



OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM
BOARD MEETING AGENDA

Tuesday
June 23, 2020
9:00 A.M.

PERS
11410 SW 68th Parkway
Tigard, OR

	ITEM	PRESENTER
Administrative Rulemaking		
1.	Adoption of Member Redirect Rules	VAUGHN

PERS Board members will be utilizing a conference call option for this meeting.

*The public will not be able to attend the meeting in person. They can listen by telephone only.
Listen only phone number: 888-363-4734 Access Code: 4880827*

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

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

2020 Meetings: April 24, May 29, June 23, July 31*, October 2, December 4*

*Audit Committee planned for post-Board meeting



Oregon

Kate Brown, Governor

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June 23, 2020

TO: Members of the PERS Board

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

SUBJECT: Adoption of SB 1049 Member Redirect rules:
 OAR 459-005-0370, *Date of Participation and Transfer of Employee Funds to an Alternative Retirement Plan – OHSU*
 OAR 459-007-0001, *Definitions*
 OAR 459-007-0005, *Annual Earnings Crediting*
 OAR 459-007-0320, *Crediting Earnings for IAP Account Lump Sum Payments*
 OAR 459-007-0335, *Crediting Earnings for IAP Account Pre-Retirement Death Benefit Payments*
 OAR 459-007-0350, *Crediting Earnings to the Employee Pension Stability Account at Retirement*
 OAR 459-007-0360, *Crediting Earnings to the Employee Pension Stability Account at Death*
 OAR 459-007-0370, *Crediting Earnings to the Employee Pension Stability Account on Withdrawal*
 OAR 459-010-0055, *Withdrawal of Contributions*
 OAR 459-070-0001, *Definitions*
 OAR 459-075-0020, *Termination of OPSRP Pension Program Membership*
 OAR 459-080-0020, *Withdrawal of Individual Accounts*
 OAR 459-080-0200, *IAP Account Adjustments for Earnings or Losses*
 OAR 459-080-0400, *Employee Pension Stability Account (EPSA)*

OVERVIEW

- Action: Adopt the SB 1049 Member Redirect rules.
- Reason: Implement Senate Bill (SB) 1049 legislation.
- Policy Issue: None identified.

BACKGROUND

During the 2019 Legislative Session, the Oregon Legislature passed Senate Bill (SB) 1049, which made significant amendments to ORS Chapters 238 and 238A. The Member Redirect portion of the bill requires that, effective July 1, 2020, a portion of the member 6% mandatory contribution will be directed to a new Employee Pension Stability Account (EPSA) when the funded status of the plan is below 90% (including side accounts) and the member's monthly salary is more than \$2,500 (indexed for inflation). When those

conditions are met, 2.5% of Tier 1 and Tier 2 members' subject salary will be redirected to the EPSA and 0.75% of OPSRP members' subject salary will be redirected to the EPSA.

Once the funded status of the plan is 90% or greater, member contributions will be deposited at the full 6% contribution level into members' regular IAP accounts. The redirect, or non-redirect, of member contributions will be based on the funded status of the plan, as determined in a rate setting valuation, and will be applicable until the next rate setting valuation.

While there are many rules included in this package, most are edited only for clarification. The new EPSA is an additional account under the Individual Account Program statutes and the edits are necessary to distinguish it from the existing IAP accounts. Four new rules are added; one to outline the EPSA, and three others to explain the earnings crediting to the EPSA in different circumstances (retirement, withdrawal, and death).

As noted below, there have been many changes to the rules since notice. This was anticipated because we were still working on implementation. The most significant, substantive changes are to the earnings crediting rules OAR 459-007-0005 (Annual Earnings Crediting) and 459-007-0360 (Crediting Earnings to Employee Pension Stability Account at Death).

For annual earnings crediting, staff anticipates that the member EPSA accounts will be, relatively speaking, small accounts. As such, the administrative expenses could impact the returns these accounts receive. To address this concern, staff is recommending applying the administrative expenses to these accounts as if they were funds associated with their respective program funds. Specifically, EPSA accounts of Tier One/Tier Two members will be charged administrative expenses as if they were Tier Two funds and EPSA accounts of OPSRP members will be charged administrative expenses as if they were OPSRP Pension Program funds. Administering the EPSA accounts in this manner should reduce the impact the administrative expenses have on the accounts.

With regard to crediting earnings to the EPSA accounts at death, the original version of this new rule directed any remaining excess that has not been paid out to a beneficiary to the Retirement Installments Fund (RIF) under the IAP. For accounting purposes, the EPSA accounts will be reported on the financial reports as pension accounts. After consulting with our outside actuaries, staff has determined that, although any excess will be paid out as a lump sum and not in a pension benefit, the account will still be reported on the financial statements as a pension account. Therefore, instead of moving the unpaid excess amount to the RIF, the account will remain in the EPSA until distributed to the beneficiary.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

OAR 459-005-0370: Replaced existing definitions of different accounts with one definition of "member's PERS account(s)" for easier reading of the rule. Added the EPSA account to section (7) indicating the date of distribution for the EPSA.

OAR 459-007-0005: Added language clarifying that, for the purpose of administrative expenses, EPSA accounts for Tier One and Tier Two members will be treated as Tier Two

funds while EPSA accounts for OPSRP members will be treated as OPSRP Pension Program Reserve funds.

OAR 459-007-0350: Language limiting application of the rule to only Individual Account Program members was removed to make the application of the rule more general.

OAR 459-007-0360: The rule was edited to clarify that the key date impacting earnings when calculating pre-retirement death benefit payments is the “date the death benefit is calculated” and not the “date of [member’s] death.” Also, language was clarified to explain that any EPSA amounts not applied to the cost of *any* benefit will remain in the EPSA until paid to the beneficiary in a lump sum.

