

OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

**Friday
January 12, 2007
11:30 A.M. & 1:00 P.M.**

**PERS
11410 SW 68th Parkway
Tigard, OR**

	Item	Presenter
A. Contested Case Hearings – 11:30 A.M.		
1.	Contested Case Hearing for Kathleen Jones	KUTLER
2.	Contested Case Hearing for Linda Adams	
3.	Contested Case Hearing for Jan Karius	
4.	Status of Pending Contested Cases	
Break		
B. Administration – 1:00 P.M.		
1.	November 17, 2006 Board Meeting Minutes	CLEARY
2.	Director's Report	
	a. Forward-Looking Calendar	
	b. OIC Investment Report	
	c. HB2020 Report	
	d. Budget Report	
C. Consent Action and Information Items		
1.	Action on Contested Cases	RODEMAN
2.	Second Reading of OPSRP and IAP Withdrawals Rules	
3.	Adoption of Oregon Savings Growth Plan (OSGP) Rules	
	a. Adoption of OAR 459-050-0025, Deferred Compensation Advisory Committee	
	b. Adoption of OAR 459-050-0037, Trading Restrictions	
	c. Adoption of OAR 459-050-0070, Catch-up Programs	
	d. Adoption of OAR 459-050-0077, Loan Program and OAR 459-050-0150, Unforeseeable Emergency Withdrawal	
4.	Adoption of OAR 459-011-0050, Voluntary Redeposit	
5.	Adoption of Earnings Crediting Rules	
D. Action and Discussion Items		
1.	<i>Strunk / Eugene</i> Implementation Project Update	RODEMAN
E. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225		
1.	Litigation Update	LEGAL COUNSEL

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Michael Pittman, Chair James Dalton Thomas Grimsley Eva Kripalani Brenda Rocklin Paul R. Cleary, Executive Director

MEETING	01-12-07
DATE	
AGENDA	B.1.
ITEM	Minutes

PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting
 1:00 P.M.
 November 17, 2006
 Tigard, Oregon

MINUTES

Board Members:

Mike Pittman, Chair
 Brenda Rocklin, Vice-chair
 James Dalton
 Thomas Grimsley
 Eva Kripalani

Staff:

Paul Cleary, Director
 Steve Delaney
 Donna Allen
 Steve Rodeman
 Brendalee Wilson

Joe DeLillo
 Dave Tyler
 Brian DeForest
 Dale Orr
 Jeanette Zang
 Kyle Knoll
 Gloria English

Debra Hembree
 Jeff Marecic
 David Crosley
 Jason Stanley
 Helen Bamford
 Jason Stanley
 Dale Lucht

Others:

David Wimmer
 Linda Ely
 Alison Chan
 Jim Green
 Bob Andrews
 Karen Artiaco

Steve Law
 Debra Guzman
 Hasina Squires
 Deborah Tremblay
 Betsy Hammond
 Ken Armstrong
 Bryan Branstetter

Steve Manton
 Pat West
 Karla Alderman
 Francis Charbonnier
 Denise Yunker
 Ardis Belknap
 Maria Keltner

Chris Warner
 DeeAnn Raile
 Mary L. Botkin
 Greg Hartman
 Carol Samuels
 Don Loving
 Keith Kutler

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

ADMINISTRATION

B.1. BOARD MEETING MINUTES OF OCTOBER 20, 2006

Brenda Rocklin moved and Tom Grimsley seconded to approve the minutes of the October 20, 2006 Board meeting. The motion passed unanimously.

B.2. DIRECTOR'S REPORT

Director Paul Cleary presented the Forward-Looking Calendar and announced a joint PERS Board and Oregon Investment Council (OIC) meeting will be held December 6, 2006, focused on the OPERF asset-liability study. Cleary noted that the first PERS Board meeting for 2007 will be held the second Friday of the month, January 12, 2007. Cleary provided the OIC investment report and said that the total fund value is now at a record high of almost \$60 billion. Cleary presented the HB2020 employer reporting update and said that on-going employer support meetings have helped improve understanding of the electronic reporting system. Cleary reported that corrected 2004/2005 IAP account statements have been mailed to members. Cleary said that the adjustments of the IAP accounts were completed and the black-out lifted sooner than expected due to efforts of multiple staff members under the leadership of Fiscal Services Administrator David Tyler. Cleary presented a memo summarizing follow-up on three issues raised during the Board's October 20, 2006 discussion on adoption of revised actuarial equivalency factors (AEFs).

CONSENT ACTION AND INFORMATION ITEMS

C.1. ACTION ON CONTESTED CASE HEARINGS

Vice-chair Brenda Rocklin presented the staff recommendations as detailed below in the contested case hearings of Kathleen Jones, Linda Adams, and Robin Martin.

It was moved by Mike Pittman and seconded by Tom Grimsley to approve the staff recommendations. The motion passed unanimously.

Under that motion, the Board acted on each contested case item and directed staff as follows:

ITEM A.1. CONTESTED CASE HEARING FOR KATHLEEN JONES

Postponed consideration in the contested case hearing of Kathleen Jones to the January 2007 Board meeting.

ITEM A.2. CONTESTED CASE HEARING FOR LINDA ADAMS

Postponed consideration in the contested case hearing of Linda Adams to the January 2007 Board meeting.

ITEM A.3. CONTESTED CASE HEARING FOR ROBIN MARTIN

Adopted the draft final order as presented in the contested case hearing of Robin Martin.

Vice-chair Rocklin noted the Board requested that PERS staff research possible statutory changes and contact the Department of Justice, Child Support Division to determine if there were other collection alternatives available to Ms. Martin. Rocklin also noted the Board's direction that staff send written explanation to Ms. Martin regarding the Board's decision.

C.2. FIRST READING OF CHAPTER 238 FORFEITURE AND RESTORATION OF SERVICE RIGHTS

Brendalee Wilson, Policy, Planning, and Legislative Analysis Division (PPLAD) interim administrator, presented first reading of the proposed rules to incorporate the break-in-service statutory provisions into the Chapter 238 rules regarding forfeiture and restoration of service rights.

C.3. FIRST READING OF OPSRP AND IAP WITHDRAWALS RULES

Wilson presented first reading of the proposed rules to establish and clarify procedures for withdrawals permitted under the Oregon Public Service Retirement Plan.

C.4. ADOPTION OF EMPLOYER LUMP-SUM PAYMENTS RULES

Wilson presented the proposed adoption of rules to streamline existing processes for handling employer lump-sum payments and establish new procedures for lump-sum payments by employers that do not have an existing unfunded actuarial liability. Wilson said there were no public comments received on the proposed rules.

It was moved by Tom Grimsley and seconded by Brenda Rocklin to adopt the proposed rules as presented. The motion passed unanimously.

C.5. ADOPTION OF P & F UNIT BENEFIT PROGRAM RULES

Wilson presented the proposed adoption of rules to clarify and specify the administration of unit benefits for police and fire (P&F) members. Wilson said there were no public comments received on the proposed rules.

It was moved by Brenda Rocklin and seconded by Eva Kripalani to adopt the proposed rules as presented. The motion passed unanimously.

C.6. ADOPTION OF USERRA RULES

Wilson presented the proposed adoption of rules to clarify payment methods of member-paid make-up contributions for reemployed members under USSERA. Wilson said there were no public comments received on the proposed rules.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the proposed rules as presented. The motion passed unanimously.

ACTION AND DISCUSSION ITEMS

D.1. 2007-09 EMPLOYER CONTRIBUTION RATES

Bill Hallmark and Matt Larrabee of Mercer presented an overview of the 2007 – 09 employer contribution rates that would be effective from July 1, 2007 to June 30, 2009. Hallmark said that the employer contribution rates reflect the costs of both Tier One/Tier Two and OPSRP as they are applied to the different payrolls. Hallmark noted that the rate charged to OPSRP payroll is significantly affected by the UAL rate for Tier One/Tier Two because that UAL is spread over the combined payroll. Hallmark noted that recent gains in investment returns have eliminated the need for the second step of the two-phased 2005 - 07 rate increase. Larrabee noted there was variation in the general trends in individual payroll rates and that no employer could go below the minimum rate necessary for retiree health insurance costs (0.37 percent). Larrabee reviewed graphs showing the effects on employer contribution rates of pension and health insurance costs, side accounts and pre-pooled obligations. Larrabee said that there were significant changes in the employer contribution rates due to side account investment performance and transition liability re-amortization.

It was moved by James Dalton and seconded by Tom Grimsley to adopt the proposed 2007 - 09 employer contribution rates for both the Tier One/Tier Two and OPSRP Pension programs. The motion passed unanimously.

D.2. HB 2189 LUMP SUM PAYMENTS CREDITING

Director Cleary presented stakeholder input and staff recommendations for using the Contingency Reserve to cover approximately \$5 million in retroactive employee IAP contributions and associated earnings on lump-sum payments to Tier One/Tier Two members pursuant to HB 2189 (2005 session).

Board members spoke on the unusual circumstances surrounding the proposed use of the Contingency Reserve, and the benefits of resolving this matter as recommended for employers, members, and the PERS system.

It was moved by Tom Grimsley and seconded by James Dalton to authorize use of the Contingency Reserve to credit employers for the employee contributions and to cover associated earnings related to the retroactive posting of employee IAP contributions for lump-sum payments pursuant to HB 2189. The motion passed unanimously.

D.3. CUSTOMER SERVICE SURVEY RESULTS AND INITIATIVES

Customer Service Division Administrator Jeannette Zang and Communications Officer David Crosley presented the overall results of PERS 2006 Member and Employer Customer Service Surveys as well as the separate call center study results and recommendations that were developed by an independent contractor. Crosley said the surveys responded to a legislative requirement that all state agencies conduct customer service surveys and incorporate them as part of agency key performance measures. Zang indicated that the surveys were distributed at a difficult time because of recent plan changes, the *Strunk/Eugene* project, and changes in employer reporting and related computer programming. Zang said there were no surprises in the survey results and that staff now has a baseline from which to measure customer service improvements and related agency performance on an on-going basis. Zang said the goal is to report continued improvement to the Board, with an overall target of having 80% or more of survey respondents reporting good or excellent service.

Board member Dalton noted that there is a culture at PERS where everyone wants to right thing and be as helpful as possible. The Board agreed that it was important to support that culture with improved technology, better processes and continued staff training. The Board also requested regular updates on the agency's customer service initiatives.

D.4. APPROVAL OF 2007 LEGISLATIVE CONCEPTS

Deputy Director Steve Delaney presented proposed legislative concepts for submission to the 2007 session of the Oregon Legislature.

Jim Green, representing Oregon School Boards Association and PERS Employer Alliance, addressed the Board in support of LC 636 Break in Service. Green said the concept would encourage members to settle issues without taking legal action, and that employer and member stakeholders should be able to reach agreement on the final bill language.

The PERS Board approved the following concepts for submission:

- LC 456-1 - Equal To Or Better Than
Eliminate the mandatory biennial Equal To Or Better Than actuarial review of retirement benefits provided to police officer and firefighters by non-PERS participating employers.
- LC 457 - Withdrawals
Clarify that a withdrawal from one program requires a withdrawal from all programs.
- LC 458 - Notice of Contest
Change term "Notice of Contest" to "Notice of Dispute" for challenges to member's final retirement benefit calculations.

- LC 635 – Oregon Investment Council
Removes requirement for a PERS Board member to also serve on the OIC, allowing a dual-appointment to be discretionary rather than mandatory.
- LC 636-1 - Break In Service
Provide that a court judgment, administrative order, settlement or other agreement to restore a terminated or suspended employee to his or her position would constitute an exception from a "Break in Service."
- LC 666 - Total Lump-Sum Retirement Option
Clarify that a member taking a total lump-sum retirement option may not return to PERS covered employment for six months following retirement.
- LC 790-1 - Oregon Savings Growth Plan
Allows an alternate payee to an Oregon Savings Growth Plan account to withdraw funds when desired.

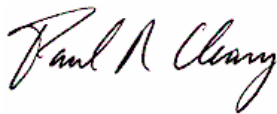
It was moved by Tom Grimsley and seconded by James Dalton to adopt the staff recommendation. The motion passed unanimously.

EXECUTIVE SESSION

Pursuant to ORS 192.660 (2) (f), (h), and ORS 40.255, the Board went into executive session at 3:15 P.M.

The Board reconvened to open session.
Chair Pittman adjourned the meeting at 3:50 P.M.

Respectfully submitted,



Paul R. Cleary
Executive Director

Prepared by Donna R. Allen, Executive Assistant

MEETING	1-12-07
DATE	
AGENDA	B.2.a
ITEM	Calendar

PERS Board Meeting Forward-Looking Calendar

February 2007

1:00 P.M. February 16, 2007

Contested Case Hearing for Katharine English
Contested Case Hearing for Barbara Pinkerton
Contested Case hearing for Jan Karius
Notice of OPSRP Disability Benefit Rules
Notice of Waiting Time / Qualifying Service Rules
Adoption of OPSRP Withdrawals Rules
Adoption of Power of Attorney Rules
Preliminary 2006 Earnings Crediting

Audit Committee Meeting

March 2007

1:00 P.M. March 30, 2007

Notice of Judge Member Rules
First Reading for Waiting Time / Qualifying Service Rules
Adoption of OPSRP Disability Benefit Rules
Tier One Rate Guarantee Reserve Analysis
Final 2006 Earnings Crediting

April 2007

No Meeting Scheduled

May 2007

1:00 P.M. May 18, 2007

Adoption of Waiting Time / Qualifying Service Rules
First Reading for Judge Member Rules

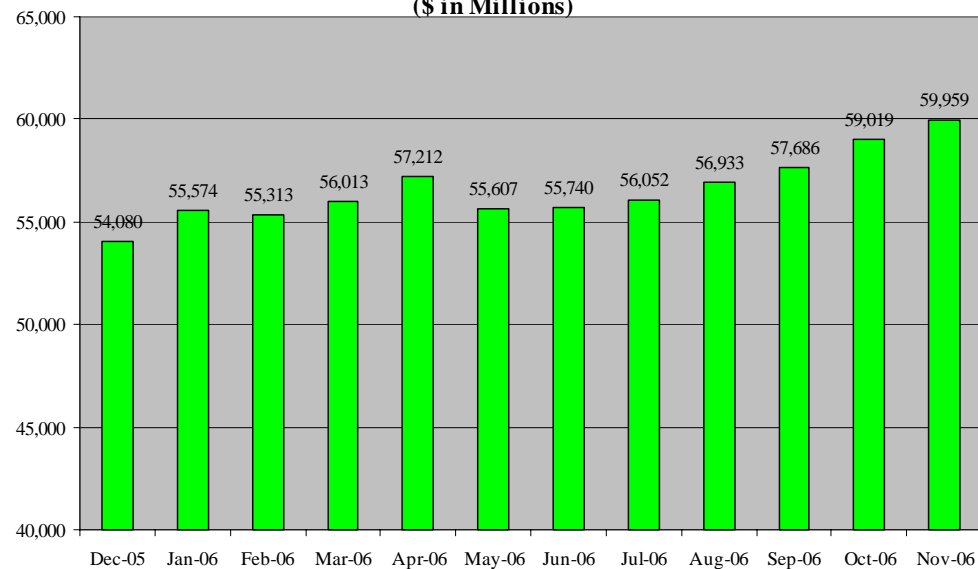
Audit Committee Meeting

OPERF	Regular Account				Historical Performance					
	Policy ¹	Target ¹	\$ Thousands ²	Actual	Year-To-Date	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Domestic Equity	30-40%	35%	\$ 20,052,267	34.4%	12.60	13.19	12.19	12.64	14.45	7.76
International Equity	15-25%	20%	12,271,186	21.1%	22.64	28.72	23.14	23.91	24.73	17.05
Alternative Equity	7-13%	10%	5,729,847	9.8%	13.42	24.67	30.47	29.39	18.67	11.70
Total Equity	60-70%	65%	38,053,300	65.4%						
Opportunity Portfolio			25,800	0.0%						
Total Fixed	22-32%	27%	16,307,975	28.0%	6.10	7.18	5.45	5.80	6.90	6.72
Real Estate	5-11%	8%	3,789,504	6.5%	23.56	33.16	31.43	27.33	24.03	20.59
Cash	0-3%	0%	50,512	0.1%	4.60	4.96	3.97	3.11	2.66	2.55
TOTAL OPERF Regular Account	100%		\$ 58,227,091	100.0%	13.64	16.97	15.20	15.33	15.23	10.63
OPERF Policy Benchmark					13.25	15.19	13.07	13.22	14.01	9.59
Value Added					0.39	1.78	2.13	2.11	1.22	1.04

Asset Class Benchmarks:

Russell 3000 Index	14.35	14.45	12.10	12.41	13.84	7.21
MSCI ACWI Free Ex US	23.31	29.25	22.73	23.56	24.44	16.46
Russell 3000 Index + 300 bps--Quarter Lagged	10.62	11.83	15.49	15.84	16.91	10.60
LB Universal--Custom FI Benchmark	5.24	6.24	4.62	4.79	5.18	5.49
NCREIF Property Index--Quarter Lagged	13.63	18.67	18.35	15.79	13.69	12.00
91 Day T-Bill	4.39	4.73	3.84	2.95	2.51	2.37

TOTAL OPERF NAV
 (includes variable fund assets)
 One year ending November 2006
 (\$ in Millions)



¹OIC Policy 4.01.18

²Includes impact of cash overlay management.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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

January 12, 2007

TO: Members of the PERS Board
FROM: Paul Cleary, Executive Director
SUBJECT: Update of HB2020 Employer Reporting, Accounts Receivable,
and Employer Outreach Plans

MEETING	01-12-06
DATE	
AGENDA	
ITEM	B.2.c. HB2020 Update

The agency finished its third year of administering the HB2020 program and using the new employer electronic reporting system. The Membership and Employer Relations Section (MERS) worked with 871 employer-reporting units to process outstanding 2005 and 2006 employer reports. In addition, PERS implemented a new accounts receivable process and revised its employer outreach program in 2006. Updates on each are provided below.

