- Who determines results and pays for testing
- Potential concerns identified

The board meeting held December 3, 2021, saw an update presented that addressed some of these concerns. Based on staff recommendations, the PERS Board took the following actions:

1. Affirmed the provisions of OAR 459-030 as the basis for equal to or better than testing determination.
2. Directed agency staff to solicit a request for quote to at least three firms to conduct the actuarial review specified in OAR 459-030-0015. The firms identified are Independent Actuaries, Inc., Summit Benefit & Actuarial Services, Inc., and Bartel Associates, LLC.
3. Approved a revised timeline for completion of ETOB testing as follows:
  - January 2022: Recommend actuary to perform testing. PERS Board will select actuary.

- February – March 2022: Obtain current demographic, salary, and plan data. Update will be provided at March 28 board meeting, final direction to complete testing.
- April – May 2022: Perform testing for all impacted employers. Recommend pass/fail for each at May 27 board meeting.
- June 2022: Identify corrective action for any employers who fail ETOB testing. Final report to PERS Board at July 22 meeting.

### EMPLOYERS IMPACTED

PERS staff reviewed the initial list of plans identified, based on the 2010 determination. The final list removes Mid-Columbia Fire & Rescue (as they are now a PERS-participating employer) and is presented as follows:

City of Forest Grove  
City of Portland (FPDR)  
City of Seaside  
City of Springfield  
City of The Dalles  
Morrow County  
Tillamook County  
Union County  
Wheeler County

### REQUEST FOR QUOTE AND RECOMMENDATIONS

Staff distributed a request for quote, via email, to each of the three firms indicated above on January 12, 2022. The request specified a deadline for questions of January 21 and receipt of quote by **January 26, 2022 at 12:00 p.m.**

The following responses were received as of January 12, 2022:

- Independent Actuaries, Inc. – responded.
- Summit Benefit & Actuarial Services, Inc. – no response.
- Bartel Associates, LLC – no response.

Based on the one response, which met the requirements included in the RFQ, PERS staff recommends that the PERS Board award the equal to or better than actuarial determination to Independent Actuaries, Inc.

### ACTIONS NEEDED

Staff recommends that the board approve the following action:

1. Make a motion to award the equal to or better than determination to the firm of Independent Actuaries, Inc.

#### BOARD OPTIONS

The PERS Board may:

1. Pass a motion awarding the equal to or better than actuarial determination contract to Independent Actuaries, Inc.
2. Direct staff to explore other options.

#### STAFF RECOMMENDATION

Staff recommends the PERS Board select option 1.

## Action and Discussion Items

1. Legislative Preview/Update
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January 31, 2022

TO: Members of the PERS Board  
FROM: Richard Horsford, Chief Financial Officer  
Amanda Marble, Financial Reporting Manager  
SUBJECT: 2021 Preliminary Earnings Crediting and Reserving

### OVERVIEW

- Action: Allocate 2021 preliminary earnings crediting.
- Reason: ORS 238.670(5) requires PERS to submit a preliminary proposal to the appropriate legislative committee at least 30 days before making a final decision on earnings crediting.
- Subject: Crediting earnings for calendar year 2021 to the PERS Fund's accounts and reserves.
- Policy Issue: Is the Contingency Reserve adequately funded?

The PERS Board is charged with crediting the 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.

### 2021 PRELIMINARY ALLOCATIONS

The PERS Board's Annual Earnings Crediting rule (see OAR 459-007-0005) directs the crediting to the Judge and Tier Two member regular accounts, as well as the OPSRP Pension Program, Benefits-in-Force, and Employer reserves. Staff recommends the following allocations be adopted preliminarily by the PERS Board:

#### **Non-Discretionary Allocations**

##### **1. Tier One Member Regular Accounts Reserve and Judge Member Accounts**

Credit Tier One member regular accounts and Judge member accounts with the assumed earnings rate (7.20%) in effect during 2021.

**Tier One Rate Guarantee Reserve:** This reserve, established under ORS 238.255(1), is used to fund crediting of the assumed rate to Tier One member regular accounts when earnings are less than the assumed rate. Because earnings on Tier One member regular accounts for 2021 exceed the assumed rate, those excess earnings will be credited to Tier One Rate Guarantee Reserve, resulting in a remaining balance of \$450.9 million.

##### **2. Tier Two Member Regular Accounts**

Credit Tier Two member regular accounts with a proportional share of available PERS Fund Regular Account earnings, which will result in a preliminary rate of 20.22%.

##### **3. Benefits-in-Force and Employer Reserves**

Credit the Benefits-in-Force and Employer Reserves evenly with the remaining available PERS Fund Regular Account earnings, which will result in a preliminary rate of 20.22%.

##### **4. OPSRP Pension Plan Member Accounts**



OPSRP member accounts usually are credited with a proportional share of available PERS Fund Regular Account earnings, which will result in a preliminary rate of 20.47%.

**EARNINGS ALLOCATIONS DIRECTED BY STATUTE OR RULE**

The following reserves and accounts are allocated earnings by applicable statute or rule. In compliance with these restrictions, the preliminary earnings allocation reflects the following:

- 5. Individual Account Program (IAP):** These member accounts are credited with actual earnings or losses of the PERS Fund Regular Account as required by ORS 238A.350 (1). The overall preliminary IAP earnings for 2021 are 16.26% after deducting IAP expenses. The table below illustrates the IAP earnings by tranche.

