

# OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

Friday January 27, 2012 1:00 P.M.		PERS 11410 SW 68 <sup>th</sup> Parkway Tigard, OR	
ITEM		PRESENTER	
<b>A. Administration</b>			
1.	November 18 and December 16, 2011 Board Meeting Minutes	CLEARY	
2.	Director's Report		
	a. Forward-Looking Calendar		
	b. OIC Investment Report		
	c. Operating Budget Report		
	d. Strategic Planning Update		
	e. Overpayment Recovery Project Update		
<b>B. Administrative Rulemaking</b>			
1.	Notice of Minimum Retroactive Payment Rule	RODEMAN	
2.	Notice of Earnings Crediting Rules		
3.	Notice of Reemployment of Retired Members Rule		
4.	Notice of Disability Housekeeping Rules		
5.	Notice of Petition for Reconsideration Rule		
6.	Adoption of Rules to Implement 2011 Legislation		
7.	Adoption of Death and Survivor Benefits Rules		
<b>C. Action and Discussion Items</b>			
1.	2011 Preliminary Earnings Crediting and Reserving	RODEMAN / DUFRENE	
<b>D. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225</b>			
1.	Litigation Update	LEGAL COUNSEL	

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

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

James Dalton, Board Chair    Eva Kripalani    Mike Pittman    Laurie Warner    Pat West    Paul R. Cleary, Executive Director



# OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

November 18, 2011  
Tigard, Oregon

## Board Members:

James Dalton, Chair  
Eva Kripalani  
Laurie Warner  
Pat West

## Excused:

Mike Pittman

## Staff:

Donna Allen  
Helen Bamford  
Josh Binkley  
Paul Cleary  
David Crosley

Joe DeLillo  
Jon DuFrene

Yvette Elledge  
Brian Harrington  
Debra Hembree  
Pamela Johnson  
Kyle Knoll  
Herb Lawton  
Jeff Marcic

Joe O'Leary  
Brenda Pearson  
Steve Rodeman  
Susan Sjordal  
Jason Stanley  
Stephanie Vaughn  
Carol Vogel

## Others:

Bruce Adams  
Marc Feldesman  
William F. Gary  
Nelson Hall  
Ross Hamilton  
Greg Hartman  
Celia Heron

Keith Kutler  
Matt Larrabee  
Judy Lubeck  
Susan Marmaduke  
Elizabeth McCann  
Mike Patterson  
P. Peg

Scott Preppernau  
Bill Robertson  
Larry Shadbolt  
Ted Sickinger  
Deborah Tremblay  
Lonnie Tucker

Chair James Dalton called the meeting to order at 1:00 P.M. Mike Pittman was excused.

## ADMINISTRATION

### A.1. BOARD MEETING MINUTES OF SEPTEMBER 30, 2011

The Board unanimously approved the minutes from the September 30, 2011 Board meeting.

### A.2. DIRECTOR'S REPORT

Executive Director Paul Cleary reviewed the walk-in items. Cleary acknowledged the work of the Fiscal Services staff for receiving the Certificate of Achievement for Excellence in Financial Reporting for the 20<sup>th</sup> consecutive year.

Cleary presented the forward looking calendar noting the next meeting will be January 27, 2012. Agenda items will include preliminary 2011 Earnings Crediting and Reserving and 2011 year-end investment results.

Cleary presented the September OIC Report. Cleary provided the updated 2009-11 biennial operating budget close-out figures reflecting a 6.5% positive variance. Cleary reported the 2011-13 biennial operating budget continues to show a positive variance. He noted PERS may need to go before the legislature to request additional limitation for the implementation of the Strunk/Eugene Overpayment Recovery Project.

Cleary presented the Employer Reporting update and the Quarterly Member Transactions report. Cleary described the workload issues and explained the benefits the new On-Line Member Services tool (OMS) will provide to members. Cleary provided the 2011 Customer Service Survey results which continue to show good overall ratings from both members and employers.

Deputy Director Steve Rodeman presented the restated PERS Mission Statement and Core Values. The intent is to restate the fundamental principles and aspirations to better reflect the agency's current environment. Rodeman gave an overview of the strategic planning process and the next steps.

Pat West commented on the Mission Statement and Operating Principles changes, wanting to ensure that there would be continued focus on providing member service to enable informed decisions. Cleary and Rodeman explained that further development of the operating principles will provide that clarity, and that the agency will certainly maintain a member service focus.

Board Member Eva Kripalani, Chair of the Audit Committee, presented the Review of the Annual Report for the Financial Transactions of the Executive Director for the Fiscal Year ended June 30, 2011, noting that there were no exceptions on irregularities. The PERS Board acknowledged receipt of the Annual Financial Transaction report.

### **RULE ADOPTION**

#### **B.1. ADOPTION OF DISABILITY ELIGIBILITY RULES**

Rodeman presented the modification to the Disability Eligibility rules for adoption. The adoption of these rules was postponed at the September 30, 2011 Board meeting allowing additional time for public comment.

Nelson Hall, on behalf of the PERS Coalition, noted that his comments on the rules were included in the Board book and restated his request to the Board to reconsider adopting the proposed modification to OARs 459-015-005 and 459-076-0005.

Board member Pat West expressed concern about removing the "similar in compensation" 80 percent of pre-disability income standard from the rules, and asked whether relying on just the "unable to perform any work for which qualified" standard would result in different outcomes for new disability retirement applications.

Benefit Payments Division Administrator Brian Harrington explained the current processing of disability claims, noting the proposed rule changes would not materially alter review standards but would clarify the work of the disability unit for both staff and applicants.

Rodeman explained approval of the rules would not “raise the bar” for qualifying for disability retirement. Rodeman further clarified these are disability retirement benefits and not insurance for a short term disability.

Kripalani moved and Warner seconded the motion to adopt the modifications to the Disability Eligibility rules as presented. The motion passed three to one with West voting no.

#### B.2. REPEAL OF CONTINUOUS SERVICE RULE

Rodeman presented the now obsolete Continuous Service Rule for repeal.

Kripalani moved and Warner seconded the motion to repeal the now obsolete continuous service rule as recommended. The motion passed unanimously.

#### B.3. ADOPTION OF PUBLIC RECORDS RULE

Rodeman presented the modifications to the Public Records Rules for adoption to incorporate the Marion County Circuit Court judgments in the public records request lawsuit involving The Oregonian and Statesman Journal newspapers.

Rodeman reported the PERS Coalition has filed a separate lawsuit asking for an injunction to prohibit the records release. The release of any information would be pending the outcome of the November 21 hearing on that request.

PERS retiree Marc Feldesman commented on the Attorney General’s ruling, noting that he was not informed of the potential release of his name and benefit information at the time he retired.

Dalton recognized all the comments submitted and acknowledged the concerns of the retirees as expressed in those comments. Dalton noted that the information release was originally ordered by the Attorney General and required under the Court judgments.

Kripalani moved and Warner seconded the motion to adopt the Public Records Rule modifications as presented. The motion passed three to one with West voting no.

#### B.4. TEMPORARY ADOPTION OF UNCOLLECTIBLE DEBT RULE

Rodeman presented for temporary adoption the Uncollectible Debt Rule required to comply with HB 2252 (2011). Rodeman said the rule reflected the Department of Justice’s model rule language.

Kripalani moved and Warner seconded the motion to temporarily adopt the Uncollectible Debt Rule. The motion passed unanimously.

## **NOTICE OF RULEMAKING**

### **B.5. NOTICE OF RULES TO IMPLEMENT 2011 LEGISLATION**

Rodeman provided notice of rulemaking needed to implement 2011 Legislation. Rodeman described the state income tax remedy change for new retirees who live or move out of state (effective with January 1, 2012 retirements) and suggested stakeholders review and provide comment on the proposed method for implementing that statutory change.

### **B.6. NOTICE OF RULEMAKING FOR DEATH AND SURVIVOR BENEFITS RULES**

Rodeman presented notice of rulemaking for the Death and Survivor Benefit Rules which will be presented in January for adoption.

### **B.7. PERS AND SOCIAL SECURITY "RETURN TO WORK" STANDARDS FOR DISABILITY RETIREMENTS**

Rodeman presented an information item on the federal Social Security Administration's "return to work" standards for disability retirements in response to a Board request made during the September 30, 2011 Board meeting.

## **ACTION AND DISCUSSION ITEMS**

### **C.1. EWEB PETITION FOR DECLARATORY RULING**

PPLAD Division Administrator Joe O'Leary presented the Eugene Water and Electric Board's (EWEB) Petition for Declaratory Ruling. The EWEB response to the staff's memo to the Board was submitted as part of the walk-in packet.

O'Leary provided a summary of the petition, and described the staffs' recommendation to the Board to decline to issue a declaratory ruling.

Bill Gary, with Harrang, Long, Gary, Rudnick, P.C., responded and asked the Board to reject the staffs' recommendation and instead grant the request for declaratory ruling.

Board members took the opportunity to ask clarifying questions regarding the petition and related process. Chair Dalton and Board members agreed more time was needed to analyze the information received in the walk-in packet.

DOJ Attorney Keith Kutler suggested an extension of time to respond to the petition as a possible solution. All parties agreed to extend the petition response deadline by 30 days, with the decision to be made no later than December 24, 2011.

### **C.2. STRUNK/EUGENE OVERPAYMENT RECOVERY PROJECT**

Rodeman described the Oregon Supreme Court's decisions in the *Arken*, *Robinson and Goodson* cases. The Business Case for implementation of the Strunk/Eugene Overpayments Project was presented, outlining the project scope and potential time frame. Rodeman noted

the results of the petition for reconsideration filed by the *Robinson* attorneys will determine how and when these activities will begin.

C.3. GASB PROPOSED CHANGES TO EMPLOYER FINANCIAL REPORTING STANDARDS

Mercer Actuary Matt Larrabee presented the Government Accounting Standards Board's (GASB) proposed changes to financial reporting standards for public pension plans like PERS and their participating employers. The changes are expected to be finalized in mid 2012 and to be effective for fiscal years ending on or after June 30, 2014. Larrabee reported the changes are significant and employers should become familiar with the proposals. Larrabee provided an executive summary on the proposed changes and comparison to the current GASB standards.

Larrabee clarified for Chair Dalton that the changes will primarily impact financial reporting rather than contribution rate policy. Larrabee noted all the proposed changes and comments from the public pension plan community are available on GASB's website.

Warner noted that a lot more information will be required on the employer side in how they report their pension liabilities and projected costs. Larrabee noted this will be a significant new entry on employer balance sheets.

Dalton adjourned the meeting at 2:50 PM.

Respectfully submitted,



Paul R. Cleary  
Executive Director



# OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD CONFERENCE CALL MEETING

December 16, 2011  
Tigard, Oregon

<u>Board Members:</u>	<u>Staff:</u>	<u>Other</u>
James Dalton, Chair	Donna Allen	Mike Eliason
Eva Kripalani	Paul Cleary	Keith Kutler (by phone)
Mike Pittman	Yvette Elledge	Tammy Newsome
Laurie Warner	Joe O'Leary	Michelle Morrison
Pat West	Steve Rodeman	

Chair James Dalton called the meeting to order at 10:00 P.M.

## ACTION AND DISCUSSION ITEM

### EUGENE WATER AND ELECTRIC BOARD (EWEB) PETITION FOR DECLARTORY RULING

Joe O'Leary described the petition, noting it was filed with PERS by EWEB on September 26, 2011. EWEB is seeking a ruling on two separate questions, both regarding potential PERS status of temporary employees who are under the direction and control of the public agency but are paid by a temporary agency who is not a public employer. O'Leary noted these issues were first discussed at the PERS November 18, 2011 Board Meeting. EWEB provided a supplemental written briefing the morning of the November 18<sup>th</sup> meeting and EWEB attorneys provided oral arguments during the meeting.

O'Leary noted that at the time of the November 18<sup>th</sup> Board meeting, we were approaching the 60 day time period where the Board had to respond to the petition. EWEB agreed to extend the deadline by 30 days allowing the Board time to consider the oral argument provided by EWEB attorneys and their supplemental briefing materials.

Chair Dalton had directed staff to do additional legal research and analysis, and to follow-up with EWEB as to whether or not they would be willing to supplement the Petition with additional facts. Board Member Eva Kripalani was then briefed on the subsequent DOJ legal analysis. The follow-up correspondence between PERS staff and EWEB was included in the Board packet and EWEB's response was they are not willing to agree to the staff's proposed stipulated facts.

Kripalani noted the Board's decision is discretionary and her recommendation is to decline to issue a declaratory ruling based on the DOJ legal analysis and not knowing the factual details about the contractual agreements among EWEB, the temporary agency, and the workers.

Kripalani further noted that even if EWEB had been willing to stipulate to the facts, the declaratory ruling procedure recommended by EWEB attorneys does not seem like the most efficient or appropriate procedure to use for resolving this type of dispute.

Board members provided their comments and recommendations.

Kripalani moved and Pittman seconded to decline to issue a declaratory ruling on the EWEB petition filed September 2011. Motion carried unanimously.

Dalton adjourned the meeting at 10:16 AM.