EMPLOYER REPORTING

The table below shows the status as of December 2006 of employer reports and member records for calendar years 2005 and 2006.

	Calendar Year 2005	Calendar Year 2006
Reports due (estimated):		
▪ Number	12,726	11,882
▪ Percent received	99.7 %	97.5 %
Outstanding reports	38	299
Reports fully posted at 100%:		
▪ Number	12,497	10,213
▪ Percent received	98.2%	85.9 %
Records due (estimated)	3,142,542	2,809,435
Records not posted	4,009	41,133
Contributions posted	\$ 407,538,755	\$ 385,951,387
Contributions not posted	\$ 179,022	\$ 2,009,593

Employers' year-over-year statistics improved. Last year at this time, 99% of prior year reports due were submitted and 97% of the prior year reports were 100% posted. Currently for 2005, we have 99.7% of all required reports submitted and 98% of those are 100% posted. Likewise last year at this time, only 96% of the current year reports were submitted and only 83% of those reports were 100% posted. For 2006, 98% of current year reports have been submitted and 86% of those reports are 100% posted.

Currently, employers are concentrating their efforts on completing their 2006 reports so PERS can complete the 2006 Annual Reconciliation. We anticipate that by the second quarter of 2006 the reporting statistics will improve, with 100% of the employers reconciled for both 2005 and 2006.

ENHANCED EMPLOYER OUTREACH PROGRAM

During 2005, PERS began its employer outreach program by issuing more frequent all-employer communiqués and conducting a series of headquarter-based training sessions for employers to better learn the jClarety/EDX reporting system. Since this program's inception, more than 463 employer-staff have attended the 25 formal training sessions.

In mid-2006, PERS expanded the jClarety/EDX training sessions to include locations throughout the state. Since May 2006 we have conducted five offsite jClarety training sessions, with a total of 60 employer-staff attending the sessions. Given the receptivity by the attendees, PERS decided to continue the offsite training sessions on a monthly basis, as well as continue the monthly headquarters'-based training sessions.

Since the inception of the employer outreach program, PERS has seen a significant improvement in the employers' timely and complete submission of payroll reports and records. However, the accuracy of the reported data needs to be improved. To meet this data accuracy void, in November 2006 PERS escalated its outreach efforts by scheduling aggressive statewide data quality training sessions. The sessions covered subject-specific training on complex program provisions such as eligibility and part-timers, and focused on data quality reporting issues like waiting-time reporting and service/FTE reporting codes. A total of 19 presentation sessions were completed during the last quarter 2006. Approximately 400 employer staff attended these sessions, representing more than 250 employers.

Employer feedback on the statewide sessions was very positive. Overall PERS Employers rated the sessions a 4.5 out of a possible 5.0 score for overall value. Responses included, *"I loved the relaxed atmosphere and one-on-one help"* and *"thanks for being open to each question and repeating for clarity"*.

ACCOUNTS RECEIVABLE PLAN

Besides assisting employers with overdue reports and electronic payment, PERS implemented an accounts receivable plan to proactively collect receivable balances that are more than 30 days overdue. As of December 1, 2006, we have 265 outstanding invoices (14 employers) with an aggregate balance of less than \$260,000. This is a significant improvement since the inception of the accounts receivable plan when PERS had 82 employers with outstanding invoices that totaled in excess of \$2.1 million. We have cut the delinquent invoice amount by 88%, but our goal is to collect all outstanding invoices that exceed 30 days by following up with these employers by phone and letters each month.



Oregon

Theodore R. Kulongoski, Governor

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(503) 598-7377
TTY (503) 603-7766
www.pers.state.or.us

January 12, 2007

TO: Members of the PERS Board
FROM: Dave Tyler, FSD Administrator
SUBJECT: 2005-2007 Budget Update

MEETING DATE	1/12/07
AGENDA ITEM	B.2.d. Budget Report

Attached is the PERS budget report for the period ending November 30, 2006. Final results for the period ending December 31, 2006 are not yet available given the timing of the January 2007 Board meeting.

2005-2007 ACTUAL EXPENDITURES AND PROJECTIONS

Operating expenditures for the months of October and November 2006 totaled \$3,219,879 and \$4,270,331, respectively. This represents an increase of approximately \$1.4 million, or almost 23%, over total expenditures for the months of August and September. Through 19 months (70.83%) of the biennium, the Agency has expended a total of \$48,713,223, or 65.86%, of our Operations budget. We continue to project an increase in expenditure levels over the remaining seven months of the biennium as we incur planned expenses and complete staffing the priority projects.

BUDGET VARIANCES

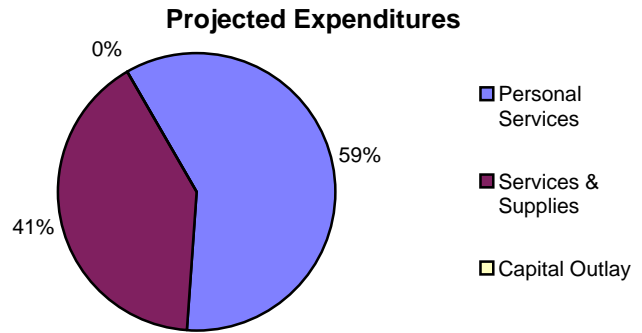
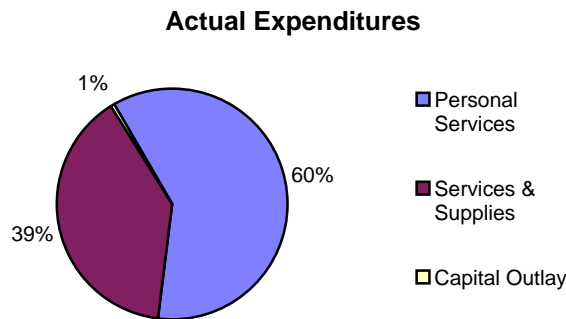
Accumulated limitation savings for the biennium approximates \$305,000, down from \$650,000 at September 30, 2006. Reduction of projected savings levels has been anticipated throughout this biennium as work on priority projects (*Strunk and Eugene*, RCP, etc.) has accelerated. Expenditures on the RIMS Conversion Project (RCP) exceeded projected levels in October and November, but not beyond total projected levels for the biennium as a whole.

Earlier in the biennium, PERS worked with DAS to unschedule approximately \$4.4 million of the RCP budget based upon projections that indicated these funds would not be required prior to June 30, 2007. Because work on the HB 2020 project was not completed prior to June 30, 2005, approximately \$1,050,000 of HB 2020 project expenditures was charged against this biennium's budget limitation. We have requested that this amount be rescheduled and made available for use in this biennium, and anticipate approval of this request within 30 days. There is no change to the total RCP project budget of \$27.5 million. The rescheduled limitation will be used to fund RCP data migration activities and additional actuarial services we anticipate will be required prior to June 30, 2007.

2005-07 Agency-wide Operations - Budget Execution Summary Budget Analysis For the Month of: November 2006

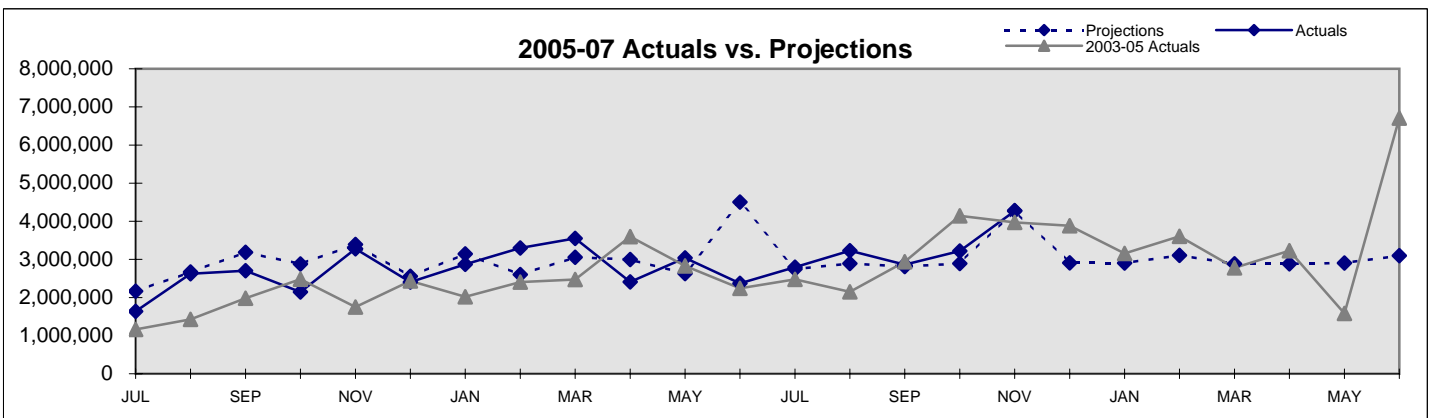
Biennial Summary

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	29,299,015	14,809,624	44,108,639	46,875,869	2,767,230
Services & Supplies	19,103,329	10,132,248	29,235,576	26,740,026	(2,495,550)
Capital Outlay	310,880		310,880	344,618	33,738
Special Payments					
Total	48,713,223	24,941,872	73,655,095	73,960,513	305,418



Monthly Summary

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	1,793,504	2,017,412	223,908	1,723,471	2,115,661
Services & Supplies	2,402,027	2,264,144	(137,883)	1,123,725	1,447,464
Capital Outlay	74,800		(74,800)	18,287	
Special Payments					
Total	4,270,331	4,281,556	11,225	2,865,484	3,563,125



2005-07 Agency-wide Operations - Budget Execution
Spending Plan - Actual and Estimated Expenditures
 2005-07 Summary

B.2.d. Attachment

	1st QTR	2nd QTR	3rd QTR	4th QTR	5th QTR	6th QTR	7th QTR	8th QTR	ACTUAL EXPEND. TO DATE	EST. EXPEND.	ENC. & PRE-ENC.	TOTAL ESTIMATED EXPEND.	05-07 LAB BUDGET	VARIANCE
Personal Services														
3110 Salaries & Wages	3,102,084	3,128,099	3,252,118	3,275,416	3,362,077	3,618,557	4,018,018	4,066,692	18,412,688	9,410,373		27,823,061	29,846,673	2,023,612
3160 Temporary Appointments	40,406	43,071	29,041	36,809	42,700	31,697	39,020	25,137	215,314	72,567		287,881	156,922	(130,959)
3170 Overtime	33,466	71,029	79,550	56,890	66,858	41,982	45,005	33,238	345,063	82,954		428,017	540,505	112,488
3180 Shift Differential	1,326	1,615	2,139	1,878	1,820	6,137	375	375	9,791	5,875		15,666	1,980	(13,686)
3190 All Other Differential	34,599	54,556	65,171	63,587	73,959	53,059	17,563	17,563	339,088	40,970		380,058	209,350	(170,708)
3210 ERB Assessment	1,289	1,311	1,341	1,352	1,340	1,572	1,979	1,979	7,545	4,619		12,163	12,700	537
3215 Wokers' Comp. Insurance (SAI)														
3220 PERS	449,000	451,927	439,938	427,041	444,369	494,223	597,044	602,444	2,510,260	1,395,727		3,905,987	4,481,716	575,729
3221 Pension Bond Contribution	207,759	205,184	207,139	201,975	208,270	221,807	249,117	252,135	1,169,943	583,443		1,753,386	1,756,591	3,205
3230 Social Security Taxes	243,827	249,974	261,324	262,386	269,096	284,243	315,178	316,940	1,467,595	735,375		2,202,969	2,356,099	153,130
3240 Unemployment Comp.		16,576		4,077					20,654			20,654	37,388	16,734
3250 Workers' Comp. Assess.	2,484	2,335	2,370	2,358	2,266	2,740	3,593	3,593	13,356	8,384		21,739	26,833	5,094
3260 Mass Transit Tax	19,249	19,844	20,556	20,687	21,389	22,375	24,108	24,400	116,145	56,462		172,608	185,833	13,225
3270 Flexible Benefits	756,424	772,987	849,681	861,809	858,832	916,538	1,034,090	1,034,090	4,671,574	2,412,876		7,084,450	7,308,467	224,017
3455 Vacancy Savings														(155,537)
3465 Reconciliation Adj.														188,451
Unscheduled P.S.														(78,102)
Total Personal Services	4,891,915	5,018,508	5,210,367	5,216,265	5,352,978	5,694,931	6,345,091	6,378,585	29,299,015	14,809,624		44,108,639	46,875,869	2,767,230
			<i>actual</i>			<i>estimated</i>								
Services & Supplies														
4100 Instate Travel	12,995	24,326	14,906	19,723	11,981	19,577	13,475	18,550	98,684	36,850		135,534	116,894	(18,640)
4125 Out-of-state Travel			40	11,252	339	300	300	300	11,631	900		12,531	31,127	18,596
4150 Employee Training	30,385	44,332	39,369	36,044	60,420	58,570	41,965	37,265	257,067	91,285		348,352	488,069	139,717
4175 Office Expenses	91,727	121,888	283,010	200,313	240,166	157,900	204,790	207,449	1,026,760	480,483		1,507,242	2,063,722	556,480
4200 Telecommunications	25,713	69,518	65,443	62,725	58,881	48,963	68,249	68,249	308,494	159,248		467,742	537,685	69,943
4225 St. Gov. Svc. Chg.	595,854	135,567	109,154	43,618	574,579	158,337	54,000	54,000	1,599,109	126,000		1,725,109	1,504,171	(220,938)
4250 Data Processing	266,701	506,983	426,702	317,110	474,884	765,794	895,000	825,000	2,443,175	2,035,000		4,478,175	5,256,990	778,815
4275 Publicity/Publications	7,318	6,251	18,487	27,825	17,017	9,781	12,100	20,000	85,180	33,600		118,780	292,704	173,924
4300 Professional Services	545,896	1,213,796	1,640,303	695,945	815,605	744,579	742,169	708,812	5,451,651	1,655,454		7,107,105	2,862,534	(4,244,571)
4315 IT Professional Services		360,233	1,343,483	795,597	842,976	2,089,427	90,000	90,000	5,401,716	210,000	4,254,875	9,866,591	13,897,953	4,031,362
4325 Attorney General	48,913	72,187	113,494	96,841	105,384	104,170	141,000	146,500	493,990	334,500		828,490	947,681	119,191
4350 Dispute Res. Svc.	957	3,910	16,510	13,525	7,157	6,143	6,200	10,000	45,902	18,500		64,402	73,736	9,334
4375 Empl. Recruit./Devel.	8,863	24,770	12,469	16,325	7,315	15,699	15,000	15,000	80,442	35,000		115,442	58,036	(57,406)
4400 Dues & Subscriptions	4,943	10,106	5,799	5,388	3,871	6,810	2,175	2,275	35,493	5,875		41,368	50,702	9,334
4425 Facility Rental	104,691	95,696	96,140	96,223	96,166	99,573	99,018	99,018	555,483	231,042		786,525	703,597	(82,928)
4450 Fuels/Utilities	23,497	25,490	30,773	27,089	30,229	26,716	27,000	36,000	154,794	72,000		226,794	121,063	(105,731)
4475 Facility Maint.	47,868	43,335	47,231	86,504	113,561	94,430	76,251	101,668	407,512	203,336		610,848	724,698	113,850
4575 Agency/Program S & S														
4625 Other COP Costs		371	1,090	765	1,511	573			4,310			4,310	6,500	2,190
4650 Other S & S	1,095	8,915	(3,237)	5,246	13,493	(3,680)			21,832			21,832	2,700	(19,132)
4700 Expendable Property	72,658	19,094	16,087	16,353	33,318	45,922	2,850	3,100	201,081	8,300		209,381	193,465	(15,916)
4715 IT Expendable Property		23,267	35,037	161,673	82,198	136,851	60,000	60,000	419,026	140,000		559,026	450,300	(108,726)
Unscheduled S & S														(3,644,301)
Total Services & Supplies	1,890,074	2,810,037	4,312,289	2,736,087	3,591,051	4,586,435	2,551,542	2,503,186	19,103,329	5,877,373	4,254,875	29,235,576	26,740,026	(2,495,550)
Capital Outlay														
5100 Office Furn./Fixture													30,868	30,868
5150 Telecomm. Equip.													5,589	5,589
5200 Technical Equipment													57,161	57,161
5550 Data Proc.-Software			197,783	(129,701)	(73,034)	90,549			85,597			85,597	447,019	361,422
5600 Data Proc.-Hardware	181,877				16,516	26,890			225,283			225,283	492,857	267,574
5700 Building & Structure													(688,876)	(688,876)
Total Capital Outlay	181,877		197,783	(129,701)	(56,518)	117,439			310,880			310,880	344,618	33,738
Special Payments														
Total Special Payments														
Total Expenditures	6,963,866	7,828,545	9,720,439	7,822,652	8,887,511	10,398,805	8,896,632	8,881,771	48,713,223	20,686,997	4,254,875	73,655,095	73,960,513	305,418