OAR 459-007-0370: Language limiting application of the rule to only Individual Account Program members was removed to make the application of the rule more general.

OAR 459-070-0001: Refined the definition of “voluntary contributions” to remove redundant language and added clarifying language to the definition of “member account” to make clear that it refers to Individual Account Program accounts established under ORS 238A.350.

OAR 459-075-0020: Changed the title of the rule, as withdrawals are no longer available after July 1, 2020. Retained only the language related to terminating OPSRP Pension membership and potential restoration of membership if member’s IAP withdrawal is not effective (i.e. mandatory redeposit).

OAR 459-080-0020: Updated statutory reference.

OAR 459-080-0200: Removed references to the EPSA in sections (3) and (4), as the EPSA is not included in installment distributions under 238A.400.

OAR 459-080-0400: Added clarification on how retroactive payments will be considered for purposes of evaluating the salary threshold. Added a section (5) to clarify that any excess EPSA amount is paid out to a member or member’s beneficiary in a lump sum.

PUBLIC COMMENT AND HEARING TESTIMONY

No rulemaking hearing was held because the PERS headquarters building was closed to the public. The public comment period ended June 1, 2020, at 5:00 p.m. One public comment was received. Aruna Masih, with Bennett Hartman, submitted public comment on June 1, 2020. A copy of her email is included as Attachment 15. Ms. Masih commented that the “rules do not include any reference to refund of amounts that exceed the cost of benefits that accrue on or after July 1, 2020.” In response, staff added a new section (5) to OAR 459-080-0400 which addresses her concern.

LEGAL REVIEW

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

IMPACT

Mandatory: No, but statute authorizes the board to update its rules as necessary to implement Member Redirect.

Benefit: Clarifies the implementation of Member Redirect.

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

RULEMAKING TIMELINE

April 24, 2020	Staff began the rulemaking process by filing a Notice of Rulemaking with the Secretary of State. Notice was sent to employers, legislators, and interested parties. Public comment period began.
April 24, 2020	PERS Board notified that staff began the rulemaking process.
May 1, 2020	Secretary of State published the Notice in the Oregon Administrative Rules Database.
June 1, 2020	Public comment period ended at 5:00 p.m.
June 23, 2020	Board may adopt the rule modifications.

BOARD OPTIONS

The PERS Board may:

1. Pass a motion to “adopt the SB 1049 Member Redirect rules, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #1.

- Reason: Implement Senate Bill (SB) 1049 legislation

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

A.1. Attachment 1 – 459-005-0370, *Date of Participation and Transfer of Employee Funds to an Alternative Retirement Plan – OHSU*

A.1. Attachment 2 – 459-007-0001, *Definitions*

A.1. Attachment 3 – 459-007-0005, *Annual Earnings Crediting*

A.1. Attachment 4 – 459-007-0320, *Crediting Earnings for IAP Account Lump Sum Payments*

A.1. Attachment 5 – 459-007-0335, *Crediting Earnings for IAP Account Pre-Retirement Death Benefit Payments*

A.1. Attachment 6 – 459-007-0350, *Crediting Earnings to the Employee Pension Stability Account at Retirement*

Adoption – Member Redirect Rules

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- A.1. Attachment 7 – 459-007-0360 – *Crediting Earnings to the Employee Pension Stability Account at Death*
- A.1. Attachment 8 – 459-007-0370, *Crediting Earnings to the Employee Pension Stability Account on Withdrawal*
- A.1. Attachment 9 – 459-010-0055, *Withdrawal of Contributions*
- A.1. Attachment 10 – 459-070-0001, *Definitions*
- A.1. Attachment 11 – 459-075-0020, *Termination of OPSRP Pension Program Membership*
- A.1. Attachment 12 – 459-080-0020, *Withdrawal of Individual Accounts*
- A.1. Attachment 13 – 459-080-0200, *IAP Account Adjustments for Earnings or Losses*
- A.1. Attachment 14 – 459-080-0400, *Employee Pension Stability Account (EPSA)*
- A.1. Attachment 15 – Public comment email dated 6-1-20 from Aruna Masih

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

1 **459-005-0370**

2 **Date of Participation and Transfer of Employee Funds to an Alternative Retirement**

3 **Plan — OHSU**

4 (1) For the purposes of this rule, “member’s PERS account(s)” means one or
5 more of the following:

6 (a) [*“PERS account” means t*] The member’s regular account [in the Fund] as
7 defined in ORS 238.250; [*, and]*

8 (b) [t]The member’s variable account [*in the Variable Annuity Account in the*
9 *Fund]* as defined in ORS 238.260;

10 (c) The member’s accounts under ORS 238A.350, to the extent the member is
11 vested in those accounts; and

12 (d) The member’s Employee Pension Stability Account under 238A.353.

13 [*(b) “OPSRP pension account” means the member’s benefit eligible for withdrawal*
14 *under the provisions of ORS 238A.120; and]*

15 [*(c) “IAP account” means the member’s accounts, to the extent the member is*
16 *vested, as set forth under ORS 238A.350.]*

17 (2) If an employee elects to participate in an alternative retirement plan authorized
18 under ORS 353.250:

19 (a) Unless otherwise agreed upon, the effective date of an election to participate in
20 an alternative retirement plan shall be certified by Oregon Health and Science University
21 (OHSU) to PERS within 30 days of that effective date.

1 (b) If the employee is a member of PERS, and is eligible for and elects to transfer the
2 balance of the member’s PERS[, *OPSRP Pension, or IAP*] account(s) to the alternative
3 retirement plan, OHSU shall forward a copy of that election together with the
4 certification required in subsection (a) of this section.

5 (c) In the event an eligible employee is disabled or deceased and an election to
6 participate in an alternative retirement plan has not been signed by the employee, the
7 employee shall be deemed to be an active member of PERS, if all other conditions of
8 ORS 238.015 are met.

