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NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 459 OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED

09/25/2025 12:28 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Update to OSGP to implement the federal Secure Act 2.0.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/31/2025 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Joel Mellor
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/28/2025

TIME: 2:00 PM

OFFICER: Joel Mellor

IN-PERSON HEARING DETAILS

ADDRESS: PERS Headquarters Board Meeting, 11410 SW 68th Parkway, Tigard, OR 97223

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 971-300-4342

CONFERENCE ID: 54886549

SPECIAL INSTRUCTIONS:

Meeting ID: 212 543 492 927 8

Passcode: vR74Cd6N

NEED FOR THE RULE(S)

The SECURE 2.0 Act, formally known as the Setting Every Community Up for Retirement Enhancement 2.0 Act of 2022, was signed into law on December 29, 2022, building upon the earlier SECURE Act of 2019. It introduced a range of enhancements designed to make retirement savings easier and more flexible for workers and employers alike. Staff are proposing the following rule amendments to implement one mandatory and one optional provision of the SECURE 2.0 Act.

Optional Provision (Self-Certification for Emergency or Hardship Withdrawals in Section 312 of SECURE 2.0 Act)
Amendments clarify that it is up to the plan participant requesting an emergency withdrawal to self-certify that the withdrawal is not being used for one of the enumerated impermissible purposes. Instead of submitting an emergency withdrawal application and financial information and related documentation, a plan participant requesting an

emergency withdrawal only needs to submit a completed unforeseeable emergency withdrawal self-certification form authorized by OSGP. The form may be obtained either from OSGP or the OSGP third party administrator (VOYA). Plan participants now have the right to continue with deferred contributions in the event of an emergency withdrawal. The deferred compensation manager is no longer involved or required to approve the release of funds. As the third-party administrator, VOYA will release the fund to the plan participant once a completed self-certification for emergency withdrawal has been received.

Repeal of 459-050-0040. There is no longer a need for the Unforeseeable Emergency Withdrawal Appeals Committee to handle appeals from denial of withdrawal requests when plan participants can self-certify for the withdrawal without having to submit any financial information or related documentation. The unforeseeable emergency withdrawal request will be approved without any additional staff determination that could require the service of the Unforeseeable Emergency Withdrawal Appeals Committee.

Mandatory Provision (Requirement for Roth Treatment of Elective Deferral Catch-Up Contributions under Section 603 of SECURE 2.0 Act)

Amendments align with recent federal law changes under the SECURE 2.0 Act. Beginning in 2026, higher-earning employees (those with more than about \$145,000 in FICA wages from the prior year, adjusted annually for inflation) will no longer be able to make pre-tax age 50 plus catch-up contributions. For plan participants aged 50 and older, all catch-up contributions will now go into a Roth account, which means they are taxed in the year they are contributed but can be withdrawn tax-free in retirement. If plan participants do not elect Roth for their catch-up contributions, the contributions will be returned. For plan participants in the last three years before retirement who qualify for the special 457(b) "last-three-year" catch-up, most contributions can still be made pre-tax, but a portion may be required to go into a Roth account, depending on how the federal rules apply.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 243.470

ORS243.401-243.507

These documents are available on the Internet at: https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Adoption of the rule will not affect racial equity.

FISCAL AND ECONOMIC IMPACT:

There are no discrete costs attributable to the rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The rules do not affect small businesses and therefore small businesses were not involved in the development of the

rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

459-050-0040, 459-050-0070, 459-050-0150

REPEAL: 459-050-0040

RULE SUMMARY: No longer needed

CHANGES TO RULE:

~~459-050-0040~~

~~Unforeseeable Emergency Withdrawal Appeals Committee~~

~~(1) Purpose. The Unforeseeable Emergency Withdrawal Appeals Committee (the Committee) shall evaluate appeals denied by the Deferred Compensation Manager or designee authorized to take action on the Manager's behalf for the distribution of deferred compensation on the basis of claims of unforeseeable emergency in compliance with the Internal Revenue Code, Section 457, 26 USC 457, and the provisions of OAR 459-050-0150. The Committee shall formally approve or deny each appeal based on the merits of the appeal.¶¶~~

~~(2) Committee composition. The Committee shall consist of not fewer than three persons.¶¶~~

~~(a) One person shall be a PERS staff member from the Deferred Compensation Program.¶¶~~

~~(b) Two persons shall be PERS staff members from other than the Deferred Compensation Program.¶¶~~

~~(3) Committee meetings. The Committee shall meet upon the call of the Manager of the Deferred Compensation Program no later than 14 calendar days following receipt of an appeal. The Committee may meet by phone or in person. The Committee shall evaluate the participant's written request, emergency withdrawal application, financial information, and all related documentation submitted for compliance with 26 USC 457 and the provisions of OAR 459-050-0150.¶¶~~