Respectfully submitted,

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

Paul R. Cleary  
Executive Director

## **PERS Board Meeting Forward-Looking Calendar**

### **Thursday, March 22, 2012**

Employer Reporting Update  
Development of PERS Strategic Plan  
Notice of Roth 457 Rules  
Notice of Contested Case Hearings Rules  
Adoption of Minimum Retroactive Payment Rule  
Adoption of Earnings Crediting Rules  
Adoption of Reemployment of Retired Members Rule  
Adoption of Disability Housekeeping Rules  
Adoption of Petition for Reconsideration Rule  
2011 Final Earnings Crediting and Reserving  
Report on 2012 Legislative Session  
Audit Committee Meeting

### **Friday, May 18, 2012**

2013-15 Budget Development Update  
Adoption of Roth 457 Rules  
Adoption of Contested Case Hearings Rules  
2013 Retiree Health Insurance Plan Renewals

### **Friday, July 27, 2012**

2013-15 Agency Request Budget Approval  
2011 Valuation Results  
Audit Committee Meeting

### **September 28, 2012**

2013-15 Employer Rate Adoption

### **November 30, 2012**

2013 Session Legislative Concept Approval  
Audit Committee Meeting

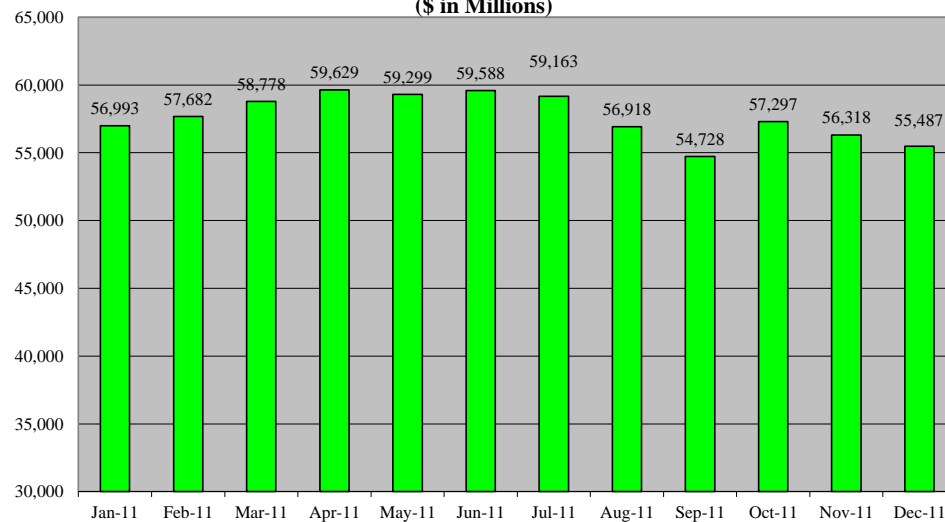


OPERF	Regular Account				Historical Performance (Annual Percentage)					
	Policy <sup>1</sup>	Target <sup>1</sup>	\$ Thousands <sup>2</sup>	Actual	Year-To-Date <sup>3</sup>	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Public Equity	38-48%	43%	\$ 19,214,232	35.1%	(8.23)	(8.23)	3.04	13.28	(4.41)	(1.90)
Private Equity	12-20%	16%	13,399,987	24.5%	11.06	11.06	13.72	7.34	3.07	7.25
<b>Total Equity</b>	<b>54-64%</b>	<b>59%</b>	<b>32,614,219</b>	<b>59.6%</b>						
Opportunity Portfolio			938,553	1.7%	1.50	1.50	6.80	16.17	4.19	3.95
<b>Total Fixed</b>	<b>20-30%</b>	<b>25%</b>	<b>14,151,034</b>	<b>25.9%</b>	<b>6.12</b>	<b>6.12</b>	<b>8.43</b>	<b>13.91</b>	<b>7.44</b>	<b>6.91</b>
Real Estate	8-14%	11%	6,387,079	11.7%	14.44	14.44	5.97	0.57	(3.17)	(0.63)
Alternative Investments	0-8%	5%	375,473	0.7%	N/A					
Cash	0-3%	0%	233,384	0.4%	0.10	0.10	0.49	1.11	1.15	1.99
<b>TOTAL OPERF Regular Account</b>		<b>100%</b>	<b>\$ 54,699,742</b>	<b>100.0%</b>	<b>2.22</b>	<b>2.22</b>	<b>7.29</b>	<b>11.19</b>	<b>0.10</b>	<b>1.94</b>
<b>OPERF Policy Benchmark</b>					<b>0.80</b>	<b>0.80</b>	<b>5.93</b>	<b>9.04</b>	<b>(0.06)</b>	<b>1.97</b>
Value Added					<b>1.42</b>	<b>1.42</b>	<b>1.36</b>	<b>2.15</b>	<b>0.16</b>	<b>(0.03)</b>
<b>TOTAL OPERF Variable Account</b>			<b>\$ 787,516</b>		<b>(7.53)</b>	<b>(7.53)</b>	<b>2.92</b>	<b>12.82</b>	<b>(4.38)</b>	<b>(3.22)</b>

Asset Class Benchmarks:

Russell 3000 Index	1.03	1.03	8.69	14.88	(1.26)	(0.01)
MSCI ACWI Ex US IMI Net	(14.31)	(14.31)	(1.71)	11.53	(6.85)	(2.49)
MSCI ACWI IMI Net	(7.89)	(7.89)	2.63	12.84	(4.60)	(1.64)
Russell 3000 Index + 300 bps--Quarter Lagged	3.57	3.57	8.79	5.45	(1.00)	2.82
Oregon Custom FI Benchmark	5.33	5.33	6.01	6.66	5.72	5.84
NCREIF Property Index--Quarter Lagged	16.10	16.10	10.85	(1.45)	0.19	3.40
91 Day T-Bill	0.10	0.10	0.11	0.14	0.62	1.48

**TOTAL OPERF NAV**  
(includes variable fund assets)  
One year ending December 2011  
(\$ in Millions)



<sup>1</sup>OIC Policy 4.01.18, as revised April 2011.

<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.

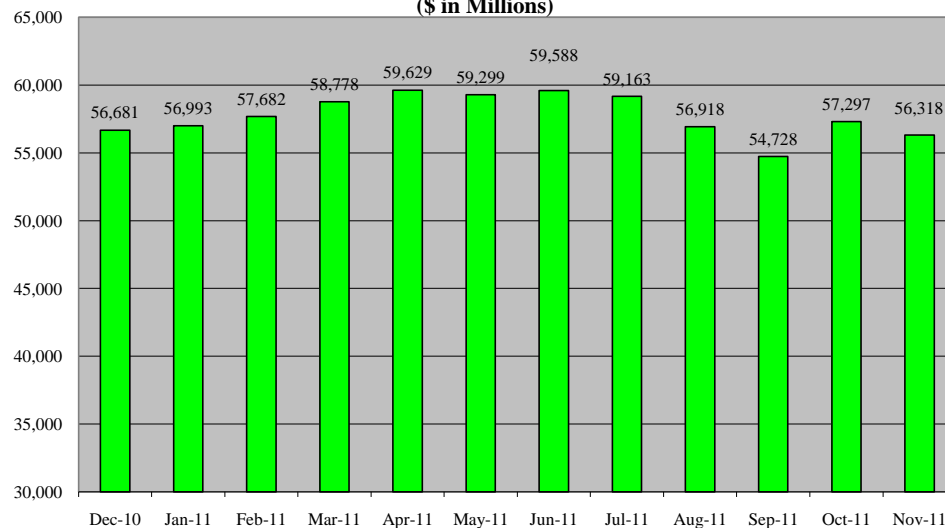


OPERF	Regular Account				Historical Performance (Annual Percentage)					
	Policy <sup>1</sup>	Target <sup>1</sup>	\$ Thousands <sup>2</sup>	Actual	Year-To-Date <sup>3</sup>	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Public Equity	38-48%	43%	\$ 20,160,855	36.3%	(7.67)	(0.70)	4.80	15.11	(4.49)	(1.37)
Private Equity	12-20%	16%	13,914,564	25.1%	17.24	23.46	22.37	6.25	5.02	8.86
<b>Total Equity</b>	<b>54-64%</b>	<b>59%</b>	<b>34,075,419</b>	<b>61.4%</b>						
Opportunity Portfolio			844,766	1.5%	2.31	3.65	7.99	13.17	4.00	4.12
<b>Total Fixed</b>	<b>20-30%</b>	<b>25%</b>	<b>14,017,017</b>	<b>25.2%</b>	<b>5.03</b>	<b>5.26</b>	<b>8.19</b>	<b>14.71</b>	<b>7.22</b>	<b>6.64</b>
Real Estate	8-14%	11%	6,323,820	11.4%	13.39	17.28	6.66	(1.57)	(3.35)	(0.22)
Alternative Investments	0-8%	5%	256,740	0.5%	N/A					
Cash	0-3%	0%	820	0.0%	0.12	0.16	0.49	1.34	1.25	2.08
<b>TOTAL OPERF Regular Account</b>		<b>100%</b>	<b>\$ 55,518,582</b>	<b>100.0%</b>	<b>3.47</b>	<b>8.19</b>	<b>9.74</b>	<b>11.49</b>	<b>0.36</b>	<b>2.49</b>
<b>OPERF Policy Benchmark</b>					<b>2.60</b>	<b>8.30</b>	<b>8.45</b>	<b>10.20</b>	<b>0.41</b>	<b>2.69</b>
Value Added					<b>0.87</b>	<b>(0.11)</b>	<b>1.29</b>	<b>1.29</b>	<b>(0.05)</b>	<b>(0.20)</b>
<b>TOTAL OPERF Variable Account</b>			<b>\$ 799,701</b>		<b>(7.30)</b>	<b>(0.37)</b>	<b>4.29</b>	<b>14.40</b>	<b>(4.51)</b>	<b>(2.96)</b>

Asset Class Benchmarks:

Russell 3000 Index	0.20	7.00	9.77	15.29	(1.61)	0.06
MSCI ACWI Ex US IMI Net	(13.26)	(6.25)	(0.06)	14.14	(6.91)	(1.65)
MSCI ACWI IMI Net	(7.62)	(0.65)	4.01	14.42	(4.81)	(1.15)
Russell 3000 Index + 300 bps--Quarter Lagged	21.29	36.25	27.29	8.28	3.58	7.22
Oregon Custom FI Benchmark	4.12	3.30	4.77	7.52	5.48	5.51
NCREIF Property Index--Quarter Lagged	12.39	16.73	7.24	(2.57)	0.25	3.44
91 Day T-Bill	0.10	0.12	0.12	0.15	0.69	1.57

**TOTAL OPERF NAV**  
(includes variable fund assets)  
One year ending November 2011  
(\$ in Millions)



<sup>1</sup>OIC Policy 4.01.18, as revised April 2011.

<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.

Returns for periods ending 10/31/11

Oregon Public Employees Retirement Fund

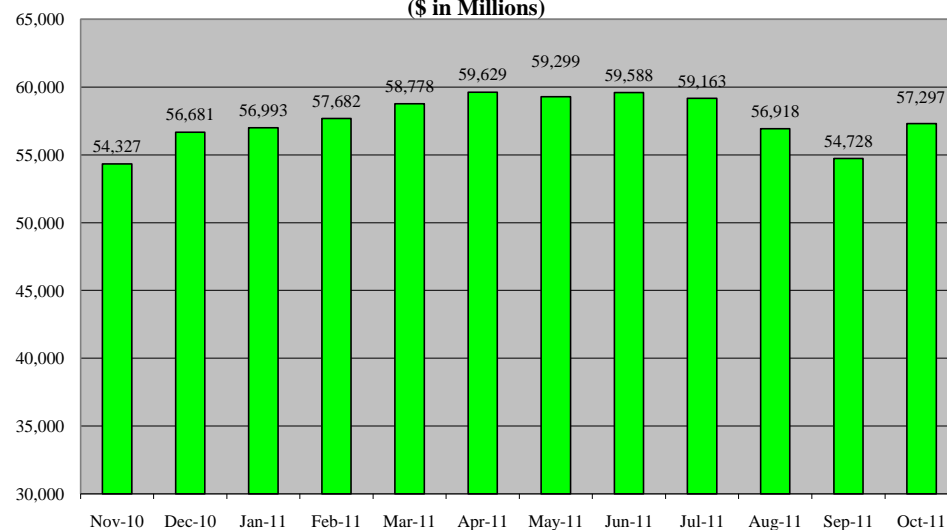
A.2.b. OIC Report  
October 2011

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
Public Equity	38-48%	43%	\$ 20,856,733	36.9%	(5.11)	0.33	8.21	13.44	(4.99)	(0.33)
Private Equity	12-20%	16%	13,996,843	24.8%	17.24	23.46	22.37	6.25	5.02	8.86
<b>Total Equity</b>	<b>54-64%</b>	<b>59%</b>	<b>34,853,576</b>	<b>61.7%</b>						
Opportunity Portfolio			873,599	1.5%	5.48	9.63	12.48	7.30	4.81	4.75
<b>Total Fixed</b>	<b>20-30%</b>	<b>25%</b>	<b>14,095,611</b>	<b>25.0%</b>	<b>5.69</b>	<b>5.43</b>	<b>9.06</b>	<b>14.08</b>	<b>7.55</b>	<b>7.04</b>
Real Estate	8-14%	11%	6,366,783	11.3%	14.45	17.85	7.68	(2.08)	(3.60)	0.11
Alternative Investments	0-8%	5%	265,185	0.5%	N/A					
Cash	0-3%	0%	2,525	0.0%	0.19	0.24	0.59	1.52	1.37	2.19
<b>TOTAL OPERF Regular Account</b>		<b>100%</b>	<b>\$ 56,457,279</b>	<b>100.0%</b>	<b>4.87</b>	<b>8.76</b>	<b>11.60</b>	<b>10.52</b>	<b>0.07</b>	<b>3.14</b>
<b>OPERF Policy Benchmark</b>					<b>4.19</b>	<b>8.62</b>	<b>10.49</b>	<b>9.90</b>	<b>0.29</b>	<b>3.37</b>
Value Added					<b>0.68</b>	<b>0.14</b>	<b>1.11</b>	<b>0.62</b>	<b>(0.22)</b>	<b>(0.23)</b>
<b>TOTAL OPERF Variable Account</b>			<b>\$ 839,431</b>		<b>(4.48)</b>	<b>0.75</b>	<b>7.92</b>	<b>12.89</b>	<b>(5.09)</b>	<b>(2.02)</b>

Asset Class Benchmarks:

Russell 3000 Index	0.47	7.90	13.00	12.28	(2.67)	0.55
MSCI ACWI Ex US IMI Net	(8.04)	(4.31)	4.94	14.39	(5.59)	0.82
MSCI ACWI IMI Net	(4.76)	0.46	7.66	12.92	(5.21)	0.04
Russell 3000 Index + 300 bps--Quarter Lagged	21.29	36.25	27.29	8.28	3.58	7.22
Oregon Custom FI Benchmark	4.70	3.09	5.71	8.65	6.00	5.86
NCREIF Property Index--Quarter Lagged	12.39	16.73	7.24	(2.57)	0.25	3.44
91 Day T-Bill	0.10	0.13	0.12	0.18	0.81	1.66

**TOTAL OPERF NAV**  
(includes variable fund assets)  
One year ending October 2011  
(\$ in Millions)



<sup>1</sup>OIC Policy 4.01.18, as revised April 2011.

<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.



# Oregon

John A. Kitzhaber, M.D., 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  
(503) 598-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

January 27, 2012

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

### 2011-13 BUDGET UPDATE

Operating expenditures for November and December 2011 were \$2,898,873, and \$3,070,509 respectively.

- To date, through the first six months (25%) of the 2011-13 biennium, the Agency has expended a total of \$18,061,746, or 23.15% of PERS' legislatively approved operating budget of \$78,010,820.
- The current projected positive variance is \$1,901,226, or approximately 2.4% of the operating budget.