<b>Oregon Public Employees Retirement System</b>				
<b>Preliminary IAP TDF Earnings</b>				
(All dollar amounts in thousands)				
<b>TDF Fund</b>	<b>Reserves Before Crediting</b>	<b>2021 Crediting</b>	<b>Reserves After Crediting</b>	<b>2021 Rates</b>
<b>RAF Fund</b>	\$ 786,377.3	\$ 110,482.5	\$ 896,859.8	14.04%
<b>2025 Fund</b>	1,458,544.4	208,179.9	1,666,724.3	14.27%
<b>2030 Fund</b>	1,937,387.7	318,321.9	2,255,709.6	16.43%
<b>2035 Fund</b>	2,184,951.0	399,088.0	2,584,039.0	18.26%
<b>2040 Fund</b>	1,876,578.7	346,346.4	2,222,925.1	18.45%
<b>2045 Fund</b>	1,436,085.8	257,456.6	1,693,542.4	17.92%
<b>2050 Fund</b>	777,043.7	131,176.3	908,220.0	16.88%
<b>2055 Fund</b>	320,916.7	48,339.2	369,255.9	15.06%
<b>2060 Fund</b>	86,982.3	10,064.9	97,047.2	11.57%
<b>2065 Fund</b>	17,458.3	2,597.3	20,055.6	14.87%
<b>Total</b>	<b>\$10,882,325.9</b>	<b>\$1,832,053.0</b>	<b>\$12,714,378.9</b>	

In accordance with Senate Bill 1049 (2019), effective July 1, 2020 all currently employed Tier One/Tier Two and OPSRP members earning \$2,500/month or more (\$2,535 in 2021), a portion of their 6 percent monthly IAP contributions will be redirected to an “Employee Pension Stability Account.” The Employee Pension Stability Account (EPSA) will be used to pay for part of the member’s future pension benefit.

Of note, House Bill 2906 was passed in 2021, increasing the monthly salary threshold to \$3,333, effective January 1, 2022.

For earnings crediting purposes, Tier One/Tier Two member EPSA accounts will be credited with the same rate as Tier Two Regular Member accounts, which will result in a preliminary rate of 20.22%.

For earnings crediting purposes, OPSRP member EPSA accounts will be credited with the same rate as OPSRP Pension Member Accounts, which will result in a preliminary rate of 20.47%.

- 6. Employer Lump Sum Payment Accounts:** These accounts are credited with actual earnings or losses of the PERS Fund Regular Account less administrative expenses, as authorized by ORS 238.225. For 2021, the preliminary crediting rate for the side accounts established before 1/1/2021 is 20.77%. The preliminary crediting rate for new lump sum payment accounts varies depending on the time of payments.
- 7. 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 2021, the preliminary crediting rate for these accounts are 21.02% for RHIA, 18.24% for RHIPA, and 0.18% for SRHIA (invested in the Treasury Short-Term Fund).

Oregon Public Employees Retirement System Health Insurance Accounts Preliminary Rates	
Health Insurance Fund	2021
RHIA	21.02%
RHIPA	18.24%
SRHIA *	0.18%

\* Invested in the Treasury Short-Term Fund

- 8. Variable Annuity Account:** This account is credited with earnings and losses on its distinct asset allocation of the PERS Fund. The Variable Annuity Account is only invested in equities and therefore its earnings are discrete from those of the more diversified PERS Fund Regular Account. For 2021, the preliminary Variable Annuity Account earnings is 18.84%.

**Administrative Expenses:** PERS administrative costs are funded by earnings when they are sufficient, as they were in 2021 (ORS 238.610(1)). As directed by House Bill 4155 (2014 Regular Session), the administrative costs to comply with Governmental Accounting Standards Board (GASB) 68 and 75 reporting standards were \$27,238, and will be recovered from earnings on employer's contributions.

Oregon Public Employees Retirement System Calendar Year 2021 Preliminary 2021 Crediting and Reserving Option 1: No Contingency Reserve Funding (All dollar amounts in millions)								
	Reserves Before Crediting	Gross Investment Income (a)	Investment Expense (b)	Administrative Expenses (c)	Other Adjustments <sup>2</sup> (d)	Net 2021 Crediting (a+b+c+d)	Reserves After Crediting	2021 Rates
Tier One Member Regular Accounts	2,644.8	709.7	(46.9)	(3.7)	(468.7)	190.4	2,835.2	7.20%
Tier One Rate Guarantee Reserve	526.8	-	-	-	450.9	450.9	977.7	N/A
Tier Two Member Regular Accounts	953.5	213.4	(14.1)	(1.1)	(5.3)	192.9	1,146.4	20.22%
Benefits In Force Reserve	17,942.9	4,015.0	(265.4)	(20.8)	(100.4)	3,628.4	21,571.3	20.22%
Employer Reserves	35,445.8	7,931.6	(524.2)	(41.1)	(198.4)	7,167.9	42,613.7	20.22%
Tier One/Two Employee Pension Stability Account	127.9	16.5	(1.2)	-	11.1	26.4	154.3	20.22%
OPSRP Pension	8,417.4	1,721.1	(109.8)	(11.5)	123.8	1,723.6	10,141.0	20.47%
OPSRP Employee Pension Stability Account	88.7	10.8	(0.8)	-	8.2	18.2	106.9	20.47%
IAP Accounts, as a whole <sup>1</sup>	11,273.6	2,008.4	(116.5)	(15.3)	(43.2)	1,833.4	13,107.0	16.26%
UAL Lump-Sum Pmt. Side Accounts <sup>1</sup>	5,581.5	1,087.8	(30.5)	(0.2)	-	1,057.1	6,638.6	Various <sup>3</sup>
Contingency Reserve	32.0	-	-	-	-	-	32.0	N/A
<b>Total</b>	<b>\$83,034.9</b>	<b>\$17,714.3</b>	<b>(\$1,109.4)</b>	<b>(\$93.7)</b>	<b>(\$222.0)</b>	<b>\$16,289.2</b>	<b>\$99,324.1</b>	

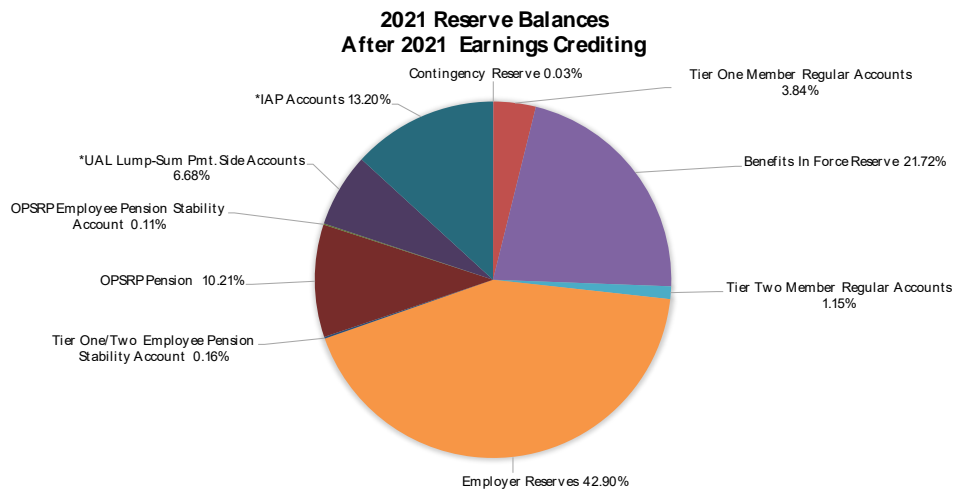
<sup>1</sup> Informational only. Not affected by Board reserving or crediting decisions.