~~(4) Appeal approval. If an appeal is approved, the Committee authorizes the Manager to release the funds within 30 calendar days of approval.¶¶~~

~~(5) Appeal denial. Within seven calendar days of the Committee's denial, the requestor may request an informal conference with the Deferred Compensation Manager or designee authorized to take action on the Manager's behalf.¶¶~~

~~(6) Request for review. The requester may submit a request for review of the Committee's determination to the Director of PERS and must do so within 30 calendar days of the Committee's denial. The request must be in writing and include:¶¶~~

~~(a) A description of the staff action or determination for which review is requested;¶¶~~

~~(b) A short statement of the manner in which the action is alleged to be in error;¶¶~~

~~(c) A statement of facts that are the basis of the request;¶¶~~

~~(d) Reference to applicable statutes, rules or court decisions upon which the person relies;¶¶~~

~~(e) A statement of the relief the request seeks; and¶¶~~

~~(f) A request for review.¶¶~~

~~(7) Director's determination. Within 30 calendar days of receiving a request for review, the Director shall issue a written determination either approving or denying the unforeseeable emergency withdrawal.~~

~~Statutory/Other Authority: ORS 243.470~~

~~Statutes/Other Implemented: ORS 243.401–243.507~~

RULE SUMMARY: Rule that further explains catch up programs, available under IRC.

CHANGES TO RULE:

459-050-0070

Catch-Up Programs ¶¶

The purpose of this rule is to establish the criteria and process to allow ~~an eligible employee plan participant~~ to contribute additional amounts, in excess of the regular applicable maximum allowable contributions, to the eligible employee's account.¶¶

(1) For purposes of this rule, "normal retirement age" shall be:¶¶

(a) For employers that do not sponsor another deferred compensation plan under IRC 457(b), the earlier of:¶¶

(A) Age 65; or,¶¶

(B) The normal retirement age for non-police and fire employees established in the employer's defined benefit pension plan or money purchase pension plan.¶¶

(b) For employers additionally sponsoring another deferred compensation plan under IRC 457(b) with a 3-Year Catch-Up Program, for purposes of this rule, "normal retirement age" shall have the same meaning as defined in the plan provisions of the other deferred compensation plan. If the other plan does not define normal retirement age, normal retirement age shall be determined as outlined in subsection (1)(a) of this rule.¶¶

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

(a) Conditions for participation: ~~An eligible employee plan participant~~ must be 50 years of age or older on December 31 of the calendar year in which the eligible employee begins to participate in the 50-Plus Catch-Up Program.¶¶

(A) ~~An eligible employee plan participant~~ may participate in the 50-Plus Catch-Up Program during years either before or after participation in the 3-Year Catch-Up Program, but may not participate in both programs during the same calendar year.¶¶

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

(b) Additional deferral amounts. The additional deferral may be an amount elected by ~~an eligible employee plan participant~~, but may not exceed the maximum additional deferral amount allowed under section 414(v) of the Internal Revenue Code, 26 USC 414(v). ~~An eligible employee plan participant~~ may change the amount of additional contributions deferred within the maximum additional deferral amount allowed. Changes may be made at any time by using online account access or other methods approved by the Deferred Compensation Program.¶¶

(3) 3-Year Catch-Up Program. ~~An eligible employee plan participant~~ may elect to contribute an additional amount under section 457 of the Internal Revenue Code, in excess of the maximum regular contribution allowed, for one or more of the three consecutive calendar years of employment before attaining normal retirement age, if in previous years the ~~eligible employee plan participant~~ did not contribute the maximum regular contribution amount.¶¶

(a) Conditions for participation. The earliest date to begin participation in the 3-Year Catch-Up Program is in the three calendar years immediately preceding the year in which ~~an eligible employee plan participant~~ reaches normal retirement age.¶¶

(A) Contributions over the maximum allowable regular contribution limit are permitted only to the extent of the unused portions of the maximum allowable regular contribution for previous calendar years during which the eligible employee contributed less than the maximum allowable regular contribution or did not make contributions to the Deferred Compensation Program.¶¶

(B) Calendar years during which contributions were made under the 50-Plus Catch-Up Program may not be included in the calculation to determine the maximum allowable contribution under the 3-Year Catch-Up Program.¶¶

(C) ~~An eligible employee plan participant~~ may not participate in the 3-Year Catch-Up Program and the 50-Plus Catch-Up Program during the same calendar year.¶¶

