

# OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

**Friday**  
**November 16, 2007**  
**11:30 A.M. & 1:00 P.M.**

**PERS**  
**11410 SW 68<sup>th</sup> Parkway**  
**Tigard, OR**

	<b>ITEM</b>	<b>PRESENTER</b>
<b>A. Contested Case Hearings (11:30 A.M.)</b>		
<ol style="list-style-type: none"> <li>1. Contested Case Hearing for Lynn Topp</li> <li>2. Contested Case Hearing for Betty Britt</li> <li>3. Contested Case Hearing for James Wallace</li> <li>4. Contested Case Hearing for Deanna Gary</li> <li>5. Contested Case Hearing for Jan Karius</li> <li>6. Contested Case Hearing for Susan Aronson</li> <li>7. Status of Contested Cases</li> </ol>		RODEMAN/KUTLER
<b>B. Administration (1:00 P.M.)</b>		
<ol style="list-style-type: none"> <li>1. September 21, 2007 Board Meeting Minutes</li> <li>2. Director's Report                             <ol style="list-style-type: none"> <li>a. Forward-Looking Calendar</li> <li>b. OIC Investment Report</li> <li>c. Employer Reporting and Outreach Program</li> <li>d. Budget Report</li> <li>e. 2007 Customer Service Survey Results</li> <li>f. Future Legislative Sessions</li> </ol> </li> </ol>		CLEARY
<b>C. Consent Action and Information Items</b>		
<ol style="list-style-type: none"> <li>1. Action on Contested Cases</li> <li>2. Adoption of Withdrawal Rules</li> <li>3. Adoption of Crediting Earnings to Employer Lump-Sum Payments Rule</li> <li>4. Adoption of Lump-Sum Payments by Employers Rules</li> <li>5. Adoption of Eligibility Rules</li> <li>6. Adoption of Earnings Crediting at Loss of Membership Rules</li> <li>7. Adoption of Elimination of Break in Service/Accrual of Retirement Credit Rules</li> <li>8. Adoption of Alternate Payees Rules</li> <li>9. Update on Review of ETOB Rules</li> <li>10. Adoption of IAP Account Installments Rule</li> <li>11. Adoption of Notice of Contest Rule</li> <li>12. Adoption of Reemployed Retirees Rule</li> <li>13. Update on Review of Employer Disputes and Prior Period Contributions Rules</li> <li>14. Delegation of Subpoena Authority</li> </ol>		RODEMAN
<b>D. Action and Discussion Items</b>		
<ol style="list-style-type: none"> <li>1. 2006 Actuarial Valuation Report</li> <li>2. 2006 Actuarial Equivalency Factors</li> </ol>		MERCER
<b>E. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225</b>		
<ol style="list-style-type: none"> <li>1. Litigation Update</li> </ol>		LEGAL COUNSEL

*Note: If you have a disability that requires any special materials, services or assistance, call (503) 603-7575 at least 48 hours before the meeting.*

Michael Pittman, Chair \* James Dalton \* Thomas Grimsley \* Eva Kripalani \* Brenda Rocklin \* Paul R. Cleary, Executive Director

MEETING	11-16-07
DATE	
AGENDA	B.1.
ITEM	Minutes

## PUBLIC EMPLOYEES RETIREMENT BOARD

PERS Board Meeting  
1 P.M., September 21, 2007  
Tigard, Oregon

### MINUTES

#### Board Members:

Mike Pittman, Chair  
Brenda Rocklin  
James Dalton  
Thomas Grimsley  
Eva Kripalani

#### Staff:

Paul Cleary	Steve Delaney	Dale Orr
Donna Allen	Susan Riswick	Helen Bamford
Dave Tyler	Joe DeLillo	Patrick Teague
Yvette Elledge	Kyle Knoll	
David Crosley	Curt Corder	

#### Others:

Deborah Tremblay	Bill Hallmark	Bruce Adams	Linda Ely
Pat West	David Wimmer	Steve Law	Hasina Squires
Keith Kutler	E. Marie Laird	Greg Hartman	Dallas Weyand
	BethAnne Darby	Scott Winkles	Blake Johnson

Chair Mike Pittman called the meeting to order at 1:00 P.M.

### CONTESTED CASE HEARINGS

#### A.1. BOWEN MOTION TO CORRECT APPELLATE RECORD

Director Paul Cleary presented member Marilyn Bowen's motion to correct the judicial review record to omit certain documents that were mistakenly included in the record when filed with the Court of Appeals.

It was moved by Brenda Rocklin and seconded by Tom Grimsley to adopt the draft order to correct and amend the judicial review record. The motion passed unanimously.

### ADMINISTRATION

#### B.1. BOARD MEETING MINUTES OF JULY 20, 2007

The Board unanimously approved the minutes of the July 20, 2007 Board meeting.

#### B.2. DIRECTOR'S REPORT

Director Cleary presented the Forward-Looking Calendar and confirmed that the 2006 Valuation will be presented at the October 19 meeting. Cleary said that the November 16 meeting will include various rule adoptions and there will be an audit committee meeting following the regular meeting. Cleary provided information about a new series of employer outreach presentations that will cover 2007 legislative changes, changes in electronic reporting, and a review of new eligibility rules. Cleary said the October Board meeting will include a report on the results of recent member and retiree and employer customer satisfaction surveys. Cleary reported that the 2005 – 07 budget still shows a positive variance of \$390,854. Cleary said that the 2007 – 09 budget shows a negative variance because staff salary Cost of Living Adjustments (COLA's) had yet to be added to the agency's budget limitation. Cleary distributed several information items,

including a 2007 replacement ratio study, Mercer's 2007 purchasing power study, and two maps showing the geographic distribution of retirees and benefit payments of \$2.6 billion annually within Oregon and the 50 states. Cleary introduced Oregon Investment Council (OIC) Chief Investment Officer Ron Schmitz, who reported on investment performance and market conditions. Schmitz provided a risk-reward analysis of the recently revised OIC asset allocation and reviewed the returns as of August 31, 2007. Schmitz reported that the total regular account year-to-date return, at 6.6%, was short of the 7.4% policy benchmark. Schmitz said that while the recent equity market has been volatile, the numbers are still strong and the OIC's revised asset allocation would gradually decrease domestic equity exposure while increasing international and private equity and real estate exposure.

### **CONSENT ACTION AND INFORMATION ITEMS**

#### **C.1. SECOND AND THIRD READING OF WITHDRAWAL RULES**

Deputy Director Steve Delaney presented the second reading of the Chapter 238 Program Withdrawal Rules and third reading of the OPSRP Withdrawal Rules. Delaney also provided stakeholder comments and said the rules would be presented at the October meeting for adoption.

#### **C.2. SECOND READING OF ADMINISTRATIVE REVIEW AND APPEAL PROCESSES RULES**

Delaney presented the second reading of the rules that would clarify employer dispute resolution procedures. Delaney presented comments received to date and noted that public comment would be accepted through September 30. Delaney said that staff would continue to review and discuss comments with stakeholders before presenting the rules for adoption.

#### **C.3. FIRST READING OF CREDITING EARNINGS TO EMPLOYER LUMP-SUM PAYMENTS RULES**

and

#### **C.4. FIRST READING OF LUMP-SUM PAYMENTS BY EMPLOYERS RULES**

Delaney presented the first reading of the companion Lump-Sum Payments rules that address employer side account payments, amortization, and earnings crediting. Delaney noted that comments would be accepted through September 28, with both sets of rules presented for adoption in October.

#### **C.5. NOTICE OF EMPLOYER CONTRIBUTIONS FOR PRIOR PERIODS RULES**

Delaney presented notice of rulemaking that will address employer concerns about invoicing for employee contributions for prior period adjustments. Delaney noted these were companion rules to item C.2. on employer dispute resolution and would also be discussed further with stakeholders.

#### **C.6. NOTICE OF ELIGIBILITY RULES FOR CHAPTER 238 PROGRAM**

Delaney presented notice of rulemaking that would clarify membership eligibility standards, accrual of creditable service, six-month waiting period and early retirement eligibility in the Chapter 238 Tier 1 / Tier 2 program. Delaney noted that public comments would be accepted through October 26, with the rules presented for adoption in November.

C.7. NOTICE OF EARNINGS CREDITING AT LOSS OF MEMBERSHIP RULES,

C.8. NOTICE OF ELIMINATION OF BREAK IN SERVICE RULES,

C.9. NOTICE OF ALTERNATE PAYEES' OSGP RULES,

C.10. NOTICE OF ETOB RULES,

C.11. NOTICE OF IAP ACCOUNT INSTALLMENTS RULES,

C.12. NOTICE OF DOMESTIC RELATIONS ORDERS (NOTICE OF CONTEST) RULES,

and

C.13. NOTICE OF REEMPLOYED RETIREES' RULES

Delaney presented notice of rulemaking for agenda items C.7. through C.13., noting that all are a result of recent legislative decisions. All rules are open for public comment through October 26, 2007. Staff will present permanent rule modifications, including amendments resulting from public comment, at the November meeting.

### **ACTION AND DISCUSSION ITEMS**

#### **D.1. 2007 LEGISLATION IMPLEMENTATION**

Susan Riswick, Manager of the Policy, Planning and Legislative Analysis Division, presented the agency's 2007 Legislation Implementation Plan. Riswick said the enterprise-wide project is focused on 18 PERS-related bills and an additional 17 more general bills that impact agency operations. Riswick provided a chart with a description of each bill and an outline of the agency's role and implementation responsibilities. Riswick said that all new legislation implementation will be centrally coordinated with full agency involvement and completed in a timely manner. Riswick said that each bill had been assigned to a specific lead division but would be implemented throughout the agency.

Chair Pittman commended staff on the organization and project management approach taken to implement the legislative changes.

#### **D.2. 2008 – 09 LEGISLATIVE PROCESS**

Chair Pittman reviewed the Board's fiduciary obligations and the challenges for the Board, the Legislative Advisory Committee, (LAC) and stakeholders in reviewing the numerous legislative bills during the 2007 session.

Deputy Director Steve Delaney reviewed the agency approach to past and current legislative sessions, the development of the LAC and the Board's involvement in legislative decisions.

Hasina Squires spoke on behalf of the Special Districts Association, Association of Oregon Counties School Board Association and League of Oregon Cities. Squires thanked the Board for the utilization of the LAC and said that the committee provided an opportunity to communicate with Associate members and stakeholders in a more organized manner. BethAnne Darby, representing the Oregon Education Association and the PERS Coalition, supported Squires' comments. Darby said the LAC provided a structured process for interested parties, employees, and employers to better understand PERS issues and identify common interests.

PERS Board meeting

9/21/2007

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The Board members discussed the challenges of working effectively within the legislative review process particularly during the end of session when bills and bill amendments move rapidly raising the risk of incomplete analysis and unintended consequences. The Board confirmed it's desire for managing the system for long-term sustainability. The Board also confirmed it's desire to manage PERS system changes in a transparent manner that was comprehensible for all stakeholders. The Board asked staff to further discuss these concerns with the LAC and look for ways to improve the legislative review and analysis process for the benefit of all involved.