Percent of 2005-07 LAB Expended:	65.86%
Percent of Biennium Expired:	70.83%



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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

January 12, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Action on Contested Cases

MEETING DATE	1/12/07
AGENDA ITEM	C.1. Contested Cases

OVERVIEW

Actions: Staff recommends the following action be taken in relation to the cases scheduled for deliberation at this meeting:

1. Adopt the Draft Final Order as presented in the contested cases of Kathleen Jones and Linda Adams.
2. Adopt a motion to delay consideration of the proposed order in the contested case of Jan Karius until the February 2007 Board Meeting.

BOARD OPTIONS

The Board may:

1. Adopt the staff recommendations as presented above.
2. Adopt one of the alternative directions specified in the memos related to each of these contested cases.
3. Take no action. The proposed orders would become final as their deadlines are passed.

STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- If the Board does not adopt: The specific outcomes and alternatives vary but are more fully explained in the memos accompanying each individual case.



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January 12, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Second Reading of OAR 459-075-0020, *Withdrawal from OPSRP Pension Program* and OAR 459-080-0020, *Withdrawal of Individual Accounts*

MEETING DATE	1/12/07
AGENDA ITEM	C.2. OPSRP Withdrawals

OVERVIEW

- Action: None. This is the second reading for OAR 459-075-0020, *Withdrawal from OPSRP Pension Program* and OAR 459-080-0020, *Withdrawal of Individual Accounts*.
- Reason: These new rules would establish and clarify procedures for withdrawals permitted under the Oregon Public Service Retirement Plan.
- Subject: *Withdrawal from the OPSRP Pension and the Individual Account Programs.*
- Policy Issue: Should the withdrawal process for the OPSRP programs generally parallel the process for withdrawals from the PERS Chapter 238 Program?

BACKGROUND

The Oregon Public Service Retirement Plan (OPSRP) provides for withdrawal from the OPSRP Pension Program and the Individual Account Program (IAP). Under both programs, a withdrawal terminates membership and forfeits accrued retirement credit or time toward vesting.

POLICY ISSUE

Should the withdrawal process for the OPSRP programs generally parallel the process for withdrawals from the PERS Chapter 238 Program?

For ease and consistency of administration, these new proposed rules parallel many concepts established by rule or statute for the PERS Chapter 238 Program. For example, the criteria for a bona fide separation are the same, as is the requirement for mandatory repayment if the member fails that separation standard. One exception is that these rules do not provide for a member to repay their withdrawal in installments. Staff recommends this change as requiring a lump-sum payment is more consistent with the intent of restoring membership immediately.

One policy which has long been a part of the PERS Chapter 238 Program withdrawal rules would change under these new rules as proposed. This deviation is to conform to stakeholder comments and is explained more fully below.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 24, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The initial public comment period ended on November 24, 2006 at 5:00 p.m. The rules were renoticed to permit additional public comment on substantive changes. A rulemaking hearing will be held on January 23, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The extended period for public comment ends on January 26, 2007 at 5:00 p.m.

To date, PERS has received public comment from four stakeholders. Copies of the comments received are included with this memo.

Greg Hartman, representing the PERS Coalition, commented by letters dated October 25, 2006 and November 15, 2006. Mr. Hartman also met with staff to discuss the proposed rules. Mr. Hartman's comments centered on requesting staff to revisit provisions of the rules that obligate the employer to terminate the employee or become liable for repayment of the withdrawn amount, for reasons stated in more detail in his letter.

Nancy Brewer, Finance Director, City of Corvallis, commented by letter. A copy of Ms. Brewer's letter is also included with this memo. Ms. Brewer expresses concern over the same requirements that employers terminate an employee or repay the amount of the employee's withdrawal. These concerns are echoed by comments received by Kathy Rodeman, Director of Business Services, Corvallis School District 509J, in an e-mail and by Maria Keltner on behalf of the Employers' PERS Alliance. These comments are also included with this memo.

Staff revisited those provisions of the proposed rules that established employer obligations and potential liabilities and agrees that the shift of accountability to the employee is appropriate and administrable.

SUMMARY OF MODIFICATIONS TO RULES SINCE FIRST READING

Based upon the public comment originally received, staff is proposing to make several revisions from the rules as last reviewed by the Board. For this reason, we have reopened the public comment period and postponed adoption until the February 2007 meeting to allow stakeholders to react to these new revisions.

An employee is not eligible to receive a withdrawal without a bona fide separation from employment, defined in the PERS Chapter 238 Program statute and applied by these rules to the OPSRP Pension Program and the IAP. Allowing a member to continue in the plan after having received an in-service distribution risks the plan's tax qualified status. The previous rules imposed an obligation on the employer to remit this withdrawal because that was the most reliable way to recover the funds. However, as pointed out by the commenters, whether that obligation can be imposed is questionable and whether it's appropriate is debatable.

Instead, ORS 238.618 provides a clear remedy if including any employee in the plan would jeopardize tax qualification, allowing PERS to deny or terminate membership in the plan if the tax qualified status is at risk. If the employee does not repay the unlawful

distribution as required by these rules, PERS will initiate collection actions against the employee and deny membership in the system until such time as the withdrawal is repaid. Staff recommends this change because it follows the clear authority granted to the Board and conforms to the concerns raised by the stakeholders about shifting this obligation to employers. For these reasons and for consistency of administration, staff will also begin rulemaking for OAR 459-010-0055, Withdrawal of Contributions, to bring the provisions of that rule governing the PERS Chapter 238 Program into concert with these rules if the Board adopts these modifications.

The following modifications were made to the rules since first reading to reflect this approach and clarify another issue, as explained below:

OAR 459-075-0020:

Subsection (2)(c) was edited to clarify that the requirement of absence from employment extends to controlled groups as well as participating employers.

Section (7) was extensively edited. First, employment with a controlled group also violates the bona fide separation requirement, so that clarification was added. Second, the obligation of employers to terminate or repay the withdrawal amount was deleted. Lastly, provisions on collection actions and membership denial were added.

Section (8) was edited to reflect the proper reference to section (7).

Section (9) was deleted as it was not deemed relevant to the rule. Participating employers are required to report employment. The obligation to establish a bona fide separation and to repay the withdrawal if a bona fide separation is not established is placed upon the employee and is not affected by the employer's obligation to report employment. Unless the employee repays the required amount, participation in the system is prohibited.

OAR 459-080-0020:

Subsection (2)(b) was edited for the same reason as subsection (2)(c) above.

Section (4) was edited to add the words "the member's."

Section (8) was extensively edited for the same reasons as section (7) above.

Section (9) was edited to reflect the proper reference to section (8).

Section (10) was edited for the same reasons as section (9) of OAR 459-075-0020.

LEGAL REVIEW

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

IMPACT

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

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

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

RULEMAKING TIMELINE

August 15, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2006	<i>Oregon Bulletin</i> published the Notice.
October 20, 2006	PERS Board notified that staff began the rulemaking process.
October 24, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
November 17, 2006	First reading of the rules.
November 24, 2006	Public comment period ended at 5:00 p.m.
December 15, 2006	Staff extended public comment period by filing Notice of Rulemaking with the Secretary of State.
January 12, 2007	Second reading of the rules.
January 23, 2007	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
January 26, 2007	Extended public comment period ends.
February 16, 2007	Staff will propose adopting the permanent rules, including any amendments warranted by public comment or further research.

NEXT STEPS

A hearing is scheduled for January 23, 2007. The rules are scheduled to be presented to the PERS Board for adoption at the February 16, 2007 meeting.

C.2. Attachment 1 - 459-075-0020

C.2. Attachment 2 – 459-080-0020

C.2. Attachment 3 - Hartman October 25 letter

C.2. Attachment 4 - Hartman November 15 letter

C.2. Attachment 5 - Brewer October 26 letter

C.2. Attachment 6 - Rodeman November 22 email

C.2. Attachment 7 - Keltner November 22 email

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

1 459-075-0020

2 Withdrawal from OPSRP Pension Program

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

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

6 (b) "Inactive member" has the same meaning given the term in ORS
7 238A.005(8).

8 (c) "Pension program" has the same meaning given the term in ORS
9 238A.005(12).

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

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

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

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

18 (d) The member files with PERS a written request for withdrawal on a form
19 acceptable to PERS; and

20 (e) The actuarial equivalent of the member's pension benefit is \$5,000 or less on
21 the date PERS receives the withdrawal request. The actuarial equivalent may not
22 include any value attributable to cost-of-living adjustments under ORS 238A.210.

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

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

6 (a) The date of distribution; or

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

9 (5) A member who withdraws from the pension program terminates
10 membership in the pension program as of the date of distribution.

11 (6) A member who withdraws from the pension program forfeits any service
12 performed by the member prior to the date of the separation required under
13 subsection (2)(b) of this rule and may not use that service for any purpose including,
14 but not limited to, establishing membership under ORS 238A.100, vesting under
15 ORS 238A.115, and the accrual of retirement credit under ORS 238A.140,
16 238A.150, or 238A.155.

17 (7) If a former member who has withdrawn from the pension program returns
18 to employment with a participating employer or an employer in a controlled group
19 with a participating employer prior to the first day of the second calendar month
20 following the month of the separation required under subsection (2)(b) of this rule
21 the former member must repay, to PERS the full amount of the lump-sum payment
22 attributable to the withdrawal within 30 days following the effective date of the
23 employment. If the former member fails to repay as provided in this section, PERS

Deleted: ny

Deleted: and has not repaid

Deleted: , the employer shall be obligated to the Fund for the full amount of the lump-sum payment unless:

1 shall take all reasonable steps to recover the repayment amount due. Until the
2 amount due is paid in full, the former member will be excluded from participation
3 in the system pursuant to ORS 238.618, (8) Upon receipt by PERS of repayment
4 under section (7) of this rule, the withdrawal of the member is cancelled and
5 membership is reestablished in the pension program. Any service rights forfeited
6 under section (6) of this rule are revived.

7 Stat. Auth.: ORS 238A.450
8 Stats. Implemented: ORS 238A.375

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Deleted: (a) The employer immediately terminates the former member's employment and does not reemploy the former member unless the requirements of section (2) of this rule are satisfied; or¶
 (b) The former member repays the full amount of the lump-sum payment within 30 days following the effective date of such employment.¶

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Deleted: (b)

Deleted: (9) If a participating employer employs a person who has withdrawn from the pension program and fails to notify PERS of the employment, the employer shall hold PERS harmless for any actual or perceived loss of benefits resulting from the withdrawal.¶

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

1 459-080-0020

2 Withdrawal of Individual Accounts

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

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

6 (b) “Inactive member” has the same meaning given the term in ORS
7 238A.005(8).

8 (c) “Individual account program” has the same meaning given the term in ORS
9 238A.005(9).

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

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

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

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

20 (c) The member files with PERS a written request for withdrawal on a form
21 acceptable to PERS.

22 (3) A member must withdraw the entire balance in the individual accounts.

1 (4) A member may revoke a request for withdrawal of the individual accounts if
2 PERS receives ~~the member's~~ written revocation of the request before the earlier of:

Deleted: a

3 (a) The date of distribution; or

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

6 (5) A member who withdraws the individual accounts terminates membership
7 in the IAP as of the date of distribution.

8 (6) An employer account not included in the withdrawn individual accounts by
9 reason of the member's failure to vest in the employer account is permanently
10 forfeited as of the date of distribution.

11 (7) A member who withdraws the individual accounts and is subsequently
12 employed with a participating employer forfeits any service performed by the
13 member prior to the separation required under subsection (2)(a) of this rule for the
14 purpose of vesting in an employer account.

15 (8) If a former member who has withdrawn the individual accounts returns to
16 employment with a participating employer ~~or an employer in a controlled group~~
17 with a participating employer prior to the first day of the second calendar month
18 following the month of the separation required under subsection (2)(a) of this rule

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19 ~~the former member must repay to PERS the full amount of the withdrawal within~~
20 ~~30 days following the effective date of the employment. If the former member fails to~~
21 ~~repay as provided in this section, PERS shall take all reasonable steps to recover the~~
22 ~~repayment amount due. Until the amount due is paid in full, the former member~~
23 ~~will be excluded from participation in the system pursuant to ORS 238.618.~~

Deleted: and has not repaid

Deleted: , the employer shall be obligated to the Fund for the full amount of the former member's withdrawal unless:

1 (9) Upon receipt by PERS of repayment under section (8) of this rule, the
2 withdrawal of the member is cancelled and membership is reestablished in the IAP.
3 The repayment amount received will be returned to the individual accounts and
4 credited pro rata to the accounts from which the withdrawal amount was derived.
5 Any rights forfeited under sections (6) and (7) of this rule are revived.

Deleted: sub
Deleted: (b)

6 Stat. Auth.: ORS 238A.450
7 Stats. Implemented: ORS 238A.375
8

Deleted: (10) If a participating employer employs a person who has withdrawn the individual accounts and fails to notify the system of the employment, the employer shall hold PERS harmless for any actual or perceived loss of benefits resulting from the withdrawal.

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

ATTORNEYS AT LAW

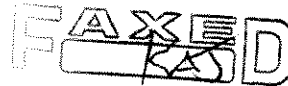
GREGORY A. HARTMAN

hartmang@bennetthartman.com
Direct Dial: 503-546-9601

SUITE 1650
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3627
(503) 227-4600
FAX (503) 248-6800
www.bennetthartman.com

October 25, 2006

BY FAX AND MAIL



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

Re: Rulemaking: Proposed OAR 459-075-0020 and 459-080-0020
Our File No.: 5415-237

Dear Steve:

The purpose of this letter is to comment on behalf of the PERS Coalition on the proposed rules regarding withdrawal from the OPSRP pension and IAP program. Both proposed rules deal with the topic of withdrawal by OPSRP members when they have left covered employment.

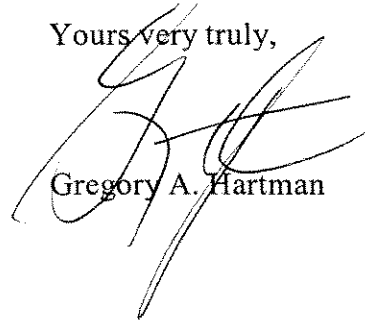
The concern we have is with the proposal for dealing with members who have mistakenly or improperly withdrawn from the system (OAR 459-075-0020(7) and OAR 459-080-0020(8)). As I understand these rules they are meant to deal with the situation where an employee has returned to covered employment so quickly that they should not have been entitled to a withdrawal of their funds from the system. Clearly a member who has improperly withdrawn funds from the system has an obligation to repay those funds. However, the rule places the obligation of repayment upon the employer who has hired that member. While from a member's perspective, placing the repayment obligation on the employer may have some surface appeal, it may well lead to unintended consequences. Under the proposed rules the employer can deal with this additional liability by the simple expedient of terminating the employment of the member. Thus an individual who has received a mistaken payment from PERS in what may be a relatively small amount may find that the application of this rule also causes them to lose employment.