(D) ~~An eligible employee plan participant~~ must designate a proposed retirement date upon application. The designated proposed retirement date shall be used for the purpose of determining the catch-up period only. The catch-up period so determined may not include the year of the designated proposed retirement date. ~~An eligible employee plan participant~~ who retires during the catch-up period may contribute the maximum allowable amount for the year of the employee's retirement.¶¶

(E) Pursuant to section 457(b) of the Internal Revenue Code, ~~an eligible employee plan participant~~ who is 70½

years of age or older may not participate in the 3-Year Catch-Up Program.¶¶

(F) An ~~eligible employee plan participant~~ may participate only once in the 3-Year Catch-Up Program, regardless of whether participation in the 3-Year Catch-Up Program is for less than three calendar years or whether the eligible employee participates in an eligible plan after retirement.¶¶

(b) Application for enrollment. An ~~eligible employee plan participant~~ may participate in the 3-Year Catch-Up Program by entering into a written agreement with the plan sponsor. The written agreement must specify the eligible employee's designated proposed retirement date, the month in which to begin the 3-Year Catch-Up Program contributions and the number of years the eligible employee plans to participate in the 3-Year Catch-Up Program.¶¶

(A) An ~~eligible employee plan participant~~ may enter into a written agreement to participate in the 3-Year Catch-Up Program at any time while employed.¶¶

(B) A properly completed 3-Year Catch-Up Program enrollment form provided by the Deferred Compensation Program must be filed with and approved by the Deferred Compensation Program. Wage or salary information must be submitted for previous calendar years during which an ~~eligible employee plan participant~~ either did not participate in the Deferred Compensation Program or did not contribute the maximum regular contribution amount. An ~~eligible employee plan participant~~ may be requested to submit:¶¶

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

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

(C) If the application for enrollment is incomplete, if wage or salary information is incomplete or illegible, or if the application does not comply with the 3-Year Catch-Up Program conditions of enrollment, then the Deferred Compensation Program will notify the eligible employee within 30 calendar days from the date the enrollment documents are received of the reasons the Deferred Compensation Program cannot accept the enrollment.¶¶

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

(d) Additional Deferral Amount. After receipt of a properly completed 3-Year Catch-Up Program enrollment form and required wage or salary information, the Deferred Compensation Program will notify the eligible employee of the maximum amount of additional contributions that may be deferred.¶¶

(A) The amount of the 3-Year Catch-Up Program salary reduction may not be less than the minimum additional contribution amount established by the plan sponsor and may not exceed the maximum allowable contribution under section 457(b)(3) of the Internal Revenue Code.¶¶

(B) An ~~eligible employee plan participant~~ may change the amount of additional contributions deferred within the minimum and maximum additional deferral amounts allowed. Changes may be made at any time by using online account access or other methods approved by the Deferred Compensation Program and will be effective for any calendar month only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available.¶¶

(e) Cancellation of Participation in the 3-Year Catch-Up Program. An ~~eligible employee plan participant~~ may cancel participation in the 3-Year Catch-Up Program at any time by using online account access or other methods approved by the Deferred Compensation Program. The cancellation will be effective for any calendar month only if an agreement providing for the cancellation has been entered into before the first day of the month in which the compensation is paid or made available. An election to cancel participation is irrevocable.¶¶

~~[Publications: Publications referenced are available from the agency.]~~ (4) Catch-up Contributions Required to be Roth Contributions. Beginning with taxable years after December 31, 2025, if a plan participant's wages (as defined in IRC 3121(a)) from the participating employer for the preceding calendar year exceeded the threshold amount of \$145,000, as adjusted for cost-of-living increases under IRC 414(v)(7)(E):¶¶

(a) All catch-up contributions under IRC 414(v) (50-Plus Catch-Up) must be designated Roth contributions under IRC 402A; and¶¶

(b) If the plan participant is using the 3-Year Catch-Up, catch-up contributions must be designated Roth contributions under IRC 402A to the extent required under IRC 457(e)(18)(A)(ii), as amended by Section 603(b)(2) of the SECURE 2.0 Act.

Statutory/Other Authority: ORS 243.470

Statutes/Other Implemented: ORS 243.401-243.507

RULE SUMMARY: Establish criteria for emergency withdrawal of deferred compensation funds.