IAP accounts receiving installments have already received 2021 earnings.

<sup>2</sup> Primarily due to Tier One Rate Guarantee Reserve transfer of the Tier One member regular account excess earnings, defined benefit commingled earnings transfer, and the earnings credited to mid-year retirements.

<sup>3</sup> The preliminary earnings rate for the pre-2021 Side Accounts is 20.77%

Note: The actual market returns for private equity investments are reported on a three-month lag as additional time is needed to value these non-public assets and returns. Private equity returns for the fourth quarter will be reflected in the following year earnings crediting.



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 IAP accounts receiving installments have already received 2021 earnings.

**POLICY ISSUE**

- *Is the Contingency Reserve adequately funded?*

ORS 238.670 (1) limits the PERS Board’s crediting of funds to the Contingency Reserve; specifically, “...the board may not credit further amounts to the reserve account if the amounts in the reserve account exceed \$50 million.”

The current balance of the Contingency Reserve is \$32,001,041.65 million, with \$2.5 million earmarked for resolving employer insolvencies. The staff recommends an additional allocation at this time of \$17,998,958.35 to replenish the fund for the corrections made to member accounts by the OPSRP IAP First Wage Cleanup Project.

**OPSRP IAP First Wage Cleanup Project:** Between January 1, 2004 through December 31, 2014, employers’ inconsistent understanding of when OPSRP IAP contributions were due for new OPSRP members resulted in some members not receiving IAP contributions for their first eligible pay date. At the November 18, 2016 board meeting, the board approved the EAG’s request to use the Contingency Reserve to fund the approximate \$21,809,890 cost associated with correcting the Contribution Start Date (CSD) for members during the period from 2004 through 2014.

Data Services completed their research and analysis in December 2021, and the anticipated the amount needed from the contingency reserve of \$17,998,958.35 was moved to fund the processing of member account corrections.

Oregon Public Employees Retirement System								
Calendar Year 2021								
Preliminary 2021 Crediting and Reserving								
Option 2: Contingency Reserve Funding								
(All dollar amounts in millions)								
	Reserves Before Crediting	Gross Investment Income (a)	Investment Expense (b)	Administrative Expenses (c)	Other Adjustments <sup>2</sup> (d)	Net 2021 Crediting (a+b+c+d)	Reserves After Crediting	2021 Rates
Tier One Member Regular Accounts	2,644.8	709.7	(46.9)	(3.7)	(468.7)	190.4	2,835.2	7.20%
Tier One Rate Guarantee Reserve	526.8	-	-	-	450.1	450.1	976.9	N/A
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Benefits In Force Reserve	17,942.9	4,015.0	(265.4)	(20.8)	(105.3)	3,623.5	21,566.4	20.19%
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OPSRP Employee Pension Stability Account	88.7	10.8	(0.8)	-	8.2	18.2	106.9	20.44%
IAP Accounts, as a whole <sup>1</sup>	11,273.6	2,008.4	(116.5)	(15.3)	(43.2)	1,833.4	13,107.0	16.26%
UAL Lump-Sum Pmt. Side Accounts <sup>1</sup>	5,581.5	1,087.8	(30.5)	(0.2)	-	1,057.1	6,638.6	Various <sup>3</sup>
Contingency Reserve	32.0	-	-	-	18.0	18.0	50.0	N/A
<b>Total</b>	<b>\$83,034.9</b>	<b>\$17,714.3</b>	<b>(\$1,109.4)</b>	<b>(\$93.7)</b>	<b>(\$222.1)</b>	<b>\$16,289.1</b>	<b>\$99,324.0</b>	

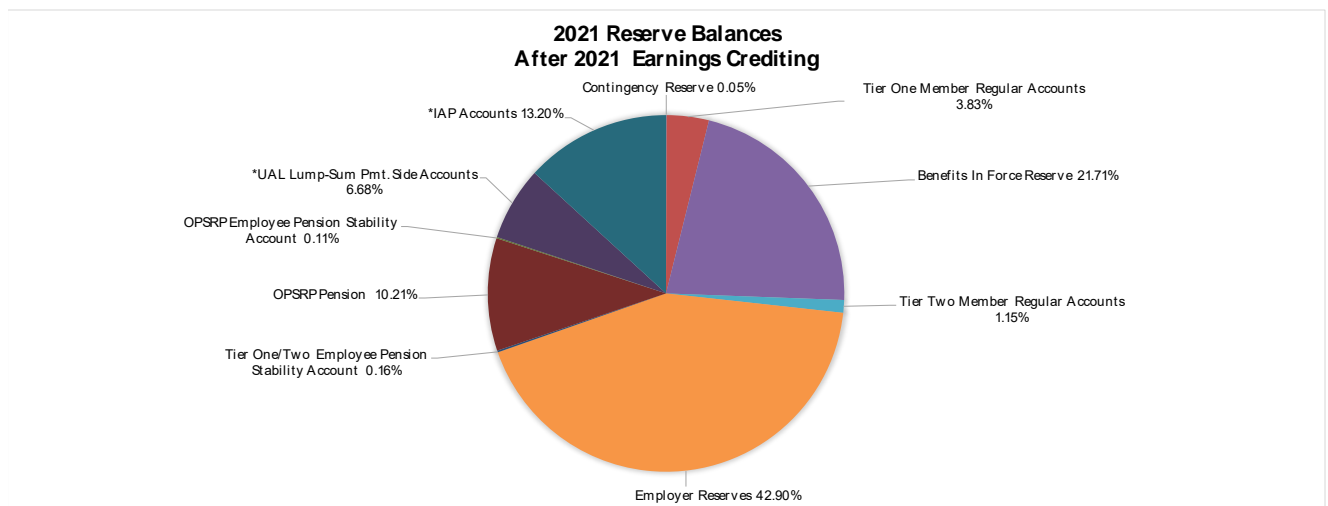
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IAP accounts receiving installments have already received 2021 earnings.