**EXECUTIVE SESSION**

No executive session was held.

There being no further business, Chair Pittman adjourned the meeting at 2:45 P.M.

Respectfully submitted,

A handwritten signature in cursive script that reads "Paul R. Cleary".

Paul R. Cleary  
Executive Director

# PERS Board Meeting Forward-Looking Calendar

MEETING	11-16-07
DATE	
AGENDA	B.2.a
ITEM	Calendar

## December 2007

**No Meeting Currently Scheduled**

## January 2008

**January 18, 2008**

Contested Case of Lynn Topp  
Contested Case of Betty Britt  
Contested Case of James Wallace  
Preliminary 2009 Legislative Concepts - Introduction

## February 2008

**February 15, 2008 (Tentative)**

2007 Preliminary Earnings Crediting  
Audit Committee Meeting  
Preliminary 2009 Legislative Concepts - Review

## March 2008

**March 28, 2008 (Tentative)**

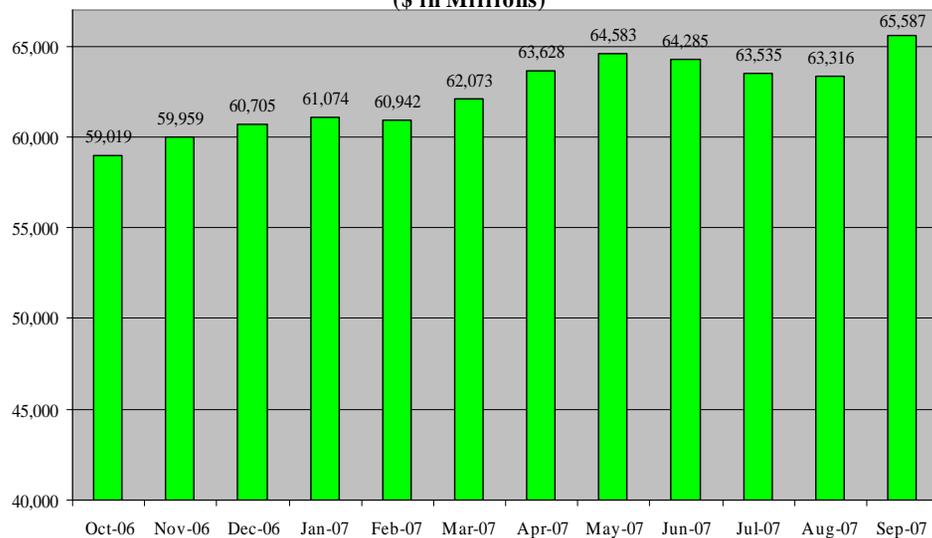
2007 Final Earnings Crediting  
Preliminary 2009 Legislative Concepts – Approval to Submit

OPERF	Regular Account				Historical Performance					
	Policy <sup>1</sup>	Target <sup>1</sup>	\$ Thousands <sup>2</sup>	Actual	Year-To-Date <sup>3</sup>	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 YEARS
Domestic Equity	14-24%	19%	\$ 18,570,585	29.1%	8.91	16.25	12.84	14.00	14.22	16.67
Non-US Equity	14-24%	19%	10,451,504	16.4%	16.88	29.94	24.68	26.42	25.71	26.35
Global Equity	5-11%	8%	4,989,918	7.8%	N/A					
Private Equity	12-20%	16%	7,844,231	12.3%	23.19	25.70	25.19	28.86	28.46	20.04
<b>Total Equity</b>	<b>60-70%</b>	<b>62%</b>	<b>41,856,238</b>	<b>65.5%</b>						
Opportunity Portfolio			156,704	0.2%	6.18	6.18				
<b>Total Fixed</b>	<b>22-32%</b>	<b>27%</b>	<b>17,002,017</b>	<b>26.6%</b>	<b>3.25</b>	<b>5.12</b>	<b>4.94</b>	<b>4.95</b>	<b>5.15</b>	<b>6.41</b>
<b>Real Estate</b>	<b>8-14%</b>	<b>11%</b>	<b>4,630,177</b>	<b>7.2%</b>	<b>11.62</b>	<b>17.63</b>	<b>24.21</b>	<b>26.88</b>	<b>24.73</b>	<b>22.10</b>
<b>Cash</b>	<b>0-3%</b>	<b>0%</b>	<b>223,863</b>	<b>0.4%</b>	<b>4.10</b>	<b>5.48</b>	<b>5.07</b>	<b>4.26</b>	<b>3.51</b>	<b>3.09</b>
<b>TOTAL OPERF Regular Account</b>		<b>100%</b>	<b>\$ 63,868,999</b>	<b>100.0%</b>	<b>10.44</b>	<b>16.76</b>	<b>14.86</b>	<b>16.01</b>	<b>15.87</b>	<b>16.12</b>
<b>OPERF Policy Benchmark</b>					<b>10.49</b>	<b>17.01</b>	<b>14.14</b>	<b>14.30</b>	<b>14.26</b>	<b>15.04</b>
Value Added					<b>(0.05)</b>	<b>(0.25)</b>	<b>0.72</b>	<b>1.71</b>	<b>1.61</b>	<b>1.08</b>

**Asset Class Benchmarks:**

Russell 3000 Index	8.77	16.52	13.33	13.74	13.87	16.18
MSCI ACWI Free Ex US	17.85	31.06	25.07	26.52	25.67	26.34
Russell 3000 Index + 300 bps--Quarter Lagged	16.95	23.14	17.78	15.97	18.31	15.99
LB Universal--Custom FI Benchmark	3.65	5.12	4.56	4.29	4.28	4.77
NCREIF Property Index--Quarter Lagged	13.26	17.24	17.95	17.98	16.15	14.39
91 Day T-Bill	3.91	5.22	4.86	4.11	3.35	2.94

**TOTAL OPERF NAV**  
 (includes variable fund assets)  
 One year ending September 2007  
 (\$ in Millions)



<sup>1</sup>OIC Policy 4.01.18, as revised September 2007.

<sup>2</sup>Includes impact of cash overlay management.

<sup>3</sup>For mandates beginning after January 1, YTD numbers are "N/A". Performance is reflected in Total OPERF.



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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November 16, 2007

TO: Members of the PERS Board  
FROM: Paul R. Cleary, Director  
SUBJECT: Employer Reporting and Outreach Program

MEETING	<b>11-16-07</b>
DATE	
AGENDA	
ITEM	<b>B.2.c.</b> ER Update

PERS is working with 875 employer-reporting units to process outstanding 2006 and 2007 employer reports. In addition, PERS implemented an accounts receivable process and revised its Employer Outreach Program in late 2006.

### EMPLOYER REPORTING

The table below shows the status as of October 26, 2007 of employer reports and member records for calendar years 2006 and 2007.

	Calendar Year 2006	Calendar Year 2007
Reports due:		
▪ Number expected	12,884	10,019
▪ Number received	12,814	9,869
▪ Percent received	99.45%	98.50%
▪ Key Performance Measure	99.0%	N/A
Reports fully posted at 100%:		
▪ Number	12,478	8,719
▪ Percent fully posted at 100%	96.84%	87.02%
▪ Key Performance Measure	95.0%	95.0%
Records due (estimated)	3,143,765	2,634,796
Records not posted:		
▪ Number	1,669	47,057
▪ Percent not posted	≤ .1%	1.7%
▪ Key Performance Measure	≤ .2%	≤ .2%
Contributions posted	\$ 426,961,582	\$349,956,789
Contributions not posted	\$47,625	\$1,285,633

As of October 26, 2007, employers submitted 99.45 % of the reports due for 2006. Of the reports submitted, less than 0.1% of records remain suspended (representing less than 0.01% of total contributions anticipated for 2006). For 2007, employers have submitted approximately 98% of the reports due. Of those reports submitted, approximately 87% are 100% posted. We are pleased to announce that the year-over-year performance is slightly better than last year's, and that we are well on the way to meeting our 2007 targets.

### EMPLOYER OUTREACH PROGRAM

We are continuing our employer outreach with presentations being offered in the spring and fall each year. The fall 2007 presentations concluded on October 26, 2007. A total of 35 sessions were conducted in 19 locations throughout the state. The fall 2007 sessions covered the effects of 2007 legislation on employers, miscellaneous EDX reporting issues and a review of new eligibility rules. Unfortunately, we did not have as good participation as we had last spring with only 23% of employers attending. Some reasons why this occurred could be due to the sessions beginning in early September with school districts too busy to attend at that time and some employers thought that this presentation was identical to one held in the spring. As a result, we will make sure that all employers are notified of the topics that will be covered and have a more comprehensive advertising campaign next spring. We will also move the fall sessions back to October and November.

Even with the low turnout, over 90% of the employers who did attend rated the fall 2007 outreach presentation excellent.

Finally, in August we conducted the annual employer customer satisfaction survey. The survey results will be presented at the November 2007 Board meeting.

### ACCOUNTS RECEIVABLE PLAN

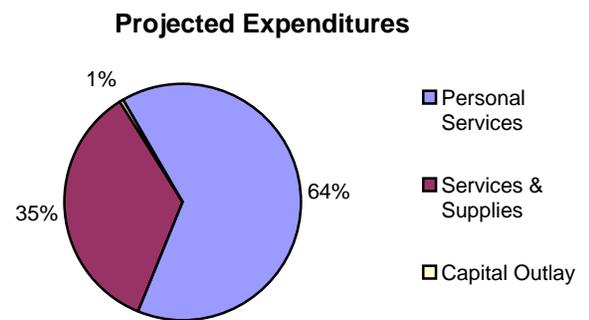
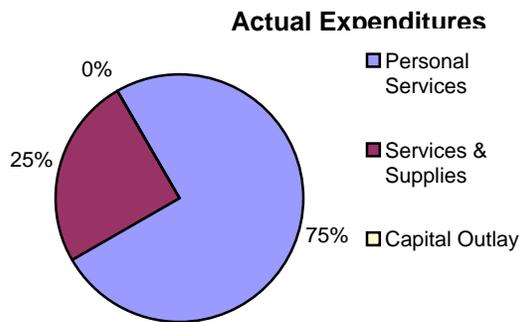
Besides assisting employers with overdue reports and electronic payments, PERS' accounts receivable department proactively collects receivable balances that are more than 30 days overdue. As of October 26, 2007, we had 117 outstanding invoices (27 employers) with an aggregate balance of less than \$233,355. Our goal is to collect all outstanding invoices that exceed 30 days by following up with these employers by phone and letters each month.

