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

459-005-0610
Recovery of Overpayments

(1) Authority and Purpose. In accordance with ORS 238.715, this rule sets forth the criteria and process for the recovery of overpayments and erroneous payments made by PERS. It is the policy of the Board to implement wherever possible, and if cost effective, a full recovery of all overpayments and erroneous payments. Staff shall attempt recovery of overpayments and erroneous payments in the most efficient method available and in the least amount of time possible.

(2) For the purposes of this rule:

(a) Erroneous payment" means any payment that has been made from the Public Employees Retirement Fund in error, including a payment to a payee that is not entitled to receive the payment.

(b) "Good cause" means a cause beyond the reasonable control of the person. "Good cause" exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent person of normal sensitivity, exercising ordinary common sense.

(c) "Lump-sum payment" means any one-time distribution or payment made under ORS Chapters 238 or 238A, or any other law directing PERS to make a payment, including a retroactive adjustment, that is not scheduled to be paid to or on behalf of a payee on a regular monthly basis.

(d) "Monthly payment" means any gross pension, annuity, service or disability retirement allowance, death benefit, or other benefit under ORS Chapter 238 or 238A that is paid monthly to or on behalf of a payee.

(e) "Overpayment" refers to an amount that is in excess of the amount a payee is entitled to under ORS Chapters 238 and 238A.

(f) "Payee" means:

(A) A member, a trust established by the member, or the member's estate;

(B) A member's beneficiary, a trust established by the member's beneficiary, or the estate of the member's beneficiary;

(C) An alternate payee, as defined in OAR 459-045-0001(2), a trust established by an alternate payee, or the estate of an alternate payee;

(D) The beneficiary of an alternate payee, a trust established by the beneficiary of an alternate payee, or the estate of the beneficiary of an alternate payee; or

(E) Any other recipient of a benefit payment by PERS.

(3) In addition to the notice of an overpayment or erroneous payment to a payee required by ORS 238.715(4), PERS shall also send an explanation of the overpayment or erroneous payment; whether the Board asserts a right to assess interest, penalties and costs of collection; and a description of the manner in which the payee may appeal the determinations reflected in the explanation, if applicable.

(4) In determining the amounts owed by a payee and setting a repayment schedule under sections (5) or (6) of this rule, PERS shall reduce the amount owed by any lump-sum payment then owed by PERS to that payee. If the payee should subsequently become entitled to any lump sum

payment, it shall be applied against the amounts then owed by that payee. PERS, in its discretion, may revise the repayment schedule or continue on the established schedule until the remaining amounts owed are fully repaid.
(5) The following list includes possible methods for PERS to recover an overpayment under an agreement with the payee. These methods are listed in order of preference. Unless otherwise ordered by the Board, PERS Staff is granted the discretion to select the method deemed most likely to effect a full recovery:
(a) A repayment of all amounts owed in a single payment.
(b) A deduction of a percentage or fixed dollar amount, to be agreed upon between the payee and PERS, from future monthly payments for a period not to exceed two years that will fully repay the amounts owed.
(c) A fixed monthly dollar amount to be agreed upon between the payee and PERS that will fully repay the amounts owed.
(d) A deduction of a percentage or fixed dollar amount from future monthly payments, to be agreed upon between the payee and PERS, for a specified period greater than two years that will fully repay the amounts owed if PERS deems that a longer repayment period is warranted by the payee's personal financial circumstances.
(6) If the payee does not agree to one of the recovery methods under section (5) of this rule, PERS shall use one or more of the following methods to effect a full recovery of any overpayment or erroneous payment:
(a) Deducting not more than 10 percent from current and future monthly payments to a payee until the full amounts owed are recovered.
(b) Making an actuarially determined reduction, not to exceed 10 percent, to current and future payments from PERS calculated to repay the full amount of the overpayment or erroneous payment during the period in which monthly payments will be made to the payee.
(c) Seeking recovery of the overpayment or erroneous payment by using any remedy available to the Board under applicable law.
(d) Engaging the services of outside collection agencies.
(7) If a recovery method has to be selected under section (6) and the overpayment is caused solely by the actions of PERS or a participating public employer, PERS will select a method which imposes the least economic hardship on the member while allowing for a reasonably prudent recovery of the overpayment.
(8) The base or original benefit payment used to calculate cost-of-living adjustments, ad hoc increases, or other benefit increases shall not be altered by an actuarial reduction provided for in subsection (6)(b) of this rule.
(9) In the event that PERS determines that an overpayment or erroneous payment was not caused by PERS or by the actions of a participating public employer, PERS may include within the amounts owed by the payee:
(a) All costs incurred by PERS in recovering the overpayment or erroneous payment, including attorney fees, and fees assessed by an outside collection agency; and
(b) Interest in an amount equal to one percent per month on the balance of the overpayment or erroneous payment until that payment is fully recovered.
(10) The Board authorizes the Director, or the Director's designee, to waive:
(a) The interest and costs of collection associated with the recovery of an overpayment or erroneous payment for good cause shown; and

(b) The recovery of any overpayment or erroneous payment if the total amount of overpayments or erroneous payments is less than $50.
(11) Recovery of an overpayment or erroneous payment shall not be effected if PERS has not initiated recovery of those payments within six years after the date the overpayment or erroneous payment was made. PERS initiates recovery on the date it mails the notification required by ORS 238.715(4).

Stat. Auth.: ORS 238.715(9), 238.630 & 238.650
Stats. Implemented: ORS 238.715