<sup>2</sup> Primarily due to Tier One Rate Guarantee Reserve transfer of the Tier One member regular account excess earnings, Contingency Reserve funding, defined benefit commingled earnings transfer, and the earnings credited to mid-year retirements.

<sup>3</sup> The preliminary earnings rate for the pre-2021 Side Accounts is 20.77%.

Note: The actual market returns for private equity investments are reported on a three-month lag as additional time is needed to value these non-public assets and returns. Private equity returns for the fourth quarter will be reflected in the following year earnings crediting.



<sup>1</sup> Informational only. Not affected by Board reserving or crediting decisions.

IAP accounts receiving installments have already received 2021 earnings.

## BOARD ACTION – PRELIMINARY EARNINGS CREDITING

The PERS Board’s options for 2021 preliminary earnings crediting include:

1. Pass a motion to “adopt the preliminary crediting of earnings as presented for calendar year 2021, subject to final adoption at the March 28, 2022 PERS Board meeting.”
2. Pass a motion to “adopt the preliminary crediting of earnings for calendar year 2021, subject to final adoption at the March 28, 2022 PERS Board meeting, and allocating a stated amount of 2021 earnings to fully fund the Contingency Reserve.
3. Pass a motion preliminarily allocating 2021 earnings in an alternative proportion, subject to final adoption at the March 28, 2022 PERS Board meeting.

### STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #2.

### NEXT STEPS

**Preliminary Earnings Crediting:** Once the board makes its preliminary allocation, staff will prepare and present the required report to the Joint Legislative Committee on Ways and Means. Any comments received from the committee will be presented to the PERS Board prior to the final crediting decision at its meeting on March 28, 2022.

This preliminary action and the resulting report to the Legislature do not prohibit the PERS Board from changing its final decision, such as if new information becomes available. If the board makes a significant change from its preliminary decision, staff will report the board's actions to the Legislature.

C.6. Attachment 1: ORS 238.670 – Reserve Accounts in Fund

C.6. Attachment 2: OAR 459-007-0005 – Annual Earnings Crediting Rule

C.6. Attachment 3: EAG Board Request to fund the CSD Corrections with the Contingency Reserve, with a copy of the Board minutes reflecting approval Board approval

**238.670 Reserve accounts in fund.**

(1) At the close of each calendar year in which the earnings on the Public Employees Retirement Fund equal or exceed the assumed interest rate established by the Public Employees Retirement Board under ORS 238.255, the board shall set aside, out of interest and other income received through investment of the Public Employees Retirement Fund during that calendar year, such part of the income as the board may deem advisable, not exceeding seven and one-half percent of the combined total of such income, which moneys so segregated shall remain in the fund and constitute therein a reserve account. The board shall continue to credit the reserve account in the manner required by this subsection until the board determines that the reserve account is adequately funded for the purposes specified in this subsection, but the board may not credit further amounts to the reserve account if the amounts in the reserve account exceed \$50 million. Such reserve account shall be maintained and used by the board to prevent any deficit of moneys available for the payment of retirement allowances, due to interest fluctuations, changes in mortality rate or, except as provided in subsection (3) or (4) of this section, other contingency. In addition, the reserve account may be used by the board for the following purposes:

(a) To prevent any deficit in the fund by reason of the insolvency of a participating public employer. Reserves under this paragraph may be funded only from the earnings on employer contributions made under ORS 238.225.

(b) To pay any legal expenses or judgments that do not arise in the ordinary course of adjudicating an individual member's benefits or an individual employer's liabilities.

(2) At the close of each calendar year, the board shall set aside, out of interest and other income received during the calendar year, after deducting the amounts provided by law and to the extent that such income is available, a sufficient amount to credit to the reserves for pension accounts and annuities varying percentage amounts adopted by the board as a result of periodic actuarial investigations. If total income available for distribution exceeds those percentages of the total accumulated contributions of employees and employers, the reserves for pensions and annuities shall participate in such excess.

(3) The board may set aside, out of interest and other income received through investment of the fund, such part of the income as the board considers necessary, which moneys so segregated shall remain in the fund and constitute one or more reserve accounts. Such reserve accounts shall be maintained and used by the board to offset gains and losses of invested capital. The board, from time to time, may cause to be transferred from the reserve account provided for in subsection (1) of this section to a reserve account provided for in this subsection such amount as the board determines to be unnecessary for the purposes set forth in subsection (1) of this section and to be necessary for the purposes set forth in this subsection.

(4) The board may provide for amortizing gains and losses of invested capital in such instances as the board determines that amortization is preferable to a reserve account provided for in subsection (3) of this section.

(5) At least 30 days before crediting any interest and other income received through investment of the Public Employees Retirement Fund to any reserve account in the fund, the board shall

submit a preliminary proposal for crediting to the appropriate legislative review agency, as defined in ORS 291.371(1), for its review and comment. [Formerly 237.281; 2001 c.945 §5; 2017 c.746 §11]