9 (3) In accordance with ORS 238A.100 and 238A.300:

10 (a) An employee who is serving a six-month waiting period shall establish active
11 membership in accordance with ORS 238A.100 and 238A.300 unless PERS receives
12 notification of an election to participate in an alternative retirement plan prior to the
13 completion of that six-month waiting period.

14 (b) Notwithstanding subsection (a) of this section, if PERS receives a notification of
15 an election to participate in an alternative retirement plan, active membership in PERS or
16 OPSRP shall cease as of the effective date of the election.

17 (4) A PERS or OPSRP member electing to participate in an alternative retirement
18 plan, authorized under ORS 353.250, and who is not concurrently an active member of
19 PERS or OPSRP with another PERS or OPSRP participating employer, may petition
20 PERS to have the member’s PERS[, *OPSRP Pension, or IAP*] account(s) transferred
21 directly to an alternative retirement plan.

1 (a) A transfer of a member’s account as provided in this section shall be transferred
2 directly to the alternative retirement plan by PERS and shall not be made available to the
3 employee while remaining in the employ of OHSU.

4 (b) A transfer of a member’s PERS [*OPSRP Pension, or IAP*] account(s) as
5 provided in subsection (a) of this section shall not include any reserves of any PERS-
6 participating employer.

7 (5) A PERS or OPSRP member electing to participate in an alternative retirement
8 plan who has not separated from service in any position at OHSU shall be not be eligible
9 to withdraw the member’s accounts, except as provided in section (4) of this rule.

10 (6) A transfer of a member’s PERS[, *OPSRP Pension, or IAP*] account(s) to an
11 alternative retirement plan established under the provisions of ORS 353.250 shall be in
12 compliance with all applicable Internal Revenue Code provisions and related Treasury
13 regulation governing qualified pension plans. The transfer may occur only if the
14 alternative retirement plan:

15 (a) Is a qualified plan under the Internal Revenue Code;

16 (b) Is capable of accepting funds transferred under the provisions of section (4) of
17 this rule without the transfer being treated as a taxable event under the Internal Revenue
18 Code; and

19 (c) Is willing to accept those transfers.

20 (7) The date of distribution of a member’s [*PERS or OPSRP Pension accounts*]
21 regular account defined in ORS 238.250, variable account defined in ORS 238.260,
22 and Employee Pension Stability Account under ORS 238A.353 to an alternative

1 retirement plan, authorized under ORS 353.250, as provided for in section (4) of this rule
2 shall be the later of:

3 (a) The first of the calendar month following the date of receipt by PERS of a copy
4 of the election if such copy is received by PERS on or before the fifteenth of a calendar
5 month; or

6 (b) The first of the second calendar month following the date of receipt by PERS of a
7 copy of the election if such copy is received on or after the 16th of a calendar month.

8 (8) The date of distribution of a member's *[OPSRP]* IAP account(s) under ORS
9 238A.350 to an alternative retirement plan, authorized under ORS 353.250, as provided
10 for in section (4) of this rule will be the date of the actual distribution.

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

12 Stats. Implemented: ORS 238.015 & 353.250

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 7 – EARNINGS AND INTEREST DISTRIBUTION**

1 **459-007-0001**

2 **Definitions**

3 The words and phrases used in this division have the same meaning given them in
4 ORS Chapter 238, 238A and OAR 459-005-0001. Specific and additional terms for
5 purposes of this division are defined as follows unless context requires otherwise:

6 (1) “Annual rate” means the rates determined by the Board for crediting earnings to
7 Tier One regular accounts, Tier Two regular accounts, IAP accounts, judge member
8 regular accounts and member variable accounts, effective as of December 31 of each
9 year.

10 (2) “Assumed rate” means the actuarial assumed rate of return on investments as
11 adopted by the Board for the most recent actuarial valuation.

12 (3) “Average annualized rate” means the monthly rate provided by the Oregon State
13 Treasury representing the rate credited to cash accounts.

14 (4) “Benefits-in-Force Reserve” or “BIF Reserve” means the reserve established
15 under ORS 238.670(2).

16 (5) “Capital Preservation Reserve” means the reserve established under ORS
17 238.670(3).

18 (6) “Contingency Reserve” means the reserve established under ORS 238.670(1).

19 (7) “Date of distribution” is the date inscribed on the check, warrant, or electronic
20 transfer issued to or on behalf of the member, the member’s beneficiary, or an alternate
21 payee.

1 (8) “Date of payment” means the date a payment is received by PERS.

2 (9) “Earnings” means all income or losses to the Fund from investments and other
3 sources, but does not include member or employer contributions.

4 **(10) “Employee Pension Stability Account” and “EPSA” mean the account**
5 **established in ORS 238A.353.**

6 **(11) “Member account” means the account established in ORS 238.250.**

7 ~~[(10)]~~**(12)** “Retirement allocation fund” means the particular target date fund so
8 designated by the Oregon State Treasury when it determines the investment allocation for
9 all the target date funds.

10 ~~[(11)]~~**(13)** “Retirement installments fund” means the fund so designated by the
11 Oregon State Treasury and is separate and apart from target date funds.

12 ~~[(12)]~~**(14)** “Target date fund” means a fund with an investment allocation that is
13 aligned with the member’s birth year.

14 ~~[(13)]~~**(15)** “Tier One Member Rate Guarantee Reserve” and “Rate Guarantee
15 Reserve” mean the reserve referenced in ORS 238.255(1) that enables the Board to credit
16 earnings at or above the assumed rate under the conditions specified in 238.255.