CHANGES TO RULE:

459-050-0150

Unforeseeable Emergency Withdrawal ¶¶

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

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

(a) "Deferred Compensation Account" means the account described in OAR 459-050-0001, but does not include any amount in the Self-Directed Brokerage Option.¶¶

(b) "Designated Roth Account" means the account described in OAR 459-050-0001, but does not include any amount in the Self-Directed Brokerage Option.¶¶

(c) "Emergency withdrawal" means a payment to the participant from the participant's Deferred Compensation Account, Designated Roth Account, or a combination of both, in an amount directly related to and reasonably necessary to satisfy a financial obligation attributable to an unforeseeable emergency.¶¶

(d) "Unforeseeable emergency" or "Unforeseen emergency" means: a severe financial hardship to a participant resulting from a sudden and unexpected illness or accident of the participant, or of a dependent of the participant as defined in 26 CFR 1.152-1; a loss of the participant's property due to casualty; or other similar extraordinary and unforeseeable circumstance beyond the control of the participant.¶¶

(2) Eligibility for emergency withdrawals. Only a participant who established a deferred compensation account as an eligible employee and has not terminated from employment with their plan sponsor may apply to receive an unforeseeable emergency withdrawal. An alternate payee of a participant may not be eligible to receive an emergency withdrawal.¶¶

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

(4) Source of emergency withdrawals. The amount of an emergency withdrawal will be deducted first from the participant's Deferred Compensation Account unless otherwise indicated by the participant on the emergency withdrawal application.¶¶

~~(5) Circumstances that do not constitute an unforeseeable emergency. AA plan participant requesting an emergency withdrawal may not be approved for any reason other than an unforeseeable emergency. Cust certify that the withdrawal is not being used for the following circumstances that do not constitute an unforeseeable emergency include, but are not limited to: ¶¶~~

~~(a) Participant or dependent school expenses;¶¶~~

~~(b) The purchase of a home or costs associated with a voluntary relocation of housing;¶¶~~

~~(c) The reduction of personal credit liabilities not associated with an unforeseeable emergency;¶¶~~

~~(d) Expenses associated with a legal separation or the dissolution of a marriage;¶¶~~

~~(e) Expenses associated with medical procedures that are elective or not medically required;¶¶~~

~~(f) Expenses associated with establishing or managing a personal business;¶¶~~

~~(g) Recreational expenses;¶¶~~

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

~~(i) Usual and customary tax obligations.¶¶~~

~~(6) Limitations on amount of emergency withdrawal. The amount of an emergency withdrawal may not exceed the combined balance of the participant's Deferred Compensation Account and Designated Roth Account. The maximum amount that may be approved as an emergency withdrawal shall be limited to what is reasonably needed to satisfy the immediate financial obligation related to the unforeseeable emergency, including taxes anticipated on the distribution. The amount of the emergency withdrawal shall be limited to the extent that the financial obligation can or may be satisfied by:¶¶~~

~~(a) Reimbursement or compensation by insurance or otherwise;¶¶~~

~~(b) Liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe unforeseeable emergency; or¶¶~~

~~(c) Cessation of participant contributions to the Deferred Compensation Program.¶¶~~

~~(7) Application for an emergency withdrawal. A participant must submit a completed unforeseen emergency withdrawal application and financial information and related documentation sufficient to satisfy the provisions of this rule. The emergency withdrawal self-certification form authorized by the Deferred Compensation Program The self-certification form may be returned if incomplete the form if insufficient financial information or~~

related documentation is submitted incompleted.¶

(a) The ~~app~~self-certification form may be obtained from the Deferred Compensation Program or the third party administrator (TPA) retained to administer a portion of the Deferred Compensation Program.¶

(b) The completed application, financial information, and related documentationself-certification form shall be submitted by using online account access or other methods approved by the Deferred Compensation Program.¶

(8) Cancellation of future contributions. Contributions by a participant to the Deferred Compensation Program shall immediately be cancelled upon receipt of an application for an emergency withdrawal from the participant. A participant who receives a denial for an emergency withdrawal may enroll to make elective deferrals and contributions to the Deferred Compensation Program at any time.¶

(9) Approval or denial notification. The Deferred Compensation Manager or an authorized designee shall approve or deny a request for an emergency withdrawal within three working days after receipt of an accepted application. The participant will be notified by mail within 10 days after a decision is made.¶

(10) Release of payment upon approval of an emergency withdrawal. The Deferred Compensation Manager or an authorized designee shall determine the method of payment. The Deferred Compensation Program shall immediately notify the TPA to release the requested funds.¶

(11) A participant may appeal a denial of an emergency withdrawal to the Unforeseeable Emergency Withdrawal Appeals Committee as provided in OAR 459-050-0040. The appeal shall be in writing and must include:¶

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

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

(c) Any additional information or documentation to support the request for an emergency withdrawalApproval or denial notification. The Deferred Compensation Manager or an authorized designee shall approve or deny a request for an emergency withdrawal within three working days after receipt of an accepted application. The participant will be notified by mail within 10 working days after a decision is made.¶

(12) Number of emergency withdrawal requests. The number of times a participant may apply for an emergency withdrawal is unlimited and is unaffected by previous applications.

Statutory/Other Authority: ORS 243.470

Statutes/Other Implemented: ORS 243.401-243.507