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Re: PERS Coalition Comments on Proposed Rulemaking
Proposed OAR 459-013-0250 and OAR 459-075-0040
(Service Retirement Application Requirements)

Dear PERS Rulemaking Staff:

This office represents the PERS Coalition, a group of public employee labor organizations representing the people who teach our children, protect our life and property, repair our roads and bridges, and keep our communities healthy and safe. I write to comment on the new proposed administrative rules regarding “Service Retirement Application Requirements.” OAR 459-013-0245 (PERS), and OAR 459-075-0040 (OPSRP). The new rules set out service retirement application requirements, and then requires a member whose application is still “incomplete” 95 days after the effective retirement date will have that application cancelled and have to start over in order to obtain benefits, thus delaying the receipt of benefits for 90 days or more. We strongly object to the adoption of these rules; they are neither necessary nor consistent with the governing statutes.

According to PERS staff, it is proposing these rules to address the occasional situation where PERS is unable to calculate a member’s *actual* monthly benefit amount due to an incomplete application. When that occurs, PERS must still issue estimated payments pursuant to ORS 238.455, and then follow up with the member to complete the application. PERS staff argue that these rules are necessary because of the staff time spent monitoring these accounts. PERS staff also emphasized their outreach efforts to applicants. When questioned at the July

board meeting, PERS staff reported that there were approximately 160 Tier One/Tier Two members with incomplete applications and 13 OPSRP members.

While my client acknowledges that members should be able to complete the application without prompting (and most do) and that there may be a workload impact of tracking these incomplete applications, the fact remains that the current system is outdated and clunky. There is no mechanism for submitting an application or missing materials on-line, which can create a challenge for many members who do everything electronically and do not have ready access to a copier or printer. This is particularly true for members living in rural areas. The notarized signature requirement is also burdensome and likely confusing to members. Indeed, in the legal world, there are relatively few documents that require a notarized signature. Before adopting a rule that penalizes members who have incomplete applications, it is essential to understand exactly what the barriers are to completing the paperwork. Does the member have a health issue? Is there a language barrier or challenges accessing a copier? Does the member understand the difference between a “notarized” signature and a simple signature? Is their spouse sick or uncooperative? Is the beneficiary unavailable? All of these are potential reasons that point to systemic problems or barriers outside of the members’ control, as opposed to the lack of effort that is implied by the rule.¹

It is also critical to understand the impact on members of having to start the application process over, which would delay the receipt of benefits potentially another three months, assuming they understand that they need to submit a new application immediately. When members select a retirement date, they do so with the assumption that they will be receiving a monthly benefit in three months. During that time, they have often stopped working and may be using up their savings to bridge the gap until they get their monthly benefit. A delay of another three months could be the difference between paying rent, purchasing medicine or putting food on their table. Indeed, it is exactly because members rely on receiving benefits that the legislature required PERS to ensure that estimated payments are made, even when actual benefits cannot be finally calculated. ORS 238.455. The proposed rules allowing an administrative cancellation of an application to avoid paying estimated monthly benefits are contrary to legislative intent.

In response to my inquiries, PERS staff have indicated that a lack of a notarized signature is the most common reason for an application to be incomplete. Notably, this is an administrative requirement only. It is not currently required by rule or by statute, except for spousal signatures in certain circumstances. ORS 238.462(5). Historically, many official documents and contracts required notarized signatures to prevent fraud, but the requirement is

¹ Once PERS adopts a rule requiring that applications be cancelled 85 days after the effective date of retirement, it will likely claim that it has no discretion to extend the deadline, no matter the reason for the incomplete application.

less common now. We would be interested in understanding better the rationale for requiring notarized signatures, and any evidence that the practice has reduced fraud. If not, then we would recommend that the requirement be eliminated to reduce the administrative burden for all.

In addition to these general policy concerns, we believe the proposed rule is inconsistent with ORS 238.455 and therefore exceeds PERS statutory authority. ORS 183.400(3)(b). As PERS staff candidly acknowledged, they can calculate an estimated amount for the monthly payment based on the information then available and have been doing so. They are just not able to finalize the calculation because of the missing paperwork. The proposed administrative rules would effectively end-run ORS 238.455 by cancelling the application of a member who is otherwise entitled to receive benefits. This renders the rule unlawful.

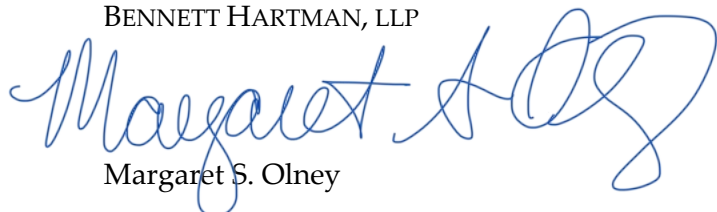
Finally, we are skeptical that the rule would, in fact, result in less work for PERS staff. In its presentation, PERS staff reported the frequent letters, calls, and emails made to members with missing information. There is nothing in the rule that requires staff to continue those efforts, nor is it clear whether any of that outreach reaches the member. But even if that outreach continues, a member whose application is cancelled is likely to complain and/or appeal the administrative cancellation. Dealing with those complaints and appeals is likely to be more time consuming than the status quo.

In closing, the PERS Coalition recognizes that PERS staff work hard to provide benefits to our members. PERS staff may also be rightly frustrated that some members are not responsive to their outreach. But the scope of the problem is relatively small and does not justify the adoption of the punitive solution set out in the proposed rules, particularly given the acknowledged systemic challenges (such as inability to file applications on-line), as well as the lack of information about *why* some members have been unable to complete the paperwork. Members of the PERS Coalition stand ready to work with PERS staff to identify strategies to minimize the administrative burden, but requiring members counting on receiving monthly benefits to start over is unacceptable and inconsistent with ORS 238.455.

Thank you for your consideration.

Sincerely,

BENNETT HARTMAN, LLP



Margaret S. Olney

cc: Clients