**2007-09 Agency-wide Operations - Budget Execution  
Summary Budget Analysis  
For the Month of: October 2007**

B.2.d. Attachment

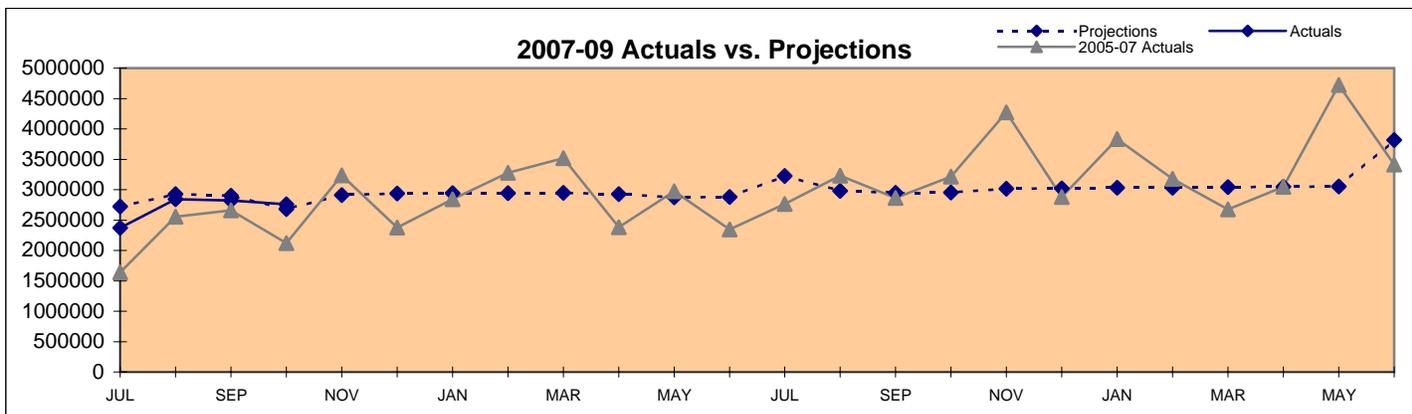
**Biennial Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2007-09 LAB	Variance
Personal Services	8,098,783	46,021,625	54,120,409	50,404,161	(3,716,248)
Services & Supplies	2,694,573	24,783,074	27,477,647	29,620,739	2,143,092
Capital Outlay		474,800	474,800	947,701	472,901
Special Payments					
<b>Total</b>	<b>10,793,356</b>	<b>71,279,500</b>	<b>82,072,856</b>	<b>80,972,601</b>	<b>(1,100,255)</b>



**Monthly Summary**

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	2,076,137	2,229,402	153,265	2,024,696	2,301,081
Services & Supplies	683,361	453,751	(229,609)	673,643	1,239,154
Capital Outlay					23,740
Special Payments					
<b>Total</b>	<b>2,759,498</b>	<b>2,683,154</b>	<b>(76,344)</b>	<b>2,698,339</b>	<b>3,563,975</b>



**2005-07 Biennium Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2005-07 LAB	Variance
Personal Services	42,359,527	42,359,527	42,359,527	46,875,869	4,516,342
Services & Supplies	29,461,389	29,461,389	29,461,389	27,460,026	(2,001,363)
Capital Outlay	331,114	331,114	331,114	679,533	348,419
Special Payments					
<b>Total</b>	<b>72,152,030</b>	<b>72,152,030</b>	<b>72,152,030</b>	<b>75,015,428</b>	<b>2,863,398</b>



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November 17, 2007

TO: Members of the PERS Board  
FROM: Kyle J. Knoll, Budget and Fiscal Operations Manager  
SUBJECT: October 2007 Budget Report

MEETING DATE	11/16/07
AGENDA ITEM	B.2.d.

### 2005-07 BUDGET UPDATE

The total expenditures remains at \$74,336,308, or 99.09% of our 2005-07 operating budget. The positive budget variance is projected at \$615,120. A final 2005-07 Budget Report will be submitted to the Board in January 2008.

### 2007-09 BUDGET UPDATE

Operating expenditures for the month of October 2007 currently total \$2,759,498. Through the first four months (16.67%) of the biennium, the Agency has expended a total of \$10,793,356, or 13.33% of our 2007-09 operating budget. The negative budget variance for the biennium is currently projected at \$1,100,255.

The primary reasons for this negative variance are the 2007-09 Cost of Living Adjustments (COLAs) under the 2007 – 2009 DAS and SEIU Collective Bargaining Agreement, as well as the 2007-09 Management Compensation Package, both of which are now included in our Personal Services projections.

- We anticipate DAS requesting funding from the legislature for represented employee and management COLAs. The projected costs of the 3% COLA effective July 1, 2007, and 3.2% COLA effective November 1, 2008 total \$1,772,653.
- And as with other state agencies, PERS is expected to cover the costs of the remainder of the Management Compensation Package (i.e., additional 3%, and two new salary steps) in our operating budget. The projected costs of the Management Compensation Package are \$475,813.
- The net gain to Personal Services, based on these projections, will be \$1,296,840. And if the projections hold true, that would leave us with a current positive variance of \$196,585.



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November 16, 2007

TO: Members of the PERS Board  
FROM: David Crosley, Communications Officer  
SUBJECT: 2007 Customer Service Survey Results

MEETING DATE	11/16/07
AGENDA ITEM	B.2.e. Cust. Survey

PERS conducted customer satisfaction surveys for members (including retirees) and employers in August 2007. This was the second year of our survey program.

The 2005 Legislature adopted common customer service performance measures and survey questions for all agencies in all branches of state government. The measures require agencies to survey customers and report results in their budget presentations.

The 2007 surveys we conducted provide the baseline for future improvement and show improvement from 2006.

We will conduct yearly surveys that measure and trend improvement in our customer service.

### **MEMBER CUSTOMER SATISFACTION SURVEY**

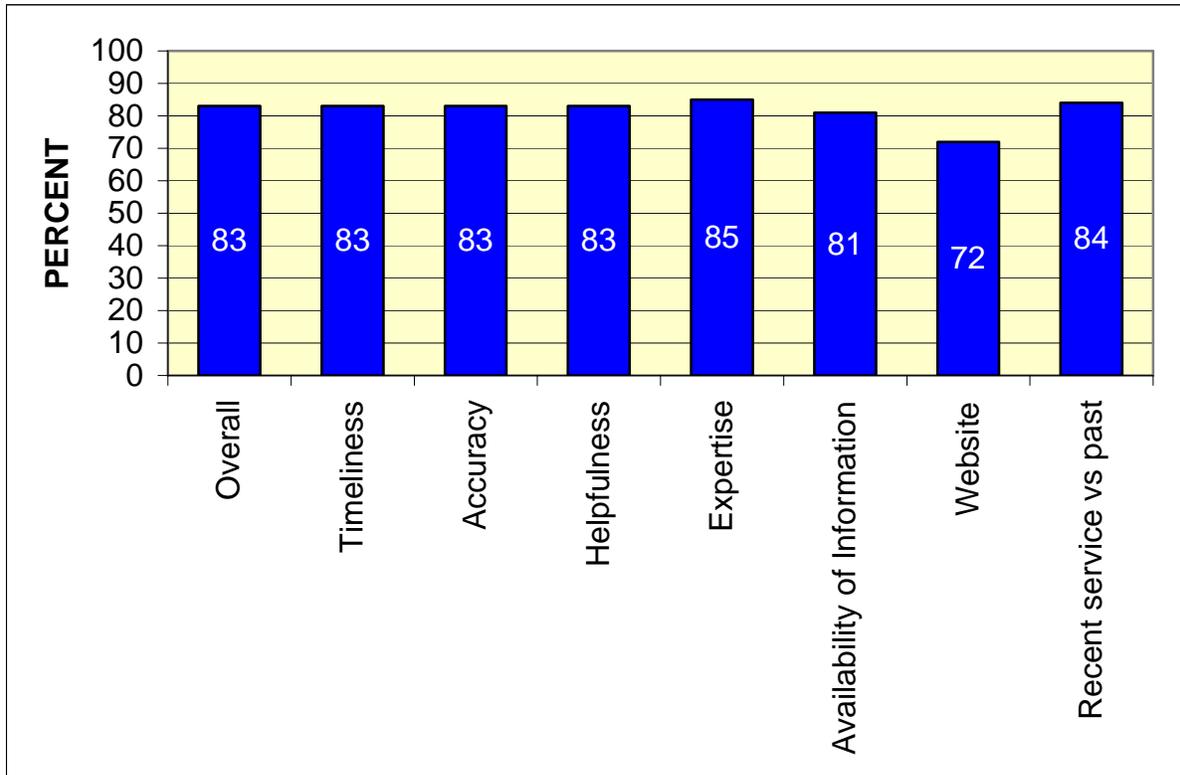
#### **BACKGROUND**

PERS posted a customer service survey on its website during August 2007. We also placed a hard copy of the survey in the August 1 retiree newsletter, *Perspectives*, that retirees could complete and mail to PERS. In total, we received 2,510 responses, a number of which included individual comments.

We identified three key issues from the comments received as outlined below. We also describe our strategies to address the issues and the methodologies used in the survey.

The following graphs and charts display the survey results and provide a comparison of 2007 responses to 2006 responses. Staff were pleased to note that customer satisfaction (measured as the percent of respondents rating a service factor as “excellent” or “good”) increased for all six service factors when comparing 2006 to 2007 results.

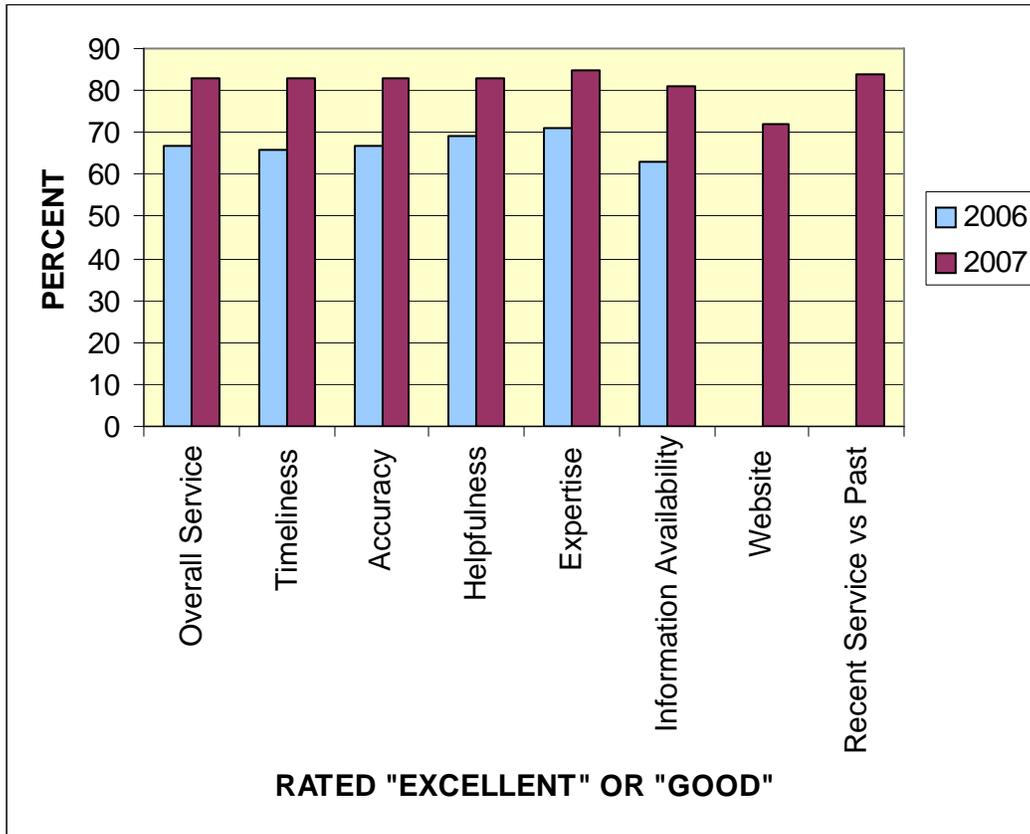
**Percent of respondents rating “excellent” or “good” (the State’s Key Performance Measures do not include the “Don’t Know” responses; the numbers in the graph have been rebaselined to exclude those responses)**