17 ~~[(14)]~~**(16)** “Year-to-date calculation” means the rates used to credit a pro-rata
18 distribution of year-to-date earnings, allowing for reserves and expenses, to Tier One
19 regular accounts, Tier Two regular accounts, IAP accounts, judge member regular
20 accounts or member variable accounts. These rates are calculated by staff on a monthly
21 basis using the market value of investments in the Fund as supplied by the Oregon State

1 Treasury. Year-to-date calculations for Tier One member regular accounts will be
2 determined in accordance with OAR 459-007-0003.

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

4 Stats. Implemented: ORS Chapters 238 & 238A

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

1 **459-007-0005**

2 **Annual Earnings Crediting**

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

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

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

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

17 (5) Member variable accounts. Earnings on the Variable Annuity Account shall first
18 be used to pay a pro rata share of administrative expenses in accordance with ORS
19 238.260(6). If the annual earnings from the Variable Annuity Account are insufficient to
20 pay for the pro rata share of administrative expenses, those administrative expenses shall
21 be paid from earnings on other accounts within the Public Employees Retirement Fund
22 (PERF), if available. If earnings from those accounts within the PERF are insufficient to

1 pay for the administrative expenses, those expenses shall be paid from employer accounts
2 as required by ORS 238.610. All remaining earnings or losses attributable to the Variable
3 Annuity Account shall be credited to the participants of that account, as provided under
4 238.260(6) and (7)(b).

5 (6) Individual Account Program accounts. Earnings on the Individual Account
6 Program accounts established under ORS 238A.350 shall first be used to pay a pro rata
7 share of administrative expenses in accordance with ORS 238A.350(1). Losses on
8 Individual Account Program target date funds shall be increased by a pro rata share of
9 administrative expenses. After administrative expenses, each Individual Account
10 Program account established under ORS 238A.350 shall be credited with the earnings
11 or losses of the specific target date fund to which the account is allocated, except for
12 account balances allocated to the retirement installments fund, which shall be credited
13 with earnings or losses on a monthly basis.

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

20 (8) Contingency Reserve.

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

1 [Employee Pension Stability Accounts](#), the Benefits-in-Force Reserve, employer
2 contribution accounts, the Capital Preservation Reserve and the Contingency Reserve
3 shall be credited to the Contingency Reserve to the level at which the Board determines it
4 is adequately funded for the purposes specified in ORS 238.670(1).

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

8 (9) Tier One Member Rate Guarantee Reserve. All remaining earnings attributable to
9 Tier One regular accounts, the Tier One Member Rate Guarantee Reserve, judge member
10 regular accounts, the Benefits-in-Force Reserve, and the Contingency Reserve may be
11 credited to the Tier One Member Rate Guarantee Reserve established under ORS
12 238.255(1).

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

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

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

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

10 (14) Employee Pension Stability Account (EPSA). All remaining earnings or
11 losses attributable to the EPSAs shall be credited to all active and inactive EPSAs
12 under ORS 238A.353. For administrative expenses:

13 (a) EPSA accounts of Tier One and Tier Two members will be treated as Tier
14 Two funds.

15 (b) EPSA accounts of OPSRP members will be treated as OPSRP Pension
16 Program Reserve funds.

17 ~~[(14)]~~(15) OPSRP Pension Program Reserve. Remaining earnings attributable to the
18 OPSRP Pension Program Reserve, the Contingency Reserve, and the Capital Preservation
19 Reserve may be used to credit the OPSRP Pension Program reserve.

20 ~~[(15)]~~(16) Benefits-in-Force Reserve. Remaining earnings attributable to the
21 Benefits-in-Force Reserve, the Contingency Reserve, the Capital Preservation Reserve
22 and employer contribution accounts, in that order, shall be used, to the extent available, to
23 credit the Benefits-in-Force Reserve with earnings up to the assumed rate for that
24 calendar year in accordance with ORS 238.670(2).

1 ~~[(16)]~~(17) Employer contribution accounts. All remaining earnings attributable to
2 employer contribution accounts shall be credited to employer contribution accounts.

3 ~~[(17)]~~(18) Remaining earnings. Any remaining earnings shall be credited to
4 accounts and reserves in the Fund at the Board’s discretion.

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

6 Stats. Implemented: ORS Chapter 238, 238A, 238A.350

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

1 **459-007-0320**

2 **Crediting Earnings for IAP Account Lump Sum Payments**

3 When an IAP member elects to withdraw their account(s) established under ORS
4 238A.350 according to [under] ORS 238A.375 or retires and elects to receive a lump
5 sum payment of *[their]* those account(s) under ORS 238A.400(1), earnings will be
6 credited in the manner specified in this rule.

7 (1) If earnings for the calendar year before the date of distribution have not been
8 credited, earnings for that year will be credited based on the member’s target date fund’s
9 latest IAP year-to-date calculation available for that year.

10 (2) Earnings credited for the calendar year of distribution will be credited based on
11 the member’s target date fund’s latest IAP year-to-date calculation as of the first day of
12 the calendar month of the date of distribution.

13 Stat. Auth.: ORS 238A.450

14 Stats. Implemented: ORS 238A.350, 238A.375 & 238A.400

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

1 **459-007-0335**

2 **Crediting Earnings for IAP Account Pre-Retirement Death Benefit Payments**

3 (1) For the purposes of this rule, “monthly change rate” means the monthly earnings
4 rate for IAP account(s) invested in the retirement installments fund.

5 (2) When a beneficiary or beneficiaries receive(s) pre-retirement death benefit
6 payments under ORS 238A.410, earnings will be credited to the accounts established
7 under ORS 238A.350 in the manner specified in this rule.

8 (a) For payments made in the first month of distribution:

9 (A) If earnings for the calendar year before the date of distribution(s) have not been
10 credited, earnings for that year shall be credited based on the member’s target date fund’s
11 latest IAP year-to-date calculation available for that year.