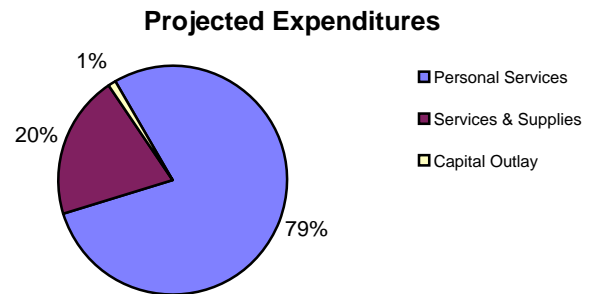
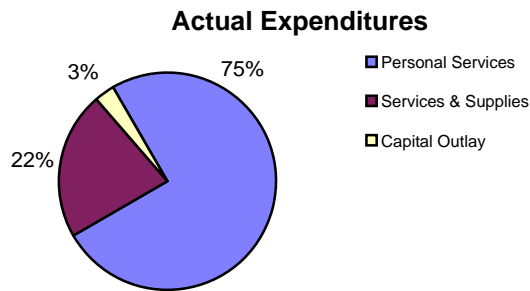
### 2009 -11 BUDGET UPDATE

The agency's 2009 -11 biennial expenditures closed in the Statewide Financial Management System (SFMS) December 31, 2011. The final positive variance is \$5,377,122, or approximately 6.5% of the 2009-11 operating budget of \$83,261,952.

**2011-13 Agency-wide Operations - Budget Execution  
Summary Budget Analysis  
For the Month of: December 2011**

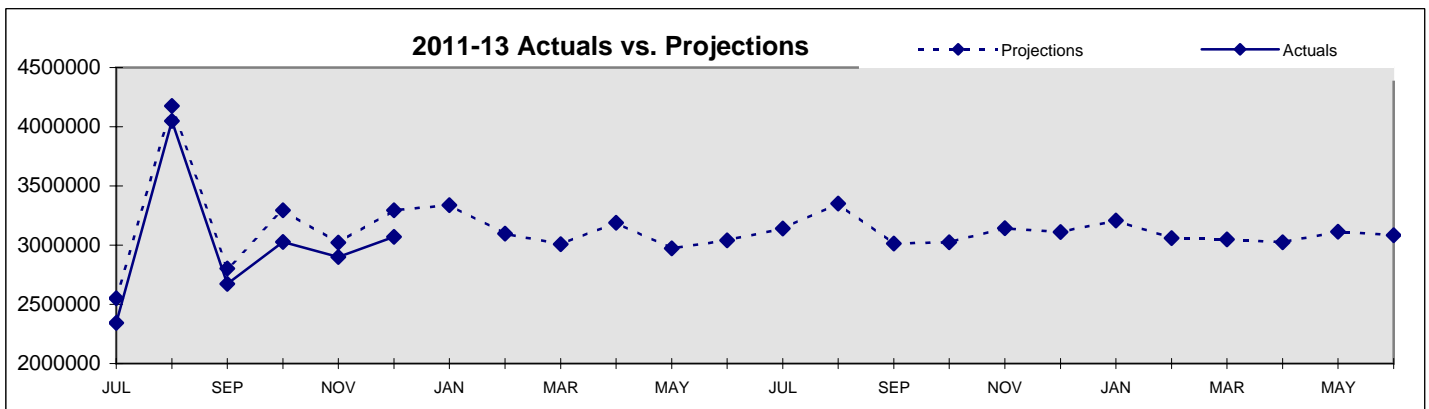
**Biennial Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2011-13 LAB	Variance
Personal Services	13,563,059	44,054,609	57,617,669	56,577,463	(1,040,206)
Services & Supplies	3,937,819	13,009,029	16,946,848	20,505,769	3,558,921
Capital Outlay	560,868	984,209	1,545,078	927,588	(617,490)
<b>Total</b>	<b>18,061,746</b>	<b>58,047,848</b>	<b>76,109,594</b>	<b>78,010,820</b>	<b>1,901,226</b>



**Monthly Summary**

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Monthly Projected Exp.
Personal Services	2,271,438	2,482,760	211,322	2,260,510	2,447,478
Services & Supplies	649,908	661,117	11,209	656,303	630,366
Capital Outlay	149,164	150,000	836	93,478	31,691
<b>Total</b>	<b>3,070,509</b>	<b>3,293,877</b>	<b>223,367</b>	<b>3,010,291</b>	<b>3,109,536</b>



**2009-11 Biennium Summary**

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



# Oregon

John A. Kitzhaber, M.D., Governor

## Public Employees Retirement System

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[www.oregon.gov/pers](http://www.oregon.gov/pers)

January 27, 2012

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Agency Mission Statement, Core Values, and Operating Principles

Following up on the report from the November 18, 2011 Board meeting, the agency's staff completed work on updating the Mission Statement, Core Values, and Operating Principles. The results of this work are attached to this memo. As a reminder, these efforts complete the first step in the agency's strategic planning process for the 2013-15 biennium and support Governor Kitzhaber's direction that agencies develop outcome-based budgets and align them with a Ten Year Outlook for state government. The complete package forms a strong foundation not only for the agency's strategic planning but also as guideposts for all agency activities.

The next phase will engage a working team to identify the agency's fundamental Operating and Supporting Processes that align with our Mission, incorporate our Values, and support our Operating Principles. These processes will flow from these foundations to derive goals and objectives for our 2013-15 agency-request budget that map to our Key Performance Measures and other measurable outcomes. This Fundamentals Map will be presented at the Board's May 18, 2012 Board meeting, along with the first draft of our requested budget.





## Our Mission

We serve the people of Oregon  
by administering public employee benefit trusts  
to pay the right person the right benefit at the right time

## Our Core Values

### **Integrity**

Inspiring trust through transparency and accountability

### **Innovation**

Empowering change through collaborative teamwork

### **Simplicity**

Reducing barriers through clear communication and streamlined processes

## Our Core Operating Principles

### **Member Service**

Enabling our diverse membership to make informed decisions

### **Data Integrity**

Partnering with employers and members to ensure timely and reliable information

### **Information Security**

Constantly vigilant to safeguard confidential information





# Oregon

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January 27, 2012

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Recovery of Strunk/Eugene Overpayments

On October 6, 2011, the Oregon Supreme Court issued unanimous decisions in the *Arken*, *Robinson*, and *Goodson* cases. Together, these decisions validated the PERS Board's Order Adopting Repayment Methods, issued January 27, 2006, that set the framework for recovering the overpayments to benefit recipients caused by the re-crediting of 1999 earnings to 11.33% from the original 20%.

Attorneys in the *Robinson* case filed a petition for reconsideration which the Oregon Supreme Court rejected on December 30, 2011. At this point, the Supreme Court still needs to enter an appellate judgment which remands the *Robinson* case back to Judge Kantor in the Multnomah County Circuit Court. Then, the judge will enter a judgment on remand, reversing his earlier judgment, and the cases will finally be resolved. The time line for that resolution is at the discretion of the respective courts, but is expected to take a few more weeks. Recall that the parties to the litigation required PERS to suspend collection activities until that litigation was resolved. In our view, that resolution does not occur until the Circuit Court judgment is entered.

As a reminder, staff earlier estimated that the remaining workload involves recovering \$156,333,437 in overpayments from 28,042 benefit recipients, spread across the following groups in the stated amounts:

Monthly Retirements	20,016	\$133,113,164
Lump Sum Retirements	1,372	\$11,458,293
Withdrawals	3,976	\$5,436,780
Police & Fire Unit Accounts	1008	\$403,200
Deceased Members (Received overpayment prior to death)	912	\$3,648,000
Beneficiaries (A survivor of a deceased person who is or has received benefits)	758	\$2,274,000

Those persons whose monthly retirements were adjusted previously received a letter some time in 2007 through June 2009. A template of that letter is included with this memo, to demonstrate its general contents. As you can see, the letter informed recipients of the overpayment amount and that PERS would not engage in any collection activities until the court case was resolved.

Memo on Recovery of *Strunk/Eugene* Overpayments

1/27/2012

Page 2 of 2

In anticipation of that resolution, PERS staff is following its established project methodology to develop and deploy the resources required to recover these overpayments. We are completing work on a project proposal to select the most reasonable approach to completing this project. In broad terms, the project proposal will be resource-loaded on the anticipated schedule of resuming recovery activities on or before April 1, 2012 (assuming the necessary preparation can be completed and the court processes have run their course), with a goal of completing the project's recovery activities no later than the close of calendar year 2012.

The agency currently does not have expenditure limitation or position authority to complete this recovery project. We anticipate the need to request that limitation and authority at a subsequent time, once those impacts are better assessed.

Attachment:

A.2.e. Payment Adjustment Notification Letter



# Oregon

Theodore R. Kulongoski, Governor

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[www.pers.state.or.us](http://www.pers.state.or.us)

[Date]

MEMBER NAME

MEMBER ADDRESS

CITY, ST ZIP

PERS #XXXX

Dear [Recipient's Name]:

This letter explains your recalculated PERS retirement benefit as a result of two 2005 Oregon Supreme Court cases, *Strunk* and *City of Eugene*, and the PERS Board's Settlement Agreement in the *Eugene* case. This letter details the recalculations to your member account, your recalculated monthly benefit, and your total overpayment. We have enclosed a summary of your recalculations for your review.

After making the *Strunk* and *Eugene* recalculations, we determined that you have been overpaid benefits. We calculated the amount of overpayment as follows:

- 1) We totaled the benefits that have been and will be paid to you from your retirement date of [Retirement Date] to the recalculation date of [Adjustment Date].
- 2) We then totaled the monthly benefits you should have received after the *Strunk* and *Eugene* recalculations, including all applicable Cost of Living Adjustments (COLAs), from your retirement date of [Retirement Date] to the recalculation date of [Adjustment Date].
- 3) The difference between what you were paid (number 1, above) and what you should have been paid (number 2, above) is the overpayment amount. Your overpayment amount totals \$XXX.XX.

At this time, there is a lawsuit pending in Multnomah County Circuit Court addressing the issue of whether PERS can collect this overpayment amount from you. Until that suit is resolved, PERS will take no action to collect this overpayment from you. Please do not pay this amount until the courts decide whether you are obligated to do so. PERS will contact you further once the suit is resolved.

PERS will begin to pay your corrected benefit on [Adjustment Date].





# Oregon

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January 27, 2012

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

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Set a minimum retroactive payment amount of \$5.00.
- Policy Issue: Should PERS set a minimum retroactive payment amount of \$5.00?

### BACKGROUND

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

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

### POLICY ISSUES

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

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

Setting a minimum amount for a retroactive payment would not affect plan qualification. Internal Revenue Service Revenue Procedure 2003-44, Employee Plans Compliance Resolution System, Section 6 paragraph (5)(b) “Delivery of Small Benefits,” states “If the total corrective distribution due a participant or beneficiary is \$50.00 or less, the Plan Sponsor is not required to make the corrected distribution if the reasonable direct costs of processing and delivering the distribution to the participant or beneficiary would exceed the amount of the distribution.”

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

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

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

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

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

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

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 28, 2012 at 3:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 1, 2012 at 5:00 p.m.

### LEGAL REVIEW

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

### IMPACT

Mandatory: No.

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

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

### RULEMAKING TIMELINE

December 15, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 3, 2012	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
January 27, 2012	PERS Board notified that staff began the rulemaking process.
February 28, 2012	Rulemaking hearing to be held at 3:00 p.m. in Tigard.
March 1, 2012	Public comment period ends at 5:00 p.m.
March 22, 2012	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

### NEXT STEPS

A hearing will be held on February 28, 2012 at PERS Headquarters in Tigard. The public comment period ends on March 1, 2012 at 5:00 p.m. The rule is scheduled to be brought before the PERS Board for adoption at the March 22, 2012 Board meeting.

B.1. Attachment 1 – 459-005-0615, *Minimum Retroactive Payment*



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

1 **459-005-0615**

2 **Minimum Retroactive Payment**

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

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

6 **Stats. Implemented: ORS 238.601**





# Oregon

John A. Kitzhaber, M.D., Governor

## Public Employees Retirement System

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January 27, 2012

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

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Clarify rate used to determine crediting of an installment payment in the year of distribution.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

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

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 28, 2012 at 3:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 1, 2012 at 5:00 p.m.

### LEGAL REVIEW

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

### IMPACT

Mandatory: No.

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

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

RULEMAKING TIMELINE

December 15, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 3, 2012	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
January 27, 2012	PERS Board notified that staff began the rulemaking process.
February 28, 2012	Rulemaking hearing to be held at 3:00 p.m. in Tigard.
March 1, 2012	Public comment period ends at 5:00 p.m.
March 22, 2012	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A hearing will be held on February 28, 2012 at PERS Headquarters in Tigard. The rules are scheduled to be brought before the PERS Board for adoption at the March 22, 2012 Board meeting.

B.2. Attachment 1 – 459-007-0090, *Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments*

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

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

1 **459-007-0090**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **459-007-0270**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



# Oregon

John A. Kitzhaber, M.D., Governor

## Public Employees Retirement System

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January 27, 2012

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

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Update Social Security annual compensation limits and clarify exception to work after retirement limitations for replacing employees called to active military duty.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

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

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

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

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 28, 2012 at 3:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 1, 2012 at 5:00 p.m.

### LEGAL REVIEW

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

### IMPACT

Mandatory: No.

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

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

### RULEMAKING TIMELINE

December 15, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 3, 2012	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
January 27, 2012	PERS Board notified that staff began the rulemaking process.
February 28, 2012	Rulemaking hearing to be held at 3:00 p.m. in Tigard.
March 1, 2012	Public comment period ends at 5:00 p.m.
March 22, 2012	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

### NEXT STEPS

A hearing will be held on February 28, 2012 at PERS Headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the March 22, 2012 Board meeting.

B.3. Attachment 1 – 459-017-0060, *Reemployment of Retired Members*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 017 – REEMPLOYED RETIRED MEMBERS**

1    **459-017-0060**

2    **Reemployment of Retired Members**

3           (1) For purposes of this rule, “retired member” means a member of the PERS Chapter  
4    238 Program who is retired for service.

5           (2) Reemployment under ORS 238.082. A retired member may be employed under  
6    238.082 by a participating employer without loss of retirement benefits provided:

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

9           (b) If the retired member is receiving retirement, survivors, or disability benefits under  
10   the federal Social Security Act, the period or periods of employment total less than 1,040  
11   hours in a calendar year or no more than the total number of hours in a calendar year that,  
12   at the retired member’s specified hourly rate of pay, limits the annual compensation of the  
13   retired member to an amount that does not exceed the following Social Security annual  
14   compensation limits:

15           (A) For retired members who have not reached full retirement age under the Social  
16   Security Act, the annual compensation limit is [~~\$14,160~~] \$14,640; or

17           (B) For the calendar year in which the retired member reaches full retirement age  
18   under the Social Security Act and only for compensation for the months before reaching  
19   full retirement age, the annual compensation limit is [~~\$37,680~~] \$38,880.