**OAR 459-007-0005****Annual Earnings Crediting**

- (1) For purposes of this rule, “remaining earnings” means earnings available for distribution to a particular account or reserve after deduction of amounts required or authorized by law for other purposes.
- (2) Except as otherwise specified in this division, earnings on all accounts and reserves in the Fund shall be credited as of December 31 of each calendar year in the manner specified in this rule.
- (3) Health insurance accounts. All earnings attributable to the Standard Retiree Health Insurance Account (SRHIA), Retiree Health Insurance Premium Account (RHIPA) or Retirement Health Insurance Account (RHIA) shall be credited to the account from which they were derived, less administrative expenses incurred by each account, as provided in ORS 238.410, 238.415 and 238.420, respectively.
- (4) Employer lump sum payments. All earnings or losses attributable to the employer lump sum payment accounts established under ORS 238.229 shall be credited to the accounts from which they were derived.
- (5) Member variable accounts. Earnings on the Variable Annuity Account shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238.260(6). If the annual earnings from the Variable Annuity Account are insufficient to pay for the pro rata share of administrative expenses, those administrative expenses shall be paid from earnings on other accounts within the Public Employees Retirement Fund (PERF), if available. If earnings from those accounts within the PERF are insufficient to pay for the administrative expenses, those expenses shall be paid from employer accounts as required by ORS 238.610. All remaining earnings or losses attributable to the Variable Annuity Account shall be credited to the participants of that account, as provided under 238.260(6) and (7)(b).
- (6) Individual Account Program accounts. Earnings on the Individual Account Program accounts established under ORS 238A.350 shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238A.350(1). Losses on Individual Account Program target date funds shall be increased by a pro rata share of administrative expenses. After administrative expenses, each Individual Account Program account established under ORS 238A.350 shall be credited with the earnings or losses of the specific target date fund to which the account is allocated, except for account balances allocated to the retirement installments fund, which shall be credited with earnings or losses on a monthly basis.
- (7) Administrative expenses. Earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two member regular accounts, judge member regular accounts, the OPSRP Pension Program reserve, Employee Pension Stability Accounts, employer contribution accounts, the Contingency Reserve, the Benefits-in-Force Reserve, and the Capital Preservation Reserve shall first be used to pay the system’s remaining administrative expenses under ORS 238.610.
- (8) Contingency Reserve.
  - (a) In any year in which total earnings on the Fund equal or exceed the assumed rate, an amount not exceeding seven and one-half percent of remaining earnings attributable to Tier One regular accounts, the Tier One Rate Guarantee Reserve, Tier Two regular accounts, judge member regular accounts, the OPSRP Pension Program reserve, Employee Pension Stability Accounts, the Benefits-in-Force Reserve, employer contribution accounts, the Capital Preservation Reserve and the Contingency Reserve shall be credited to the Contingency Reserve to the level at which the board determines it is adequately funded for the purposes specified in ORS 238.670(1).



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

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

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

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

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

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

(14) Employee Pension Stability Account (EPSA). All remaining earnings or losses attributable to the EPSAs shall be credited to all active and inactive EPSAs under ORS 238A.353. For administrative expenses:

(a) EPSA accounts of Tier One and Tier Two members will be treated as Tier Two funds.

(b) EPSA accounts of OPSRP members will be treated as OPSRP Pension Program Reserve funds.

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

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

(17) Employer contribution accounts. All remaining earnings attributable to employer contribution accounts shall be credited to employer contribution accounts.

(18) Remaining earnings. Any remaining earnings shall be credited to accounts and reserves in the Fund at the board's discretion.

**Statutory/Other Authority:** ORS 238.650 & 238A.450

**Statutes/Other Implemented:** ORS 238 & 238A.350

**History:**

PERS 9-2020, amend filed 06/23/2020, effective 06/23/2020

PERS 9-2019, amend filed 12/06/2019, effective 12/06/2019

PERS 2-2018, amend filed 02/02/2018, effective 02/02/2018

PERS 7-2017, temporary amend filed 12/01/2017, effective 12/01/2017 through 05/29/2018

PERS 9-2012, f. & cert. ef. 5-24-12

PERS 4-2009, f. & cert. ef. 4-6-09

PERS 1-2006, f. & cert. ef. 2-1-06

PERS 18-2005(Temp), f. & cert. ef. 10-26-05 thru 4-19-06

PERS 8-2004, f. & cert. ef. 4-15-04

# Employer Advisory Group

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November 4, 2016

Chair Thomas and Members of the PERS Board,

The Employer Advisory Group is requesting the PERS Board approve the use of the Contingency Reserve to fund the costs associated with correcting the Contribution Start Date (CSD) for members during the period from 2004 to 2014.

## Background

In 2014, through an internal audit, PERS staff became aware of the fact that errors and inconsistencies existed in the employers' calculation of eligible wages subject to PERS contributions following the CSD for new OPSRP members since the OPSRP program's inception in 2004. PERS staff and the PERS Employer Advisory Group request the errors and inconsistencies be corrected so that contributions for employees are accurate and consistently calculated.

To that end, the PERS Employer Advisory Group has been working with PERS staff for nearly two years to understand and reconcile the variances in how employee contributions were treated following each new employee's designated CSD. This has been a complex issue to unravel, which impacts 71% of PERS employers representing more than 56,000 members. The State of Oregon alone accounts for nearly half of the total amount outstanding.

During the past two years PERS staff has worked diligently to increase the accuracy of the projected costs associated with correcting these errors and inconsistencies. At this time, the population of members has been split into two groups. Group A are those who are known to have incorrect first month contributions. Group B will require additional research, likely on an individual-by-individual basis. Cost estimates to align all members' CSD data are:

	IAP	Employer	Prior Earnings	Total Cost
Population A	\$3,120,430	\$3,965,627	\$3,017,322	\$10,103,380
Population B	3,527,264	4,311,336	3,867,911	11,706,510
<b>Total</b>	<b>\$6,647,694</b>	<b>\$8,276,963</b>	<b>\$6,885,233</b>	<b>\$21,809,890</b>

Members of the Employer Advisory Group are unanimous in requesting that the Board approve the use of the Contingency Reserve for the following reasons:

- In 2014, following the audit, PERS staff revised their initial 2004 interpretation of the statute that defines the CSD for new OPSRP members. This new interpretation, which is now being retroactively implemented to 2004, is a significant element of the 21.8 million dollar estimated cost.
- Between 2004 and 2014, PERS staff gave inconsistent direction to employers for whether the first remittance following CSD was based on earned-when-earned or earned-when-paid.

- Most employers followed the directions that were given by PERS staff, which led to many employers reporting information and making payments which have now been determined to be in error. Some employers were given directions that match the current interpretation of the first remittance based on CSD and pay dates.
- Some employers did not follow the directions given by staff, which resulted in the employer contributing “correctly” as later re-interpreted by PERS staff.
- For employers who are member paid, and where the employee is no longer working, the employer must try to collect the amounts from the former employee, or, in essence, pay the member contribution and overpay the former employee; neither alternative is acceptable.
- Several large State of Oregon employers have experienced resistance from the Federal Government when submitting PERS invoices related to older year adjustments for federal reimbursement.

Representatives of the Employer Advisory Group will be at the November 18 meeting to respond to any questions the Board may have.