**Numerical results (numbers rounded)**

How do you rate...	Percent				
	Excellent	Good	Fair	Poor	Don't Know
The overall quality of service?	49	29	8	8	6
The timeliness of services PERS provides?	51	28	7	9	5
PERS' ability to provide services accurately the first time?	49	28	6	10	7
PERS' helpfulness?	52	26	8	9	5
The knowledge and expertise of PERS employees?	46	30	7	6	10
The availability of information at PERS?	46	28	9	10	7
The PERS website?	16	19	7	5	53
Our service in the past year compared to previous years?	33	24	6	8	29

**2006 vs. 2007 MEMBER RESULTS**



**KEY ISSUES (in order of number of responses)**

**1. The wait to speak with a PERS Customer Service agent is sometimes long.**

Many respondents feel that the wait times to speak with a Customer Service Representative on the telephone are sometimes too long and they expressed frustration about being “on hold.”

**Resolution**

To address this issue, we have revamped the telephone messaging to direct callers to the PERS website for answers to programmatic questions (how old do I have to be to retire, what is the Individual Account Program, etc.).

We recently added staff to the Information Center to cut down on the wait to speak with a Customer Service Representative.

In periods when we can anticipate telephone calls (mailing of member annual statements, annual cost-of-living adjustments, etc.) we are drawing staff from other divisions to help with telephone volume using a prepared script regarding a particular issue.

## **2. The time to receive a response to an email or letter can sometimes be long.**

Survey responses indicate frustration with the length of time it can take to receive an answer to an email or letter. PERS had established a 30-day service standard. However, based on the survey, that is too long.

### **Resolution**

We recently revamped job duties and now have the Presentation Team answering correspondence (emails and letters) when not conducting presentations. As of September 10, 2007, we are answering most emails (unless it is a complex issue requiring research) within three working days. We have also caught up on the backlog of letters and are working to provide an answer to a letter within 10 working days (unless it is a complex issue requiring research).

## **3. It is sometimes difficult to get consistent, accurate answers to questions.**

Members request information through phone calls, e-mail, letters, and by visiting a PERS office. In calendar year 2006, PERS received more than 180,000 member telephone calls and 32,000 member emails.

This was the number one issue in last year's survey. Although it was not the predominant issue this year, it continues to be an area needing improvement.

Survey comments indicate that regardless of the method members use to contact PERS, they sometimes cannot get satisfactory answers to their questions. The three most common complaints are:

- Members sometimes get inconsistent answers to questions from one staff member to another.
- Staff sometimes does not have answers to questions and doesn't get back with the correct answers as promised.
- Staff isn't knowledgeable in all aspects of the retirement plan.

### **Resolution**

To address this issue, we are:

- Continuing to offer core staff training in features of the Tier One/Tier Two and 238A OPSRP programs;
- Increasing customer service training for all CSD staff, including training designed specifically for Information Center staff;
- Using the incoming telephone message to encourage callers to use the website and the A-Z topic listings.
- Distributing internal newsletters to keep staff abreast of changes in business rules, OARs, policy decisions, and Board actions; and
- Ensuring Information Center response scripting uses the same verbiage as publications and the A-Z directory to provide consistent answers.

## **METHODOLOGIES**

To maximize member response, PERS created this survey online and posted it in a prominent spot on our home page. We also published the location of the survey in our member and retiree newsletters, inviting members and retirees to participate. The online survey ran throughout August 2007.

Further, we placed a hard copy of the survey in the newsletter that goes to retired members and they had several weeks to complete and mail the survey to PERS.

We used surveymonkey.com to create the survey, using the six key questions the state requires all state agencies to use for the Customer Satisfaction Performance Measure survey. We created two additional questions this year:

1. "How do you rate the PERS website?"
2. "How do your rate our service in the past year compared to our service in previous years?"

We also used surveymonkey's tools to analyze the survey responses.

The survey included a comments section. The comments have been summarized and addressed in the Key Issues section.

The survey report combines the online and hard copy responses, even though only retired members received hard copies.

Items of note:

1. The survey was posted on our website and while we asked if the respondent was a PERS member, anyone could take the survey.
2. Someone could respond more than once.
3. Only retired members received hard copies of the survey. When evaluating hard-copy responses only, it appears that those who retired before 2000 are more satisfied with PERS than active members or more recent retirees whose benefits have been affected by legislation and court decisions.

## **EMPLOYER CUSTOMER SATISFACTION SURVEY**

### **BACKGROUND**

PERS surveyed employers online throughout August 2007 for the second consecutive year. The 2007 results are discussed below.

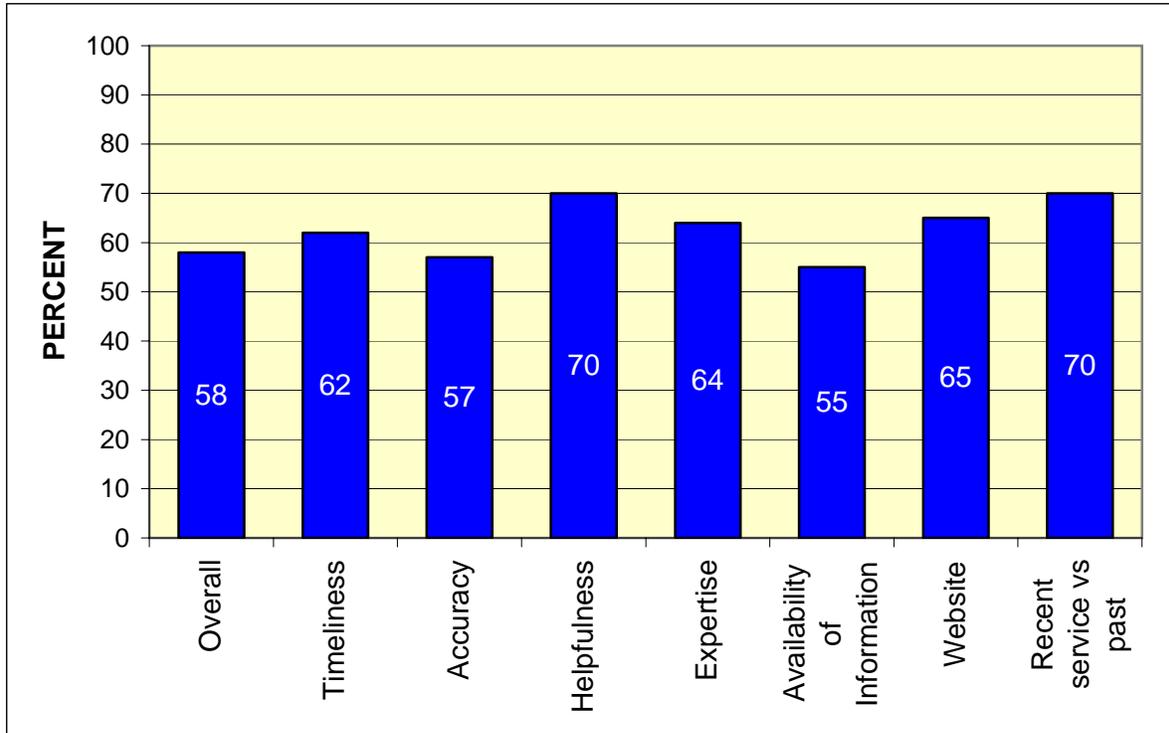
### **2007 ONLINE SURVEY SUMMARY**

PERS posted an online employer satisfaction survey throughout August 2007. Employers received an e-mail inviting them to take the survey; 227 responses were received, a number of which included individual comments.

We identified three key issues from the comments received as outlined below. We also describe our strategies to address the issues and the methodologies used in the survey.

The following graphs and charts display the survey results and provide a comparison of 2007 responses to 2006 responses. Staff were pleased to note that customer satisfaction (measured as the percent of respondents rating a service factor as "excellent" or "good") increased for all six service factors when comparing 2006 to 2007 results.

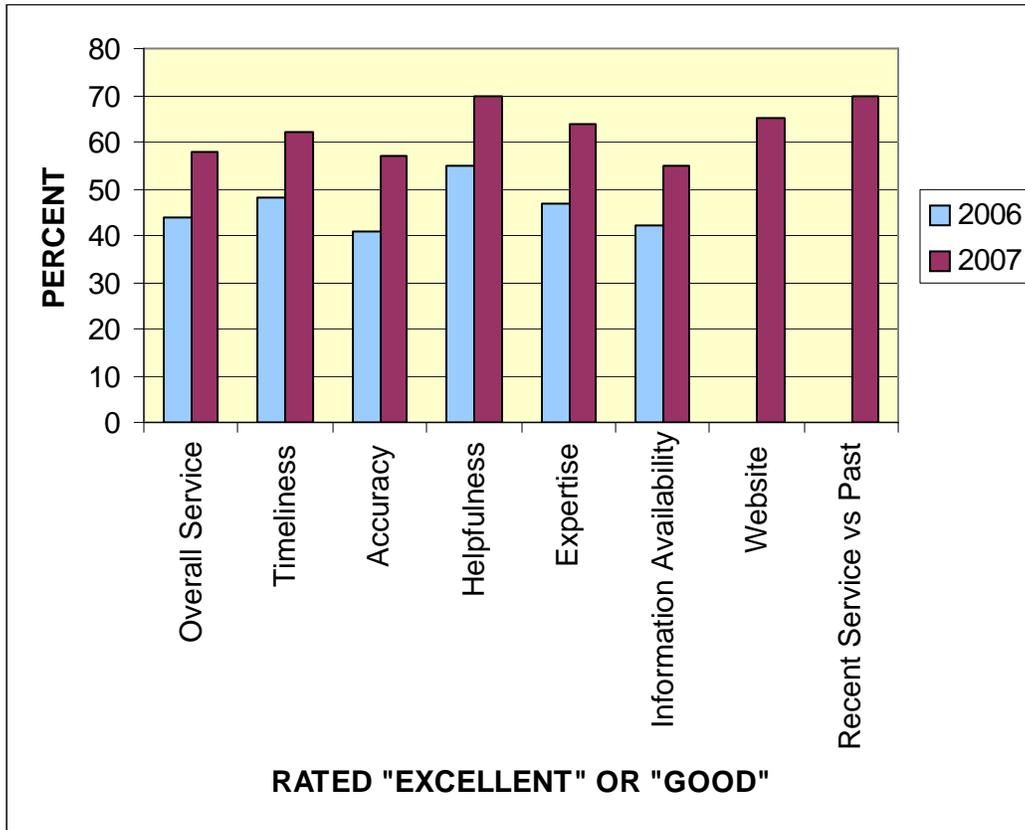
**Percent of respondents rating “excellent” or “good” (the State’s Key Performance Measures do not include the “Don’t Know” responses; the numbers in the graph have been rebaselined to exclude those responses)**