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

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

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

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

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

9 (A) The retired member did not retire at a reduced benefit under the provisions of  
10 ORS 238.280(1), (2), or (3); or

11 (B) If the retired member retired at a reduced benefit under the provisions of ORS  
12 238.280(1), (2) or (3), the retired member is not so employed until more than six months  
13 after the member’s effective retirement date and the member’s retirement otherwise meets  
14 the standard of a bona fide retirement;

15 (d) The retired member meets the requirements of section 2, chapter 499, Oregon  
16 Laws 2007;

17 (e) The retired member is employed for service during a legislative session under ORS  
18 238.092(2); or

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

21 (g) For purposes of population determinations referenced by statutes listed in this  
22 section, the latest federal decennial census shall first be operative on the first day of the  
23 second calendar year following the census year.

1 (h) For purposes of ORS 238.082(6), a retired member replaces an employee if  
2 the retired member:

3 (A) Is assigned to the position of the employee; and

4 (B) Performs the duties of the employee or duties that might be assigned to an  
5 employee in that position.

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

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

11 (A) PERS will cancel the member's retirement.

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

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

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

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

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

3            (C) The member’s account must be rebuilt in accordance with the provisions of  
4 section (7) of this rule.

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

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

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

10           (C) The member will reestablish active membership effective the date the member  
11 was reemployed.

12           (D) The member account will be rebuilt as of the date that PERS receives the single  
13 payment. The amount in the member account must be the same as the amount in the  
14 member account at the time of the member’s retirement.

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

16           (a) Hours of employment are hours on and after the retired member’s effective  
17 retirement date for which the member receives wages, salary, paid leave, or other  
18 compensation.

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

1 (7) Reemployment under ORS 238.078(1). If a member has been retired for service  
2 for more than six calendar months and is reemployed in a qualifying position by a  
3 participating employer under the provisions of 238.078(1):

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

6 (b) The member will reestablish active membership on the date the member is  
7 reemployed.

8 (c) If the member elected a benefit payment option other than a lump sum option  
9 under ORS 238.305(2) or (3), the last monthly service retirement allowance payment to  
10 which the member is entitled is for the month before the calendar month in which the  
11 member is reemployed. Upon subsequent retirement, the member may choose a different  
12 benefit payment option.

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

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

19 (d) If the member elected a partial lump sum option under ORS 238.305(2), the last  
20 monthly service retirement allowance payment to which the member is entitled is for the  
21 month before the calendar month in which the member is reemployed. The last lump sum  
22 or installment payment to which the member is entitled is the last payment due before the  
23 date the member is reemployed. Upon subsequent retirement, the member may not choose

1 a different benefit payment option unless the member has repaid to PERS in a single  
2 payment an amount equal to the lump sum and installment benefits received and the  
3 earnings that would have accumulated on that amount.

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

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

10 (e) If the member elected the total lump sum option under ORS 238.305(3), the last  
11 lump sum or installment payment to which the member is entitled is the last payment due  
12 before the date the member is reemployed. Upon subsequent retirement, the member may  
13 not choose a different benefit payment option unless the member has repaid to PERS in a  
14 single payment an amount equal to the benefits received and the earnings that would have  
15 accumulated on that amount.

16 (A) If the member repays PERS as described in this subsection the member’s account  
17 will be rebuilt as required by ORS 238.078 effective the date that PERS receives the single  
18 payment.

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

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

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

- 3            (i) The member may choose a different benefit payment option.
- 4            (ii) The member’s retirement benefit will be calculated based on the member’s periods  
5 of active membership after the member’s initial effective retirement date.

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

- 8            (i) The member may choose a different benefit payment option.
- 9            (ii) The member’s retirement benefit will be calculated based on the member’s periods  
10 of active membership before and after the member’s initial effective retirement date.

11            (iii) The member’s account will be rebuilt as described in ORS 238.078(2)

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

14            (8) Reemployment under ORS 238.078(2). If a member has been retired for less than  
15 six calendar months and is reemployed in a qualifying position by a participating employer  
16 under the provisions of 238.078(2):

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

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

21            (c) The member will reestablish active membership effective the date the member is  
22 reemployed.

1            (d) The member account will be rebuilt as of the date that PERS receives the single  
2 payment. The amount in the member account must be the same as the amount in the  
3 member account at the time of the member’s retirement.

4            (e) Upon subsequent retirement, the member may choose a different benefit payment  
5 option.

6            (9) Upon the subsequent retirement of any member who reestablished active  
7 membership under ORS 238.078 and this rule, the retirement benefit of the member must  
8 be calculated using the actuarial equivalency factors in effect on the effective date of the  
9 subsequent retirement.

10           (10) The provisions of paragraphs (7)(c)(B), (7)(d)(B), and (7)(e)(B) of this rule are  
11 applicable to retired members who reestablish active membership under ORS 238.078 and  
12 this rule and whose initial effective retirement date is on or after March 1, 2006.

13           (11) Reporting requirement. A participating employer that employs a retired member  
14 must notify PERS in a format acceptable to PERS under which statute the retired member  
15 is employed.

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

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

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

1 (12) Sick leave. Accumulated unused sick leave reported by an employer to PERS  
2 upon a member's retirement, as provided in ORS 238.350, may not be made available to a  
3 retired member returning to employment under sections (2) or (7) of this rule.

4 (13) Subsections (4)(c) and (4)(d) of this rule are repealed effective January 2, 2016.

5 (14) This rule is effective January 1, ~~[2010]~~ 2012.

6 Stat. Auth.: ORS 238.650

7 Stats. Implemented: ORS 238.078, 238.082, 238.092, 399.075, ~~&~~ 2007 OL Ch. 499 &  
8 774 ~~[& 2009 OL Ch. 390 & 868]~~





# Oregon

John A. Kitzhaber, M.D., Governor

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January 27, 2012

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Notice of Rulemaking for Disability Housekeeping Rules:  
459-015-0020, *Application Required*  
459-076-0020, *Application Required*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Housekeeping edits to OAR 459-015-0020(7) and 459-076-0020(5) to change “date of termination” to “date of separation from service”.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

This update to OARs 459-015-0020 and 459-076-0020 is a housekeeping edit to correctly use the term “date of separation” for when PERS may begin paying disability benefits to a disability recipient. The definitions “date of termination” and “date of separation” were amended during the recent disability rulemaking and this change to the rules was overlooked.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 28, 2012 at 3:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 1, 2012 at 5:00 p.m. The rules are scheduled to be brought before the PERS Board for adoption at the March 22, 2012 Board meeting.

### 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.

Impact: This housekeeping edit conforms the terms to the recently modified disability rule definitions.

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

RULEMAKING TIMELINE

January 13, 2012	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 27, 2012	PERS Board notified that staff began the rulemaking process.
February 1, 2012	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
February 28, 2012	Rulemaking hearing to be held at 3:00 p.m. in Tigard.
March 1, 2012	Public comment period ends at 5:00 p.m.
March 22, 2012	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A hearing will be held on February 28, 2012 at PERS Headquarters in Tigard. The rules are scheduled to be brought before the PERS Board for adoption at the March 22, 2012 Board meeting.

B.4. Attachment 1 – 459-015-0020, *Application Required*

B.4. Attachment 2 – 459-076-0020, *Application Required*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 – DISABILITY RETIREMENT ALLOWANCES**

1    **459-015-0020**

2    **Application Required**

3       (1) Applications must be made on forms provided by PERS. PERS may require the  
4    member to provide any information that PERS considers necessary to determine the  
5    applicant’s eligibility for a disability retirement allowance.

6       (2) No disability retirement allowance will be paid unless the member files a timely  
7    and complete application.

8       (3) Application must be made by a member or the member’s authorized  
9    representative. A representative must submit to PERS written proof of the  
10   representative’s authority; such as, a power of attorney, guardianship or conservatorship  
11   appointment.

12      (4) Upon the filing of an application for a disability retirement allowance, PERS will  
13   notify the applicant’s current or most recent employer of the filing. Additionally, PERS  
14   may request of an employer information pertaining to current or previous employment.

15      (5) When an employee member is disabled due to injury or disease, the member may  
16   make application immediately after the last day worked even though the member may be  
17   on a paid leave or on an official leave of absence without pay. No application will be  
18   accepted that predates the last day the member was actually on the job.

19      (6) An application will be considered filed in a timely manner when received by  
20   PERS as follows:

21      (a) For a member who is totally disabled due to injury or disease before terminating  
22   employment from all PERS qualifying positions and has not withdrawn the amount

1 credited to the account of the member in the system, the member must file an application  
2 for a disability retirement allowance within five calendar years of the date of termination.  
3 The disabling condition must be continuous from the date of termination to the date the  
4 application is filed.

5 (b) For a member who is totally disabled due to injury or disease after terminating  
6 employment from all PERS qualifying positions and has not withdrawn the amount  
7 credited to the account of the member in the system, the member must file an application  
8 for a disability retirement allowance within six months (180 days) after the date of  
9 separation from service. The disabling condition must be continuous from the date of  
10 disability to the date the application is filed.

11 (c) A member cannot apply for disability retirement before their date of disability.

12 (7) In determining the effective date of a disability retirement allowance, PERS may  
13 allow up to 60 months of benefits retroactive from the date the application is filed with  
14 PERS, but in no case earlier than the first day of the month following the date of  
15 ~~termination~~ separation.

16 (8) When making application for a PERS disability retirement allowance, PERS will  
17 request the applicant authorize any physician, health practitioner, hospital, clinic,  
18 pharmacy, employer, employment agency, or government agency to release and disclose  
19 to PERS, or independent physicians and vocational consultants retained by PERS, any  
20 information within their records or knowledge, including that information otherwise  
21 protected under federal or state law, regarding the applicant's health and employment  
22 which PERS determines relates to the applicant's claim of disability and inability to  
23 perform any work for which qualified.

1 (9) When filing an application for disability retirement allowance, if the applicant  
2 wishes to authorize release and disclosure of protected health information, as defined in  
3 OAR 459-015-0001~~[(17)]~~(21), the applicant must complete and sign a consent form  
4 which specifically authorizes the release and disclosure of such information.

5 (a) This authorization is voluntary. Because PERS is not a covered entity as defined  
6 in 45 C.F.R., Parts 160 and 164, the protected health information is not subject to federal  
7 and state health information privacy laws, but may be protected under Oregon State  
8 Public Record disclosure laws.

9 (b) This authorization may be revoked in writing at any time, except to the extent the  
10 entities named on the authorization form(s) have taken action in reliance of the  
11 authorization.

12 (c) If the applicant refuses to give or revokes authorization to disclose to PERS  
13 medical information that PERS determines it needs to evaluate the application, eligibility  
14 for a disability retirement allowance may be affected.

15 Stat. Auth.: ORS 238.650

16 Stats. Implemented: ORS 238.320 - 238.345



**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 076 – OPSRP DISABILITY BENEFIT**

1 **459-076-0020**

2 **Application Required**

3 (1) Application must be made on forms provided by PERS. PERS may require the  
4 member to provide any information that PERS considers necessary to determine the  
5 member's eligibility for a disability benefit.

6 (2) No disability benefit will be paid unless the member files a timely and complete  
7 application with PERS.

8 (3) Application must be made by a member or the member's authorized  
9 representative. A representative must submit to PERS written proof of the  
10 representative's authority; such as, a power of attorney, guardianship or conservatorship  
11 appointment.

12 (4) A member must file a timely application for disability benefits:

13 (a) An active member may file the application immediately after the last day worked  
14 even though the member may be on a paid leave or on an official leave of absence  
15 without pay. No application will be accepted that predates the last day the member was  
16 actually on the job.

17 (b) An inactive member who was totally disabled due to injury or disease while the  
18 applicant was an active member and has not terminated membership, must file an  
19 application for a disability benefit within five calendar years of the date of separation  
20 from service. The disabling condition must have arisen while the applicant was an active  
21 member and be continuous from the date the member last worked to the date the  
22 application is filed.

1 (c) A member cannot apply for disability benefits before their date of disability.

2 (5) In determining the effective date of a disability benefit PERS may allow up to 60  
3 months of benefits retroactive from the date the application is filed with PERS, but in no  
4 case earlier than the first day of the month following the date of *[termination]*  
5 separation.

6 (6) Upon the filing of an application for a disability benefit, PERS will notify the  
7 applicant’s current or most recent employer of the filing. Additionally, PERS may request  
8 of an employer information pertaining to current or previous employment.

9 (7) When making application for a PERS disability benefit, PERS will request the  
10 applicant authorize any physician, health practitioner, hospital, clinic, pharmacy,  
11 employer, employment agency, or government agency to release and disclose to PERS,  
12 or independent physicians and vocational consultants retained by PERS, any information  
13 within their records or knowledge, including that information otherwise protected under  
14 federal or state law, regarding the applicant’s health and employment which PERS  
15 determines relates to the applicant’s claim of disability and inability to perform any work  
16 for which qualified.

17 (8) When filing an application for disability benefit, if the applicant wishes to  
18 authorize release and disclosure of protected health information the applicant must  
19 complete and sign a consent form which specifically authorizes the release and disclosure  
20 of such information.

21 (a) This authorization is voluntary. Because PERS is not a covered entity as defined  
22 in 45 CFR Parts 160 and 164, the protected health information is not subject to federal

1 and state health information privacy laws, but may be protected under Oregon State  
2 Public Record disclosure laws.

3       (b) This authorization may be revoked in writing at any time, except to the extent the  
4 entities named on the authorization form(s) have taken action in reliance of the  
5 authorization.

6       (c) If the applicant refuses to give or revokes authorization to disclose to PERS  
7 medical information that PERS determines it needs to evaluate the application, eligibility  
8 for a disability benefit may be affected.

9       Stat. Auth.: ORS 238A.450

10       Stats. Implemented: ORS 238A.235





# Oregon

John A. Kitzhaber, M.D., Governor

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January 27, 2012

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Notice of Rulemaking for Petition for Reconsideration Rule:  
459-001-0025, *Delegation to Director and Staff*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Clarify petition for reconsideration requirements.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

In 2008, PERS adopted changes to OAR 459-001-0040 relating to reviews of petitions for reconsideration of a final order in a contested case. Those modifications conformed to the Department of Justice (DOJ) Model Rules of Procedure. During that rulemaking, section (2) of 459-001-0040 was deleted, which clarified specific information to be included in a petition for reconsideration. That rulemaking, however, did not modify OAR 459-001-0025, which references the now-deleted section (2) of OAR 459-001-0040.