**Members of the Employer Advisory Group:**

Rob Bovett, Association of Oregon Counties  
 Ralph Wyatt, Linn County  
 Jeff White, Marion County  
 Nancy Brewer, City of Corvallis  
 Celia Heron, City of Portland  
 Rich McDonald, Chemeketa Community College  
 Dave Henderson, Linn-Benton Community College  
 Jim Langstraat, Portland Community College  
 Lori Sattenspiel, Oregon School Boards Association  
 Michelle Morrison, Hillsboro School District  
 David Moore, Tigard-Tualatin School District  
 Hasina Squires, Special Districts  
 Debra Grabler, Tualatin Valley Fire and Rescue  
 Shauna Tobiasson, State of Oregon, Department of Administrative Services  
 Trudy Vidal, State of Oregon, Department of Administrative Services  
 Donna Chastain, Oregon State University  
 Kerry Gilbreth, Portland State University  
 Heather Mercer, Western Oregon University

extensive research. There is still ample budget left in the duration of this project. Most of the necessary programming has been completed.

No Board action was required.

#### C.2. LEGISLATIVE ADVISORY COMMITTEE AND LEGISLATIVE UPDATE

Senior Policy Director Marjorie Taylor presented.

Two new appointments have been proposed to fill vacancies on the Legislative Advisory Committee - Ed Edwards for Oregon School Employees Association and Lori Sattenspiel for Oregon School Boards Association.

Furnstahl moved to approve the recommended appointments. West seconded the motion. The motion passed unanimously.

In addition, Taylor presented policy papers on several issues which PERS anticipates will be discussed during the upcoming legislative session. Also included in the Board meeting materials were the actuarial analyses of the legislative proposals developed for the PERS Solutions Work Group by the Board's actuary, Milliman.

#### C.3. 2017-19 EMPLOYER RATES FOR JACKSON AND JOSEPHINE COUNTIES

Assistant Chief Administration Officer Mary Dunn presented. She reviewed the matter which was continued from the September Board meeting regarding the transitional liability assessed to Jackson and Josephine counties as well as past practices for how this type of issue has historically been addressed.

West moved to adopt the 2017-19 individual contribution rates for Jackson and Josephine County as presented by the PERS actuary on September 30, 2016. Gema seconded the motion. The motion passed unanimously.

#### C.4. OPSRP CONTRIBUTION START DATE

Elledge-Rhodes introduced Nancy Brewer of the City of Corvallis and Jeff White of Marion County. Brewer and White presented on behalf of the Employer Advisory Group (EAG). The EAG has submitted a request to the Board to approve the use of the Contingency Reserve to fund the costs associated with correcting the Contribution Start Date (CSD) for members during the period of 2004-2014. Greg Hartman of the PERS Coalition came forward and expressed opposition to the use of these funds for this purpose. He explained that this a premature decision and a policy should be established on when the Contingency Reserve will be used.

Buckley asked about the history of the CSD issue. Rodeman reviewed the changes to the system that gave rise to the varying compliance issues among employers. Elledge-Rhodes reviewed the administrative process which will need to be undertaken to clean up the data.

West noted that he agrees that a policy or guidelines for how the Contingency Reserve is used needs to be addressed.

Gema moved to use the Contingency Reserve as requested. Furnstahl seconded the motion. West opposed the motion. The motion passed 4-1.

#### C.5. ACTUARIAL FINANCIAL MODELING

Matt Larrabee and Scott Preppernau of Milliman presented long-term financial modeling projections reflecting published investment results through September 30, 2016. No Board action was required.

Thomas adjourned the Board meeting at 2:50 PM.

## Action and Discussion Items

1. Legislative Preview/Update
2. SB 1049 Update
3. SB 1566 Reporting Requirements
4. Reporting and Funding Overpayments to Members with Data Verification
5. Equal to or Better Than Testing
6. Preliminary 2021 Earnings Crediting and Reserving
7. Update Reflecting on Earnings through December 31, 2021



# UPDATED VALUATION RESULTS ESTIMATES

## OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

Presented by:

**Matt Larrabee, FSA, EA, MAAA**

**Scott Preppernau, FSA, EA, MAAA**

January 31, 2022

This work product was prepared for discussion purposes only and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work. Any recipient of this work product who desires professional guidance should engage qualified professionals for advice appropriate to its own specific needs.

## Calendar

- October: System-wide results of December 31, 2020 actuarial valuation
- December:
  - **Advisory** employer-specific 2023-2025 contribution rates
    - Based on the December 31, 2020 actuarial valuation
  - Long-term financial modeling projections reflecting published investment **returns through September 30, 2021 of +15.39%**
    - System average contribution rates, funded status, and unfunded actuarial liability (UAL)
- Today: Preliminary estimate of system-wide December 31, 2021 results
  - Based on financial model presented in December, updated for published **full-year 2021 returns of +20.05%**
  - Actual December 31, 2021 valuation results will reflect updated member data
    - Initial system-average valuation results will be presented to the Board on July 22nd, 2022
    - Proposed 2023-2025 contribution rates for Board adoption on September 30th, 2022



# Preliminary 12/31/2021 valuation results estimate

Actual 2021 Investment Return	Excluding Side Accounts		Including Side Accounts	
	UAL	Funded Status	UAL	Funded Status
+ 20.05%	\$19.7	80%	\$14.4	85%

(Amounts in billions)

- Estimate reflects 12/31/2020 member census data, including the effect of assumed individual member salary increases during 2021
- Side accounts reflected do not include new accounts established during 2021
- Final valuation results will be based on 12/31/2021 member census data, including the effect of actual individual member salary increases during 2021
- At 12/31/2020 and excluding side accounts, UAL was \$28.0 billion and funded status was 71%