I understand that this proposed rule is similar to rules that currently exist for ORS Chapter 238. I ask that the PERS staff revisit this concept to determine whether there is another way to approach this problem which would not put a member's continued employment at risk. There's no question that there needs to be a mechanism for recovering improperly paid funds if for no other reason than to preserve PERS's qualified tax status.

Steve Rodeman
October 25, 2006
Page 2

However I suspect there may be some other approaches to this problem which should merit consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read 'G. Hartman', is written over the typed name. The signature is fluid and cursive, with a large initial 'G' and a long, sweeping tail.

Gregory A. Hartman

GAH:kaj

G:\Hartman\AFSCME 5415\237 PERS 2\Rodeman 06-10-25.wpd

cc: PERS Coalition

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

ATTORNEYS AT LAW

GREGORY A. HARTMAN
hartmang@bennetthartman.com
Direct Dial: 503-546-9601

SUITE 1650
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3627
(503) 227-4600
FAX (503) 248-6800
www.bennetthartman.com

November 15, 2006

BY EMAIL AND FIRST CLASS MAIL

Brenda Lee Wilson
Interim Administrator
PPLAD
Public Employee Retirement System
PO Box 23700
Tigard, OR 97281-3700

Re: Proposed OAR 459-075-0020 and OAR 459-080-0020
Our File No.: 5415-237

Dear Brenda Lee:

The purpose of this letter is to follow up on my October 25 letter in which I expressed concern about that portion of the proposed rule which permits PERS to convert an employee obligation to return a mistaken payment into an employer obligation or alternatively requires the employer to terminate the employee. I am disappointed that the sole response I have received on this issue is the November 17 memo to the board stating that the staff regards this provision as reasonable to protect the qualified status of the plan.

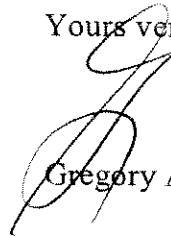
Realistically the qualified status of the plan is not going to be placed in jeopardy regardless of the mechanism used by PERS to recover an occasional mistaken payment. In fact the provision is solely for the administrative convenience of PERS by converting PERS's obligation to make recovery into an obligation placed on the employer. I also agree with the concerns expressed in Nancy Brewer's recent letter in which she pointed out the difficulties that this proposal will cause for employers, who may find themselves with conflicting legal obligations regarding the continued employment of one of their employees.

Perhaps I should have focused my initial letter more on the issue of PERS authority because I can find no authority for PERS adopting a rule which places the burden of recovering a mistaken payment on an employer. PERS's ability to recover a mistaken distribution is governed by ORS 238.715 and there is nothing in that statute which permits PERS to convert a mistaken payment into an employer obligation.

Brenda Lee Wilson
November 15, 2006
Page 2

Once again I ask that prior to submitting this matter to the PERS board that the PERS staff reconsider this portion of the rule and determine whether there is a better way to make this recovery which is consistent with PERS's legal authority and does not create a hardship for employers or employees who participate in the system.

Yours very truly,



Gregory A. Hartman

GAH:kaj

G:\Hartman\AFSCME 5415\237 PERS 2\Wilson 06-11-15.wpd



Finance Department
501 SW Madison Avenue
P.O. Box 1083
Corvallis, OR 97339-1083
(541) 757-6990
Fax (541) 754-1729

October 26, 2006

Daniel Rivas
PERS Administrative Rule Coordinator
PO Box 23700
Tigard, OR 97281-3700

RE: Proposed Administrative Rules 459-075-0020 Withdrawal from OPSRP Pension Program and 459-080-0020 Withdrawal of Individual Accounts

I have comments on the two proposed rules cited above. Section 7 of 459-075-0200 and Section 8 of 459-080-0020 both state that if a member has terminated employment and withdrawn his/her account balances, then returns to work for a PERS subject employer within two calendar months and does not repay either OPSRP pension or IAP contributions, the employer will be obligated to the Fund to pay the full amount.

I have serious concerns about this section in both rules. First and foremost, I can see no reason why the employer should have any responsibility for making this member's account "whole". The member chose to take the monies from his/her account, including the fully employer funded pension program. Why in the world would the employer have any reason to fund the pension a second time? The beautiful scam here would be for an employee to terminate, take out his/her monies, then re-enter public employment and have the employer make the contributions all over again. This situation is the epitome of the term "having one's cake and eating it too."

In addition to the fact that employers should in no way be responsible, from a practical perspective even if the employee was hired back by the previous employer, the employer would have no way to know that the employee withdrew his/her account balances. If hired by a different employer, the employer may not know that the new employee was ever a member of OPSRP/PERS prior to employment (you would not believe the number of hires who have no idea if they are or ever were members). It is likely the employer will not find out about previous membership until sometime after the first pay cycle when the employee's record is sent via EDX. Presumably, the record would be suspended, causing an investigation to find the reason for the suspension, so several more months

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may have passed before the employer finally gets the issue resolved. In any case, it is most certainly going to take longer than 30 days for an employer to discover that the new employee had previously withdrawn his/her account balance and needed to pay it back.

Although the rule goes on to state that the employer may terminate an employee in this situation, that is an unrealistic statement. The employment agreement is between an individual and the employer, and is subject to rules promulgated by BOLI, labor agreements and so forth. I suspect any termination where the reason cited was "you withdrew your account balance from PERS and did not re-pay it and so PERS said we can terminate you" would be fodder for an arbitrator.

My recommendation for this section of the respective rules is to simply state that if the monies are not re-paid by the member within two months, the member loses all previous service time and cannot buy that service time later. To do anything else punishes the employer for the personal decisions of the employee over which the employer has absolutely no control.

Please feel free to contact me if you have any questions about these comments.

Sincerely,



Nancy Brewer
Finance Director

Daniel Rivas - Please consider this testimony regarding OAR 459-075-0020, and OAR 459-080-0020

C.2 Attachment 6

From: "RODEMAN, KATHY" <Kathy.Rodeman@Corvallis.K12.OR.US>
To: RIVAS Daniel <Daniel.Rivas@state.or.us>
Date: 11/22/2006 3:44:25 PM
Subject: Please consider this testimony regarding OAR 459-075-0020, and OAR 459-080-0020

November 22, 2006

Daniel Rivas
PERS Administrative Rule Coordinator
PO Box 23700
Tigard, OR 97281-3700

Re: OAR 459-075-0020, *Withdrawal from OPSRP Pension Program* and
OAR 459-080-0020, *Withdrawal of Individual Accounts*

You are considering these two administrative rules which potentially have an adverse effect on employers. As a PERS employer, I'm urging you to hold former PERS members individually accountable for their decision to withdraw their accounts and seek collections from workers who withdrew their PERS funds and returned to work. Since these individuals are the ones to directly benefit from previous PERS balances, they should be the ones to pay. Employers should not be placed in the middle between PERS and the individual.

Nancy Brewer stated the case well. I worry that state law regarding teacher dismissals and collective bargaining agreements for school districts would prevent any quick and easy dismissal, thus resulting in an employer footing the bill.

Sincerely,

Kathy Rodeman
Director of Business Services
Corvallis School District 509J
(541) 757-3859
Kathy.rodeman@corvallis.k12.or.us

November 22, 2006

To: Members of the PERS Board
From: Employers' PERS Alliance

Comments on Proposed Rules:

OAR 459-075-0020 Withdrawal from OPSRP Pension Program

OAR 459-080-0020 Withdrawal of Individual Accounts

The Alliance agrees that the Tax Status of the Trust should be protected. It makes some sense that the criteria—for a bona fide separation and mandatory repayments if the member withdraws and fails that separation standard—be the same for the ORS Chapter 238 Program, the OPSRP Pension Program and the IAP Program.

The Employers' PERS Alliance has several concerns about the proposed rules and the ORS Chapter 238 Program rules. The Alliance concludes the proposed rules and the ORS Chapter 238 Program rules inappropriately shift responsibility from the individual (who withdrew dollars from PERS) to PERS participating employers. We agree the Tax Status of the Trust should be protected. However, it is the individual who knows: (1) if and when they terminated employment; (2) if and when they withdrew dollars; (3) if and when they either did or did not repay those withdrawn dollars; and (4) if and when they were re-employed by a PERS participating employer.

The proposed rules place the obligation on the employer to terminate the individual or pay the amount the individual withdrew from PERS. The only exception is if (within 30 days following the effective date of employment) the employee repays (to PERS) the dollars withdrawn. The employer is not likely to know that the person hired was ever a PERS member – let alone a PERS member who withdrew, was reemployed before the first of the second calendar month following separation, and did not repay to PERS the full amount withdrawn. The probability is very high that the employer will not find out all of this PERS related info until more than 30 days following the date the individual is hired. Thus, the opportunity for the individual hired to repay the amount withdrawn will likely have passed before the employer knows about the situation.

The proposed rules give individuals an opportunity to “game the system” and to place unnecessary financial burdens on PERS participating employers. It is a hardship on the employer to terminate an employee, even if it is legal to terminate an individual because the individual withdrew PERS dollars and accepted employment with a PERS participating employer under circumstances requiring that the dollars withdrawn must be repaid to PERS. In addition to the cost of defending challenges to such a termination, the employer has other recruitment, selection, etc. costs. The proposed rules do not say PERS will cover employer costs in defending a challenge to such terminations.

The Alliance urges the PERS Board to make the individual who withdrew the dollars the sole party responsible for any repayment required. PERS has the authority and ability to collect these dollars from individuals. Employers should not be responsible for collecting these dollars from individuals. Employers should not be required to pay PERS for amounts individuals have withdrawn from and not repaid to PERS. In addition to changing the proposed rules to conform to this policy approach, OAR 459-010-0055 (applicable to PERS Tier 1/Tier 2 Pension Withdrawals) should also be amended to hold the individual (not the PERS participating employer) responsible for any repayment required.

Further, these proposed rules and OAR 459-010-0055 should not contain the language in subsection (9) / (10): If a participating employer employees a person who has withdrawn from the ...program and fails to notify PERS of the employment, the employer shall hold PERS harmless for any actual or perceived loss of benefits resulting from the withdrawal. There should not be an additional penalty for failure to notify PERS of the employment of an individual who has withdrawn from one of the PERS Programs. For the most part, employers don't know if an individual has withdrawn from one of the PERS Programs. Look at the problems employers have finding out if an individual is a member of PERS – will PERS provide reliable information to PERS participating employers in advance of hire about whether and when an individual terminated, withdrew, repaid?

The Alliance also notices that the mandatory repayments language in the proposed OPSRP Pension and IAP withdrawal rules—if the member fails the standard for a bona fide separation—are substantially different from the repayment language contained in the rule for the PERS Chapter 238 Tier 1/ Tier 2 Pension Program withdrawals. While the Alliance also has concerns about the PERS Chapter 238 Program rule, this rule does provide for notice and a payroll deduction option – although involuntary payroll deductions may be illegal.

OAR 459-010-0055 (applicable to PERS Tier 1/ Tier 2 Pension Withdrawals provides that *PERS shall notify the employer* that the employer shall be obligated to the Fund for the full amount of the member's withdrawal not repaid, unless....

- a) the employer immediately terminates the employment *upon discovering or being notified of the member's failure to repay the withdrawn contributions...*
- b) the member repays the withdrawn amount in full within 30 days following the effective date of employment...
- c) *the full amount of the withdrawal is repaid by the participating employer from payroll deductions from the member's monthly salary....*

The proposed rules do not provide for notification from PERS to the employer.

The proposed rules do not include the trigger language for the immediate termination requirement (upon discovering or being notified).

The proposed rules do not provide for the employer to repay the amount withdrawn via payroll deductions from the member's monthly salary.

Summary: The Alliance urges the PERS Board to review OAR 459-010-0055 as well as the proposed rules in light of the above comments and in light of employment law issues such as collective bargaining agreements and wage/hour laws. A PERS participating employer should not be liable for repaying dollars to PERS when PERS pays dollars to an individual and the individual does not voluntarily repay those dollars to PERS. A PERS participating employer should not be required to terminate an employee because the employee refuses to voluntarily repay dollars to PERS....especially when PERS cannot provide the employer with reliable information before the individual is hired.

Thank you for your consideration.

Maria Keltner, Employers' PERS Alliance
503.588.2251



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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

January 12, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption of OAR 459-050-0025, *Deferred Compensation Advisory Committee*

MEETING DATE	1/12/07
AGENDA ITEM	C.3.a. OSGP Advisory Committee

OVERVIEW

- Action: Adopt modifications to OAR 459-050-0025, Deferred Compensation Advisory Committee.
- Reason: The current rule is administratively burdensome and can be improved to enhance the process to appoint members to the Deferred Compensation Advisory Committee.
- Subject: Oregon Savings Growth Plan (OSGP) Deferred Compensation Advisory Committee.
- Policy Issues: None. Changes are minor and for administrative efficiency.

SUMMARY OF RULE MODIFICATIONS

The rules as presented today have not changed since they were presented to the Board upon first reading. These rule modifications make changes in the OSGP Advisory Board membership application and selection process; delete the requirement to provide draft copies of the Advisory Committee's minutes to the PERS Board; and change the time line of publishing the "Plan Update."

LEGAL REVIEW

The proposed rule was submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on July 25, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on September 22, 2006 at 5:00 p.m. and no public comment was received.

IMPACT

Mandatory: No, the Board could retain the existing rule language. The current rule, however, is inconsistent with established practices and presents administrative obstacles.

Impact: Administrative efficiency will be enhanced. Notice will be more effective by the use of the most widely distributed OSGP publication.

Cost: There are no perceived costs to members, employers, stakeholders or the Fund as a result of the adoption of the rule.

RULEMAKING TIMELINE

June 15, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
July 1, 2006	<i>Oregon Bulletin</i> published the Notice.
July 21, 2006	PERS Board notified that staff began the rulemaking process.
July 25, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
September 15, 2006	First Reading of the rule.
September 22, 2006	Public comment period ended at 5:00 p.m.
January 12, 2007	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-050-0025, *Deferred Compensation Advisory Committee*, 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: Adopting these modifications will enhance the process for appointment of members to the *Deferred Compensation Advisory Committee* and will more accurately reflect current administrative practice.

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

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

1 **459-050-0025**

2 **Deferred Compensation Advisory Committee**

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

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

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

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

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

13 (e) No two members *[shall]* **may** be employed by the same state agency or local
14 government *[unless]* **except that** a member **who** transfers employment *[from one*
15 *employing entity]* to **the employer of** another **member may continue to serve on the**
16 **Advisory Committee, but** *[and]* only for the balance of the term of appointment of the
17 *[member]* transferring **member**.

18 (f) No member *[shall]* **may** serve more than two consecutive full terms.

19 (g) No member *[shall]* **may** be an employee of PERS during the term of
20 appointment.

1 (2) The Advisory Committee shall study and advise the *[Public Employees*
 2 *Retirement]* Board on all aspects of the *[deferred compensation p]*Program, including but
 3 not limited to:

4 (a) The *[deferred compensation p]*Program fee structure and *[program]* procedures;

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

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

9 (d) Ways and means to inform and educate eligible employees about the *[deferred*
 10 *compensation p]*Program;

11 (e) The expressed desires of eligible employees as to the *[Deferred Compensation]*
 12 Program*[.]; and*

13 (f) The actuarial characteristics of eligible employees.

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

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

17 (b) Information furnished by the OIC or *[the staff of]* the State Treasurer concerning
 18 the types of available investments, the respective balance of risk and return of each
 19 investment, and the administrative costs associated with each investment.

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

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

1 (6) Pursuant to the Public Meetings Law, ORS 192.610 to 192.690, the Deferred
2 Compensation Manager *[of the Deferred Compensation Program]* shall distribute to the
3 Advisory Committee *[members]*, and other interested parties, an agenda for a regular
4 meeting a reasonable time *[at least one week]* prior to the meeting.