**Numerical results (numbers rounded)**

How do you rate...	Percent				
	Excellent	Good	Fair	Poor	Don't Know
The overall quality of service?	12	46	35	7	0
The timeliness of services PERS provides?	16	46	26	12	0
PERS’ ability to provide services accurately the first time?	13	44	31	12	0
PERS’ helpfulness?	25	45	26	4	0
The knowledge and expertise of PERS employees?	19	45	32	4	0
The availability of information at PERS?	12	43	38	7	0
The PERS employer website?	11	53	28	7	1
Our service in the past year compared to previous years?	19	48	22	7	4

**2006 vs. 2007 EMPLOYER RESULTS**



**KEY ISSUES**

**1. My customer service representative does not always return my calls in a timely manner or may be difficult to reach.**

Survey comments indicate that many employers are frustrated with the length of time that passes before an Employer Service Center Representative returns a telephone call.

**Resolution**

This is an issue of time management and professional courtesy. To address this issue, we are:

- Requiring the entire team to participate in Time Management training. This will be completed in October 2007.
- Involving the team in committing to meet our service standards for callbacks, whether it is with an answer or just to provide an update.
- Using tools such as the Contact Management system to monitor the staff workload and ensure that representatives are able to manage their calls.

**2. The ability to only contact a PERS employer representative in the morning is inconvenient.**

Survey comments indicate that some employers believe that they can only contact an Employer Representative during morning hours.

**Resolution**

This is partially an employer education issue, as some employers do not understand that they can call their assigned account representative at any time. The first step will be to reiterate our full-day availability to employers, encouraging them to call their representative during non-Information Center hours or to call the Information Center in the mornings if their representative is not available. They can also email their account representative at any time.

We will create an Employer Announcement detailing that Employer Representatives can be contacted at any time during business hours by telephone and email. We will send the information to employers via email and will post the information on the Employer website.

**3. It is sometimes difficult to get consistent, accurate answers to questions.**

This was the number one issue with employers in last year's survey. Although it was not the predominant issue this year, it continues to be an area needing improvement.

Employers request information through phone calls and e-mails. For the fiscal year ending June 30, 2007, the PERS Employer Information Center received more than 29,000 telephone calls and 22,000 emails.

Survey comments indicate that regardless of the method members use to contact PERS, employers sometimes cannot get satisfactory answers to their questions. Responses indicate three primary reasons:

- They sometimes get inconsistent answers to questions from one staff member to another.
- Staff does not always have answers to questions and doesn't get back with the correct answers as promised.
- Staff is not knowledgeable in all aspects of the system.

**Resolution**

This is a staff training and disbursement of information issue. To help provide consistency in answers to employers, management will:

- Dedicate a portion of each week's team meeting to gaining consensus on disputed or unclear issues. Additionally, all pertinent policy and procedural changes will be provided to the team and follow-up discussions will be held to ensure that everyone understands the information uniformly;
- Continue to offer core staff training in features of the Tier One/Tier Two and OPSRP programs;
- Increase customer service training for all CSD staff, including training designed specifically for employer Information Center staff;
- Distribute internal newsletters to keep staff abreast of changes in business rules, OARs, policy decisions, and Board actions;

- Ensure scripting uses the same verbiage as publications and the A-Z directory to provide consistent answers;
- Encourage employers to use the A-Z subject help file section on the Employer website for answers to non-complex questions; and
- Ensure that a subject-matter expert handles phone call escalations.

## **METHODOLOGIES**

To maximize employer response, we created this survey online and an email was sent to all employers inviting them to participate. The survey ran throughout August 2007. We set the survey so more than one employee per employer could respond since we often interact with more than one employer contact.

We used surveymonkey.com to create the survey, using the six key questions the state requires all state agencies to use for the Customer Satisfaction Performance Measure survey. We created two additional questions this year:

1. "How do you rate the PERS website?"
2. "How do your rate our service in the past year compared to our service in previous years?"

We also used surveymonkey's tools to analyze the survey responses.

The survey included a comments section. The comments have been summarized and addressed in the Key Issues section.



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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November 16, 2007

TO: Members of the PERS Board  
FROM: Steve Delaney, Deputy Director  
SUBJECT: Future Legislative Sessions

MEETING DATE	11/16/07
AGENDA ITEM	B.2.f. Legislative

### 2008

While a supplemental session of the Oregon Legislature is currently scheduled to begin on February 4, 2008, staff has not heard of any party planning to introduce PERS-related legislation during that session.

### 2009

PERS staff has begun to compile suggestions from staff and stakeholders regarding possible legislative concepts for 2009.

PERS staff will develop those concepts through November 2007.

The Legislative Advisory Committee has agreed to meet in early December 2007 to discuss those concepts considered of sufficient import that they should be carried to the PERS Board for consideration.

PERS staff will make an initial presentation of possible concepts to the PERS Board at the January 18, 2008 meeting of the Board. Our goal will be to lay out how each concept (if any) fits into the context of the Board's guiding principles and legislative policy decision matrix, and determine which of those concepts (if any) the Board would like staff to continue developing.

The Department of Administrative Services has just provided a timeline to guide preparation of possible legislative concepts for 2009:

- |  |   |
|--|---|
| <b>April 4, 2008 – 5:00 PM</b>   | Last day to submit Concepts to DAS  |
| <b>June 2, 2008 – 5:00 PM</b>  | Last day for DAS to submit concepts to Legislative Counsel                    |
| <b>July 14, 2008 – 5:00 PM</b>   | Last day for agencies to submit additional information necessary for drafting |
| <b>November 3, 2008 - 5:00 PM</b> <i>or</i><br>fourteen calendar days after the date<br>on the draft – whichever is sooner | Deadline for requesting a revised draft.                                      |
| <b>December 1, 2008 – 5:00 PM</b>  | Legislative Counsel stops work on agency drafts                               |
| <b>December 15, 2008- 5:00 PM</b>  | Deadline for Governor to pre-session file agency bills                        |
| <b>January 12, 2009</b>  | Session begins  |





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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Action on Contested Cases

MEETING DATE	<b>11/16/07</b>
AGENDA ITEM	<b>C.1. Contested Cases</b>

### OVERVIEW

Actions: Staff recommends the following action be taken in relation to the cases scheduled for deliberation at this meeting:

- Adopt the Draft Final Orders as presented in the contested cases of Deanna Gary, Jan Karius, and Susan Aronson.
- Postpone consideration of the contested cases of Lynn Topp, Betty Britt, and James Wallace.

### BOARD OPTIONS

The Board may:

1. Adopt the staff recommendation as presented above.
2. Adopt one of the alternative directions specified in the memo related to each contested case.
3. Take no action. The proposed orders would become final as the deadlines pass.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- If the Board does not adopt: The specific outcome and alternatives vary but are more fully explained in the memo accompanying each case.



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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Adoption of Withdrawal Rules

OAR 459-010-0055, *Withdrawal of Contributions*  
OAR 459-075-0020, *Withdrawal from OPSRP Pension Program*  
OAR 459-080-0020, *Withdrawal of Individual Accounts*

MEETING DATE	11/16/07
AGENDA ITEM	C.2. Withdrawals

### OVERVIEW

- Action: Adopt modifications to PERS Chapter 238 Program withdrawal rule, OAR 459-010-0055, and adopt new OPSRP Withdrawal Rules, OARs 459-075-0020 and 459-080-0020.
- Reason: These new rules and rule modifications establish and clarify procedures for withdrawals permitted under the Oregon Public Service Retirement Plan pension and IAP programs and PERS Chapter 238 Program. Further modifications have also been made to conform to statutory changes by HB 2281.
- Subject: Withdrawal from the OPSRP Pension Program, Individual Account Program, and PERS Chapter 238 Program.
- Policy Issue: Should the withdrawal processes for the PERS Chapter 238 Program and the OPSRP Programs reflect generally parallel administration?

### BACKGROUND

Originally, the proposed OPSRP withdrawal rules were to be modified to parallel where possible the withdrawal rule for the PERS Chapter 238 Program. That existing rule was also placed in rulemaking to align it with the provisions of the OPSRP-related rules. Public comment has supported making the withdrawal processes as parallel as possible.

Also, the PERS Board put forward a legislative concept that requires a member who withdraws from one program to withdraw from them all. That concept was passed by the 2007 Oregon Legislature as HB 2281, effective January 1, 2008.

With the ultimate goal of having these administrative rules coordinate with the legislative changes and also parallel each other, staff recommended that final consideration be postponed until the legislative process was completed and the coordinating changes could be made on the PERS Chapter 238 Program rule that was then just entering rulemaking.

## POLICY ISSUE

*Should the withdrawal processes for the PERS Chapter 238 Program and the OPSRP Programs generally reflect parallel administration?*

Consistent and parallel administration of withdrawals in all PERS programs is operationally efficient and more predictable and understandable for staff, employers, and members. The public comments made in association with the OPSRP rulemaking support parallel changes in the PERS Chapter 238 withdrawal rule. Comments also support a significant shift in the administration of mandatory re-deposits (when a member returns to PERS-covered employment without a bona fide separation).

## PUBLIC COMMENT AND HEARING TESTIMONY

### OPSRP Withdrawal Rules:

At the PERS Board's January 12, 2007 meeting, these rules were presented for second reading. Staff reported at that time that PERS had received public comment from four stakeholders that resulted in changes to the proposed rules relating to employer obligations and potential liabilities, shifting accountability to the employee from the employer.

At the PERS Board's September 21, 2007 meeting, these rules were presented for third reading. Staff reported that PERS had received additional public comment from four stakeholders (relating to repayment options, accountability, and the OUS Optional Retirement Plan) and the resulting changes from those comments.