# System-average weighted total\* pension-only rates

2009-2011 rates set prior to economic downturn

2011-2013 rates first to reflect -27% return in 2008

2013-2015 shown before (dotted line) and after (solid line) legislated changes

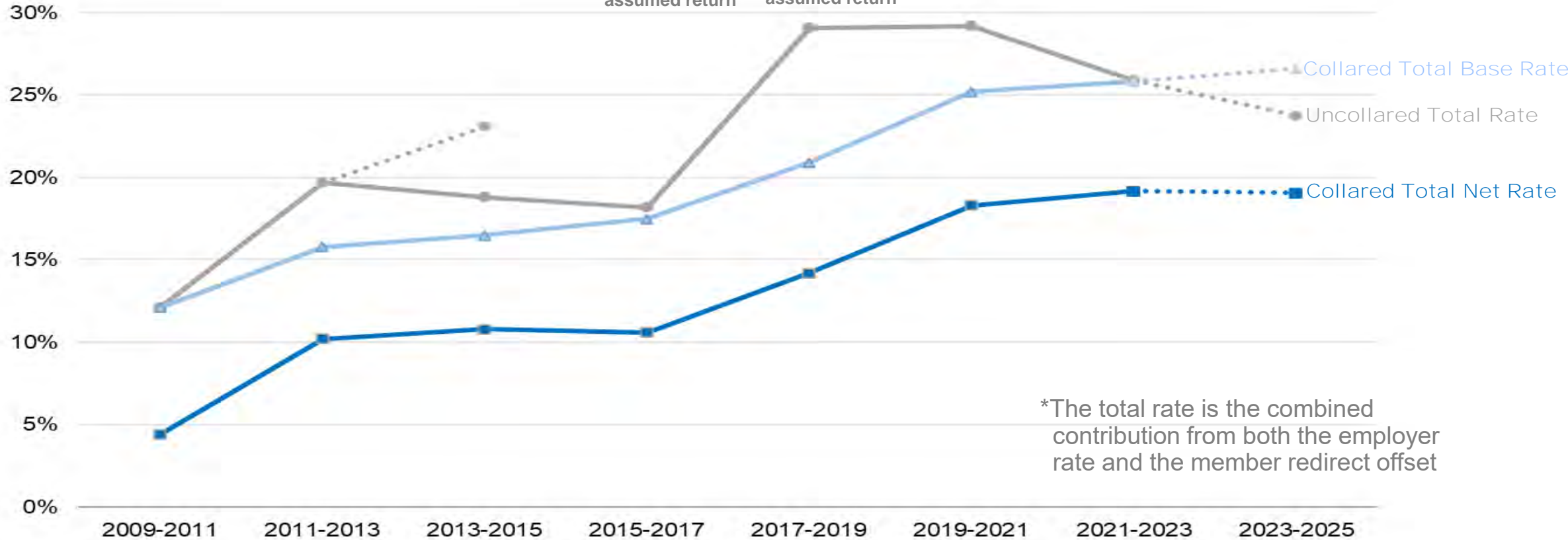
2015-2017 set pre-Moro reflecting 2012 (+14.3%) & 2013 (+15.6%) returns, first decrease in assumed return

2017-2019 set post-Moro, reflecting 2015 return (+2.1%) and second decrease in assumed return

2019-2021 reflects +15.4% return in 2017 and third decrease in assumed return

2021-2023 reflects +0.48% return in 2018 and +13.6% return in 2019

2023-2025 rates are preliminary estimates; reflects decrease in assumed return to 6.90% and 2021 actual return of +20.05%



\*The total rate is the combined contribution from both the employer rate and the member redirect offset

Assumed Return:

8.00%

8.00%

8.00%

7.75%

7.50%

7.20%

7.20%

6.90%

# System-average pension rates

	2021-2023	Estimated 2023-2025
<b>Uncollared Total Rate</b>	<b>25.9%</b>	<b>23.8%</b>
<b>Collared Total Base Rate</b>	<b>25.8%</b>	<b>26.6%</b>
<b>Member Redirect Offset</b>	<b><u>(1.2%)</u></b>	<b><u>(1.1%)</u></b>
<b>Collared Base Employer Rate</b>	<b>24.6%</b>	<b>25.5%</b>
<b>Collared Net Employer Rate</b>	<b>17.9%</b>	<b>17.9%</b>

(Excludes retiree healthcare and IAP contributions)

- Member redirect offset shown for 2023-2025 is average of 2.40% for Tier 1/Tier 2 and 0.65% for OPSRP, based on estimated 12/31/2021 payroll weightings
  - Amounts reflect estimated impact of redirect excluding members with monthly pay below statutory threshold
  - Over time, average will converge to OPSRP offset of 0.65%
- Estimates reflect 2021 investment return of +20.05% and 12/31/2020 member census data

# Appendix

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# Certification

This presentation summarizes a limited update to deterministic modeling for the Oregon Public Employees Retirement System (“PERS” or “the System”) initially presented to the PERS Board in December 2021. Updates since December 2021 consist solely of changes to modeled 2021 investment returns as noted in the body of this presentation, including a modeled +18.60% 2021 return on Tier 1/Tier 2 member variable accounts. The December 2021 presentation should be referenced for additional detail on the assumptions, methods, and plan provisions underlying these results.

In preparing this report, we relied, without audit, on information (some oral and some in writing) supplied by the System’s staff. This information includes, but is not limited to, statutory provisions, employee data, and financial information. We found this information to be reasonably consistent and comparable with information used for other purposes. The valuation results depend on the integrity of this information. If any of this information is inaccurate or incomplete our results may be different and our calculations may need to be revised.

All costs, liabilities, rates of interest, and other factors for the System have been determined on the basis of actuarial assumptions and methods which are individually reasonable (taking into account the experience of the System and reasonable expectations); and which, in combination, offer our best estimate of anticipated experience affecting the System. The valuation results were developed using models intended for valuations that use standard actuarial techniques.

Future actuarial measurements may differ significantly from the current measurements presented in this report due to such factors as the following: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period or additional cost or contribution requirements based on the plan's funded status); and changes in plan provisions or applicable law. Due to the limited scope of our assignment, we did not perform an analysis of the potential range of future measurements. The PERS Board has the final decision regarding the appropriateness of the assumptions.

Actuarial computations presented in this report are for purposes of determining the recommended funding amounts for the System. The computations prepared for other purposes may differ as disclosed in our report. The calculations in the enclosed report have been made on a basis consistent with our understanding of the System’s funding requirements and goals.

# Certification

The calculations in this report have been made on a basis consistent with our understanding of the plan provisions described in the appendix of this report. Determinations for purposes other than meeting these requirements may be significantly different from the results contained in this report. Accordingly, additional determinations may be needed for other purposes.

Milliman's work is prepared solely for the internal business use of the Oregon Public Employees Retirement System. Milliman does not intend to benefit or create a legal duty to any third party recipient of its work product.

No third party recipient of Milliman's work product should rely upon Milliman's work product. Such recipients should engage qualified professionals for advice appropriate to their own specific needs.

The consultants who worked on this assignment are pension actuaries. Milliman's advice is not intended to be a substitute for qualified legal or accounting counsel.