5 *[(7) The Manager of the Program shall submit a draft copy of the Advisory*
6 *Committee minutes to the Board at its next regular meeting which is not less than fifteen*
7 *working days following each Committee meeting.]*

8 *[(8)]* (7) Nominations of *[C]* candidates for the Advisory Committee shall be made
9 as follows:

10 (a) Notice of a position *[(s)]* on the Advisory Committee expected to become vacant
11 upon the expiration of a term of appointment shall be published not later than *[March 1]*
12 April 15 of each calendar year;

13 (b) Persons interested in serving on the Advisory Committee must apply in writing
14 to the Manager *[of the Deferred Compensation Program]* not later than May 15
15 following the publication of a *[ny]* vacancy *[ies]*;

16 (c) The Manager *[of the Deferred Compensation Program]* shall review the written
17 applications of interested persons for completeness, accuracy, and satisfaction of the
18 minimum requirements of the vacant position on the Advisory Committee. *[, and*
19 *forward the acceptable applications to the Board's Investment Oversight Committee.]*

20 (d) *[The Board's Investment Oversight Committee]* A committee consisting of the
21 Manager and four members of PERS executive or managerial staff designated by
22 the PERS Executive Director shall review the acceptable applications and recommend
23 to the *[full]* Board candidates for appointment to the Advisory Committee that:

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

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

5 (C) Appear to have a sincere interest in the *[deferred compensation p]* Program; and

6 (D) Appear to be willing and able to work in a group setting to review and
7 recommend policies governing the *[p]*Program.

8 (e) In the event of a vacancy *[of]* for an unexpired term, the Manager *[the Board*
9 *shall select an appointee]* may select applications from the most recent list of interested
10 persons established under subsection (c) of this section and the applications of other
11 persons as deemed appropriate for consideration. *[following the most recent*
12 *publication of vacancy]* A committee consisting of the Manager and four members of
13 PERS executive or managerial staff designated by the PERS Executive Director
14 shall review the selected applications and recommend to the Board candidates for
15 appointment to the Advisory Committee. The appointment shall be *[to become]*
16 immediately effective for the remainder of the unexpired term. If no candidate is
17 recommended or appointed, the vacancy must be filled under the provisions of
18 subsections (a) through (d) of this section.

19 Stat. Auth: ORS 243.470

20 Stats. Implemented: ORS 243.505



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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

January 12, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption of OAR 459-050-0037, *Trading Restrictions*

MEETING DATE	1/12/07
AGENDA ITEM	C.3.b. Trading Restrictions

OVERVIEW

- Action: Adopt OAR 459-050-0037, Trading Restrictions.
- Reason: The Oregon Savings Growth Plan (OSGP) has determined that frequent trading by participants drives up administrative costs for the deferred compensation program and adversely affects investment returns and liquidity management. Previous restrictions have been applied on a case-by-case basis with limited success. OSGP seeks to avoid the adverse consequences of such activity by establishing procedures to restrict trades for all participants.
- Subject: Oregon Savings Growth Plan trading restrictions
- Policy Issue: Should OSGP by rule impose restrictions upon participant trades?

BACKGROUND

OSGP has the authority to implement some trading restrictions to prevent increases in administrative costs or fees, negative investment performance, or other detrimental effects from excessive trading activities. These restrictions were only implemented on an individual basis when such practices were identified. The application of these restrictions has had some success but excessive trading persists. OSGP management recommends moving to a set of restrictions that would be applied systemically to all participants, rather than individual members as identified.

POLICY ISSUE

Should OSGP by rule impose system-wide restrictions on participant trades?

Excessive trading activity can be detrimental to the performance of mutual funds and adversely affect the investment return of those funds. The Securities and Exchange Commission may require that mutual funds charge redemption fees on monies not held for a given number of days. Mutual funds participating in OSGP may eliminate OSGP as an allowable investor.

To more effectively and comprehensively address this activity, trading restrictions should be codified in administrative rule and applied across the plan as a whole. The proposed rule would apply the following restrictions to all participants:

1. A participant may not make a trade that exceeds \$100,000.

2. A purchase in an investment option that is attributable to a trade must remain in the investment option for a minimum of 90 days.
3. No trade may be made directly from the Stable Value Option to the Short-Term Fixed Income Option or the Intermediate Bond Option.

The rule also provides that the Deferred Compensation Manager may establish additional temporary restrictions to comply with restrictions requested or imposed by mutual funds or the SEC, which would later have to be reviewed by the Board to be extended.

SUMMARY OF MODIFICATIONS TO RULE SINCE FIRST READING

The following modifications have been made to the rule since first reading:

In subsection (2)(b), the redemption restriction period was changed from 30 to 90 days.

Subsection (2)(c) was added. This restriction is currently in effect for all participants and was added to consolidate all system-wide restrictions in the rule.

In section (3), language regarding the duration of temporary restrictions was deleted. Duration of temporary restrictions is dealt with in section (5).

Section (4) was added to allow the flexibility to temporarily suspend restrictions in the event of extraordinary market conditions, such as a market crash scenario.

Section (5) was added to limit the duration of any temporary imposition or suspension of trading restrictions. Under this section, such actions will be presented to the Board at its next scheduled meeting. If the Board does not take some action to ratify the temporary measure, it will expire on the first business day following the meeting.

Section (7) was added to clarify that this rule does not restrict the Board from establishing additional restrictions or sanctions permitted by statute.

Section (8) was added to establish an effective date that would provide sufficient time for the OSGP third party administrator to implement these restrictions and for OSGP to communicate them to all participants in the April 2007 “Plan Update” newsletter.

LEGAL REVIEW

The proposed rule was submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on July 25, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The initial public comment period ended on September 22, 2006 at 5:00 p.m. Due to substantive changes, the rule was renoticed. The extended public comment period ended on December 29, 2006.

To date, PERS has received public comment from one person. Jim Wallace, OSGP participant, commented by email. His concern was that the rule should "...not make the holding period for any option any longer than the longest period of any fund in the option." He noted that the 30-day period proposed in the rule is less than the 90-day period of some mutual funds within the investment options and expressed concern that an agreement should exist between OSGP and member mutual funds permitting the shorter holding period.

The 30-day period in the proposed rule has been changed to 90 days, a period more consistent with industry norms. OSGP staff report there are no agreements with shorter restrictive holding periods, but that member mutual funds are very supportive of establishing restrictions to prevent frequent trading. They also note that the imposition of such restrictions for the protection of participants and the program are compelled by and consistent with OSGP's fiduciary obligation.

IMPACT

Mandatory: No. The Board need not adopt the rule.

Impact: Restrictions will reduce risks and costs for all participants and the program.

Cost: OSGP would pay CitiStreet a one-time fee of between \$45,000 to \$75,000 for system changes required to implement the restrictions. This estimate is higher than the original quote of \$38,000. The payment would be derived from revenue sharing funds received by OSGP held for program enhancements. There is not expected to be any significant cost incurred by members, employers, or the PERS Fund.

RULEMAKING TIMELINE

June 15, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
July 1, 2006	<i>Oregon Bulletin</i> published the Notice.
July 21, 2006	PERS Board notified that staff began the rulemaking process.
July 25, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
September 15, 2006	First Reading of the rule.
September 22, 2006	Public comment period ended at 5:00 p.m.
November 15, 2006	Staff extended the public comment period by filing Notice of Rulemaking with the Secretary of State.
December 29, 2006	Extended public comment period ended.
January 12, 2007	Board may adopt the permanent rule.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt OAR 459-050-0037, *Trading Restrictions*, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

STAFF RECOMMENDATIONS

Staff recommends that the Board choose Option #1.

- Reason: Adopting this rule will:
 1. Establish uniform trading standards for all participants.
 2. Avoid trading practices that may drive up administrative costs for the deferred compensation program and adversely affect investment returns and liquidity management.
 3. Provide sufficient flexibility to OSGP and the Board to address changes in market or regulatory conditions.

NOTE: Adoption of this rule will not affect existing trading restrictions established by the Board or OSGP for participants, and all such restrictions will remain in effect until the effective date of the proposed rule, if adopted.

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

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

OAR 459-050-0037

Trading Restrictions

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

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

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

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

(2) Restrictions. The following restrictions apply to all participants:

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

(b) A purchase that is attributable to a trade may not be redeemed from the investment option in which the purchase was made for a period of 90 days following the date of the trade.

Deleted: 3

1 (c) No trade may move monies directly from the Stable Value Option to the
2 Short-Term Fixed Income Option or the Intermediate Bond Option.

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

Deleted: Temporary trading restrictions so established will remain in effect until such time as the Board acts upon the restrictions.

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

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

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

Deleted: 4)

16 (7) The trading restrictions provided in this rule are not exclusive. The Board
17 may establish additional restrictions or sanctions as authorized by ORS 243.401 to
18 243.507.

19 (8) The effective date of this rule is May 1, 2007.

20 Stat. Auth.: ORS 243.470

21 Stats. Implemented: ORS 243.401 – 243.507



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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

January 12, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption OAR 459-050-0070, *Catch-Up Programs*

MEETING DATE	1/12/07
AGENDA ITEM	C.3.c. Catch-Up Programs

OVERVIEW

- Action: Adopt modifications to OAR 459-050-0070, Catch-Up Programs.
- Reason: The current rule's provisions regarding participation in the 3-Year Catch-Up Program are unnecessarily restrictive.
- Subject: Oregon Savings Growth Plan (OSGP) Catch-Up Programs
- Policy Issue: Should OSGP participants be permitted to participate in the 3-Year Catch-Up Program in the calendar year of the participant's retirement date?

BACKGROUND

OSGP participants who enroll in the 3-Year Catch-Up Program must designate a proposed retirement date for the purpose of establishing the period during which catch-up contributions may be made. OSGP's current rule prohibits a participant who in fact retires in a year during the catch-up period, i.e., prior to the designated proposed retirement date, from making the maximum amount of catch-up contributions for the year of retirement unless the participant continues active employment until December 31 of that year.

POLICY ISSUE

Should OSGP participants be permitted to participate in the 3-Year Catch-Up Program in the calendar year of the participant's retirement date?

OSGP has determined that IRS regulations do not prohibit a participant from making the maximum amount of contributions to the 3-Year Catch-Up Program in the year of the participant's actual retirement provided the year of actual retirement is not the year containing the designated proposed retirement date. For example, if a participant designated June 1, 2010 as his proposed date of retirement and planned to participate in the 3-Year Catch-Up Program during 2007, 2008, and 2009, but then retired in May of 2009, IRS regulations would allow him to contribute the maximum allowable amount for 2009 because 2010 was the year of his designated proposed retirement date. The proposed rule modifications would eliminate the current prohibition and allow the participant to contribute up to the maximum allowable amount.

SUMMARY OF MODIFICATIONS TO RULE SINCE FIRST READING

Non-substantive edits were incorporated in the proposed rule for clarity and consistency.

LEGAL REVIEW

The proposed rule was submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on July 25, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on September 22, 2006 at 5:00 p.m. and no public comment was received.

IMPACT

Mandatory: No, the Board could retain the existing rule language. The current rule, however, is unnecessarily restrictive.

Impact: Administrative efficiency will be enhanced by reducing refunds and having a more easily understood standard for participation. Participants will benefit from the opportunity to make contributions during the year of retirement.

Cost: There are no perceived costs to members, employers, stakeholders, or the Fund as a result of the adoption of the rule.

RULEMAKING TIMELINE

June 15, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
July 1, 2006	<i>Oregon Bulletin</i> published the Notice.
July 21, 2006	PERS Board notified that staff began the rulemaking process.
July 25, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
September 15, 2006	First Reading of the rule.
September 22, 2006	Public comment period ended at 5:00 p.m.
January 12, 2007	Board may adopt the permanent rule.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-050-0070, *Catch-Up Programs*, 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: Adopting these modifications will:
 1. Permit more flexibility and provide clearer standards for participation in Catch-Up Programs by accommodating the less restrictive guidelines of the IRS regulations; and
 2. Eliminate the administrative burden of unnecessary refunds of Catch-Up Program contributions.

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

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

1 **459-050-0070**

2 **Catch-Up Programs**

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

7 (1) *[Definitions. Subject to]* **Except as provided in** subsections (a) and (b) **of this**
8 **section [below]**, for purposes of this rule, “normal retirement age” *[means]* **shall be** the
9 normal retirement age *[defined]* **established** in the plan sponsor’s retirement plan.

10 (a) “Normal retirement age” for members of the Public Employees Retirement
11 System shall **be as provided** *[have the same meaning as]* **in** ORS 238.005(14),
12 238.280(3), **238A.160, or** *[and for judge members,]* ORS 238.535.

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

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

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

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

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

6 (b) Application for enrollment. *[Subject to the conditions in subsection (2)(a) above,*
7 *an eligible employee may participate in the 50-Plus Catch-Up Program.]* An eligible
8 employee choosing to participate must enroll by entering into a written agreement *[as*
9 *specified herein]* with the plan sponsor. The written agreement must specify the amount
10 of the additional annual deferral, that the additional deferral will be divided equally by
11 the available months for the calendar year, and that the amount is in addition to the
12 eligible employee's regular maximum deferral.

13 (A) *[Subject to the conditions and requirements of these rules and applicable law,*
14 *a]* An eligible employee may enter into a written agreement to participate in the 50-Plus
15 Catch-Up Program on or before the first day of employment or anytime while employed
16 *[to defer an amount annually in addition to the eligible employee's regular maximum*
17 *deferral amount].*

18 (B) *[In order for an eligible employee to be enrolled, a]* A properly completed 50-
19 Plus Catch-Up Program enrollment form provided by the Deferred Compensation
20 Program must be filed with and approved by the Deferred Compensation Program.

21 (C) If the form is incomplete or does not comply with 50-Plus Catch-Up Program
22 conditions of enrollment *[in subsection (2)(a) above]*, then the Deferred Compensation
23 Program *[staff]* will notify the eligible employee within 30 calendar days from the date

1 the enrollment form is received *[with]* **of** the reasons the *[Deferred Compensation Plan]*
2 **enrollment** cannot **be** accepted **ed** *[the enrollment]*.

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

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

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

1 (3) 3-Year Catch-Up Program. An [E]eligible employee[s] may elect to contribute
2 an additional amount under section 457 of the Internal Revenue Code,*[26 USC 457,]* in
3 excess of the maximum regular contribution allowed, for one or more of the three
4 consecutive calendar years of employment prior to attaining normal retirement age, if in
5 previous years the *[full amount of the]* eligible employee*[s' deferral allowance was not*
6 *used]* **did not contribute the maximum regular contribution amount.**

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

10 (A) *[The increase]* **Contributions** over the maximum allowable regular contribution
11 limit *[is available]* **are permitted** only to the extent of **the** unused portions of the
12 maximum allowable regular contribution for previous calendar years during which the
13 eligible employee contributed less than the maximum allowable **regular contribution** or
14 did not *[choose to]* make contributions to the Deferred Compensation Program.

15 (B) *[Previous c]* **Calendar** years during which **contributions** *[deferrals]* were made
16 *[to]* **under** the 50-Plus Catch-Up **Program** shall not be included in the calculation to
17 determine the maximum allowable contribution under the 3-Year Catch-Up Program.

18 (C) An eligible employee may not participate in the 3-Year Catch-Up Program and
19 the 50-Plus Catch-Up **Program** *[in section (2) above]* during the same calendar year.

20 (D) *[An eligible employee may not participate in the 3-Year Catch-Up during the*
21 *calendar year containing the eligible employee's retirement date, unless the last day*
22 *worked is the last working day of that calendar year.]* **An eligible employee must**
23 **designate a proposed retirement date upon application. The designated proposed**

1 retirement date shall be used for the purpose of determining the catch-up period
2 only. The catch-up period so determined shall not include the year of the designated
3 proposed retirement date. An eligible employee who retires during the catch-up
4 period may contribute the maximum allowable amount for the year of his
5 retirement.

6 (E) Pursuant to section 457(b) of the Internal Revenue Code, *[26 USC 457(b),]* an
7 eligible employee who is 70-1/2 years of age or older may not participate in the 3-Year
8 Catch-Up Program.

9 (F) An eligible employee may participate only once in the 3-Year Catch-Up
10 Program, regardless of whether participation in the 3-Year Catch-Up Program is *[used*
11 *in] for* less than three calendar years *[and] or whether* the eligible employee *[or former*
12 *eligible employee rejoins the plan or]* participates in an*[other]* eligible plan after
13 retirement.

14 (b) Application for enrollment. *[Subject to the conditions in subsection (3)(a) above,*
15 *a]* An eligible employee may [enroll to] participate in the 3-Year Catch-Up Program by
16 entering into a written agreement [as specified herein] with the plan sponsor. The written
17 agreement must specify the eligible employee's designated proposed retirement date,
18 *[and]* the month in which to begin the 3-Year Catch-Up Program contributions
19 *[deferrals] and the number of years the eligible employee plans to participate in the*
20 3-Year Catch-Up Program.