These proposed modifications delete the outdated citation. Instead, adopting these modifications would delegate from the PERS Board to the Director the authority to deny any petition that does not set forth the specific grounds for reconsideration. This is an admittedly subjective standard and, in practice, staff has broadly accepted petitions for reconsideration even if they do not fit within the criteria that is proposed to be deleted. Before this rule is presented for adoption, staff would appreciate any public comment about the appropriate standard by which the function of denying the petition should be delegated.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on February 28, 2012 at 3:00 p.m. at PERS headquarters in Tigard. The public comment period ends on March 1, 2012 at 5:00 p.m.

### LEGAL REVIEW

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

### IMPACT

Mandatory: No.

Impact: The rule modifications clarify that the Director may deny any petition for reconsideration that does not set forth specific grounds for reconsideration.

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

### RULEMAKING TIMELINE

January 13, 2012	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
January 27, 2012	PERS Board notified that staff began the rulemaking process.
February 1, 2012	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
February 28, 2012	Rulemaking hearing to be held at 3:00 p.m. in Tigard.
March 1, 2012	Public comment period ends at 5:00 p.m.
March 22, 2012	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

### NEXT STEPS

A hearing will be held on February 28, 2012 at PERS Headquarters in Tigard. The rule is scheduled to be brought before the PERS Board for adoption at the March 22, 2012 Board meeting.

B.5. Attachment 1 – 459-001-0025, *Delegation to Director and Staff*

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

1 **459-001-0025**

2 **Delegation to Director and Staff**

3 (1) The Director is hereby authorized to take all action necessary or desirable to administer  
4 the system including but not limited to:

5 (a) Design application and other forms;

6 (b) Act on any application for refund of contributions; crediting service, correction of  
7 records, retirement for disability or service, and death benefits and allowances;

8 (c) Calculate and authorize payment of refunds, allowances or benefits except as provided in  
9 OAR chapter 459, division 15;

10 (d) Require medical, vocational or other professional examinations of disability retirement  
11 benefits applicants and recipients;

12 (e) Reinstate persons from disability retirement upon the Director’s determination that  
13 disability does not exist; and

14 (f) Initially review, grant or deny petitions for reconsiderations. The Director may deny any  
15 petition:

16 (A) Which does not contain *[the information required in OAR 459-001-0040(2)]* specific  
17 grounds for reconsideration; or

18 (B) Regarding which there is no bona fide dispute of material fact, the pertinent statutes and  
19 rules are clear in their application to the facts and there was no material administrative error.

20 (g) Define and settle administrative and court litigation.

21 (2) The Director may refer any matter to the Board or to an administrative law judge for a  
22 contested case or other hearing.

1           (3) The Director is hereby authorized to delegate to subordinates the authority to take any  
2 action on the Director's behalf.

3           Stat. Auth.: ORS *[237.263 & 183.600 - 183.690]* 238.650

4           Stats. Implemented: ORS 183.413 - 183.470 & 183.482



# Oregon

John A. Kitzhaber, M.D., Governor

## Public Employees Retirement System

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January 27, 2012

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Adoption of Rules to Implement 2011 Legislation  
HB 2113:  
459-005-0001, *Definitions, Generally*  
459-075-0060, *Vesting in the OPSRP Pension Program*  
459-080-0010, *Membership*

HB 2252:  
459-005-0620, *Uncollectible Debt Owed to PERS*

HB 2456:  
459-013-0310, *Payment of Increased Benefits under ORS 238.375 to 238.385*  
459-013-0320, *Payment of Increased Benefits to an Alternate Payee*

SB 301:  
459-005-0525, *Ceiling on Compensation for Purposes of Contributions and Benefits*  
459-005-0545, *Annual Addition Limitation*  
459-080-0500, *Limitation on Contributions*

### OVERVIEW

- Action: Adopt new rules and modifications to rules to implement 2011 legislation.
- Reason: Implement 2011 legislation impacting PERS.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

The 2011 Oregon Legislative Assembly passed four bills which require rulemaking to implement. The first, House Bill 2113 (chapter 722, Oregon Laws 2011), became effective on August 5, 2011. The bill was introduced at PERS' request by the Governor and contains the following technical corrections: modifications to the retirement plan options available to legislators; clean-up of trustee to trustee transfer retirement credit purchases; and clarification of vesting standards for OPSRP Pension Program and IAP members. The bill was amended to also include the provisions of HB 2114, another PERS-sponsored concept, which addressed the dual membership problem presented by members who withdraw from the IAP but are not eligible to withdraw from the OPSRP Pension Program. Lastly, the bill was amended to include the SB 950 provisions authorizing the Oregon Savings Growth Plan (OSGP) to offer a Roth 457 account to conform to a change in federal law.

House Bill 2252, which became effective on June 2, 2011, provides a state agency direct authority to write off uncollectible debts on its accounts under its own criteria (previously, the Secretary of State and Attorney General had to approve the criteria). The proposed new rule establishes the criteria which are mandated by HB 2252 for PERS. As the agency's criteria must still be approved by the Attorney General, the new rule adopts the model criteria that they provided.

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

Senate Bill 301 (Chapter 7, Oregon Laws 2011), became effective on September 29, 2011. The bill updates the connection date to the federal Internal Revenue Code and other provisions of federal tax law.

Staff has reviewed the bills and determined that certain existing rules need modification to conform to these statutory provisions, two new rules are needed to implement the tax remedy provisions of HB 2456, and one new rule is needed to implement HB 2252. Rules to implement the Roth 457 provisions in HB 2113 will be noticed at the March 2012 Board meeting. More staff time was needed to develop the new program's parameters that would need to be included in that rule.

#### SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

The rules to implement HB 2456 have been modified to more clearly state the operation of the rule in one particular circumstance: when the retired member is eligible for both the tax remedy under ORS 238.380 (HB 3349) and 238.385 (SB 656) and resides out of state at retirement. Staff's reading of the operative statutes is that determining eligibility for tax remedy is made at retirement, and a change in their circumstances does not change their eligibility. In this limited circumstance, the rules as presented will operate as follows: if the out-of-state member's tax remedy under HB 3349 is higher at the time of retirement, HB 2456 prevents us from paying them that tax remedy, so the member will instead receive the SB 656 tax remedy. If the member restores their Oregon residency, they will continue to get the SB 656 tax remedy as their eligibility for one or the other tax remedy was fixed at retirement.

The following changes were made to OAR 459-013-0310 to clarify this result:

Two additional paragraphs (a) and (b) have been added to OAR 459-013-0310(3) to indicate that a person with Oregon residency who otherwise meets the requirements under ORS 238.380 may receive an increased benefit under ORS 238.380, and a person regardless of residency who otherwise meets the requirements under ORS 238.385 may receive an increased benefit under ORS 238.385. These two additions are to further clarify that the increased benefit under ORS 238.380 is residency dependent while the increased benefit under ORS 238.385 is not. New sections (4) and (5) have been added to provide clarification on the exact effective date of this

new rule and the effective payment date threshold when a payment would not be covered under chapter 653, Oregon Laws 2011.

Additionally, the rules as presented differ as follows from their previous version:

459-013-0320

Section (1)(b) has been changed so this rule applies to alternate payees with effective retirement dates on or after January 1, 2012 instead of first payments issued on or after January 1, 2012.

Section (3) has been shortened and made clear that once the increased benefit has been initiated, the payment of the increased benefit to the alternate payee is governed only by the alternate payee's residency.

A new section (5) has been added to state the effective date of this rule is January 1, 2012.

459-005-0525

Section (4) was updated to reflect the salary limitations beginning in 2012.

459-005-0545

Section (2) was updated to reflect the annual addition beginning in 2012.

459-080-0500

Section (2) was updated to reflect the annual addition beginning in 2012.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on November 22, 2011, at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on December 1, 2011 at 5:00 p.m. No public comment was received. The public comment period for the rules to implement HB 2456 was extended until the January 27 Board meeting.

LEGAL REVIEW

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

IMPACT

Mandatory: No, the bills do not compel rulemaking, but the current rules should be modified to accommodate the provisions of HB 2113, HB 2252, HB 2456, and SB 301.

Impact: Stakeholders will benefit from the rules' clarification and implementation of the statutory provisions.

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

RULEMAKING TIMELINE

October 14, 2011                      Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.

November 1, 2011	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers and interested parties. Public comment period began.
November 18, 2011	PERS Board notified that staff began the rulemaking process.
November 22, 2011	Rulemaking hearing held at 2:00 p.m. in Tigard.
November 29, 2011	Staff extended the public comment period for rules to implement HB 2456 until January 27, 2012.
December 1, 2011	Public comment period ended at 5:00 p.m.
January 27, 2012	Public comment period for rules to implement HB 2456 ends at Board meeting.
January 27, 2012	Board may adopt the permanent rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt rules to implement 2011 legislation, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Implement 2011 legislation impacting PERS.

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

B.6. Attachment 1 – 459-005-0001, *Definitions, Generally*

B.6. Attachment 2 – 459-075-0060, *Vesting in the OPSRP Pension Program*

B.6. Attachment 3 – 459-080-0010, *Membership*

B.6. Attachment 4 – 459-005-0620, *Uncollectible Debt Owed to PERS*

B.6. Attachment 5 – 459-013-0310, *Payment of Increased Benefits under ORS 238.375 to 238.385*

B.6. Attachment 6 – 459-013-0320, *Payment of Increased Benefits to an Alternate Payee*

B.6. Attachment 7 – 459-005-0525, *Ceiling on Compensation for Purposes of Contributions and Benefits*

B.6. Attachment 8 – 459-005-0545, *Annual Addition Limitation*

B.6. Attachment 9 – 459-080-0500, *Limitation on Contributions*

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

1 **459-005-0001**

2 **Definitions, Generally**

3 The words and phrases used in chapter 459, Oregon Administrative Rules, have the  
4 same meaning given them in ORS 238.005 to 238.750. Specific and additional terms used  
5 in chapter 459 generally are defined as follows unless context of a particular division or  
6 rule within this chapter requires otherwise:

7 (1) “Ad hoc” means one-time for a specific purpose, case, or situation without  
8 consideration of a broader application.

9 (2) “After-tax” contributions means:

10 (a) Member contributions required or permitted by ORS 238.200 or 238.515, which  
11 a participating employer has not elected to “pick up,” assume or pay in accordance with  
12 ORS 238.205 and 238.515(b). “After-tax” contributions are included in the member’s  
13 taxable income for purposes of state or federal income taxation at the time paid to PERS.  
14 “After-tax” contributions are included in computing FAS and in computing the  
15 employer’s contributions paid to PERS.

16 (b) Payments made by a member to PERS for the purchase of additional benefits.

17 (3) “Before-tax” contributions means member contributions required or permitted by  
18 ORS 238.200 or 238.515, which a participating employer has elected to “pick up,”  
19 assume or pay in accordance with ORS 238.205 and 238.515(b). “Before-tax”  
20 contributions are not included in the member’s taxable income for purposes of state or  
21 federal income taxation at the time paid to PERS. “Before-tax” contributions are included  
22 in:

1            (a) Computing final average salary; and

2            (b) Computing the employer’s contributions paid to PERS if the employer has  
3 elected to “pick up” the member contributions.

4            (4) “Calendar month” means the Julian Calendar beginning with the first calendar  
5 day of a month through the last calendar day of that month.

6            (5) “Casual worker” means an individual engaged for incidental, occasional,  
7 irregular, or unscheduled intervals or for a period of less than six consecutive calendar  
8 months.

9            (6) “Contributions” means any contributions required or permitted pursuant to ORS  
10 238.200 or 238.515.

11           (7) “Differential wage payment” means a payment made on or after January 1, 2009:

12           (a) By an employer to a member with respect to any period during which the  
13 member is performing service in the uniformed services, as defined in USERRA, while  
14 on active duty for a period of more than 30 consecutive days; and

15           (b) That represents all or a portion of the wages the member would have received  
16 from the employer if the member were performing service for the employer.

17           (8) “Effective date of withdrawal” means the later of:

18           (a) The first day of the calendar month in which PERS receives the last completed  
19 document required from a member who requested a withdrawal; or

20           (b) The first day of the second calendar month following the calendar month in  
21 which the member terminated employment with all participating employers and all  
22 employers in a controlled group with a participating employer.

23           (9) “Effective retirement date” means:

1            (a) For service retirements, the date described in OAR 459-013-0260; or

2            (b) For disability retirements, the date described in OAR ~~[459-015-0015]~~ 459-015-

3            0001.

4            (10) “Elected official” means an individual who is a public official holding an  
5 elective office or an appointive office with a fixed term for the state or for a political  
6 subdivision of the state who has elected to participate in PERS pursuant to ORS  
7 238.015(5).

8            (11) “Emergency worker” means an individual engaged in case of emergency,  
9 including fire, storm, earthquake, or flood.

10           (12) “Employee” has the same meaning as provided in ORS 238.005~~[(7)]~~(8) and  
11 shall be determined in accordance with OAR 459-010-0030.

12           (a) For the purposes of ORS 238.005 to 238.750 the term “employee” includes  
13 public officers whether elected or appointed for a fixed term.

14           (b) The term “employee” does not include:

15           (A) A member of the governing board of a political subdivision unless the individual  
16 qualifies for membership under ORS 238.015.

17           (B) An individual who performs services for a public employer as a contractor in an  
18 independently established business or as an employee of that contractor in accordance  
19 with OAR 459-010-0030.

20           (c) An individual providing volunteer service to a public employer without  
21 compensation for hours of service as a volunteer, except for volunteer firefighters who  
22 establish membership in accordance with ORS 238.015(6).

1 (13) “Employer contribution account” means a record of employer contributions to  
2 the Fund, as required by ORS 238.225(1), and investment earnings attributable to those  
3 contributions, that the Board has credited to the account after deducting amounts required  
4 or permitted by ORS Chapter 238.

5 (14) “Employment” is compensated service to a participating employer as an  
6 employee whose:

7 (a) Period or periods of employment includes only the actual hours of compensated  
8 service with a participating employer as an employee; and

9 (b) Compensated service includes, but is not limited to, paid vacation, paid sick  
10 leave, or other paid leave.