12 (B) Earnings credited for the calendar year of distribution will be credited based on
13 the member’s target date fund’s latest IAP year-to-date calculation as of the first day of
14 the calendar month of the initial date of distribution.

15 (b) After the first month of distribution, any remaining account balance from a
16 deceased non-retired member’s IAP account will be moved to the retirement installments
17 fund. Earnings for the remaining account balance will be credited monthly using the
18 latest monthly change rate beginning with the first of the month after the first month of
19 distribution.

20 Stat. Auth.: ORS 238A.450

21 Stats. Implemented: ORS 238A.350 & 238A.410

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

1 459-007-0350

2 Crediting Earnings to the Employee Pension Stability Account at Retirement

3 (1) Upon retirement, earnings from the effective date of the last annual rate to
4 the effective retirement date shall be credited to the Employee Pension Stability
5 Account in the manner specified in this rule.

6 (2) Earnings shall be credited to the member's Employee Pension Stability
7 Account as follows:

8 (a) If earnings for the prior calendar year have not yet been credited, earnings
9 for that year shall be credited based on the Employee Pension Stability Account
10 latest year-to-date calculation for that year.

11 (b) Earnings for the calendar year of the effective retirement date shall be
12 credited based on the Employee Pension Stability Account latest year-to-date
13 calculation for that year.

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

15 Stats. Implemented: ORS 238A.353

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 7 – EARNINGS AND INTEREST DISTRIBUTION**

1 459-007-0360

2 Crediting Earnings to the Employee Pension Stability Account at Death

3 (1) When a beneficiary or beneficiaries receive(s) pre-retirement death benefit
4 payments under ORS 238A.410, earnings will be credited to the member’s Employee
5 Pension Stability Account (EPSA) as follows:

6 (a) If earnings for the calendar year before the date the death benefit is
7 calculated have not yet been credited, earnings shall be applied for that year based on
8 the latest year-to-date Employee Pension Stability Account calculation for that year.

9 (b) Earnings for the calendar year the death benefit is calculated shall be
10 credited based on the latest Employee Pension Stability Account year-to-date
11 calculation for that year as of the first of the month that the death benefit is
12 calculated.

13 (2) The member’s EPSA will first be applied to the cost of the beneficiary’s
14 benefit under ORS 238.395 or 238A.230 that is attributable to the member’s service
15 on and after July 1, 2020.

16 (3) If the amount of the member’s EPSA calculated in section (1) exceeds the
17 amount required to fund the benefit described in section (2), the excess amount will
18 be paid to the member’s IAP beneficiary in a lump sum. If there is any remaining
19 balance after the month the death benefit is calculated, the excess amount will
20 continue to receive EPSA earnings until distributed to the beneficiary.

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238A.353 & 238A.410

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

1 **459-007-0370**

2 **Crediting Earnings to the Employee Pension Stability Account on Withdrawal**

3 **(1) When a member withdraws his or her Employee Pension Stability Account**

4 **(EPSA) under ORS 238A.375, earnings or losses from the effective date of the last**

5 **annual rate to the date of distribution shall be credited in the manner specified in**

6 **this rule.**

7 **(2) Earnings or losses on the member’s EPSA shall be credited as follows:**

8 **(a) If earnings or losses for the calendar year prior to the effective date of**

9 **withdrawal have not been credited, earnings or losses for that year shall be credited**

10 **to the member’s EPSA based on the latest year-to-date calculation for that year.**

11 **(b) Earnings or losses from January 1 of the calendar year of the effective date**

12 **of withdrawal to the effective date of withdrawal shall be credited to the member’s**

13 **EPSA based on the latest year-to-date calculation as of the effective date of**

14 **withdrawal.**

15 **Stat. Auth.: ORS 238.650**

16 **Stats. Implemented: ORS 238.265 & 238A.353**

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

1 **459-010-0055**

2 **Withdrawal of Contributions**

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

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

6 (b) “Effective date of withdrawal” has the same meaning as given the term in OAR
7 459-005-0001(8).

8 **(c) “Member account” means the account established under ORS 238.250.**

9 (2) An inactive member may withdraw the member account balance under ORS
10 238.265 if:

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

13 (b) PERS receives the member’s request for withdrawal of the member account
14 before the member reaches earliest service retirement age;

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

18 (d) The member complies with the requirements of section 1, chapter 52, Oregon
19 Laws 2007.

20 (3) Under no circumstance may a member withdraw less than the entire balance in
21 the member account.

1 (4) A member who withdrew the member account and received an additional 50
2 percent of the member account pursuant to section 2, chapter 276, Oregon Laws 2003
3 may not subsequently restore the creditable service forfeited by the withdrawal under
4 ORS 238.105 or 238.115.

5 (5) The member may revoke the request for withdrawal of the member account if
6 PERS receives a written request to revoke before the earlier of:

7 (a) The date of distribution; or

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

10 (6) If a member withdraws the member account under this rule, membership in the
11 PERS Chapter 238 Program shall be terminated as of the effective date of withdrawal.
12 Membership rights accrued under ORS chapter 238 before the effective date of
13 withdrawal, including any service rights attributable to employment before the effective
14 date of withdrawal, are forfeited.

15 (7) If a former member who has withdrawn the member account under this rule
16 returns to employment with any participating employer or an employer in a controlled
17 group with a participating employer before the first day of the second calendar month
18 following the month of the separation described in subsection (2)(a) of this rule, the
19 withdrawal is cancelled and membership is restored. The member must repay to PERS in
20 a single payment the total amount of the payments attributable to the withdrawal within
21 30 days following the effective date of employment. Upon receipt by PERS of repayment
22 under this section, service rights forfeited under section (6) of this rule are restored as of

1 the effective date of withdrawal. The repayment amount will be credited pro rata to the
2 accounts from which the withdrawal amount was derived.