No public comment has been received since third reading. The public comment period on all three rules ended September 30, 2007 at 5:00 p.m.

## SUMMARY OF MODIFICATIONS TO RULES SINCE SECOND/THIRD READING

All three rules were modified to reflect effective dates of January 1, 2008, corresponding to the effective date of HB 2281.

### OAR 459-010-0055:

All modifications to the existing rule are reflected in bracketed red italics (deletions) and bold blue underline (additions). The following modifications were made to the rule since the last PERS Board meeting:

Section (7) was edited to reflect that the failure of the withdrawn former member to establish a bona fide separation cancels the withdrawal and restores membership in the program.

Restoration of forfeited service rights remains contingent upon repayment.

In Section (8), the text regarding cancellation of the withdrawal and restoration of membership upon repayment was removed. Restoration of forfeited service rights remains contingent upon repayment.

The edits in Sections (7) and (8) reflect administrative transactions that are more consistent with plan qualification requirements under federal law.

OAR 459-075-0020:

All changes reflected in the version presented to the Board in September have been incorporated. Proposed changes made since the Board’s last meeting are reflected in the attached by bracketed red italics (deletions) and bold blue underline (additions).

Sections (7) and (8) were edited in the same manner as Sections (7) and (8) in OAR 459-010-0055.

OAR 459-080-0020:

All changes reflected in the version presented to the Board in September have been incorporated. Proposed changes made since the Board’s last meeting are reflected in the attached by bracketed red italics (deletions) and bold blue underline (additions).

Sections (7) and (8) were edited in the same manner as Sections (7) and (8) in OAR 459-010-0055, and to reflect that restoration of forfeited accounts also remains contingent upon repayment.

LEGAL REVIEW

The attached draft 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, the Board need not adopt the rules.

Impact: Clarification of procedures and administration will benefit members and staff.

Cost: There are no discrete costs attributable to these rules. Statute requires the administration of withdrawals.

RULEMAKING TIMELINE

August 15, 2006	Staff began the rulemaking process for the OPSRP rules by filing Notice of Rulemaking with the Secretary of State.
September 1, 2006	<i>Oregon Bulletin</i> published the Notice.
October 20, 2006	PERS Board notified that staff began the rulemaking process.
October 24, 2006	Rulemaking hearing for OPSRP rules held at 2:00 p.m. in Tigard.
November 17, 2006	First reading of OPSRP rules.
November 24, 2006	Public comment period for OPSRP rules ended at 5:00 p.m.
December 15, 2006	Staff extended public comment period by filing Notice of Rulemaking with the Secretary of State.
January 12, 2007	Second reading of OPSRP rules.
January 23, 2007	Second rulemaking hearing for OPSRP rules held in Tigard.
January 26, 2007	Extended public comment period for OPSRP rules ended.

## Adoption – Withdrawal Rules

11/16/2007

Page 4 of 4

February 15, 2007	Staff began the rulemaking process for the Chapter 238 rule by filing Notice of Rulemaking with the Secretary of State.
February 16, 2007	PERS Board notified that staff began the rulemaking process.
March 1, 2007	<i>Oregon Bulletin</i> published the Notice.
March 27, 2007	Rulemaking hearing for Chapter 238 rule held in Tigard.
March 30, 2007	First reading of Chapter 238 rule.
April 6, 2007	Public comment period for Chapter 238 rule ended at 5:00 p.m.
April 13, 2007	Staff renoticed all Withdrawal rules by filing Notice of Rulemaking with the Secretary of State.
May 1, 2007	<i>Oregon Bulletin</i> published the Notice.
May 31, 2007	Rulemaking hearing for all Withdrawal rules held in Tigard.
September 30, 2007	Extended public comment period for all Withdrawal rules ended.
November 16, 2007	Board may adopt the rules.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rules OAR 459-075-0020 and 459-080-0020 and modifications to OAR 459-010-0055, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: These new rules and rule modifications establish and clarify procedures for withdrawals permitted under the Oregon Public Service Retirement Plan and PERS Chapter 238 Program. Further modifications have also been made to conform to statutory changes by HB 2281.

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

C.2. Attachment 1	OAR 459-010-0055, <i>Withdrawal of Contributions</i>
C.2. Attachment 2	OAR 459-075-0020, <i>Withdrawal from OPSRP Pension Program</i>
C.2. Attachment 3	OAR 459-080-0020, <i>Withdrawal of Individual Accounts</i>

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

1       **459-010-0055**

2       **Withdrawal of Contributions**

3       (1) Definitions.

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**  
7 **OAR 459-005-0001(7).**

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

10       (a) The member has separated from employment with all participating employers  
11 and all employers in a controlled group with a participating employer~~[, and]~~;

12       (b) PERS receives the member’s request for withdrawal of the member account  
13 before the member reaches earliest service retirement age; ~~[and]~~

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

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

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

1        *[(4) An inactive member shall receive an additional 50 percent of the balance of the*  
2 *member account as of the effective date of withdrawal, including earnings credited under*  
3 *OAR 459-007-0040, to be paid from employer contributions, if:]*

4        *[(a) As of the effective date of withdrawal, the member has been an inactive member*  
5 *since on or before January 1, 2000;]*

6        *[(b) Employee contributions were made during each of five calendar years or more;]*

7        *[(c) Membership has not terminated under ORS 238.095 or 238.265; and]*

8        *[(d) The member's effective date of withdrawal is on or after July 1, 2004, and*  
9 *before June 30, 2006.]*

10        **(4)***[(5) If a] A member **who withdrew** *[withdraws]* the member account and  
11 received **d[s]** an additional 50 percent of the member account **pursuant to section 2,**  
12 **chapter 276, Oregon Laws 2003** *[under section (3) of this rule, the member]* may not  
13 subsequently restore the creditable service forfeited by the withdrawal under ORS  
14 238.105 or 238.115.*

15        **(5)***[(6)]* The member may revoke the request for withdrawal of the member account  
16 if PERS receives a written request to revoke *[prior to]* **before** the earlier of:

17        (a) The date of distribution; or

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

20        **(6)***[(7)]* If a member withdraws the member account under this rule, membership **in**  
21 **the PERS Chapter 238 Program** shall be terminated as of the effective date of  
22 withdrawal. **Membership rights accrued under ORS chapter 238 before the effective**

1 date of withdrawal, including any service rights attributable to employment before  
2 the effective date of withdrawal, are forfeited.

3 ~~(7)~~~~(8)~~ If a former member who has withdrawn the member account under this rule  
4 returns to employment with any participating employer or an employer in a controlled  
5 group with a participating employer ~~[prior to]~~before the first day of the second  
6 calendar month following the month of the separation described in subsection (2)(a) of  
7 this rule ~~[in which the member had previously separated from a qualifying position],~~ the  
8 withdrawal is cancelled and membership is restored. The member must repay to  
9 PERS in a single payment the total amount of the payments attributable to the  
10 withdrawal within 30 days following the effective date of employment. Upon receipt  
11 by PERS of repayment under this section, service rights forfeited under section (6)  
12 of this rule are restored as of the effective date of withdrawal. The repayment  
13 amount will be credited pro rata to the accounts from which the withdrawal amount  
14 was derived. ~~[PERS shall notify the employer that the employer shall be obligated to the~~  
15 ~~Fund for the full amount of the member's withdrawal not repaid, unless:]~~

16 ~~[(a) The participating employer immediately terminates the employment upon~~  
17 ~~discovering or being notified of the member's failure to repay the withdrawn~~  
18 ~~contributions, and does not reemploy the member until the requirements of section (2) of~~  
19 ~~this rule are satisfied;]~~

20 ~~[(b) The member repays the withdrawn amount in full within 30 days following the~~  
21 ~~effective date of such employment; or]~~

22 ~~[(c) The full amount of the withdrawal is repaid by the participating employer from~~  
23 ~~payroll deductions from the member's monthly salary. Such payroll deductions shall be~~

1 *in amounts necessary to effect the repayment within one calendar year, unless a longer*  
2 *period is required so that monthly payroll deductions for this purpose do not exceed 25*  
3 *percent of the member's net salary.]*

4 **(8)[(9)] If the member fails to repay as provided in section (7) of this rule, PERS**  
5 **shall take all reasonable steps to recover the repayment amount due, including any**  
6 **interest, costs, or penalties assessed by PERS, under the provisions of ORS 238.715**  
7 **and OAR 459-005-0610. Upon receipt by PERS of repayment under this section,**  
8 **service rights forfeited under section (6) of this rule are restored effective the first**  
9 **day of the month following the date of repayment. The repayment amount will be**  
10 **credited pro rata to the accounts from which the withdrawal amount was derived**  
11 **effective the first day of the month following the date of repayment.** *[If a*  
12 *participating employer employs a member after the member's effective date of*  
13 *withdrawal and fails to notify the system of the employment the employer shall hold*  
14 *PERS harmless for any actual or perceived loss of benefits as a result of the withdrawal.]*

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

16 Stat. Auth.: ORS 238.650

17 Stats. Implemented: ORS 238.265, [&]OL 2003 Ch. 276, & [ / 2]OL 2007 Ch. 52

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 075 – OPSRP PENSION PROGRAM**

1 **459-075-0020**

2 **Withdrawal from OPSRP Pension Program**

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(7).

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

9 (d) “Pension program” has the same meaning given the term in ORS 238A.005(12).

10 (2) An inactive member may withdraw from the OPSRP Pension Program under  
11 ORS 238A.120 if:

12 (a) The member is vested in the pension program under ORS 238A.115;

13 (b) The member has separated from employment with all participating employers  
14 and all employers in a controlled group with a participating employer;

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;

18 (d) The member files with PERS a written request for withdrawal on a form  
19 acceptable to PERS;

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

1 (f) The member complies with the requirements of section 2, chapter 52, Oregon  
2 Laws 2007.

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

5 (4) A member may revoke a request for withdrawal from the pension program if  
6 PERS receives the member's written revocation of the request 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 (5) A member who withdraws from the pension program terminates membership in  
11 the pension program as of the effective date of withdrawal.

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

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

1 repayment under this section, *[the withdrawal of the former member is cancelled.*  
2 *Membership in the pension program and]* service forfeited under section (6) of this rule  
3 *[are] is* restored as of the effective date of withdrawal.

4 (8) If the *[former]* member fails to repay as provided in section (7), PERS shall take  
5 all reasonable steps to recover the repayment amount due, including any interest, costs, or  
6 penalties assessed by PERS, under the provisions of ORS 238.715 and OAR 459-005-  
7 0610. Upon receipt by PERS of repayment under this section, *[the withdrawal of the*  
8 *former member is cancelled. Membership in the pension program and]* service forfeited  
9 under section (6) of this rule *[are] is* restored effective the first day of the month  
10 following the date of repayment.

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

12 Stat. Auth.: ORS 238A.450

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

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

**DIVISION 080 – 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(7).

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, rollover account, and  
12 employer account of a member of the Individual Account Program (IAP) to the extent the  
13 member is vested in those accounts under ORS 238A.320.

