



Oregon

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Public Employees Retirement System

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TO: Members of the PERS Board

FROM: Yong Yang, Tax Policy Coordinator, Policy Analysis and Compliance Section
Stephanie Vaughn, Manager, Policy Analysis and Compliance Section

SUBJECT: Adoption of Distributions During Employment (OSGP) Rule:
OAR 459-050-0075 *Distributions During Employment*

OVERVIEW

- Action: Adoption of Distributions During Employment (OSGP) Rule.
- Reason: Staff recommendation.
- Policy Issue: Whether to provide plan participants with the option of in-service distribution of their separately accounted for rollover amounts in the Oregon Savings Growth Plan (OSGP).

BACKGROUND

OSGP is a voluntary 457(b) deferred compensation plan. It can and does receive rollover funds from other qualified retirement plans, including IAP account from PERS. For rollovers coming from non-457(b) plans, OSGP is required under federal law to account for the funds separately under the plan. Except for the specific distributions outlined in OAR 459-050-0075, distributions from OSGP while the participant is employed with a participating employer are not allowed. Under IRS Revenue Ruling 2004-12, if a 457(b) plan such as the OSGP separately accounts for amounts attributable to rollover contributions to the plan, the plan document may permit the distribution of such amounts at any time pursuant to a plan participant's request. Note that the OSGP plan document consists of the statute (ORS 243.401-.507) and OARs (Chapter 459, Division 50).

OSGP staff is seeking to amend OAR 459-050-0075 so that any rollover amount in a separate account established under OAR 459-050-0090(4)(c)(A) can be distributed while a plan participant is still employed by a participating employer.

POLICY QUESTION

Should the OSGP plan document be amended to provide plan participants with the option of in-service distribution of their separately accounted for rollover amounts in the OSGP?

As mentioned above, allowing a distribution of rolled-over funds that are separately accounted for in a 457(b) plan is allowable under the IRS guidelines. The policy rationale for providing this distribution option is to promote asset retention and increase participation in OSGP, as it is an option widely available in other 457(b) plans. For example, many PERS members roll their IAP account when they retire with PERS and return to work with a participating employer after retirement. Some of these members work for employers (e.g., local, and municipal governments) with their own 457(b) plans which provide in-service distributions for rolled-over amounts. Not offering this in-service distribution option puts OSGP at a competitive disadvantage for these assets. Retirees who may want to work after retirement will be more

likely to roll their funds to an account from which they will be able to access the funds. Amending the rule will allow plan participants to access their rolled over funds in the OSGP without a severance of employment. This would be true for funds rolled into OSGP from PERS as well as other employer's 401(k), 403(b), and 401(a) plans. The rule has been amended to allow distributions from OSGP of separately accounted for rollover funds and, unless the Board directs otherwise, staff will proceed with the rule as presented.

Lastly, we are making a minor edit to subsection (1)(b) of the rule and deleting the existing section (5) of the rule which prohibits the use of rollover amounts to be included for the purpose of permissible de minimis distribution and unforeseen emergency withdrawals.

CHANGES MADE SINCE NOTICE

None.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held remotely on February 20, 2024, at 2:00 p.m. The public comment period ended February 29, 2024, at 5:00 p.m. No public comment was received.

LEGAL REVIEW

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

IMPACT

Mandatory: No.

Benefit: attract rollover funds into OSGP as they can be accessed by plan participants at any time.

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

RULEMAKING TIMELINE

February 1, 2024	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
February 1, 2024	Secretary of State publishes the Notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins.
February 2, 2024	PERS Board notified that staff began the rulemaking process.
February 20, 2024	Rulemaking hearing was held remotely at 2:00 p.m.
February 29, 2024	Public comment period ended at 5:00 p.m.
April 1, 2024	Board may adopt the rule modifications.

BOARD OPTIONS

The PERS Board may:

1. Pass a motion to "adopt changes to Distributions During Employment (OSGP) Rule, as presented."
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATION

Staff recommends the PERS Board choose Option #1.

B.3. Attachment 1 – OAR 459-050-0075 *Distributions During Employment*