3 (8) If the member fails to repay as provided in section (7) of this rule, PERS shall
4 take all reasonable steps to recover the repayment amount due, including any interest,
5 costs, or penalties assessed by PERS, under the provisions of ORS 238.715 and OAR
6 459-005-0610. Upon receipt by PERS of repayment under this section, service rights
7 forfeited under section (6) of this rule are restored effective the first day of the month
8 following the date of repayment. The repayment amount will be credited pro rata to the
9 accounts from which the withdrawal amount was derived effective the first day of the
10 month following the date of repayment.

11 (9) The effective date of this rule is January 1, 2008.

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS 238.265, OL 2003 Ch. 276 & OL 2007 Ch. 52

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

DIVISION 70 – OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY

1 **459-070-0001**

2 **Definitions**

3 The words and phrases used in divisions 070, 075, 076, and 080 of OAR Chapter
4 459 have the same meaning given them in ORS 238A.005 to 238A.475, unless otherwise
5 indicated. Specific and additional terms for purposes of divisions 070, 075, 076 and 080
6 are defined as follows unless context requires otherwise:

7 (1) “Academic employee of a community college” means an instructor who teaches
8 classes offered for college-approved credit or on a non-credit basis.

9 (a) Librarians, counselors, and aides in non-teaching positions, tutors, or other non-
10 teaching faculty, and classified, professional or nonprofessional support staff are not
11 academic employees for the purposes of ORS 238A.142, but are subject to the
12 membership requirements under ORS 238A.100 and OAR 459-075-0010.

13 (b) The governing body of a community college must determine who is an academic
14 employee in its employ under this rule. In making that determination, a community
15 college must consider all disciplines (academic activity) collectively when an employee’s
16 assignment includes multiple disciplines.

17 (2) “Business day” means a day Monday through Friday when PERS is open for
18 business.

19 (3) “Calendar month” means a full month beginning on the first calendar day of a
20 month and ending on the last calendar day of the same month.

21 (4) “Calendar year” means 12 consecutive calendar months beginning on January 1
22 and ending on December 31.

1 (5) “Employee” has the same meaning as “eligible employee” in ORS 238A.005
2 and shall be determined in accordance with OAR 459-010-0030.

3 (a) For the purposes of ORS 238A.005 to 238A.475, the term “employee” includes
4 public officers whether elected or appointed for a fixed term.

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

6 (A) An individual who performs services for a public employer as a contractor in an
7 independently established business or as an employee of that contractor in accordance
8 with OAR 459-010-0032; or

9 (B) An individual providing volunteer service to a public employer without
10 compensation for hours of service as a volunteer.

11 (6) “Employee class” means a group of similarly situated employees whose positions
12 have been designated by their employer in a policy or collective bargaining agreement as
13 having common characteristics.

14 (7) “Employee contributions” means contributions made to the individual account
15 program by an eligible employee under ORS 238A.330, or on behalf of the employee
16 under ORS 238A.335.

17 **(8) “Employee Pension Stability Account” has the same meaning given in ORS**
18 **238A.353.**

19 **(9)**~~(8)~~ “Final Average Salary” (FAS) has the same meaning given the term in:

20 (a) ORS 238A.130(1) for OPSRP Pension Program members who are not employed
21 by a local government as defined in ORS 174.116; or

22 (b) ORS 238A.130(3) for OPSRP Pension Program members who are employed by a
23 local government as defined in ORS 174.116.

1 [\(10\)](#)~~[(9)]~~ “Member” has the same meaning given the term in ORS 238A.005.

2 [\(11\)](#)~~[(10)]~~ “Member account” means the account of a member of the individual
3 account program [established under ORS 238A.350](#).

4 [\(12\)](#)~~[(11)]~~ “Member of PERS” has the same meaning as “member” in ORS 238.005,
5 but does not include retired members.

6 [\(13\)](#)~~[(12)]~~ “OPSRP” means the Oregon Public Service Retirement Plan.

7 [\(14\)](#)~~[(13)]~~ “Overtime” means the salary or hours, as applicable, that an employer has
8 designated as overtime.

9 [\(15\)](#)~~[(14)]~~ “Partial year of hire” means a period in the calendar year the employee
10 begins employment after the first working day of the year, and continues employment
11 through December 31.

12 [\(16\)](#)~~[(15)]~~ “Partial year of separation” means a period in the calendar year the
13 employee separates from employment that begins on January 1 of the year, and ends
14 before the last working day of the year.

15 [\(17\)](#)~~[(16)]~~ “Qualifying position” has the same meaning as provided in ORS
16 238A.005 and means a position designated by the employer as qualifying, including a
17 position in a partial year of hire, partial year of separation, or short segment, except:

18 (a) A position or concurrent positions in which an employee performs at least 600
19 hours of service in a calendar year is qualifying regardless of employer designation.

20 (b) A position in a partial year of separation is qualifying regardless of employer
21 designation if the position is continued from an immediately preceding calendar year in
22 which the employee performed at least 600 hours of service in the position or concurrent
23 positions.

1 (c) A position with one employer in which the employee is employed for the entire
2 calendar year and fails to perform at least 600 hours of service in that position or
3 concurrent positions in the calendar year is non-qualifying regardless of employer
4 designation.

5 (18)~~[(17)]~~ “Salary” has the same meaning given the term in ORS 238A.005 and
6 includes a differential wage payment, as defined in OAR 459-005-0001(9).

7 (19)~~[(18)]~~ “School employee” has the meaning given the term in ORS 238A.140(7).

8 (20)~~[(19)]~~ “Service” means a period in which an employee:

9 (a) Is in an employer/employee relationship, as determined in accordance with OAR
10 459-010-0030; and

11 (b) Receives a payment of “salary,” as defined in ORS 238A.005.