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

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

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

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

1 (d) The member complies with the requirements of section 3, chapter 52, Oregon  
2 Laws 2007.

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

5 (a) The date of distribution; or

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

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

10 (5) An employer account not included in the withdrawn individual accounts by  
11 reason of the member’s failure to vest in the employer account is permanently forfeited as  
12 of the date of distribution.

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

17 (7) If a former member who has withdrawn the individual accounts returns to  
18 employment with a participating employer or an employer in a controlled group with a  
19 participating employer before the first day of the second calendar month following the  
20 month of the separation described in subsection (2)(a) of this rule the withdrawal is  
21 cancelled and membership is restored. The *[former]* member must repay to PERS in a  
22 single payment the total amount of all payments attributable to the withdrawal within 30  
23 days following the effective date of the employment. Upon receipt by PERS of

1 repayment under this section, *[the withdrawal of the former member is cancelled.*  
2 *Membership in the IAP is restored as of the effective date of the withdrawal.*  
3 *A]* account(s) forfeited under section (5) and service forfeited under section (6) of this  
4 rule are restored effective the date of distribution. The repayment amount received will be  
5 credited pro rata to the accounts from which the withdrawal amount was derived.

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

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

16 Stat. Auth.: ORS 238A.450

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



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
Dale S. Orr, Manager, Actuarial Services  
SUBJECT: Adoption of Crediting Earnings to Employer Lump-Sum  
Payments Rule

MEETING DATE	<b>11/16/07</b>
AGENDA ITEM	<b>C.3. Crediting</b>

OAR 459-007-0530, *Crediting Earnings to Employer Lump-Sum Payments*

### OVERVIEW

- Action: Adopt modifications to OAR 459-007-0530, Crediting Earnings to Employer Lump-Sum Payments.
- Reason: Allow for the implementation of payroll-to-payroll amortization of side accounts as opposed to the current annual basis.
- Subject: Crediting earnings to employer lump-sum payments.
- Policy Issue: Should PERS apply a payroll-cycle based earnings crediting method to employer side accounts?

### BACKGROUND

Employers can make lump-sum payments to PERS in addition to the regular employer contributions calculated as a percent of payroll. These lump-sum payments can occur when a PERS employer has a budget surplus or chooses to pre-fund their obligations through issuing a bond. The majority of these lump-sum payments are placed in side accounts. The side accounts, when amortized, offset the payroll-based contributions that the employer owes.

This rule details how earnings are credited to these lump-sum payments. The rule modifications change crediting to occur monthly to coincide with the amortization schedule change proposed by employers. Previously, this rule called for annual crediting.

### SUMMARY OF RULE AND POLICY ISSUE

*Policy Issue: Should PERS apply a payroll-cycle based earnings crediting method to employer side accounts?*

Employers asked PERS to move to a monthly transfer schedule in amortizing their side accounts used to offset employer rates. This change to a monthly transfer will result in greater precision and timeliness in applying these offsets than the current method that uses annual offsets. Staff recommends adopting this new schedule for improved accuracy and effectiveness in applying these side accounts to employer obligations.

The proposed change to this rule will allow earnings on these amounts to track this changed amortization methodology by crediting earnings monthly rather than annually.

These changes are proposed to take effect January 1, 2008.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on August 29, 2007 at 2:00 p.m. in Salem. Lori Sattenspiel representing the Oregon School Boards Association and Maria Keltner from the Employers PERS Alliance attended and asked several questions during a presentation prepared by Dale Orr and Tom Andrews from the Fiscal Services Division. Ms. Keltner withheld presenting comments verbally and instead said she would submit written comments. She did, however, emphasize the helpfulness of having a staff presentation at the hearing to fully understand the rules and proclaimed that the discussion was invaluable.

The public comment period ended on September 28, 2007. Two comments were received. They are included in this board packet and as attachments to the memo for Agenda Item C.4., since their comments predominantly pertained to that rule set.

Maria Keltner, representing the Employers PERS Alliance, submitted a comment dated August 30, 2007. The majority of the comments were regarding definitions in the rule. Staff reviewed her comments and made several changes as indicated in the summary of modifications to the rule.

PERS received a memo from Lori Sattenspiel with the Oregon School Boards Association dated September 25, 2007. Ms. Sattenspiel stated that employers generally support moving from annual to payroll-to-payroll crediting. She noted that more work needs to be done in this area, and requested the Board's support to encourage more real time information on the crediting process and value of accounts. Similar to the comments Ms. Keltner submitted, Ms. Sattenspiel requested tightening language to conform to statutory requirements. Changes were made as suggested.

#### SUMMARY OF MODIFICATIONS TO RULE SINCE FIRST READING

A number of modifications were made as a result of recommendations provided by the Employers PERS Alliance to provide additional clarity to the rule and improved consistency in wording with other related lump-sum payment rules. These changes also were consistent with the policy positions contained in the proposed rule modifications.

In section (1), the phrase "For the purposes of this rule:" was added. A definition was added for "Allocated Earnings" and the definition of "Amortized Amount" was revised. The definition of "Employer Contribution Account" was deleted because the term is already defined in OAR 459-005-0001(12). Lastly, a revision was made to the definition of "UAL factor."

In section (3), the term "account" was changed to "side account" for consistency.

#### LEGAL REVIEW

The attached rule was submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rule as presented for adoption.

### IMPACT

Mandatory: No, the Board need not adopt the rule.

Impact: Allows for a more accurate crediting of earnings to side accounts.

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

### RULEMAKING TIMELINE

June 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
July 1, 2007	<i>Oregon Bulletin</i> published the Notice.
July 20, 2007	PERS Board notified that staff began the rulemaking process.
August 29, 2007	Rulemaking hearing held at 2:00 p.m. in Salem.
September 21, 2007	First reading of the rule.
September 28, 2007	Public comment period ended at 5:00 p.m.
November 16, 2007	Board may adopt the rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt rule modifications to OAR 459-007-0530, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Allow for the implementation of payroll-to-payroll amortization of side accounts as opposed to the current annual basis.

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

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459

DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION

1 459-007-0530

2 Crediting Earnings To Employer Lump-Sum Payments

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

4 (a) “Allocated Earnings” means the actual investment earnings or losses of the  
5 Public Employees Retirement Fund (PERF), apportioned based upon the  
6 proportionate size of the side account in relation to the PERF and adjusted for  
7 administrative costs as described in ORS 238.229(3). These earnings are exempt from  
8 funding requirements of the Contingency or Capital Preservation Reserves.

9 (b) “Amortized Amount” means the amount of a Side Account used to offset  
10 contributions due from the employer.

11 ~~[(a)]~~(c) “Employer lump-sum payment” means any employer payment that is:

12 (A) ~~[Is n]~~Not regularly scheduled;

13 (B) ~~[Is n]~~Not paid as a ~~[statutorily fixed]~~ percentage of salary; and

14 (C) ~~[The contributor has control over whether to make the payment]~~Paid at the  
15 employer’s election instead of at the PERS Board’s direction.

16 ~~[(b)]~~(d) “UAL factor” means the monthly or annual rate based upon allocated  
17 side account earnings.~~[represents actual earnings or losses from investments and is not~~  
18 ~~subject to funding requirements of the Contingency or Capital Preservation Reserves.]~~

19 (2) Subject to ~~[OL 2005 Ch. 808 Sec. 13(4)]~~ORS 238.229(4), the employer lump-sum  
20 payment shall first be applied to liabilities attributable to creditable service by employees  
21 of the employer before the ~~[participating public]~~ employer was grouped with other public  
22 employers. Earnings on these amounts shall be credited based on the following:

1 (a) For the month in which the employer lump-sum payment is received, earnings  
2 shall be credited based on the average annualized rate, prorated for the number of days  
3 from date of receipt to the end of the month.

4 (b) For the remainder of the year, the employer lump-sum payment shall receive  
5 earnings based on the difference between the final Tier Two annual earnings rate and the  
6 Tier Two earnings rate in effect as of the first of the month after receipt of the payment.

7 (c) In subsequent calendar years, earnings or losses shall be credited to the employer  
8 lump-sum payment in accordance with OAR 459-007-0005(14).

9 (3) Earnings on an employer lump-sum payment held in a separate Side [a] Account  
10 *[subject to ORS 283.225(9)]* shall be credited to the Side Account based on the following:

11 (a) For the month in which the employer lump-sum payment is received, earnings  
12 shall be credited based on the average annualized rate, prorated for the number of days  
13 from date of receipt to the end of the month.

14 (b) For the remainder of the year, the employer lump-sum payment shall receive  
15 earnings based on the difference between the annual UAL factor and the UAL factor in  
16 effect as of the first of the month after receipt of the payment.

17 (4)(a) Amortized amounts to be applied to the Employer Contribution Account  
18 shall receive earnings or losses based on the UAL factor, effective as of the first of the  
19 calendar month following the date of the application of the amortized amount.

20 *[(c)](b)* In subsequent calendar years, earnings shall be credited to the remaining  
21 balance of the employer's side account created when the lump-sum payment was  
22 received *[employer lump-sum payment]* on an annual basis in accordance with OAR 459-  
23 007-0005(4).

1        ~~[(4)]~~(5) The provisions of this rule are effective on ~~[January]~~January 1, ~~[2004]~~2008.

2        Stat. Auth.: ORS 238.650

3        Stats. Implemented: ORS 238.225 to 238.229

**August 30, 2007**

**To: Michael Pittman, PERS Board Chair, and Members of the PERS Board**

**Re: PERS Rulemaking:**

**Crediting Earnings/Losses to Side Accounts and Employer Lump-Sum Payments**

**OAR 459-007-0530**

**OAR 459-009-0084**

**OAR 459-009-0085**

**OAR 459-009-0090**

**The following comments are submitted by the Employers' PERS Alliance.**

**OAR 459-007-0530 Crediting Earnings to Employer Lump-Sum Payments**

(1) After the word "Definitions" we suggest adding: "For the purposes of this rule:"

(1)(a) Recommend deleting definition of "Employer Contribution Account" from this rule.

Reason for recommendation: "Employer Contribution Account" is defined in OAR 459-005-0001(12). There should be one definition in OAR 459 for the "Employer Contribution Account". Having more than one definition is confusing when it is the same "creature".

(1)(b)(C) We think the definitions for "Employer lump-sum payment" in OAR 459-009-0084 (1)(d)(D) and OAR 459-009-0085(1)(d)(D) and "Surplus Lump-Sum Payment" in OAR 459-0090(1)(f)(D) should match this definition.

(1)(c) We understand the "actual earnings or losses" from investment of side account dollars is adjusted for administrative expenses according to ORS 238.229(3). The word "allocated" needs to be defined. The definition of "UAL factor" needs to specify how the UAL factor is computed. Without a definition for "allocated" and no information on how the UAL factor is computed, the UAL factor could be calculated most anyway.