21 (A) An eligible employee may enter into a written agreement to participate in the 3-
22 Year Catch-Up Program at any time while employed. *[to defer an amount annually in*
23 *addition to the eligible employee's regular maximum deferral amount.]*

1 (B) *[In order for an eligible employee to be enrolled, a]* A properly completed 3-
2 Year Catch-Up Program enrollment form provided by the Deferred Compensation
3 Program must be filed with and approved by the Deferred Compensation Program. *[In*
4 *addition, w]* Wage or salary information must be submitted for *[the]* previous calendar
5 years during which an eligible employee either did not participate in the Deferred
6 Compensation Program or did not contribute the maximum regular contribution
7 amount *[use the full amount of deferral]*. An eligible employee must submit *[either]*:

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

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

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

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

22 (d) Additional Deferral Amount. After receipt of *[the]* a properly completed 3-Year
23 Catch-Up Program enrollment form and required wage or salary information, the

1 Deferred Compensation Program *[staff]* will notify *[an]* the eligible employee of the
2 maximum amount of *[maximum]* additional contributions that may be deferred.

3 (A) The amount of the 3-Year Catch-Up Program salary reduction may not be less
4 than the minimum additional contribution amount established by the plan sponsor *[that*
5 *is over the maximum regular deferral]* and may not exceed the maximum allowable
6 contribution *[to a Deferred Compensation Plan as defined in]* under section 457(b)(3) of
7 the Internal Revenue Code *[, 26 USC 457(b)(3)]*.

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

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

20 *[[Publications: Publications referenced are available from the agency.]]*

21 Stat. Auth.: ORS 243.470

22 Stats. Implemented: ORS 243.401 - 243.507



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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

January 12, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption of Oregon Savings Growth Plan Loan Program
Rules
OAR 459-050-0077, *Loan Program*
OAR 459-050-0150, *Unforeseeable Emergency Withdrawal*

MEETING DATE	1/12/07
AGENDA ITEM	C.3.d. Loan Program

OVERVIEW

- Action: Adopt new permanent rule OAR 459-050-0077, Loan Program, and modifications to OAR 459-050-0150, Unforeseeable Emergency Withdrawal.
- Reason: These rules would create a loan program that would allow eligible participants in the Oregon Savings Growth Plan (OSGP) to borrow from their account. Currently, a participant needing to access their account has no alternative but to apply for an unforeseeable emergency withdrawal. The loan program would be a less radical alternative.
- Subject: Creating a loan program within the OSGP and establishing the program as an alternative to an Unforeseeable Emergency Withdrawal.
- Policy Issues:
 1. Should a loan program for OSGP participants be established?
 2. If a loan program is established, should participants be required to use the loan program prior to application for an unforeseeable emergency withdrawal?

BACKGROUND

If an OSGP participant needs to access their account because of a financial emergency, currently their only option is the emergency withdrawal provisions of OAR 459-050-0150. Of the participants who received an emergency withdrawal in 2004 and 2005, approximately 85% failed to resume contributions to OSGP, even though they were eligible to do so six months after the withdrawal was distributed. Providing this loan program as an alternative will lead to more people continuing participation and allow easier access to a participant's account.

POLICY ISSUES

1. Should a loan program for OSGP participants be established?

A loan program would provide participants facing financial hardship with greater flexibility. Participants could access their account in a manner that would hopefully reduce the attrition of participants who instead have taken emergency withdrawals. An

informal survey by OSGP management of other governmental deferred compensation programs offering loan programs indicated that participants in those programs who received loans generally repaid the loans in full and continued to contribute to the program. That same survey also indicated that, on average, 2.6% of deferred compensation program assets were outstanding as loans.

Participants not facing financial hardship would also benefit from the loan program. Eligible employees may begin participation at an earlier age if they know that their contributions could be accessed via a loan. OSGP is not the primary retirement plan for most participants, limiting the risk that the loan program will have a significant detrimental effect upon a participant's retirement planning. Multiple concurrent loans are prohibited and a 12-month waiting period between paying off a loan and applying for a new one will further reduce any potentially excessive loan activity.

There is little administrative burden associated with establishing the loan program, as repayment would be by payroll deduction, the same process by which participants make contributions. The third party administrator will assess loan fees to offset the administration of the loan. There is little financial risk to the program as the funds disbursed are the participant's.

Should the loan program not be established, participants facing financial hardship would still be eligible for an unforeseeable emergency withdrawal.

2. If a loan program is established, should participants be required to use the loan program prior to application for an unforeseeable emergency withdrawal?

For the reasons discussed above, the loan program is less likely to result in the participant leaving the deferred compensation program. The loan program should be the primary means for participants to access their account. The modifications to OAR 459-050-0150 would establish this priority, but not require the participant to use the loan program if the OSGP Manager determines that to do so would further burden the participant financially.

SUMMARY OF MODIFICATIONS TO RULES SINCE FIRST READING

OAR 459-050-0150:

There have been no modifications to the proposed rule since first reading.

OAR 459-050-0077:

The following substantive modifications have been made from the previous version presented at first reading:

In subsection (1)(b), the definition of "Loan balance" was added.

In subsection (9)(a), text was edited to better reflect the timing of the agreement to repay by payroll deduction. This agreement is a prerequisite to the receipt of a loan.

In subsection (9)(c), the word "outstanding" was deleted as redundant, given the defined term "loan balance."

In subsection (9)(d), text was added to clarify that the prohibition against partial payment extends to scheduled payments as well.

In subsection (9)(e), the word “Income” was added to properly identify the option.

Subsection (9)(f) was added to establish that overpayments must be refunded. They may not be credited to the participant’s OSGP account.

Paragraph (10)(a)(C) was edited to include the defined term “loan balance.”

Paragraph (10)(a)(D) was edited for clarity.

Paragraph (10)(b)(E) was added to establish the requirement to re-amortize the loan balance upon the participant’s return from military leave.

Throughout sections (11) and (12) minor edits were made to accommodate the use of the defined term “loan balance.”

In section (11), subsections (a), (b), and (c) were edited to reflect the reported recipients of the taxable distributions. In subsections (a) and (b) the words “five year” and “ten year” were deleted as for each type of loan the original repayment period may be less than the maximum period allowed. Text was added to subsections (a) and (b) to reflect the consideration of the cure period in the determination of a taxable distribution. Also in subsections (a) and (b), a reference to paragraph (10)(a)(D) was added as the original repayment period may be adjusted for military leave.

In subsection (11)(c), the sentence “The deceased participant’s estate will be issued a 1099-R in January of the year following the death of the participant” was deleted as unnecessary. The issuance of 1099-Rs is governed by federal tax law.

Subsection (11)(d) was added to establish that the reporting of a taxable distribution cancels the underlying loan obligation.

Subsection (12)(b) retains only its first sentence and was edited to clarify that default by separation from employment applies only to separation from employment with the plan sponsor that administers the loan payment payroll deductions. Separation from a concurrent employer would not constitute a default.

Subsection (12)(c) was added and is the remainder of the former (12)(b), edited to extend the opportunity to cure a default by the resumption of loan payments by payroll deduction within the cure period to any participant in default. The more specific reference to paragraph (10)(a)(C) establishes that the reamortization of the loan upon cure will be over the original repayment period. The defined term “cure period” is added in lieu of the text that describes the cure period.

Subsection (12)(d) is the former (12)(c) and was edited to reference subsection (12)(c). The defined term “cure period” is added in lieu of the text that describes the cure period. The text “to the participant and the loan will be canceled” was added for clarification. The sentence “The participant will be issued a 1099-R in January of the year following the end of the cure period” was deleted as unnecessary.

Section (13) was added to establish an effective date that would provide sufficient time for the third party administrator to implement functionality and for OSGP to communicate the provisions of the loan program to all participants in the April, 2007 “Plan Update” newsletter.

LEGAL REVIEW

The proposed rules were submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rules as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on July 25, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on September 22, 2006 at 5:00 p.m.

To date, PERS has received one public comment. Mr. John Craven, Payroll Operations Mgr., Oregon University System, emailed comment on September 22, 2006. He expressed general support for the loan program and some specific concerns. He noted that the repayment payroll deduction must be voluntary and that the employer will have to terminate the deduction if directed to do so by the employee. Staff concurs and notes that, although the deduction is a prerequisite to receipt of a loan, participation in the loan program and the accompanying agreement (including payroll deduction) is voluntary. If the participant terminates the deduction, the loan will be in default and the employer has no repayment obligation.

Mr. Craven also notes that the payroll deduction will be made after other mandatory deductions, which could result in net pay being insufficient to cover the amount of the repayment deduction. Staff concurs and notes that an applicant for a loan will be fully informed of the expected repayment schedule and amounts and must determine if their other obligations make such a loan feasible. Partial payment of a scheduled payment due to insufficient funds will place the loan in default.

Mr. Craven also states that the rule provides for planned leaves of absence, but not for irregular schedules, academic year schedules, leave without pay, or payroll reversals. Staff agrees that these factors may pose problems for regular payroll deduction. Participants will need to consider these factors when deciding to apply for a loan. Payroll options that distribute wages over the entire calendar year also will avoid short-term interruptions. Payroll deduction is utilized as the method of payment as it is the most economical method available. Direct payment to the TPA is intentionally limited because of the additional administrative expense that would be borne by the OSGP and participants. Also, as noted above, the opportunity to cure a default by resuming loan payments by payroll deduction within the cure period was extended to any participant in default. Any participant in default may cure that default by maintaining or acquiring an employment situation that permits the participant to resume repayments by payroll deduction before the end of the cure period. This should accommodate most short-term

interruptions in payments. Staff also notes that such a default, if not cured, does not result in collection activity, but changes the loan to a taxable distribution.

Mr. Craven inquires if, in the limited direct payment to the TPA scenarios, OSGP will provide “coupons” or similar documents to the participant. Staff reports there are no plans to develop or provide such “coupons.” The loan repayment amount is fixed, subject only to reamortization in specific circumstances. OSGP will advise participants of the manner in which their direct payments should be identified.

Lastly, Mr. Craven advocates a program that bypasses employer payroll systems and permits direct interaction between the participant and the TPA, noting that this process is in place for the 403(b) and Optional Retirement Plan available to OUS employees. Alternatively, he suggests a direct payment option for employees faced with a temporary break in earnings. Staff notes, for reasons of administrative cost as stated above, that direct contact with the TPA is intentionally limited. Mr. Craven characterizes the rule as requiring yet another unfunded task of monitoring employment and collections. Staff feels the rule imposes little more than the obligations the employer already administers as a plan sponsor in the Deferred Compensation Program for an employee who is a contributing participant in the Deferred Compensation Program. The rule provides for no additional monitoring and places no collection obligations upon the employer. Payments are administered in the same manner as contributions. In implementing this rule, OSGP will endeavor to limit any administrative impact upon employers.

IMPACT

Mandatory: No, but the rule modifications are within the authority granted by statute.

Impact: Would provide an additional financial tool for OSGP participants and reduce attrition associated with emergency withdrawals.

Cost: There will be loan fees and interest costs to loan program participants. OSGP would pay CitiStreet a one-time fee of \$59,500 for system changes required to implement the loan program. The payment would be made from revenue sharing funds received by OSGP and held for the purpose of program enhancement. There will be no new costs to employers or to the Fund.

RULEMAKING TIMELINE

June 15, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
July 1, 2006	<i>Oregon Bulletin</i> published the Notice.
July 21, 2006	PERS Board notified that staff began the rulemaking process.
July 25, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
September 15, 2006	First Reading of the rule.
September 22, 2006	Public comment period ended at 5:00 p.m.

January 12, 2007 Board may adopt the new permanent rule and permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt OAR 459-050-0077, *Loan Program*, and permanent rule modifications to OAR 459-050-0150, *Unforeseeable Emergency Withdrawal*, 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: Adopting the new rule and rule modifications will create a loan program that would allow a participant in the OSGP to borrow from their account, an alternative to unforeseeable emergency withdrawal that would better maintain a participant’s relationship with the Plan.

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

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

1 OAR 459-050-0077

2 Loan Program

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

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

6 (b) “Loan balance” means the outstanding principal and accrued interest due
7 on the loan.

8 (c) “Participant Loan” means a loan that only affects the deferred
9 compensation account of a participant.

Deleted: b

10 (d) “Promissory note” means the agreement of loan terms between the Program
11 and a participant.

Deleted: c

12 (e) “Third Party Administrator (TPA)” means the entity providing record
13 keeping and administrative services to the Program.

Deleted: d

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

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

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

1 (b) If a participant is deceased prior to the disbursement of the proceeds of a
2 loan, the participant's loan application shall be void as of the date of death.

3 (4) Loan Types:

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

7 (b) Residential loan – a loan made for the purpose of acquiring a principal
8 residence, which is, or within a reasonable time shall be, the principal residence of
9 the participant. Residential loans must be repaid over a non-renewable repayment
10 period of up to 15 years. A refinancing does not qualify as a residential loan.

11 However, a loan from the Program that will be used to repay a loan from a third
12 party will qualify as a residential loan if the loan would qualify as a residential loan
13 without regard to the loan from the third party.

14 (5) Interest Rate: The rate of interest for a loan shall be fixed at one percent
15 (1%) above the prime interest rate as published by the Wall Street Journal on the
16 last business day of the month prior to the month in which the loan is requested.

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

20 (7) Loan Limitations:

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

22 (A) \$50,000; or

1 (B) One-half of the value of the participant's deferred compensation account on
2 the date the loan is made.

3 (b) The minimum loan amount is \$1000.

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

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

7 (8) Source of Loan: The loan amount will be deducted from a participant's
8 deferred compensation account.

9 (a) Loan amounts will be deducted pro-rata from existing investments in a
10 participant's deferred compensation account.

11 (b) A participant may not transfer a loan to or from another retirement or
12 deferred compensation plan.

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

16 (a) Loan payments must be made by payroll deduction. To receive a loan from
17 the Program a participant must enter into a payroll deduction agreement. Except as
18 provided in this rule, a participant may not submit a loan payment directly to the
19 Program or the Third Party Administrator.

20 (b) A participant is responsible for loan repayment even if the employer fails to
21 deduct or submit payments as directed under the payroll deduction agreement. To
22 avoid defaulting on a loan by reason of the employer's failure to deduct or submit a

Deleted: A
Deleted: receiving a loan from the Program

1 payment a participant may submit a loan payment by sending a money order or
2 certified check to the Third Party Administrator.

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

Deleted: outstanding.

5 (d) Partial payment of a scheduled payment and partial prepayment or advance
6 payment of future payments shall not be permitted.

Deleted: P

7 (e) Loan payments will be allocated in a participant's deferred compensation
8 account in the same manner as the participant's current contribution allocation. If,
9 for any reason, the allocation is not known, the payment will be allocated to the
10 Short-Term Fixed Income Option.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (11) Tax Reporting.

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

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

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

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Deleted: The deceased participant's estate will be issued a 1099-R in January of the year following the death of the participant.

17 (d) The reporting of a loan balance as a taxable distribution under this section
18 will cancel the loan at the time the taxable distribution is reported.

19 (12) Default.

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

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

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(c) If a participant with a loan in default resumes loan payments by payroll deduction before the end of the cure period, the default will be cured and the participant's loan balance will be re-amortized as if the participant had been on a leave of absence under the provisions of paragraph (10)(a)(C) of this rule.
(d) Except as provided in subsection (c) of this section, if the participant does not cure a default by repaying the loan balance before the end of the cure period, the loan balance will be reported as a taxable distribution to the participant and the loan will be canceled.

(13) The effective date of this rule is May 1, 2007.

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 – 243.507

- Deleted: the
- Deleted: is re-employed with a plan sponsor and
- Deleted: resume
- Deleted: last day of the quarter following the quarter in which the default occurred
- Deleted: deemed
- Deleted: payments
- Deleted: section
- Deleted: c
- Deleted: b
- Deleted: outstanding
- Deleted: including accrued interest
- Deleted: last day of the quarter following the quarter in which the default occurred
- Deleted: The participant will be issued a 1099-R in January of the year following the end of the cure period.

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

1 **459-050-0150**

2 **Unforeseeable Emergency Withdrawal**

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

6 (1) Definitions.

7 (a) "Unforeseeable emergency" or "Unforeseen emergency" means a severe financial
8 hardship to *[the]* a participant *[, in a deferred compensation plan under ORS chapter*
9 *243, 26 USC 457(d)(1)(A)(iii) and 26 CFR 1.457-6(c)(2)(i)]* resulting from a sudden and
10 unexpected illness or accident of the participant or of a dependent of the participant as
11 defined in 26 CFR 1.152-1, a loss of the participant's property due to casualty~~[,]~~ or other
12 similar extraordinary and unforeseeable circumstance *[arising as a result of events]*
13 beyond the control of the participant.