The signing actuaries are independent of the System. We are not aware of any relationship that would impair the objectivity of our work.

On the basis of the foregoing, we hereby certify that, to the best of our knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted actuarial principles and practices. We are members of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.

# Retirement System Risks

- Oregon PERS, like all defined benefit plans, is subject to various risks that will affect future plan liabilities and contribution requirements, including:
  - **Investment risk:** the potential that investment returns will be different than expected
  - **Demographic risks:** the potential that mortality experience, retirement behavior, or other demographic experience for the plan population will be different than expected
  - **Contribution risk:** the potential that actual future contributions will be materially different than expected, for example if there are material changes in the System's covered payroll
- The results of an actuarial valuation are based on one set of reasonable assumptions, but it is almost certain that future experience will not exactly match the assumptions.
- Further discussion of plan risks and historical information regarding plan experience are shown in our annual actuarial valuations. In addition, our annual financial modeling presentation to the PERS Board illustrates future outcomes under a wide range of future scenarios reflecting variation in key risk factors.

And now you hold your breath.

We see in today's Milliman's report that when 2021 investment returns through September are considered, public employers will receive a very moderate increase in contributions if these returns hold through the end of 2021, not the \$1 billion increase estimated in last month's report.

If returns hold, I'm sure you will celebrate successfully keeping employer contributions low. Mission accomplished, right? Never mind it will not be due to any rational action this board has taken. And never mind that Oregon and PERS will be worse off for it.

Absent a market drop before the end of the year, you will avoid the much-needed public scrutiny of your dreadful rate-setting policies of the last two years, decisions which can best be described not only as erratic and counterproductive but also once again driven by the political agenda of the public employee unions.

Let us not forget that public employee unions brazenly created the monster that PERS is today with monumentally disastrous decisions cynically and intentionally made years ago when they dominated the PERS Board. These decisions changed PERS from something that resembled an actual pension into a massive wealth transfer mechanism to funnel billions in Oregon tax dollars into the pocket of public retirees.

To this day, the unions are not only unapologetic for this destructive wealth grab, they are emboldened by it. Their shocking attempt in 2016 to pass the infamous Measure 97, which would have imposed a disastrous \$3 billion dollar per year gross profits tax on Oregon corporations, so appalled me that it launched my post-retirement career as a commentator. The unions' utter disregard for the destruction this tax would have caused throughout the Oregon economy taught me a lot about them. I wrote [this piece](#) that was picked up by the Eugene Register Guard, and I like to think it played some small role in the voters' sound rejection of Measure 97.

Fast forward to today, and not much has changed with respect to the unions. With the Oregon Democratic party firmly in their pockets, the unions immorally continue to wield their huge power to keep their PERS monster alive and stymie all efforts to tame it. Never mind that PERS's gigantic unfunded liability hangs over the state like the sword of Damocles, with scant solutions on the horizon. The unions don't care. They have never wanted to be part of the solution and likely never will. They have only one goal: funnel as much state money as they can to their members, by any means necessary, and without regard for the consequences to the state of Oregon or its citizens.

A 2003 law was intended to blunt the unions' power by requiring that three out of the five PERS board members be independent of both public employees and public employers. We now see it didn't go far enough. When one rogue independent board member sides with the public employees, as Chairperson Shenoy did in 2019, the blatantly self-serving and destructive



agenda of the public employee unions once again rules the PERS Board, to the detriment of everyone in Oregon except them.

The great investment returns of the last several years in no way has brought PERS out of the woods. It took the longest bull market in history to get annual returns from the top of the last bull market until now close to 7 percent. This would be great if 7 percent continued as far as the eye can see. But bull markets end, sometimes catastrophically, so the next big test of PERS will come when the inevitable bear market arrives. PERS can likely survive a mild bear market, but a big drop will put the system in real trouble, especially if recovery is slow.

The best we can hope for is that by the time PERS is tested by the next bear market, the interests of the public employee unions will once again have been relegated to where they belong on the board: in the minority. Only then can this board get back to long and difficult business of clawing Oregon out from under this colossal burden that we charitably call a pension system.

One final comment for Chairperson Shenoy: I see that Governor Brown has quietly reappointed you and board member Stephen Buckley to new three-year terms. That means that you get another bite at the rate-setting apple in 2023. I look forward to observing and commenting on that process.

Merry Christmas.

Douglas Berg  
Eugene, Oregon  
206 353 2350  
bergdw@icloud.com

Members of the PERS Board:

We see in today's Milliman report that it appears net collared employer rates will not rise at all this year using the preliminary 2021 investment returns of 20.05%.

I'm sure that from your perspective this is a great success, since you have shown you believe your mission is to serve the interests of public employers and employees at the expense of the other half of your fiduciary duty, the half that calls for administering PERS with the thought in mind of being able to pay future pension obligations.

In fact, this board, under Chairperson Shenoy, has reverted to the behavior of past PERS boards when they were controlled by the interests of public employee unions: use the Oregon Public Employees Retirement Fund as its piggy bank as if spectacular investments returns will continue as far as the eye can see and let someone else deal with the funding problem when the chickens come home to roost.

I have pointed out to you in multiple previous testimonies that long-term PERS investment returns are not sufficient to eliminate PERS's unfunded liability. New money must be added to the system via employer pension rates that must keep rising until your assumed rate of return matches actual OPERF returns over the long term. Even with this year's spectacular returns, you are not there yet in a way that can be considered sustainable. A serious downturn in the stock market would still be very damaging to the PERS system and would force employer rates to be raised quickly and painfully.

The only glimmer of good news I found in today Milliman's report was that your new rate collar system has provided a measure of protection of the PERS system from the worst impulses of this board by accomplishing the unheard-of: collaring rates upward by about 3 percent. At least you can no longer use the rate collar as an additional little piggy bank as you did when rates were almost always being collared downward despite the obvious need for substantial money to be added to the system.

In 2021, the legislature spent billions in windfall tax returns, and not one extra nickel went to the PERS problem. 2022 is shaping up to be a similar situation: more billions to spend and nobody talking about PERS. This is the way the Democrat super-majority has governed and intends to continue governing until voters stop them. We can only hope this is the year when voters say "enough" and hope that it is in time to mitigate the inevitable PERS crisis.

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