



Oregon

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TO: Members of the PERS Board

FROM: Melanie Chandler, Research Policy Coordinator, Policy Analysis and Compliance Section
Stephanie Vaughn, Manager, Policy Analysis and Compliance Section

SUBJECT: Adoption of divorce rules:
 OAR 459-045-0010 *Tier One/Tier Two Division of Benefits*
 OAR 459-045-0012 *OPSRP Pension Program Division of Benefits*
 OAR 459-045-0014 *Individual Account Program (IAP) Division of Benefits*
 OAR 459-045-0020 *Court Orders*

OVERVIEW

- Action: Adoption of updates to the divorce rules.
- Reason: Update and clarify rules pertaining to court-ordered divorce awards that are administered for members and alternate payees.

BACKGROUND

In Oregon Revised Statute (ORS) 238.465, the Legislature provided a means for PERS to pay Tier One, Tier Two, Oregon Public Service Retirement Plan (OPSRP), or Individual Account Program (IAP) benefits to an alternate payee to the extent expressly provided for in the terms of any court order or court-approved property settlement agreement incident to the dissolution of marriage, dissolution of a registered domestic partnership, or legal separation. The statute specifically directs the PERS Board to adopt rules to provide for the creation of separate accounts under ORS 238 and 238A, establish the criteria to determine whether domestic relations judgments, orders and agreements comply with statute, and provide the requisite definitions and procedures for the administration of this section. As statutorily directed, the PERS Board has put in place rules to clarify divorce provisions so members and legal practitioners can develop court orders that can be administered by PERS.

Before payments can be paid to an alternate payee, PERS must receive an administrable court document, signed by a judge, with proof that the decree has been filed in court. PERS reviews all court orders to determine if the language in the order can be administered under PERS laws and rules.

Very often court orders, as submitted to the agency, were not clear as to how PERS is to determine the alternate payee award and had to be rejected as not administrable. Beginning in 2010, in an effort to simplify internal processes and provide better service, PERS staff created divorce forms to be completed and attached as exhibits to court orders. The forms were designed for specific programs and intended to cover all the information needed by PERS staff

to administer a final court order with the goal of reducing the need for PERS to reject final court orders as not administrable.¹

Even with divorce forms available to members and legal practitioners, in 2024, PERS received 228 divorce-related court orders that were returned to members as non-administrable; in the same year, 609 court orders were confirmed as administrable.² With a goal of providing additional clarity into the complicated process of dividing PERS accounts and benefits and to reduce the number of un-administrable court orders received, PERS staff has prepared an update to PERS divorce forms to add detail and outline options available to members and their alternative payees.

This rulemaking provides additional clarity to established rules regarding how court orders and court-approved property settlement agreements are evaluated by agency staff and what makes them administrable versus non-administrable.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

The public comment received from Stacey Smith, et al. included a suggestion to revise language in OAR 459-045-0012(2)(f) to address what could be considered an incomplete clause, and their suggested language has been incorporated into the draft language included with this memo.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held remotely, and in person, on June 24, 2025, at 2:00 p.m. The initial public comment period ended June 27, 2025, during which PERS received public comment regarding the requested rule modifications (provided as an attachment to this memo). The primary concerns expressed in the public comment were: 1) a perceived attempt to limit a court's authority to divide benefits and 2) numerous specific concerns based on the old forms and the inability to review the updated forms. ORS 238.465(3) directs the PERS Board to adopt rules "... that provide for... the establishing of criteria to determine whether domestic relations judgments, orders, and agreements comply with this section, and the definitions and procedures for the administration of this section." In addition, 238.465(8) indicates that court order will not be administered until the board receives the written notice of judgment and "... such additional information and documentation as the board may prescribe."

As mentioned above, the purpose of the divorce forms is to guide members and legal professionals in developing administrable court orders. In revising the divorce forms, staff took care to incorporate common alterations to the old forms to ensure those scenarios regarding benefits are covered. To this end the revised forms are more extensive than the old forms. In light of the public comment, staff presented the rules as a First Reading at the July 29, 2025, board meeting to allow for additional time to evaluate the concerns of external partners, as well as to provide the opportunity for PERS to publish the revised divorce forms on the PERS website to allow the public and interested parties to review the specific changes. A second

¹ PERS divorce forms can be found at <https://www.oregon.gov/pers/mem/pages/divorce-forms.aspx>.

² These numbers may include multiple actions for the same divorce decree. e.g., PERS staff notified a member that the submitted decree was un-administrable, and the member corrected the deficiency and returned an administrable decree to the agency in the same calendar year.

public comment period was held and ended August 22, 2025. PERS received no additional public comment(s) during this second comment period.

LEGAL REVIEW

The attached 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.

IMPACT

Mandatory: No.

Benefit: Provide clarity to members and legal practitioners about available options related to the division of PERS benefits in the divorce process.

Cost: None identified.

RULEMAKING TIMELINE

May 28, 2025:	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
June 2, 2025:	Secretary of State published the Notice in the Oregon Administrative Rules Database. Notice was sent to employers, legislators, and interested parties. Public comment period begins.
May 30, 2025:	PERS Board notified that staff began the rulemaking process.
June 24, 2025:	Rulemaking hearing held remotely and in person at the PERS headquarters at 2:00 p.m.
June 27, 2025:	Public comment period ended at 5:00 p.m.
July 25, 2025:	First Reading of the rules.
August 22, 2025:	Second public comment period ended at 5:00 p.m.
September 26, 2025:	Staff will propose adopting the rules, as presented.

BOARD OPTIONS

The PERS Board may:

1. Pass a motion to adopt the divorce rules updates, 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 459-045-0010 *Tier One/Tier Two Division of Benefits*

B.3. Attachment 2 – OAR 459-045-0012 *OPSRP Pension Program Division of Benefits*

B.3. Attachment 3 – OAR 459-045-0014 *Individual Account Program (IAP) Division of Benefits*

B.3. Attachment 4 – OAR 459-045-0020 *Court Orders*

B.3. Attachment 5 – *459-531 IAP Non-Retired Separate Account CURRENT*

B.3. Attachment 6 – *459-531 IAP Non-Retired Separate Account REVISED*

B.3. Attachment 7 – Public Comment from Stacey Smith, Clark B. Williams, and Deb Lash.