11 (15) “Estimate” means a projection of benefits prepared by staff of a service or  
12 disability retirement allowance, a death or a refund payment. An estimate is not a  
13 guarantee or promise of actual benefits that eventually may become due and payable, and  
14 PERS is not bound by any estimates it provides. (ORS 238.455(6))

15 (16) “FAS” and “final average salary” have the same meaning as provided in:

16 (a) ORS 238.005~~[(8)]~~(9) for all PERS Tier One members;

17 (b) ORS 238.435(2) for all PERS Tier Two members who are not employed by a  
18 local government as defined in ORS 174.116;

19 (c) ORS 238.435(4) for all PERS Tier Two members who are employed by a local  
20 government as defined in ORS 174.116; or

21 (d) ORS 238.535(2) for judge members of PERS for service as a judge.

22 (17) “General service member” means membership in PERS as other than a judge  
23 member, a police officer, a firefighter, or a legislator.

1 (18) “Good cause” means a cause beyond the reasonable control of an individual.  
2 “Good cause” exists when it is established by satisfactory evidence that factors or  
3 circumstances are beyond the reasonable control of a rational and prudent individual of  
4 normal sensitivity, exercising ordinary common sense.

5 (19) “Independent contractor” means an individual or business entity that is not  
6 subject to the direction and control of the employing entity as determined in accordance  
7 with OAR 459-010-0032.

8 (20) “Judge member” has the same meaning as provided in ORS 238.500(3). For  
9 purposes of this chapter, active, inactive, and retired membership of a judge member shall  
10 have the same meaning as ORS 238.005~~(15)~~*[(12)(b), (c), and (d), respectively]*.

11 (21) “Legislator” means an individual elected or appointed to the Oregon Legislative  
12 Assembly who has elected to participate in PERS for their legislative service.*[pursuant*  
13 *to ORS 238.015(5) as a member of the Oregon Legislative Assembly as provided in ORS*  
14 *238.068.]*

15 (22) “Member cost” means after-tax member contributions and payments made by or  
16 on behalf of a member to purchase additional benefits.

17 (23) “Participating employer” means a public employer who has one or more  
18 employees who are active members of PERS.

19 (24) “PERS” and “system” have the same meaning as the Public Employees  
20 Retirement System in ORS 238.600.

21 (25) “Qualifying position” has the same meaning as provided in ORS  
22 238.005~~[(19)]~~[(22)].

1            (26) “Regular account” means the account established under ORS 238.250 for each  
2 active and inactive member who has made contributions to the Fund or the account of an  
3 alternate payee of such a member.

4            (27) “Salary” has the same meaning as provided in ORS 238.005~~[(21)]~~(26).

5            (a) “Salary” includes a differential wage payment, as defined in this rule.

6            (b) For a Tier One member, a lump sum payment for accrued vacation pay is  
7 considered salary:

8            (A) In determining employee and employer contributions.

9            (B) In determining final average salary for the purpose of calculating PERS benefits.

10           (c) For a Tier Two member, a lump sum payment for accrued vacation pay:

11           (A) Is considered salary in determining employee and employer contributions.

12           (B) Is not considered salary in determining final average salary for the purpose of  
13 calculating PERS benefits.

14           (28) “Seasonal worker” means an individual whose engagement is characterized as  
15 recurring for defined periods that are natural divisions of the employer’s business cycle  
16 or services.

17           (29) “Staff” means the employees of the Public Employees Retirement System as  
18 provided for in ORS 238.645.

19           (30) “Tier One member” means a member who established membership in the  
20 system before January 1, 1996, as defined in ORS 238.430(2).

21           (31) “Tier Two member” means a member who established membership in the  
22 system on or after January 1, 1996, in accordance with ORS 238.430.

1            (32) “USERRA” means the federal Uniformed Services Employment and  
2 Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334, as in effect on the effective  
3 date of this rule.

4            (33) “Vacation pay” means a lump sum payment for accrued leave in a Vacation  
5 Leave Program provided by a public employer which grants a period of exemption from  
6 work for rest and relaxation with pay, and does not include:

7            (a) Sick leave programs;

8            (b) Programs allowing the accumulation of compensatory time, holiday pay or other  
9 special leaves unless the public employer’s governing body indicates by resolution,  
10 ordinance, or other legislative process, that such leave is intended to serve as additional  
11 vacation leave; and

12            (c) Other programs, such as a Personal Time Off (PTO) plan, which are a  
13 combination of vacation, sick, bereavement, personal and other leaves of pay as defined  
14 and described by a public employer unless the employer has a written policy that clearly  
15 indicates the percentage of the plan that represents vacation leave. If the employer’s PTO  
16 has a cash option, the employer must report to PERS the amount of any lump sum pay-  
17 off for the percentage that represents vacation leave.

18            (34) “Variable account” and “member variable account” mean the account in the  
19 Variable Annuity Account established under ORS 238.260(2) for each active and inactive  
20 member who has elected to have amounts paid or transferred into the Variable Annuity  
21 Account.

22            (35) “Variable Annuity Account” means the account established in ORS 238.260(2).

1           (36)(a) “Volunteer” means an individual who performs a service for a public  
2 employer, and who receives no compensation for the service performed.

3           (b) The term “volunteer” does not include an individual whose compensation  
4 received from the same public employer for similar service within the same calendar year  
5 exceeds the reasonable market value for such service.

6           (37) “Year” means any period of 12 consecutive calendar months.

7           Stat. Auth.: ORS 238.650

8           Stats. Implemented: ORS [Chapter](#) 238

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

1 **459-075-0060**

2 **Vesting in the OPSRP Pension Program**

3 For the purpose of determining vesting under ORS 238A.115(1)(a):

4 (1) Hours of service performed for all participating public employers during a  
5 calendar year are included.

6 (2) Hours of service performed during the six-month period required to establish  
7 membership under ORS 238A.100 are included.

8 (3) For calendar years beginning on or after January 1, 2004, hours of service will be  
9 determined based on hours reported to PERS by the member’s employer(s) pursuant to  
10 OAR 459-070-0100.

11 (4) An eligible employee first employed by a participating public employer on or  
12 after August 29, 2003 and before January 1, 2004 is presumed to have performed less  
13 than 600 hours of service in calendar year 2003 unless records provided to PERS  
14 establish that the eligible employee performed at least 600 hours of service in the  
15 calendar year.

16 *[(5) If a member of the PERS Chapter 238 Program is elected or appointed to the*  
17 *Legislative Assembly and elects under ORS 237.650 to participate in the Oregon Public*  
18 *Service Retirement Plan for the member’s legislative service, for calendar years*  
19 *beginning before January 1, 2004, the member is presumed to have performed 600 hours*  
20 *of service in any calendar year in which the member was an active member of the system*  
21 *unless records provided to PERS establish that the eligible employee did not perform at*  
22 *least 600 hours of service in the calendar year.]*

1        ~~[(6)]~~ (5) Hours of service attributable to periods of active membership before  
2        termination of membership under ORS 238.095 and hours of service excluded under  
3        ORS 238A.120 and 238A.145 may not be included.

4        Stat. Auth.: ORS 238A.450

5        Stats. Implemented: ORS 238A.010, 238A.115

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

1 **459-080-0010**

2 **Membership**

3 (1) An employee who is eligible for membership in the pension program under OAR  
4 459-075-0010 *[shall]* becomes a member of the individual account program on the same  
5 *[day membership is established in]* date the employee becomes a member of the  
6 pension program.

7 (2) An employee who was an active or inactive member of PERS on August 28,  
8 2003, and retains membership in PERS through January 1, 2004, *[shall]* becomes a  
9 member of the individual account program on January 1, 2004.

10 (3) An employee who performed a period of service before August 29, 2003, that  
11 was credited to the six-month period required under ORS 238.015 for membership in  
12 PERS *[shall]* becomes a member of the individual account program on the date the  
13 employee becomes a member of PERS, or January 1, 2004, whichever is later.

14 (4) An employee may become a member of the individual account program as  
15 provided in ORS 238A.300(2).

16 Stat. Auth.: *[OL 2003 Ch. 733]* ORS 238A.450

17 Stats. Implemented: *[OL 2003 Ch. 733]* ORS 238A.300, 238A.305 & OL 2011 Ch.

18 722



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

1 459-005-0620

2 Uncollectible Debt Owed to PERS

3 Any debt, including interest, penalties, or any portion of the debt, may be  
4 considered to be uncollectible when the debtor has no money or other thing of value  
5 owing or held by PERS that has not been credited to the debt, and it is reasonable to  
6 conclude, after all reasonable efforts to collect the debt have been made, that one or  
7 more of the following is true:

8 (1) The debtor does not and will not for the foreseeable future own or have the  
9 right to own assets from which PERS could collect the debt.

10 (2) It is reasonably estimated that the cost of collecting the debt would equal or  
11 exceed the amount of the debt.

12 (3) The debtor is deceased, and there are no assets in the debtor's estate from  
13 which PERS could collect the debt.

14 (4) The debtor is a corporation or a limited liability company that is not and for  
15 the foreseeable future will not be engaged in any income-producing activity, and  
16 there are no assets from which PERS could collect the debt.

17 (5) The debt has previously been discharged in bankruptcy.

18 (6) The debtor's estate is subject to a pending bankruptcy proceeding in which  
19 it is reasonable to conclude that the debt will be discharged and that PERS will  
20 receive none or an insubstantial share of the assets of the bankruptcy estate.

1        (7) PERS is and will be for the foreseeable future unable to collect from the  
2 debtor or from anyone owing the debtor money or holding assets of or from the  
3 debtor.

4        (8) PERS is unable to locate the debtor despite having made reasonable efforts  
5 to do so.

6        (9) The debt has been liquidated by reduction to a court judgment,  
7 administrative order or distraint warrant, which has subsequently expired.

8        Stat. Auth.: ORS 238.650, 293.240 & 238A.450

9        Stats. Implemented: ORS 293.240(2)

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

1 459-013-0310

2 Payment of Increased Benefits under ORS 238.375 to 238.385

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

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

6 (b) “Resident” has the same meaning as defined in ORS 316.027.

7 (2)(a) The percentage of the increased benefit payable to a person under ORS  
8 238.380(1) to (3) and chapter 653, Oregon Laws 2011, will be determined when the  
9 person’s application for payments is processed by PERS.

10 (b) Once determined by PERS, the increased benefit percentage payable to the  
11 person may not change, but payment of the increased benefit to the person may stop  
12 or restart as a result of changes in the person’s residency.

13 (3) For the purposes of the determination under section (2)(a) of this rule:

14 (a) A person who is not a resident of the state of Oregon who otherwise meets  
15 the requirements of ORS 238.380 and 238.385 may receive only the increased  
16 benefit under ORS 238.385.

17 (b) A person who is not a resident of the state of Oregon who otherwise meets  
18 the requirements of ORS 238.380 but does not meet the requirements of ORS  
19 238.385 may not receive the increased benefit under ORS 238.380. If the person  
20 described in this subsection becomes a resident of the state of Oregon after  
21 payments begin, the person may receive an increased benefit under ORS 238.380 as  
22 provided in chapter 653, Oregon Laws 2011.

1        (4) For purposes of Section 2 (2)(c), chapter 653, Oregon Laws 2011, a payment  
2 begins before January 1, 2012 if the effective date of the payment, as described in  
3 this chapter, is before January 1, 2012.

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

5        Stat. Auth.: ORS 238.650

6        Stats. Implemented: ORS 238.375, 238.380, 238.385, OL 2011, Ch. 653

7        (Enrolled House Bill 2456)

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

1 **459-013-0320**

2 **Payment of Increased Benefits to an Alternate Payee**

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

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

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

8 **(2) The percentage of the increased benefit payable to the member, as**  
9 **determined under ORS 238.380; chapter 653, Oregon Laws 2011; and OAR 459-**  
10 **013-0310 is the increased benefit percentage payable to an alternate payee.**

11 **(3) Payment of the increased benefit to the alternate payee is governed by the**  
12 **residency of the alternate payee.**

13 **(4) An alternate payee described in section (1) of this rule whose effective**  
14 **retirement date is before January 1, 2012 may receive an increased benefit under**  
15 **ORS 238.380 or 238.385 regardless of the member’s or alternate payee’s residency.**

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

17 **Stat. Auth.: ORS 238.650**

18 **Stats. Implemented: ORS 238.375, 238.380, 238.385, 238.465, OL 2011, Ch. 653**

19 **(Enrolled House Bill 2456)**



**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) The purpose of this rule is to assure compliance of the Public Employees  
4 Retirement System (PERS) with Internal Revenue Code (IRC) Section 401(a)(17)  
5 relating to the limitation on annual compensation allowable for determining contribution  
6 and benefits under ORS Chapters 238 and 238A.

7 (2) Definitions:

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 237.001 to 237.315 as in effect on  
4 July 1, 1993.

5 (4) For noneligible participants, the annual compensation taken into account for  
6 purposes of determining contributions or benefits under ORS Chapters 238 and 238A  
7 shall be measured on a calendar year basis, and shall not exceed ~~[230,000]~~ \$250,000 per  
8 calendar year beginning in ~~[2008]~~ 2012.

9 (a) The limitation on annual compensation will be indexed by cost-of-living  
10 adjustments in subsequent years as provided in IRC Section 401(a)(17)(B).

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

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

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

22 (6) Notwithstanding section (4) and (5) of this rule, if the Final Average Salary as  
23 defined in ORS 238.005 with respect to Chapter 238 and as defined in 238A.130 with

1 respect to Chapter 238A is used in computing a noneligible participant’s retirement  
2 benefits, the annual compensation shall be based on compensation paid in a 12-month  
3 period beginning with the earliest calendar month used in determining the 36 months of  
4 salary paid. For each 12-month period, annual compensation shall not exceed the amount  
5 of compensation that is allowable under this rule for the calendar year in which the 12-  
6 month period begins.

7 (7) With respect to ORS Chapter 238, creditable service, as defined in 238.005, shall  
8 be given for each month that an active member is paid salary or wages and allowable  
9 contributions have been remitted to PERS, or would be remitted but for the annual  
10 compensation limit in IRC Section 410(a)(17). With respect to Chapter 238A, retirement  
11 credit as determined in 238A.140, shall be given for each month that an active member is  
12 paid salary or wages and allowable contributions have been remitted to PERS, or would  
13 be remitted but for the annual compensation limit in IRC Section 401(a)(17).

14 (8) The provisions of this rule are effective on January 1, 2004.