12 (21)~~[(20)]~~ “Short segment” means a period in the calendar year during which the
13 employee is hired after the first working day of the year, and separated from employment
14 before the last working day of the same calendar year.

15 (22) “Voluntary contributions” means additional contributions made to the
16 member account by an eligible employee under ORS 238A.330(3). Voluntary
17 contributions must be equal to the amount credited to the Employee Pension
18 Stability Account and may not be paid by the employer under ORS 238A.335.

19 (23)~~[(21)]~~ “Volunteer” means an individual who performs a service for a public
20 employer, and who receives no compensation for the service performed. The term
21 “volunteer” does not include an individual whose compensation received from the same
22 public employer for similar service within the same calendar year exceeds the reasonable
23 market value for such service.

1 (24)[(22)] “Working day” means a day that the employer is open for business.
2 Unless the employer communicates this information to PERS, PERS will presume an
3 employer’s “working day” is the same as a “business day,” as defined in section (2) of
4 this rule.

5 Stat. Auth.: ORS 238A.450

6 Stats. Implemented: ORS 238A

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 75 – OPSRP PENSION PROGRAM**

1 **459-075-0020**

2 ***[Withdrawal from]*** **Termination of OPSRP Pension Program** **Membership**

3 **(1) As of July 1, 2020, withdrawal from the OPSRP Pension Program is no**
4 **longer available.**

5 *[(1) Definitions. For the purposes of this rule:]*

6 *[(a) “Controlled group” means a group of employers treated as a single employer*
7 *for purposes of maintaining qualified status under federal law.]*

8 *[(b) “Effective date of withdrawal” has the same meaning as given the term in OAR*
9 *459-005-0001(10).]*

10 *[(c) “Inactive member” has the same meaning given the term in ORS 238A.005.]*

11 *[(d) “Pension program” has the same meaning given the term in ORS 238A.005.]*

12 *[(2) An inactive member may withdraw from the OPSRP Pension Program under*
13 *ORS 238A.120 if:]*

14 *[(a) The member is vested in the pension program under ORS 238A.115;]*

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

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

20 *[(d) The member files with PERS a written request for withdrawal on a form*
21 *acceptable to PERS;]*

1 *[(e) The actuarial equivalent of the member’s pension benefit is \$5,000 or less on*
2 *the effective date of withdrawal. The actuarial equivalent may not include any value*
3 *attributable to cost-of-living adjustments under ORS 238A.210; and]*

4 *[(f) The member complies with the requirements of ORS 238A.120(4).]*

5 *[(3) Any amount payable to the member under the provisions of this rule must be*
6 *paid to the member in a single lump-sum payment.]*

7 *[(4) A member may revoke a request for withdrawal from the pension program if*
8 *PERS receives the member’s written revocation of the request before the earlier of:]*

9 *[(a) The date of distribution; or]*

10 *[(b) The date PERS receives a valid court order requiring PERS to pay the*
11 *distribution to someone other than the withdrawing member.]*

12 *[(5)]***(2)** A member who withdraws from the *[pension program]* **Individual Account**
13 **Program (IAP) under ORS 238A.375** terminates membership in the **OPSRP**
14 **[p]Pension [p]Program** as of the effective date of **IAP** withdrawal.

15 *[(6)]***(3)** A member who withdraws from the *[pension program]* **IAP** forfeits any
16 service performed by the member before the date of the separation *[described in*
17 *subsection (2)(b) of this rule]* and may not use that service for any purpose including, but
18 not limited to, establishing membership under ORS 238A.100, vesting under ORS
19 238A.115, and the accrual of retirement credit under ORS 238A.140, 238A.150, or
20 238A.155.

21 **(4) In the event the member’s IAP withdrawal is canceled under OAR 459-080-**
22 **0020(7) and the member’s membership is restored, the member’s OPSRP Pension**
23 **Program membership will also be restored.**

1 *[(7) The withdrawal shall be processed following receipt by PERS of all the items in*
2 *subsections (a) and (b) of this section:]*

3 *[(a) From the member:]*

4 *[(A) Completed withdrawal application; and]*

5 *[(B) Proof of member's age.]*

6 *[(b) From the employer: Financial and demographic information indicating the*
7 *member has separated from employment with all participating employers and all*
8 *employers in a controlled group with a participating employer.]*

9 *[(8) PERS may cancel a member's request for withdrawal if PERS does not receive*
10 *all the items specified in section (7) of this rule within 180 days of PERS' receipt of the*
11 *original withdrawal application.]*

12 *[(9) If a former member who has withdrawn from the pension program returns to*
13 *employment with a participating employer or an employer in a controlled group with a*
14 *participating employer before the first day of the second calendar month following the*
15 *month of the separation described in subsection (2)(b) of this rule, the withdrawal is*
16 *cancelled and membership is restored. The member must repay to PERS in a single*
17 *payment the total amount of all payments attributable to the withdrawal within 30 days*
18 *following the effective date of the employment. Upon receipt by PERS of repayment under*
19 *this section, service forfeited under section (6) of this rule is restored as of the effective*
20 *date of withdrawal.]*

21 *[(10) If the member fails to repay as provided in section (9) of this rule, PERS shall*
22 *take all reasonable steps to recover the repayment amount due, including any interest,*
23 *costs, or penalties assessed by PERS, under the provisions of ORS 238.715 and OAR*

1 *459-005-0610. Upon receipt by PERS of repayment under this section, service forfeited*
2 *under section (6) of this rule is restored effective the first day of the month following the*
3 *date of repayment.]*

4 *[(11) The effective date of this rule is January 1, 2008.]*

5 Stat. Auth.: ORS 238A.450

6 Stats. Implemented: ORS 238A.120, OL 2007 Ch. 52

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 80 – OPSRP INDIVIDUAL ACCOUNT PROGRAM**

1 **459-080-0020**

2 **Withdrawal of Individual Accounts**

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

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

6 (b) “Effective date of withdrawal” has the same meaning as given the term in OAR
7 459-005-0001(10).