14 (b) "Immediate need" means *[the]* a financial obligation *[of]* attributable to an
15 unforeseeable emergency that accrues within the 180-day period preceding and the 90-
16 day period following receipt of an application for emergency withdrawal.

17 (c) "Emergency withdrawal" means *[the amount]* a payment to the participant
18 from the participant's deferred compensation account in an amount directly related
19 to and reasonably necessary to satisfy an immediate need of an unforeseeable emergency,
20 but in no case shall the amount exceed the balance of *[the]* a participant's deferred
21 compensation account *[in the deferred compensation plan]*.

1 (2) Eligibility for emergency withdrawals. Only *[plan]* **a** participant*[s]* who
 2 established **a** deferred compensation account*[s]* as **an** eligible employee*[s]* and has*[ve]*
 3 not **terminated** *[severed]* **from** employment with their plan sponsor may apply to receive
 4 an unforeseeable emergency withdrawal *[from their account]*. **An** *[A]***a**lternate payee*[s]*
 5 of *[plan]* **a** participant*[s]* shall not be eligible to receive an emergency withdrawal.

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

11 *[(3)]* **(4)** Circumstances that *[shall]* **do** not constitute an unforeseeable emergency.
 12 *[E]***An** emergency withdrawal*[s]* shall not be approved for **any** reason*[s]* other than an
 13 unforeseeable emergency. Circumstances that *[shall]* **do** not constitute an unforeseeable
 14 emergency include, but are not limited to:

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

1 (f) Expenses associated with *[the]* establishing *[of a personal business]* or managing
2 a personal business;

3 (g) Recreational expenses;

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

5 (i) Usual and customary tax obligations.

6 *[(4)] (5)* Limitations on amount of emergency withdrawal. The maximum amount
7 that may be approved *[for payment]* as an emergency withdrawal shall be limited to what
8 is reasonably needed to satisfy the immediate financial obligation related to the
9 unforeseeable emergency, including taxes anticipated on the distribution. *[Payment may*
10 *not be made]* **The amount of the emergency withdrawal shall be limited** to the extent
11 that **the** *[such]* financial obligation*[s]* can or may be satisfied **by**:

12 (a) *[Through r]* **R**eimbursement or compensation by insurance or otherwise;

13 (b) *[By l]* **L**iquidation of the participant's assets, to the extent the liquidation of such
14 assets would not itself cause severe unforeseeable emergency; or

15 (c) *[By c]* **C**essation of **participant contributions to the Deferred Compensation**
16 **Program** *[deferrals under the plan]*.

17 *[(5)] (6)* Application for an emergency withdrawal. *[The requestor]* **A participant**
18 must submit a completed **emergency withdrawal** application *[to apply for an emergency*
19 *withdrawal. F]* **and f** financial information and related documentation *[are required to]*
20 **sufficient to satisfy the provisions of this rule** *[substantiate the withdrawal request]*.

21 The emergency withdrawal **application** *[request]* may be returned if *[the application is]*
22 incomplete*[,]* **or if insufficient** *[requested]* financial information *[is not disclosed,]* or
23 *[insufficient]* **related** documentation is submitted.

1 (a) The application form *[required to apply for an emergency withdrawal]* may be
2 obtained from the *[PERS]* Deferred Compensation Program or the third party
3 administrator (TPA) retained to administer a portion of the *[PERS]* Deferred
4 Compensation Program.

5 (b) The completed application, financial information, and related documentation
6 shall be *[trans]*submitted by use of the United State Postal Service or by private carrier
7 as defined in ORS 293.660(2) for initial review.

8 *[(6)] (7)* Cancellation of future contributions. *[Employee c]*Contributions by a
9 participant to the *[d]*Deferred *[c]*Compensation *[p]*Program shall immediately be
10 cancelled upon receipt *[from a plan participant]* of an application for an emergency
11 withdrawal from the participant.

12 (a) A *[plan]* participant who receives approval for an emergency withdrawal shall be
13 prohibited from making elective deferrals and *[employee]* contributions to the
14 *[d]*Deferred *[c]*Compensation *[p]*Program for *[the]* a period of six consecutive months
15 from the date of distribution.

16 (b) A *[plan]* participant who receives a denial for an emergency withdrawal may
17 enroll to make elective deferrals and *[employee]* contributions to the *[d]*Deferred
18 *[c]*Compensation *[p]*Program at any time.

19 *[(7)] (8)* Approval or denial notification. The Deferred Compensation Manager or an an
20 authorized designee *[authorized to take action on the manager's behalf]* shall approve or
21 deny *[the]* a request for an emergency withdrawal within three working days after receipt
22 of an *[the properly completed]* accepted application *[and related documentation]*. The

1 *[requestor]* **participant** will be notified by mail within ten days after a decision is made
2 *[to approve or deny the emergency withdrawal application].*

3 *[(8)]* **(9)** Release of payment upon approval of an emergency withdrawal
4 *[application].* The Deferred Compensation Manager or an **authorized** designee
5 *[authorized to take action on the manager's behalf]* shall determine the method of
6 payment, based on the immediate need.*[s related to the nature of the unforeseeable*
7 *emergency.]* The Deferred Compensation **Program** *[Manager or other authorized staff]*
8 shall immediately notify the TPA to release the requested funds.

9 *[(9)]* **(10)** *[Requester]* **A participant** may appeal *[the]* **a** denial of an emergency
10 withdrawal *[application. If the request for an emergency withdrawal is denied, the*
11 *requester may appeal the denial]* to the Unforeseeable Emergency Withdrawal Appeals
12 Committee as provided in OAR 459-050-0040. The *[request]* **appeal** shall be in writing
13 and **must** include:

14 (a) A request for review by the Unforeseeable Emergency Withdrawal Appeals
15 Committee;

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

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

19 *[(10)]* **(11)** *[No restrictions on the n]***N**umber of emergency withdrawal requests.
20 *[Regardless of whether a request for an unforeseeable emergency withdrawal is*
21 *approved or denied, a plan participant may again submit a request for a withdrawal*
22 *because of an unforeseeable emergency. The request may be for the same or different*

1 *unforeseeable circumstances.] The number of times a participant may apply for an*
2 *emergency withdrawal is unlimited and is unaffected by previous applications.*

3 *[[ED. NOTE: Forms referenced are available from the agency.]]*

4 Stat. Auth: ORS 243.470

5 Stats. Implemented: ORS 243.401 - 243.507



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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

January 12, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption of OAR 459-011-0050, *Forfeiture and Restoration of Service Rights*

MEETING DATE	1/12/07
AGENDA ITEM	C.4. Voluntary Redeposit

OVERVIEW

- Action: Adopt modifications to OAR 459-011-0050, Forfeiture and Restoration of Service Rights.
- Reason: Update the rule to be consistent with statute and address the impact of "Break in Service."
- Subject: Restoration of Service Rights (Voluntary Redeposit).
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

A PERS Chapter 238 Program member who withdraws his or her member account terminates membership in the program and forfeits all creditable service accrued prior to the effective withdrawal date. ORS 238.105 provides a mechanism for a qualified member to restore the forfeited service and reestablish the member account upon reemployment. The process is commonly known as a voluntary redeposit. OAR 459-011-0050 was adopted to implement the provisions of ORS 238.105, but was last modified in 1996 and is inconsistent with current statutory provisions.

The proposed rule modifications address the issues that arise when a voluntary redeposit is made before or after a "Break in Service (BIS)," as provided under ORS 238A.025, has occurred. Currently, the rule provides that a voluntary redeposit restores the member's previous rights in the PERS Chapter 238 Program. The BIS provisions, if applicable, limit the restoration of rights in the PERS Chapter 238 Program to those accrued prior to the effective withdrawal date. The proposed rule modifications reconcile the rule with the statutory provisions.

SUMMARY OF MODIFICATIONS TO RULE SINCE FIRST READING

The following modifications have been made to the rule since first reading:

In the first sentence of section (2), the word "any" was changed to "a." Also, the word "last" was added to clarify the separation date at which the five-year period for redeposit begins.

In section (3), the sentence, “The former member will reestablish membership in the PERS Chapter 238 Program on the first day of the month following the date of the repayment.” was added.

Section (4) was rewritten to more clearly describe the effect of redeposit after incurring a “Break in Service.” The new text is not substantively different than the previous text.

LEGAL REVIEW

The proposed rule was submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rule as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 24, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on November 24, 2006 at 5:00 p.m. and no public comment was received.

IMPACT

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

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

Cost: There are no discrete costs attributable to the rule. Statute requires the administration of voluntary redeposits.

RULEMAKING TIMELINE

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

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule modifications to OAR 459-011-0050, 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: Adopting these modifications will:
 1. Bring the rule into compliance with current statutory provisions for voluntary redeposit.
 2. Clarify the impact and administration of “Break in Service” as it affects voluntary redeposit.

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

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

1 **459-011-0050**

2 **Forfeiture and Restoration of Service Rights**

3 (1) A member who, pursuant to ORS 238.265, *[leaves the service of all*
4 *participating employers and who]* withdraws the amount credited to the member's
5 account *[standing to his credit]* forfeits all *[his]* membership rights accrued under
6 ORS chapter 238 prior to the date of the withdrawal, including any service rights
7 attributable to employment prior to the date of the withdrawal *[, including prior*
8 *service rights. ORS 238.095(1); 238.265].*

9 (2) Any such person who reenters the service of a^[ny] participating employer within
10 five years *[of]* from the date of *[his previous termination]* the last separation from
11 employment that preceded the member's withdrawal may, at any time during the *[six*
12 *months]* one-year period immediately following the date of *[his]* re^[-]employment,
13 repay to PERS, in a single lump sum payment, an amount equal to the amount
14 *[previously]* withdrawn plus the earnings the amount withdrawn would have
15 accumulated from the date of withdrawal to the date of repayment. *[, and the*
16 *effective date of the reinstatement of his membership at his former rate of contribution*
17 *shall be the first day of the pay period following the date of repayment of the amount*
18 *withdrawn. Thereafter employee and employer contributions to the Retirement Fund are*
19 *required and all rights in the system which were forfeited by the withdrawal shall be*
20 *restored].* A person who makes a repayment as described in this section shall
21 establish or reestablish membership in the system as provided in section (3) or (4) of
22 this rule.

1 (3) If the date of the former member’s repayment under section (2) is before the
2 date on which the former member incurs a “Break in Service” under ORS
3 238A.025, the PERS Chapter 238 membership and service rights forfeited by the
4 withdrawal will be revived. The former member will reestablish membership in the
5 PERS Chapter 238 Program on the first day of the month following the date of the
6 repayment. The withdrawn member account will be reestablished in the amount of
7 the repayment.

8 (4) If the date of the former member’s repayment under section (2) occurs on or
9 after the date the former member incurs a “Break in Service” under ORS 238A.025,
10 the PERS Chapter 238 membership and service rights forfeited by the withdrawal
11 will be restored to the extent they existed immediately prior to the withdrawal. The
12 withdrawn member account will be reestablished in the amount of the repayment.
13 Membership and service subsequent to the date of reemployment will be subject to
14 the provisions of the OPSRP Pension Program. The former member will establish
15 membership in the OPSRP Pension Program on the earlier of:

16 (a) The date the former member establishes membership pursuant to ORS
17 238A.100; or

18 (b) The first day of the month following the date of the repayment.

19 (5) Notwithstanding the provisions of this rule, a member who withdraws
20 pursuant to ORS 238.265 and receives an additional amount pursuant to section 2,
21 chapter 276, Oregon Laws 2003, may not reestablish membership under section (2)
22 of this rule.

23 Stat. Auth.: ORS 238.650

24 Stats. Implemented: ORS 238.105, 238A.025



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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

January 12, 2007

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Administrator, PPLAD
SUBJECT: Adoption of OAR 459-007-0025, *Crediting Earnings to Member Lump Sum Payments Received* and OAR 459-007-0300, *Crediting Earnings to Police Officer and Firefighter Unit Accounts in the Fund*.

MEETING DATE	1/12/07
AGENDA ITEM	C.5. Earnings Crediting

OVERVIEW

- Action: Adopt modifications to OAR 459-007-0025, *Crediting Earnings to Member Lump Sum Payments Received* and OAR 459-007-0300, *Crediting Earnings to Police Officer and Firefighter Unit Accounts in the Fund*.
- Reason: To clarify the crediting of Police and Fire (P & F) units and member lump sum payments.
- Subject: Crediting earnings to P & F units and member lump sum payments.
- Policy Issue: No policy issues have been identified at this time.

BACKGROUND

OAR 459-007-0025 was drafted to describe how earnings are credited to member lump sum payments. The proposed amendment clarifies the definition of “member lump sum payment” and modifies language in section (2) that restricts certain lump sum payments from receiving earnings.

OAR 459-007-0300 describes how earnings are credited to P & F unit accounts allowed under ORS 238.440. The proposed amendments correct a citation in section (4)(b) and clarify the crediting of earnings to a lump sum unit purchase in section (8). The modifications incorporate the same crediting method currently used in OAR 459-007-0025 to make the earnings crediting process the same for all covered lump sum payments.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

There have been no modifications to the proposed rules since notice.

LEGAL REVIEW

The proposed rules were submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rules as presented for adoption.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on November 28, 2006 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on December 22, 2006 at 5:00 p.m. and no public comment was received.

IMPACT

Mandatory: No, but the rule modifications are within the authority granted by statute.

Impact: The modifications conform to state law and do not have a material fiscal or economic impact.

Cost: There are no perceived costs to members, employers, stakeholders or the Fund as a result of the adoption of these rules.

RULEMAKING TIMELINE

October 13, 2006	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
October 20, 2006	PERS Board notified that staff began the rulemaking process.
November 1, 2006	<i>Oregon Bulletin</i> published the Notice.
November 28, 2006	Rulemaking hearing held at 2:00 p.m. in Tigard.
December 22, 2006	Public comment period ended at 5:00 p.m.
January 12, 2007	Board may adopt the permanent rule modifications.

BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt the rule modifications to OAR 459-007-0025 and 459-007-0300, 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: Adopting these modifications will clarify the crediting of P & F units and member lump sum payments.

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

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

DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION

1 **459-007-0025**

2 **Crediting Earnings To Member Lump Sum Payments Received**

3 (1) Definition.

4 (a) "Member lump sum payment" means any payment received by PERS that:

5 (A) Is not regularly scheduled;

6 (B) Is not paid as a statutorily fixed percentage of salary; and

7 (C) The *[contributor]* member or payor has control over whether to make the
8 payment.

9 (b) Member lump sum payments include, but are not limited to:

10 (A) Retirement credit purchases.

11 (B) Voluntary redeposit, as provided under ORS 238.105.

12 *[(C) P & F Unit purchases, as provided under ORS 238.440(2).]*

13 *[(D)]* (C) A member's account balance that is transferred through an integration under
14 ORS 238.680.

15 (2) No earnings shall be credited to member lump sum payments that are made within
16 90 days before or after the member's effective retirement date.

17 (3) Earnings from the date of payment to December 31 of the calendar year of the date
18 of payment, or the member's effective retirement date, whichever occurs first, shall be
19 credited to the member's lump sum payment based on the rate derived from the formula:

20 $(Y - X)(R/T) + (Z - Y)$, where:

21 R = The number of days from the date of payment through the last day of the month the
22 payment is received;

1 T = The total number of days in the month the payment is received;
2 X = The latest year-to-date calculation ("factor") applicable to the member's regular
3 account as of the first of the month of the date of payment;
4 Y = The factor as of the first of the month following the date of payment; and
5 Z = The factor as of the effective retirement date if such date occurs during the year the
6 payment is received, or, in all other cases, the annual rate applicable to the member's
7 regular account as of December 31 of the year the payment is received.

8 (4) If the formula described in section (3) of this rule results in a rate less than zero for
9 a Tier One member, the rate shall be zero.

10 [Example: A member lump sum payment is received by PERS on May 12, 2002, from a
11 Tier One member whose effective retirement date is August 1, 2003. The Tier One factor
12 as of May 1, 2002, is 1.0263, the Tier One factor as of June 1, 2002, is 1.0330, and the Tier
13 One annual rate for 2002 is 1.0800. Therefore, R = 20, T = 31, X = 1.0263, Y = 1.0330, Z
14 = 1.0800 and the earnings crediting rate is:

15 $(1.0330 - 1.0263)(20/31) + (1.0800 - 1.0263)$
16 $= (0.0067)(0.6452) + (0.0537)$
17 $= 0.0043 + 0.0537$
18 $= 0.0580]$

19 (5) If the effective retirement date does not occur in the same year as the date of
20 payment, the member lump sum payment shall be made a part of the member's regular
21 account as of January 1 of the year following the date of payment.