15 Stat. Auth.: ORS 238.630, 238.650, [238A.370](#) & 238A.[450](#)~~[005(16)(c)(I)]~~

16 Stats. Implemented: ORS [chapters](#) 238 [& 238A](#)



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

1 **459-005-0545**

2 **Annual Addition Limitation**

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

6 (2) Annual Addition Limitation. Except as otherwise provided in this rule, a member's  
7 annual additions to PERS for any calendar year after ~~[2007]~~ 2011 may not exceed *[the*  
8 *lesser of the following amounts:]*

9 *[(a) \$46,000] \$50,000 (as adjusted under IRC Section 415(d)).~~]; or]~~*

10 *[(b) One hundred percent of the member's compensation for the calendar year (as*  
11 *defined in IRC Section 415(c)(3)).]*

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

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

17 (a) If a member's after-tax contributions to purchase permissive service credit are  
18 included in the member's annual additions under section (3) of this rule, the member shall  
19 not be treated as exceeding the *[100 percent of compensation]* limitation under *[sub]*section  
20 (2)*[(b)]* of this rule solely because of the inclusion of such contributions.

21 (b) With respect to any eligible participant, the annual addition limitation in section (2)  
22 of this rule shall not be applied to reduce the amount of permissive service credit to an

1 amount less than the amount that could be purchased under the terms of the plan as in effect  
2 on August 5, 1997. As used in this subsection, the term “eligible participant” includes any  
3 individual who became an active member before January 1, 2000.

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

9 (a) The payment shall be treated as an annual addition for the calendar year to which it  
10 relates;

11 (b) The payment shall not be treated as an annual addition for the calendar year in  
12 which it is made; and

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

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

17 (B) If the amount in paragraph (A) of this subsection is not reasonably certain, the  
18 member’s average compensation from the participating employer during the 12-month  
19 period immediately preceding the period of service in the Armed Forces (or, if shorter, the  
20 period of employment immediately preceding the period of service in the Armed Forces).

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

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

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

**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) Definitions. For purposes of this rule:

4 (a) “Annual addition” has the same meaning given the term in 26 U.S.C. 415(c)(2)  
5 as in effect on *[August 29, 2003]* **December 31, 2010.**

6 (b) “Compensation” has the same meaning given the term in 26 U.S.C. 415(c)(3) as  
7 in effect on *[August 29, 2003]* **December 31, 2010.**

8 (2) Annual addition limitation. Except as otherwise provided in this rule, the annual  
9 addition to a member account for any calendar year *[shall]* **may** not exceed **\$50,000.***[the*  
10 *lesser of:]*

11 *[(a) \$41,000; or*

12 *(b) 100 percent of the member's compensation for the calendar year.]*

13 (3) *[Purchase]* **Payment [of] for** military service. If a **payment of employee**  
14 **contributions for a period of military service is made** *[member makes a payment to*  
15 *purchase retirement credit for military service]* under OAR 459-080-0100:

16 (a) The payment shall be treated as an annual addition for the calendar year**(s)** of  
17 *[the]* military service to which it relates;

18 (b) The payment shall not be treated as an annual addition for the calendar year in  
19 which it is made; and

20 (c) **For the purpose of allocating payments under this section, [T]**the member’s  
21 compensation shall be the amount described in OAR 459-080-0100(3)*[(c)]***(d).**

22 Stat. Auth.: *[OL 2003 Ch. 733]* **ORS 238A.450**

1 Stats. Implemented: *[OL 2003 Ch. 733]* ORS 238A.370



# Oregon

John A. Kitzhaber, M.D., Governor

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January 27, 2012

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director

SUBJECT: Adoption of Death and Survivor Benefits Rules:  
459-014-0030, *Pre-Retirement Designation of Beneficiary*  
459-014-0040, *Valid Request for Distribution of Pre-Retirement Death Benefits*  
459-014-0050, *Designation of Beneficiary at Retirement and Survivor Benefits*

### OVERVIEW

- Action: Adopt modifications to the Death and Survivor Benefits rules.
- Reason: The administration of death and survivor benefits is not clarified in rule. Rulemaking is also needed to address audit findings.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

Recent audit findings raised concerns about the state of the administrative rules regarding the administration of death benefits for the OPSRP Pension Program (OPSRP), Individual Account Program (IAP), and the Tier One or Tier Two member's death benefit. Modifications to the existing rule and two new rules reflect current administration of pre-retirement death benefits and post-retirement payments to survivors and beneficiaries, excluding judge members, whose death benefits are addressed in the judge member OARs.

### SUMMARY OF THE RULES AS PRESENTED

The proposed rules and modifications address the following subjects:

#### 459-014-0030 Pre-Retirement Designation of Beneficiary

This rule sets out the parameters for designation of beneficiary for a Tier One or Tier Two member account and the IAP account for members and alternate payees. Section (6) provides more detail if a trustee of a trust is designated as beneficiary. The trust must meet federal required minimum distribution rules, and Section (6) sets those out and also specifies that if the individual naming a trust does not want to provide the entire trust document, a certification of trust can be submitted instead. Other sections address that the pre-retirement designation of beneficiary applies to a Tier One and Tier Two police officer or firefighter unit account as well as the member account. Lastly, the rule notes that, unlike Tier One/Tier Two and the IAP, the OPSRP Pension Program pre-retirement death benefit beneficiary is set out in statute as the spouse of the member or any other person who is constitutionally required to be treated as a spouse for purposes of retirement. This section is just clarifying why there is no pre-retirement designation of beneficiary for OPSRP Pension Program.

459-014-0040 Valid Request for Distribution of Pre-Retirement Death Benefits

The Tier One and Tier Two pre-retirement death benefit is the member account balance as of the first of the month of the member's death. Pursuant to earnings crediting rules OAR 459-007-0050 and 459-007-0230, the death benefit then increases or decreases based on the latest year-to-date actual Tier Two earnings until the beneficiary requests distribution. Earnings from the effective date of that request until the date of distribution are based on the average annualized rate. A recent audit revealed some inconsistencies across the program on what triggered those dates; this rule clarifies the pertinent dates and related earnings crediting process.

459-014-0050 Designation of Beneficiary at Retirement and Survivor Benefits

Depending on the Tier One or Tier Two service retirement benefit option selected, if death occurs after the effective retirement date but before first payment is due, the benefit may be determined as if the death occurred before retirement. This rule provides structure and definitions around that process.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

459-014-0030

A reference of the Required Minimum distribution federal rule was added to section (6).

A new section (7) was inserted to clarify that if a trust is designated as beneficiary, and the trust does not meet the criteria as set forth in section (6) of the rule, it will be treated as if no beneficiary was designated for purposes of Required Minimum Distributions and all payments to the trust must be distributed by December 31 of the fifth anniversary of the death of the member or alternate payee.

The rest of the sections were renumbered accordingly.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on November 22, 2011 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on December 1, 2011 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Impact: Members, employers, stakeholders, and staff will benefit from rules that clarify the administration of death and survivor benefits.

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

RULEMAKING TIMELINE

October 14, 2011	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
November 1, 2011	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to legislators, employers and interested parties. Public comment period began.
November 18, 2011	PERS Board notified that staff began the rulemaking process.
November 22, 2011	Rulemaking hearing held at 2:00 p.m. in Tigard.
December 1, 2011	Public comment period ended at 5:00 p.m.
January 27, 2012	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

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

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1

- Reason: The administration of death and survivor benefits is not clarified in rule. Rulemaking is also needed to address audit findings.

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

B.7. Attachment 1 – 459-014-0030, *Pre-Retirement Designation of Beneficiary*

B.7. Attachment 2 – 459-014-0040, *Valid Request for Distribution of Pre-Retirement Death Benefits*

B.7. Attachment 3 – 459-014-0050, *Designation of Beneficiary at Retirement and Survivor Benefits*



OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 014 – DEATH AND SURVIVOR BENEFITS

1 **459-014-0030**

2 **Pre-Retirement Designation of Beneficiary**

3 *[(1) A member may designate a new beneficiary or revoke a previous designation by*  
4 *giving written notice to the Retirement Board, but no revocation or new designation shall*  
5 *be effective until received by the Public Employees Retirement Board. (Forms will be*  
6 *furnished by the Board upon request.)]*

7 *[(2) When a member designates a new beneficiary or beneficiaries, such action shall*  
8 *annul and revoke all prior designations.]*

9 **(1) At any time before the effective date of retirement, a member or alternate**  
10 **payee with a separate account may designate a new beneficiary or revoke a previous**  
11 **designation of beneficiary for the purposes of paying benefits under ORS 238.390**  
12 **and 238A.410.**

13 **(2) A designation of beneficiary must be:**

14 **(a) In a written format acceptable to PERS;**

15 **(b) Signed and dated by the member or alternate payee; and**

16 **(c) Received by PERS before the member or alternate payee's death.**

17 **(3) The receipt by PERS of a new beneficiary designation revokes all previous**  
18 **designations.**

19 **(4) A member who has a member account and IAP account or an alternate**  
20 **payee with separate accounts must file a designation of beneficiary for each account.**

1 (5) If the designation of beneficiary on file with PERS at the time of death is not  
2 administrable, distributions will be paid as if no designation of beneficiary had been  
3 made in accordance with ORS 238.390 and 238A.410.

4 (6) If a trustee of a trust is named as beneficiary, the individual beneficiary or  
5 beneficiaries of the trust will be treated as designated beneficiaries for the purpose  
6 of federal Required Minimum Distribution rules pursuant to 26 CFR 1.401(a)(9)-4,  
7 if the trust satisfies the following requirements:

8 (a) The trust is a valid trust under state law, or would be but for the fact it is  
9 not funded;

10 (b) The trust is irrevocable or will become irrevocable upon the death of the  
11 member or alternate payee;

12 (c) The beneficiaries of the trust, with respect to the trust's interest in the  
13 account, are identifiable from the trust instrument. The beneficiaries will be  
14 considered identifiable as long as it is possible to identify the beneficiary with the  
15 shortest life expectancy; and

16 (d) PERS is provided:

17 (A) A copy of the trust document; or

18 (B) A certification of trust containing the following:

19 (i) A list of all beneficiaries of the trust;

20 (ii) Certification that the list is correct and complete to the best of the member  
21 or alternate payee's knowledge and the trust satisfies the requirements in  
22 subsections (a), (b) and (c) of this section; and

1 (iii) A statement agreeing to provide a copy of the trust document upon  
2 demand.

3 (7) If a trust fails to satisfy the requirements in section (6) of this rule, the  
4 member will be deemed as having no beneficiary for purposes of Required  
5 Minimum Distributions and the entire death benefit must be distributed to the trust  
6 by December 31 of the calendar year containing the fifth anniversary of the death of  
7 the member or alternate payee pursuant to 26 CFR 1.401(a)(9)-3.

8 (8) The beneficiary designation made by a Tier One or Tier Two member will  
9 apply to the member account as defined in ORS 238.005 and any optional unit  
10 account under ORS 238.440.

11 (9) A pre-retirement designation of beneficiary may not be made for the  
12 OPSRP Pension Program as ORS 238A.230 determines who is eligible to receive a  
13 pre-retirement death benefit.

14 ~~[(3)]~~ (10) The right of a beneficiary to receive *[the balance in a member's account*  
15 *in the Retirement Fund]* a death benefit payment ~~[shall]~~ may not be deemed nullified  
16 or waived by any agreement or property settlement between the member and the  
17 beneficiary, or on behalf of either of them, which does not specifically mention such right  
18 and waive it on the part of the beneficiary or vacate and set aside the designation of said  
19 beneficiary by such member.

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

21 Stats. Implemented: ORS 238.390, 238A.230 & 238A.410



OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 014 – DEATH AND SURVIVOR BENEFITS

1 459-014-0040

2 Valid Request for Distribution of Pre-Retirement Death Benefits

3 (1) For the purposes of this rule, “valid request for distribution” is when PERS  
4 receives the last required document PERS has determined necessary to distribute a  
5 death benefit to a beneficiary.

6 (2) PERS must receive a copy of the death certificate of the deceased member or  
7 alternate payee. PERS will provide instructions to a beneficiary identifying  
8 additional documents that must be received to make a valid request for distribution.

9 Required documents may include but are not limited to:

10 (a) Death Benefit Election;

11 (b) Letters of Testamentary/Administration;

12 (c) Small Estate Affidavit or out of state equivalent;

13 (d) Affidavit of Next of Kin;

14 (e) Affidavit of Beneficiary;

15 (f) Declaration of Beneficiary;

16 (g) Proof of marriage;

17 (h) Proof of registered domestic partnership;

18 (i) Proof of birth of the beneficiary;

19 (j) Trust document or certification of trust;

20 (k) Proof of Conservatorship; and

21 (l) Proof of Guardianship.

22

1 (3) Earnings crediting for the distribution amount for an IAP account

2 beneficiary will be determined under OAR 459-007-0320.

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

4 Stats. Implemented: ORS 238.390, 238A.230 & 238A.410

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 014 – DEATH AND SURVIVOR BENEFITS

1 459-014-0050

2 Designation of Beneficiary at Retirement and Survivor Benefits

3 (1) For the purposes of this rule, “first payment is due” means the first of the  
4 calendar month after the effective retirement date.

5 (2) The beneficiary designated on an application for service retirement becomes  
6 effective on the effective retirement date. If the service retirement application is  
7 rejected by PERS or cancelled by the member, the beneficiary designation is null  
8 and void.

9 (3) PERS must receive a copy of the death certificate of the member or alternate  
10 payee.

11 (4) When a retired Tier One or Tier Two member or alternate payee dies:

12 (a) Before the first payment is due, the benefit option selected pursuant to ORS  
13 238.300 or 238.305 determines how benefits are paid to the designated beneficiary.

14 (b) After the first payment is due, unpaid benefits accrued by the member or  
15 alternate payee before their death will be paid to the member or alternate payee’s  
16 estate.

17 (5) A monthly benefit payable to a beneficiary is effective the first of the month  
18 after the last month payable to the member or alternate payee.

19 (6) If a retired member receiving unit payments under ORS 238.440 dies before  
20 the last payment has been made, the designated beneficiary will receive a lump sum  
21 payment of the remaining unit account balance. There is no benefit due from  
22 employer contributions.

1 (7) If adjustments are made to the retirement allowance or benefit of a deceased  
2 retiree:

3 (a) A member's estate will be paid any underpayment or invoiced for any  
4 overpayment of benefits paid to the member.

5 (b) An alternate payee's estate will be paid any underpayment or invoiced for  
6 any overpayment of benefits paid to the alternate payee.

7 (c) A beneficiary or a beneficiary's estate will be paid any underpayment or  
8 invoiced for any overpayment of benefits paid to a beneficiary.