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

9 (d) “Individual account program” has the same meaning given the term in ORS
10 238A.005(9).

11 (e) “Individual accounts” means the employee account, [Employee Pension Stability](#)
12 [Account](#), rollover account, and employer account of a member of the Individual Account
13 Program (IAP) to the extent the member is vested in those accounts under ORS
14 238A.320.

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

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

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

4 (c) The member files with PERS a written request for withdrawal on a form
5 acceptable to PERS; and

6 (d) The member complies with the requirements of ORS 238A.375~~[(4)]~~(5).

7 (3) A member may revoke a request for withdrawal of the individual accounts if
8 PERS receives the member's written revocation of the request before the earlier of:

9 (a) The date of distribution; or

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

12 (4) A member who withdraws the individual accounts terminates membership in the
13 IAP as of the effective date of withdrawal.

14 (5) An employer account not included in the withdrawn individual accounts by
15 reason of the member's failure to vest in the employer account is permanently forfeited as
16 of the date of distribution.

17 (6) A member who withdraws the individual accounts and is subsequently employed
18 with a participating employer forfeits any service performed by the member before the
19 separation described in subsection (2)(a) of this rule for the purpose of vesting in an
20 employer account.

21 (7) If a former member who has withdrawn the individual accounts returns to
22 employment with a participating employer or an employer in a controlled group with a

1 participating employer before the first day of the second calendar month following the
2 month of the separation described in subsection (2)(a) of this rule the withdrawal is
3 cancelled and membership is restored. The member must repay to PERS in a single
4 payment the total amount of all payments attributable to the withdrawal within 30 days
5 following the effective date of the employment. Upon receipt by PERS of repayment
6 under this section, account(s) forfeited under section (5) and service forfeited under
7 section (6) of this rule are restored effective the date of distribution. The repayment
8 amount received will be credited pro rata to the accounts from which the withdrawal
9 amount was derived.

10 (8) If the member fails to repay as provided in section (7), PERS shall take all
11 reasonable steps to recover the repayment amount due, including any interest, costs, or
12 penalties assessed by PERS, under the provisions of ORS 238.715 and OAR 459-005-
13 0610. Upon receipt by PERS of repayment under this section, account(s) forfeited under
14 section (5) of this rule, and service forfeited under section (6) of this rule are restored
15 effective the first day of the month following the date of repayment. The repayment
16 amount received will be credited pro rata to the accounts from which the withdrawal
17 amount was derived effective the first day of the month following the date of repayment.

18 *[(9) The effective date of this rule is January 1, 2008.]*

19 Stat. Auth.: ORS 238A.450

20 Stats. Implemented: ORS 238A.375 & OL 2007 Ch. 52

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 80 – OPSRP INDIVIDUAL ACCOUNT PROGRAM**

1 **459-080-0200**

2 **IAP Account Adjustments for Earnings or Losses**

3 (1) Earnings and losses on employee, employer, and rollover contributions under the
4 OPSRP Individual Account Program (“IAP”) shall be credited annually in accordance
5 with OAR 459-007-0005(6). In no event shall earnings or losses be credited to individual
6 accounts until funds are actually received by PERS and have been successfully reconciled
7 with the corresponding wage and contribution record.

8 (2) When a member elects to withdraw their accounts under ORS 238A.375,
9 earnings or losses for their employee and employer accounts shall be credited in
10 accordance with OAR 459-007-0320(2) and earnings for the Employee Pension
11 Stability Account (EPSA) will be credited in accordance with OAR 459-007-0370.

12 (3) When a member retires and elects to receive a lump sum payment of their
13 accounts under ORS 238A.400(1), earnings or losses for their employee and employer
14 accounts shall be credited in accordance with OAR 459-007-0320(1).

15 (4) When a member retires and elects to receive installment payments under ORS
16 238A.400(2), earnings or losses for their employee and employer accounts shall be
17 credited in accordance with OAR 459-007-0330.

18 *[(5) The provisions of this rule are effective January 1, 2004.]*

19 Stat. Auth.: ORS 238A.450

20 Stats. Implemented: ORS 238A.350, 238A.375, 238A.400

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

1 459-080-0400

2 Employee Pension Stability Account (EPSA)

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

7 (2) The monthly salary threshold amount:

8 (a) Is \$2,500 for calendar year 2020;

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

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

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

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

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

5 Stat. Auth.: ORS 238A.450

6 Stats. Implemented: ORS 238A.050, OL 2019, Ch. 355, Sec. 2, & OL 2018, Ch.

7 118

From: Aruna Masih <aruna@bennetthartman.com>
Sent: Monday, June 1, 2020 1:53 PM
To: Chris Geier <Chris.Geier@pers.state.or.us>
Cc: Daniel Rivas <daniel.rivas@pers.state.or.us>
Subject: Comments re. EPSA/IAP Rules, Our File No. 5415-237

Attn. Chris Geier:

As you know, this firm represents the PERS Coalition of Unions and individual union members who have challenged some of the changes enacted by SB 1049 (2019) in the case of Jennifer James et al. v. State of Oregon et al., Supreme Court Case No. S066933. Without waiving any legal arguments raised in the pending case, we submit the following brief comments regarding PERS' proposed administrative rules to implement the 2019 legislation referenced in the below notice:

https://www.oregon.gov/pers/Documents/Legislative/Proposed-OARs/4-24-2020/Member%20Redirect_Notice.pdf

Specifically, these EPSA/IAP rules do not include any reference to refund of amounts that exceed the cost of benefits that accrue on or after July 1, 2020. Modifications should be made to address that issue.

Sincerely,

Aruna Masih



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