22 Stat. Auth: ORS 238.650

23 Stats. Implemented: ORS 238

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

DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION

1 **459-007-0300**

2 **Crediting Earnings to Police Officer and Firefighter Unit Accounts in the Fund.**

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

4 (a) “Effective date of unit benefits” means the date the member elects to begin
5 receiving unit benefits.

6 (b) “End date” means the date after which earnings are no longer credited to the unit
7 account and is the later of:

8 (A) The first of the calendar month following the date the member reaches age 65; or

9 (B) The first of the calendar month following the date the member separates from the
10 service of all participating employers.

11 (c) “Unit” means a unit of additional benefits purchased under ORS 238.440.

12 (d) “Unit account” means the member's account in the Fund that is used to purchase
13 unit benefits, which includes actuarially determined member additional contributions
14 (ORS 238.440(1)) and earnings or losses.

15 (e) “Unit benefits” means the increased benefits a police officer or firefighter may
16 purchase under ORS 238.440.

17 (2) Crediting annual earnings or losses. Annual earnings or losses will be credited to
18 the unit account as follows:

19 (a) For a Tier One member, in the same manner as provided for Tier One member
20 regular accounts in OAR 459-007-0005.

21 (b) For a Tier Two member, in the same manner as provided for Tier Two member
22 regular accounts in OAR 459-007-0005.

1 (3) Crediting earnings or losses to a withdrawal. If the unit account is withdrawn
2 under ORS 238.440(4) or (5), earnings or losses will be credited to the unit account as
3 follows:

4 (a) For a Tier One member, in the same manner as provided in OAR 459-007-
5 0040(1).

6 (b) For a Tier Two member, in the same manner as provided in OAR 459-007-
7 0220(1).

8 (4) Crediting earnings or losses on a lump sum purchase.

9 (a) If a member makes a lump sum purchase under ORS 238.440(2) and elects an
10 effective date of unit benefits that is the same date as the member's effective retirement
11 date, earnings or losses will not be credited on the lump sum purchase.

12 (b) If a member makes a lump sum purchase under ORS 238.440(2) and elects an
13 effective date of unit benefits that is later than the member's effective retirement date,
14 earnings or losses on the member's lump sum purchase from the date of receipt to the
15 effective date of unit benefits shall be credited to the unit account *[in the same manner]*
16 as provided in *[OAR 459-007-0025(2)]* sections (8) to (10) of this rule.

17 (5) Crediting earnings or losses to effective date of unit benefits. When a retired
18 member elects to begin receiving unit benefits under ORS 238.440(1) or (2), earnings or
19 losses will be credited to the member's unit account as of the effective date of unit
20 benefits as follows:

21 (a) For a Tier One member, in the same manner as provided in the version of OAR
22 459-007-0070(1) in effect on the effective date of unit benefits.

1 (b) For a Tier Two member, in the same manner as provided in OAR 459-007-
2 0250(1).

3 (6) If, after the crediting of earnings under section (5) of this rule, the amount in the
4 unit account is greater than the actuarially determined amount required at the time of
5 retirement to purchase the number of units elected, the difference will be returned to the
6 member in a lump sum. The lump sum shall be credited with earnings from the effective
7 date of unit benefits to the date of distribution based on the average annualized rate.

8 (7) Crediting earnings to end date. If a member's effective date of unit benefits does
9 not occur prior to the end date, earnings from the last annual earnings crediting to the end
10 date shall be credited to the unit account as follows:

11 (a) If earnings for the calendar year prior to the end date have not yet been credited
12 to the member's unit account, earnings shall be credited for that year based on the latest
13 year-to-date calculation available for that year.

14 (b) Earnings for the calendar year of the end date shall be credited to the unit account
15 based on the latest year-to-date calculation as of the end date.

16 **(8) Earnings from the date of payment to December 31 of the calendar year of**
17 **the date of payment, or the member's effective date of unit benefits, whichever**
18 **occurs first, shall be credited to the member's lump sum payment based on the rate**
19 **derived from the formula:**

20 **$(Y - X)(R/T) + (Z - Y)$, where:**

21 **R = The number of days from the date of payment through the last day of the month**
22 **the payment is received;**

23 **T = The total number of days in the month the payment is received;**

1 X = The latest year-to-date calculation ("factor") applicable to the member's
2 regular account as of the first of the month of the date of payment;
3 Y = The factor as of the first of the month following the date of payment; and
4 Z = The factor as of the effective date of unit benefits if such date occurs during the
5 year the payment is received, or, in all other cases, the annual rate applicable to the
6 member's regular account as of December 31 of the year the payment is received.

7 (9) If the formula described in section (8) of this rule results in a rate less than
8 zero for a Tier One member, the rate shall be zero.

9 [Example: A member lump sum payment is received by PERS on May 12, 2002,
10 from a Tier One member whose effective date of unit benefits is August 1, 2003. The
11 Tier One factor as of May 1, 2002, is 1.0263, the Tier One factor as of June 1, 2002,
12 is 1.0330, and the Tier One annual rate for 2002 is 1.0800. Therefore, R = 20, T = 31,
13 X = 1.0263, Y = 1.0330, Z = 1.0800 and the earnings crediting rate is:

14 $(1.0330 - 1.0263)(20/31) + (1.0800 - 1.0263)$
15 $= (0.0067)(0.6452) + (0.0537)$
16 $= 0.0043 + 0.0537$
17 $= 0.0580]$

18 (10) If the effective date of unit benefits does not occur in the same year as the
19 date of payment, the member lump sum payment shall be made a part of the
20 member's regular account as of January 1 of the year following the date of payment.

21 Stat. Auth: ORS 238.650

22 Stats. Implemented: ORS 238.440

***Strunk* and *Eugene*
Project Business Plan Update**

**PERS Board Meeting
January 12, 2007**





Strunk and Eugene Project - Overview

Charged with implementing the Strunk and Eugene Supreme Court decisions, and the Settlement Agreement:

- Reallocate 1999 earnings to Tier One regular accounts at 11.33% instead of 20%
- Credit the 8% assumed rate to all Tier One regular accounts for both 2003 and 2004
- Reinstate the Cost-of-Living Allowance for retirees that were frozen due to the 2003 PERS reform legislation



Strunk and Eugene Project - Overview

Impacted Accounts

■ Member & AP Retirements Post 3/1/00	34,000
■ Account Withdrawals (Members & AP's)	5,000
■ Final LSI for Retirements prior to 4/1/00	1,000
■ Pre-Retirement Death Benefits	1,400
■ Non-Retired AP/Member Divisions	3,000
■ Re-employed Retirees	140

TOTAL ACCOUNTS	44,540
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Estimated Project Fiscal Impact

Estimated Fiscal Impact of Strunk and Eugene, and the Settlement Agreement

Active/Dormant Members

Future Distributions Yet to be Paid	\$800 million
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Benefit Recipients

Future Distributions Yet to be Paid	\$650 million
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Overpaid Benefits

Lump Sum Payments - Invoice Only	\$62.5 million
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Annuity Payments - ARM eligible	\$87.5 million
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	\$150 million
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TOTAL	\$ 1.6 billion
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Core Principles

- Negative adjustments to retiree's payment are as small as possible, but collect the required funds
- The account processing priority and order is transparent and communicated to stakeholders for input
- Communications are complete, understandable, concise, and proactively answer potential questions
- The project is executed efficiently, but does not put undue burden on other business operations
- The impact to the RIMS Conversion Project is planned and managed for success
- One touch per adjustment account



Success Criteria

- Recipients incur no disruption to monthly benefits
- All accounts are identified and adjusted
- Account and benefit adjustments are complete, accurate, and fully auditable
- Invoicing and accounts receivable processes optimize collections
- No data is lost or corrupted due to adjustments
- The project is completed within the approved budget and timeline



Project Complexity and Duration

- Agency decided 6+ years ago to stop investing in RIMS
 - New legislation not programmed
 - COLA freeze
 - Interest crediting rules
 - No member account interest in 2003 and 2004
 - 60% of transactions processed outside of calculation sub-system
 - Transactions processed manually using desktop tools
 - Benefit payment sub-system used for majority of benefit payments
- Record retirement volumes in 2002, 2003, and 2004
 - Thousands of estimated payments processed
 - Backlog of associated transactions created and still outstanding (primarily system reconciliation accounts)



Project Complexity and Duration – cont.

- Inherent Project Complexity
 - Diverse transaction population – regular retirements, disability, death, divorce, police and fire units, second retirements, etc.
 - Diverse payment methods – annuity, partial lump sum, total lump sum, beneficiary options, etc.
 - Transaction dates span five years and include different statutory payment provisions – AEF lookback, COLA freeze, etc.



Project Complexity and Duration – cont.

- Project cannot exceed band-width of supporting agency functions (with multiple demands)
 - Document creation and retrieval – ISD
 - Accounts receivable management – FSD
 - Membership adjustments and database fixes – CSD
 - Location services to find recipients – CSD
 - Legal services – PPLAD
- The adjustment calculation is direct and certain - updating RIMS is the challenge
 - Monthly benefit correction is only part of our responsibility
 - Necessary to reverse original entries and post correct ones
 - Calculations drives employer reserve allocations, member cost basis, reserves to fund benefit, etc.



Transaction Prioritization

Issues impacting transaction prioritization:

- Fiscal
 - PERS owes the recipient funds
 - Recipient owes PERS funds
 - Materiality
- Date of Transaction – generally prioritize older transactions first
- Administrative
 - Workload balance
 - Account research questions
 - Tool-set and process development
- Cost-of-Living Allowance – timing to coincide with future COLA benefit increases helps off-set the reduction to recipient monthly benefits



Major Project Phases

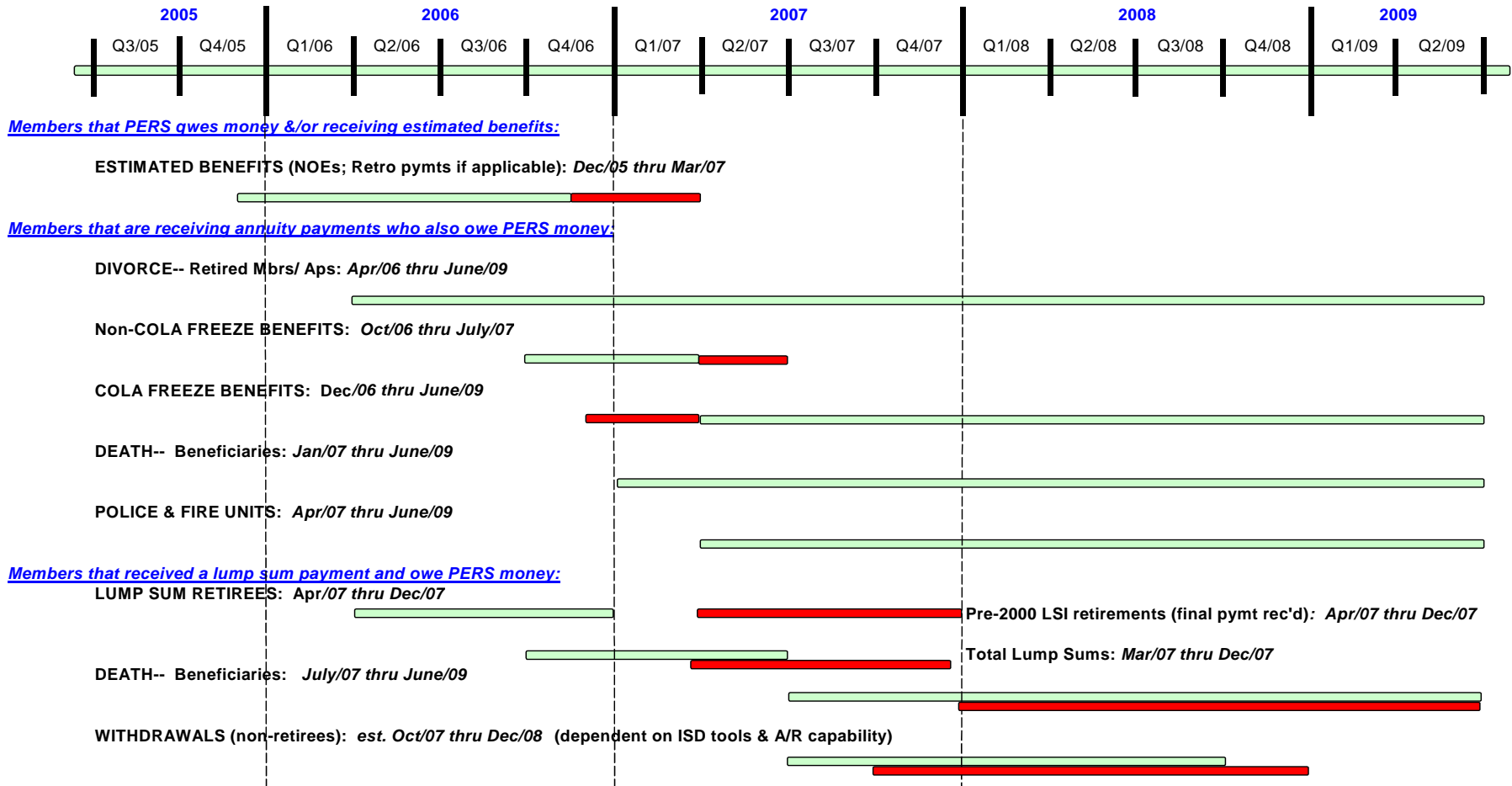
Active and dormant account adjustments

- Reallocate earnings on current accounts – Complete
- Issue 2004 statements – Complete

Payment recipient adjustments

- Monthly annuitants – In Process
 - Phase 1: Estimated benefits
 - Phase 2: Non-COLA Freeze
 - Phase 3: COLA Freeze
- Recipients of a lump sum – In Process

Project Transaction Staging – Timeline for Payment Adjustments



Note: Some accounts in each of these types will be delayed due to data-cleanup issues, eligibility determination, etc.



Statistical Report – Annuity Adjustments

Total Adjustments: 3161 (Started eff. 8/1/2006)

■ ARMs	1452	(45.93%)	\$5,899,548.26
■ Under \$50 (Waived)	149	(4.71%)	\$2,585.34
■ No Change	272	(8.60%)	
■ Under \$200 Refund	197	(6.23%)	(Combined)
■ Over \$200 Refund	1091	(34.51%)	\$2,607,761.05

December 2006 Adjustments: 1394 (thru 12/20)

■ ARMs	1141	(81.85%)	\$5,165,390.69
■ Under \$50 (Waived)	84	(6.03%)	\$1,915.06
■ No Change	8	(0.57%)	
■ Under \$200 Refund	59	(4.23%)	(Combined)
■ Over \$200 Refund	102	(7.32%)	\$176,975.92



December Adjustments Demographics

ARM Adjustments (1141 Dec. '06 ARM Adjustments)

- Net Change as % of Benefit

- Average: -1.62% (-3.11% if only 749 neg. adj. counted)
- High: -9.23% (from \$2368 to \$2149, \$12,124 o/pay'nt)
- Low: +4.90%

- Dollar Amounts of Overpayments Recovered

- Average: \$ 4,527.07
- High: \$40,616.51 (1.15% net benefit change)
- Low: \$ 50.25



December Adjustments Demographics

Lump Sums to pay off ARM: 26

- Highest Payment: \$8,362.02 (ARM am'nt: \$34.99 on \$2699.36)
- Lowest Payment: \$ 50.25 (ARM am'nt: \$ 0.12 on \$529.68)

Phone Calls from Adjusted Group: 135

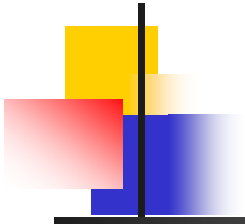
Appeals from Adjusted Group: 2

Contests from Adjusted Group: 5



Future Expectations

- Continue normalized production on annuity adjustments, meeting end dates for specific phases as identified on the time line
 - Wrap up NOE and non-COLA groups
 - Integrate COLA freeze groups as positive adjustments occur
- Enter normalized production of lump sum recoveries
 - Pilot program begun for 1/2007 invoices
 - Scale production to fit integrated system capacities
- Project still on budget
- No changes expected to phase end dates



Questions?