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

10 Stats. Implemented: ORS 238.300, 238.305, 238.390, 238.715, 238A.190 &  
11 238A.400



# Oregon

John A. Kitzhaber, M.D., Governor

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January 27, 2012

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director  
Jon DuFrene, Administrator, Fiscal Services Division

SUBJECT: 2011 Preliminary Earnings Crediting and Reserving

### OVERVIEW

- Action: Adopt 2011 preliminary earnings crediting decisions.
- 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 2011 to the PERS Fund's accounts and reserves.
- Policy Issue: Should a portion of the Contingency Reserve be distributed?

The PERS Board is charged with crediting earnings from the PERS Fund each calendar year. Some of those allocations are directed by statute or rule; the balance is at the PERS Board's discretion.

### NON-DISCRETIONARY EARNINGS ALLOCATIONS

The following reserves and accounts are allocated earnings by applicable statute or rule. In compliance with these restrictions, the preliminary earnings allocation will reflect the following:

1. **Administrative Expenses:** Administrative costs are funded by earnings when they are sufficient, as they were in 2011 (ORS 238.610(1)). Note that earnings on the Variable Annuity Account were insufficient to pay its pro rata share of administrative expenses (about \$1.4 million). The Oregon Court of Appeals has interpreted the operative statutes to direct that, in such a circumstance, the administrative expenses will be paid out of earnings on the other accounts and reserves in the PERS Fund (*Murray v. PERB*, decided May 12, 2010). Following that direction, the earnings rates stated below reflect paying for the Variable Annuity account administrative expenses out of available earnings.
2. **Health Insurance Accounts:** These accounts are created as part of the PERS Fund and directed by statute to be credited with actual earnings or losses, less the expense related to the administration of the programs (ORS 238.410(7); 238.415(4); 238.420(4)). For 2011, the preliminary rate for these accounts is estimated to be 2.95% for RHIA, 1.95% for RHIPA, and .50% for SRHIA.
3. **Employer Lump Sum Payment Accounts:** These accounts are credited with actual earnings or losses less administrative expenses, as authorized by ORS 238.225(10). For 2010, the preliminary rate for these accounts is estimated to average 2.95%.

- 4. Variable Annuity Account and Individual Account Program (IAP):** These accounts are credited with earnings or losses on their portion of the PERS Fund. Preliminary variable earnings for 2011 are estimated to be -7.81%, and IAP account earnings for 2011 are estimated to be 2.21%.
- 5. Tier One Rate Guarantee Reserve:** This reserve, established under ORS 238.255(1), is used to credit the assumed rate to Tier One member regular accounts. The reserve is currently in deficit from funding the assumed rate crediting for calendar year 2008. As earnings for 2011 did not exceed the assumed rate, another deficit will be created to credit Tier One member regular accounts with the assumed rate for 2011.

#### POLICY ISSUE

- *Should a portion of the Contingency Reserve be distributed?*

In allocating the 2010 earnings, the Board cited the continued uncertain resolution of pending litigation with substantial risk exposure, as well as the challenging financial picture for government employers, in support of a decision to credit the Contingency Reserve with a proportional share of the 2010 earnings. As a result, an additional \$81.3 million was added to the reserve, so it ended 2010 with a balance of \$734.4 million.

As earnings did not exceed the assumed rate for 2011, the PERS Board cannot credit additional amounts to the Contingency Reserve. In 2011, however, significant litigation was resolved that narrowed the agency's risk exposure. The PERS Board could therefore consider whether a portion of the Contingency Reserve should be distributed.

Previously, the PERS Board has distributed a portion of the Contingency Reserve back to the accounts whose earnings contributed to the reserve's funding. Alternatively, the Board also could use funds in the reserve to "provide for any other contingency that the board may determine to be appropriate," as they have previously. For example, in November 2006, the PERS Board approved using about \$5 million in Contingency Reserve funds to pay the employee contributions and earnings after a statutory change to the definition of "salary" affected the contributions owed on lump sum vacation payouts.

As a model to consider, PERS staff prepared an alternative crediting scenario that uses a portion of the Contingency Reserve to liquidate the Tier One Rate Guarantee Reserve deficit from 2008's crediting. By law, a deficit cannot persist in that reserve for five years, so liquidating that deficit now would relieve that constraint and allow all future earnings on Tier One member regular accounts in excess of the assumed rate to be used to liquidate the new 2011 deficit that will be created with this crediting. Even with this distribution, the Contingency Reserve balance would be about 1% of the PERS Fund, which staff believes to be a reasonable funding level.

If the PERS Board would like staff to model other crediting scenarios using portions of the Contingency Reserve for other purposes, please let us know and we can develop those alternatives before returning to the PERS Board for final earnings crediting at the March 22, 2012 meeting.

## 2011 PRELIMINARY ALLOCATIONS

The PERS Board's Annual Crediting Rule (OAR 459-007-0005) directs the crediting to the Judge and Tier Two member regular accounts, as well as the OPSRP Pension, Benefits-in-Force, and Employer reserves. Staff recommends the following allocations be adopted preliminarily by the PERS Board:

### **Non-Discretionary Allocations**

Credit administrative expenses, health insurance accounts, employer lump sum accounts, variable annuity accounts, and accounts in the Individual Account Program in the manner described above. Credit Tier One member regular accounts with the assumed earnings rate (8%) by establishing a new deficit in the Tier One Rate Guarantee Reserve for 2011 crediting.

### **Judge Member Accounts**

Credit Judge Member Accounts with the assumed earnings rate (8%).

### **Tier Two Member Regular Accounts, Benefits In Force and Employer Reserves**

Credit Tier Two member regular accounts and the Benefits-In-Force and Employer reserves evenly with the remaining available earnings. The preliminary crediting rate to those accounts would be 2.21%.

## BOARD OPTIONS

The Board may:

1. **Adopt a Baseline Allocation with no Contingency Reserve Distribution:** Pass a motion to "adopt the preliminary crediting of earnings as presented for calendar year 2011, subject to final adoption at the March 22, 2012 PERS Board meeting, with no distribution of the Contingency Reserve."
2. **Adopt an Optional Policy Position:** Pass a motion to "adopt the preliminary crediting of earnings for calendar year 2011, subject to final adoption at the March 22, 2012 PERS Board meeting," with one of the following recommendations for distributing the Contingency Reserve:
  - Distribute a stated portion of the Contingency Reserve to the accounts whose earnings contributed to its funding; or
  - Distribute a portion of the Contingency Reserve to liquidate the 2008 deficit in the Tier One Rate Guarantee Reserve, or to pay down a stated portion of that deficit.
3. **Develop alternative strategies:** Adopt an alternative preliminary crediting of 2011 available earnings. That alternative should be adopted to allow for adequate reporting to the legislature as required by ORS 238.670(5) and adopt final earnings crediting decisions at the PERS Board's March 22, 2012 meeting.

## NEXT STEPS

Once the Board makes its preliminary decisions, staff will prepare and present the required report to the Oregon Legislature's Ways and Means Committee. Any comments received from the committee will be presented to the Board prior to its final crediting decision on March 22, 2012.

This preliminary action and the resulting report to the Legislature do not prohibit the PERS Board from changing its final crediting and reserving decisions, such as if new information becomes available. If the Board makes a significant change from its preliminary decisions, staff will report the Board's actions to the Legislature.

**Attachments:**

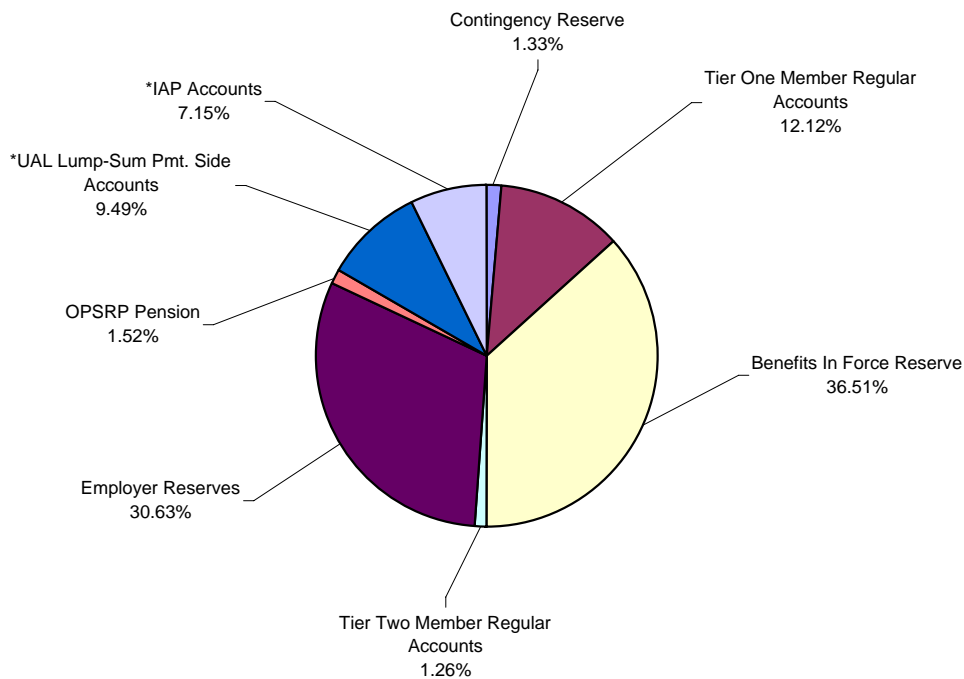
**Option 1: No Distribution of Current Contingency Reserve Balance**

**Option 2: Liquidate the 2008 Tier One Rate Guarantee Reserve Deficit**

**Oregon Public Employees Retirement System**  
**2011 Preliminary Earnings Crediting and Reserving**  
**No Contingency Reserve Distribution**  
 (All dollar amounts in millions)

Regular Account Reserve	Reserves Before Preliminary Crediting	2011 Preliminary Crediting	Reserves After Preliminary Crediting	2011 Preliminary Rates
Contingency Reserve	\$734.4	\$0.0	\$734.4	N/A
Tier One Member Regular Accounts	6,179.9	494.4	6,674.3	8.00%
Tier One Rate Guarantee Reserve	(199.1)	(361.7)	(560.8)	N/A
Benefits In Force Reserve	19,674.2	436.7	20,110.9	2.21%
Tier Two Member Regular Accounts	677.0	15.0	692.0	2.21%
Employer Reserves	16,503.8	366.3	16,870.1	2.21%
OPSRP Pension	822.6	13.8	836.4	1.67%
*UAL Lump-Sum Pmt. Side Accounts	5,075.5	150.0	5,225.5	Various
*IAP Accounts	3,853.0	84.5	3,937.5	2.21%
<b>Total</b>	<b>\$53,321.3</b>	<b>\$1,199.0</b>	<b>\$54,520.3</b>	

**2011 Regular Account Reserve Balances**  
**After 2011 Preliminary Crediting**



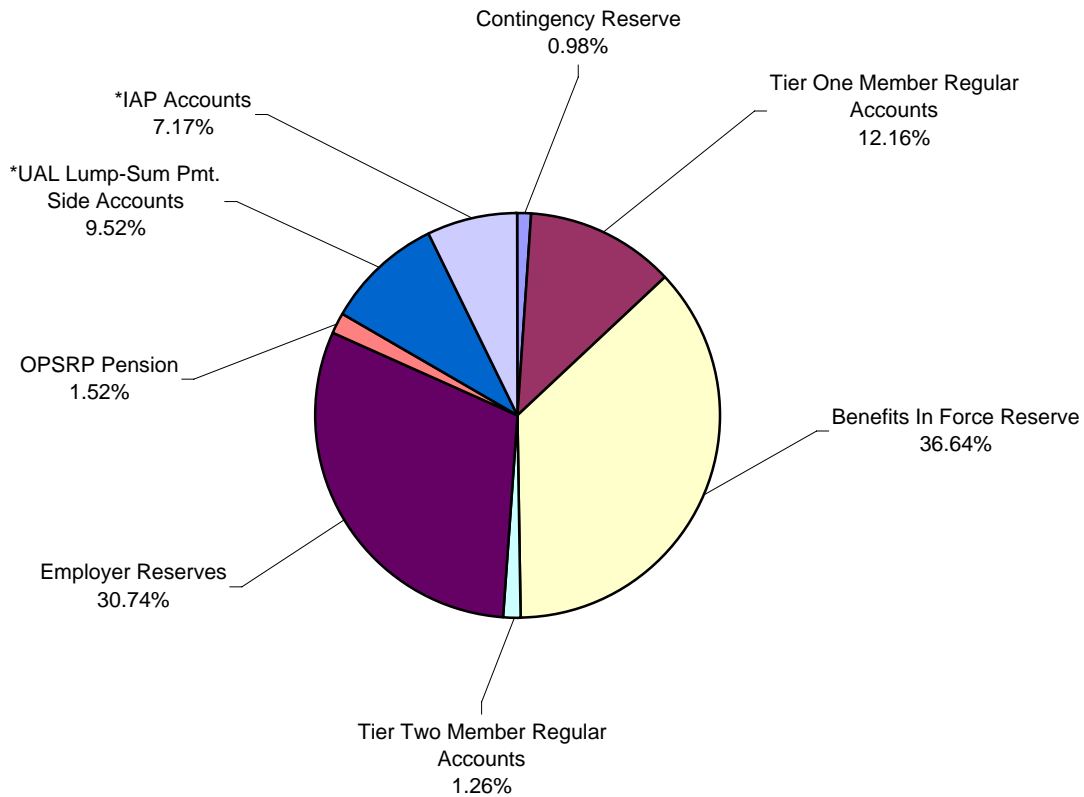
\*Informational only. Not affected by Board reserving or crediting decisions.



**Oregon Public Employees Retirement System**  
**2011 Preliminary Earnings Crediting and Reserving**  
**Liquidate 2008 Deficit**  
 (All dollar amounts in millions)

Regular Account Reserve	Reserves After CR Distribution	2011 Preliminary Crediting	Reserves After Preliminary Crediting	2011 Preliminary Rates
Contingency Reserve	\$535.3	\$0.0	\$535.3	N/A
Tier One Member Regular Accounts	6,179.9	494.4	6,674.3	8.00%
Tier One Rate Guarantee Reserve	-	(361.7)	(361.7)	N/A
Benefits In Force Reserve	19,674.2	436.7	20,110.9	2.21%
Tier Two Member Regular Accounts	677.0	15.0	692.0	2.21%
Employer Reserves	16,503.8	366.3	16,870.1	2.21%
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<b>Total</b>	<b>\$53,321.3</b>	<b>\$1,199.0</b>	<b>\$54,520.3</b>	

2011 Regular Account Reserve Balances  
 After 2011 Preliminary Crediting



\*Informational only. Not affected by Board reserving or crediting decisions.