The UAL factor definition/calculation, used to compute the earnings or losses credited to the side account for the amounts transferred from the Side Account to either the Employer Contribution Account or to the Rate Pool Account, needs to clearly comply with ORS 238.229(2) re earnings crediting to side accounts.

(2) Recommendations: Delete first sentence. Change second sentence to read: "Earnings on the amount of an employer lump-sum payment applied to transition Unfunded Actuarial Liabilities subject to ORS 238.229(4) shall be credited based on the following: (a) (b) (c) "

Note: employer lump sum payment amounts applied to transition unfunded actuarial liabilities is covered in OAR 459-009-0084(11) and -0085(11).

(3) Suggest addition (bold and underlined) to provide clarification: Earnings on an employer lump-sum payment held in a separate **Side Account** subject to ORS 238.229 shall be credited **to the Side Account** based on the following:

Recommend combining sections (3) and (4). Suggest renumbering (4)(a) to become (3)(c) and renumbering (4)(b) to become (3)(d). It all fits under the intro in section (3).

Note: section (4)(b) refers to OAR 459-007-005(4) Employer lump sum payments. We think the reference in OAR 459-007-005(4) to ORS 238.225(9) should now be a reference to ORS 238.229.

(4)(a) It is not clear from reading the rule how this works...  
Need a definition for “amortized amounts” if that term is used.

Suggestion, rewrite section (4)(a) to read something like: “ The Side Account shall receive earnings or losses on amounts transferred from the Side Account to an Employer Contribution Account or to a Rate Pool Account. These earnings or losses will be credited to the Side Account at the annual earnings crediting. The amount credited to the Side Account will be the sum of each amount transferred out of the Side Account during the calendar year times the UAL factor effective as of the first of the calendar month following the date of the transfer.”

Note: We understand the goal is to use the same methodology to credit earnings/losses for transfers out of the side account as is used to credit earnings/losses for mid year transfers out of the Employer Contribution Accounts and out of the Employer Rate Pool Accounts. We also understand the factors applied to Side Account transfers will be different because of ORS 238.229.

**OAR 459- 009-0084 Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group**

Suggestion: change “Actuarial Group” to “Employer Rate Pool” in the title of this rule. Define Employer Rate Pool as: the School District Pool, Local Government Rate Pool, State and Local Government Rate Pool, OPSRP Rate Pool.

Note: “Actuarial Group” needs to be defined if it is used.

If “actuarial group” is intended to include prime/subordinate situations as well as rate pool situations, the definition of “actuarial group” needs to say this. Otherwise, need to cover treatment of prime/subordinate lump sum payment and side account either in a separate rule or in -0084, -0085 and -0090.

(1) (d)(D) should be the same as OAR 459-007-0530 (1)(a)(C).

Sections (3) – (10) see attached payoff calculation process recommendations.

(11) Recommended clarifications:

Add to the end of sentence two: “of that employer.”

Change the last sentence to: “The remainder of the payment shall be held in a side account to offset any pooled unfunded actuarial liabilities and shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapters 238 or 238A, rather than as a reduction of those obligations.”

(12) Side Account.

Change first sentence to: “The amount of an UAL lump-sum payment held in a side account shall be for the benefit of the employer making the UAL lump-sum payment. Reason for suggested change: The rule sounds like all of the UAL lump-sum payment goes into the Side Account -- instead of just the excess after paying off the transition UAL.

Need definition of “amount amortized”... including how it is computed.

Change second sentence: The amount amortized for each payroll reporting period shall be **transferred** from the Side Account to the **Employer Rate Pool Account** in which the employer is participating.

**OAR 459-009-0085 Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group**

(1)(d)(D) should be same as OAR 459-007-0530(1)(a)(C).

Sections (3) through (10) see attached payoff calculation process recommendations

(12) Side Account. need definition and calculation method for “amount amortized”

Change second sentence: The amount amortized for each payroll reporting period shall be (*applied*) **transferred** from the Side Account to the Employer Contribution Account of the individual employer.

**OAR 459-009-0090 Surplus Lump-Sum Payments by Employers**

(1)(f)(D) and (1)(g)(D) should be same as OAR 459-007-0530.

(4) requiring a minimum surplus lump-sum payment of 100 basis points is a huge amount for larger entities. For Metro \$5 million was only 84 basis points. We recommend a minimum surplus lump-sum payment of \$1 million or 100 basis point reduction whichever is less. In the alternative, we recommend a minimum surplus lump-sum payment of 50 basis points.

Need to define “pension program contribution rate” or “pension program contribution rates”. It is not clear if the proposed rule requires a minimum surplus lump sum payment resulting in a 1% reduction in one pension program rate or a 1% reduction in each of the employer’s pension program contribution rates...PERS 238 rate, OPSRP general service rate, OPSRP police/fire rate.

(5) defining the three “pension program contribution rates” .... the OPSRP police/fire rate, the OPSRP general service rate, and the PERS 238 rate will make this section clearer.

Sections (6) through (15) see attached payoff calculation process recommendations.

Thank you for your review and consideration. Let us know if you have questions.

The Employers PERS Alliance  
OSBA  
OCCA  
AOC  
LOC  
SDAO

Attachment to Employer PERS Alliance comments on proposed rules:

Crediting Earnings/Losses to Side Accounts and Employer Lump-Sum Payments

OAR 459-007-0530 OAR 459-009-0085 OAR 459-009-0085 OAR 459-009-0090

**Conceptual recommendations for changes to the process of making a lump-sum payment:**

At least 60 days prior to anticipated payoff, employer must make a request in writing to PERS.

PERS has 5 days after request to check for completeness and forward to Mercer for invoicing. Mercer has three days to forward invoice to employer for payment. If PERS find that the employer request is incomplete, PERS must notify the employer in writing of the lacking items within 5 days after receiving the employer request.

Upon receipt of payment, Mercer has 45 days to send to employer and PERS the calculation for up to two payoff dates for minimum amount, maximum amount and third amount specified by employer.

Employer must alert PERS three days prior to transfer of funds.

To the extent payment is not made on the requested payoff dates, and/or payment is received more than five business days after the intended payment date, Employer may make one updated request of Mercer for two payment dates up to six months following the initial requested payoff date at no additional charge, as long as it is during the same valuation period, such that immediate crediting can occur (rather than waiting for next valuation.). Mercer has 30 days from receipt of the new request to provide the updated information.

Note: If someone misses the opportunity to make a lump-sum payment on the requested payoff dates because the bond market is in a temporary funk, it would be pretty unfortunate to have to go through the same request process all over again for a full second fee. Also, if a lump-sum payment arrives more than five business days after the intended payment date, it is pretty unfortunate to have to wait until the next system valuation before receiving any rate relief.

End.

**MEMORANDUM****PERS Board****TO:****FROM: Lori Sattenspiel, Legislative and Public Affairs Specialist****SUBJ: Lump Sum Rulemaking****DATE: September 25, 2007**

\*Employers are generally supportive of the idea of moving from annual to payroll-to-payroll crediting as a step toward exact and timely recognition of earnings. It's a step in the right direction toward providing more real time information on account values, a big goal of the employer alliance. We have requested more real time information on the crediting process and the value of our accounts for several years, and we applaud this effort as a strong first step. But, there is much more work to be done in this area, and we ask the Board's support in encouraging these efforts.

\*Some of the changes use imprecise language on what the earnings to be credited will be. The statute is very clear that 'actual' earnings and losses be credited. We suggest a tightening of language in keeping with these statutory requirements, eliminating, or defining new terminology (e.g., 'allocated earnings"). Similarly, the definition of "UAL factor" needs to specify how the UAL factor is computed. Without a definition for "allocated" and no information on how the UAL factor is computed, the UAL factor could be calculated most anyway. In the same vein, we suggest the use of more consistent language between and among rules that address similar topics.

\*We understand the desire to set minimums in rule for making surplus contributions, but these minimums need to be reasonable. The current draft of changes to 459-009-0090 sets the minimum surplus lump-sum payment at a level of payroll rate reduction of 100 basis points. This is much too high a bar to set for larger entities who may be interested in depositing millions of dollars in the PERS fund. For example, Metro was considering submitting a lump sum payment of \$5 million in 2005, which calculated to a reduction of only 84 basis points. As an alternative, we recommend a minimum surplus lump-sum payment of \$1 million or 100 basis point reduction whichever is less. In the alternative, we recommend a minimum surplus lump-sum payment of 50 basis points.

\*In the context of these rule revisions, we recommend reconsideration of the process by which employers request and receive payoff calculations. The current process -- by which employers must submit a request to Mercer through PERS for two very precise dates, is way too cumbersome, inflexible and time consuming. It is not unusual for the process to take up to two months from the date of the first request. Given that many of these lump sum payments are funded with bond proceeds which requires positive market conditions to be successful, having such inflexible processes may mean losing an opportunity in a volatile market. In that circumstance, the employer would need to submit the request all over again. We have made suggested changes to staff to streamline this process. We appreciate that the actuary has significant demands on their time, but hope that a more reasonable and streamlined process can be accomplished.



# Oregon

Theodore R. Kulongoski, Governor

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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
Dale S. Orr, Manager, Actuarial Services  
SUBJECT: Adoption of Lump-Sum Payments by Employers Rules

MEETING DATE	11/16/07
AGENDA ITEM	C.4. Lump-Sum

OAR 459-009-0084, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group*  
OAR 459-009-0085, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group*  
OAR 459-009-0090, *Lump-Sum Payments by Employers in Excess of an Existing Unfunded Actuarial Liability*

### OVERVIEW

- Action: Adopt modifications to the Lump-Sum Payments by Employers Rules.
- Reason: Conform rules to payroll-based application of side account funds.
- Subject: Employer Lump-Sum payments.
- Policy Issues: No policy issues have been identified at this time.

### BACKGROUND

Employers can make lump sum payments to PERS in addition to the regular employer contributions calculated as a percent of payroll. These lump sum contributions can occur when a PERS employer has a budget surplus or chooses to pre-fund their obligations through issuing a bond. The rules to be modified set forth the process for lump sum payments that are made to satisfy an unfunded actuarial liability (UAL) by employers that are pooled with other employers (-0084) and by those that are not pooled (-0085), plus a rule for surplus payments made by an employer that doesn't have a UAL (-0090). These lump sum payments are put into side accounts that are then applied to reduce the employer's ongoing contribution rate to PERS.

The principle change in these rules is to specify that the transfer of amounts from these side accounts will occur each payroll period instead of annually. Employers requested this change so the amortization more closely matched their assumptions when they decided to use this pre-funding alternative. These modifications also simplify and correct language in the current rules. Further modifications to the rule on non-UAL surplus payments also change the minimum and maximum payment from a percentage of an employer's liability to a change in employer rate. Lastly, the rules are modified to refer to the earnings crediting rule, which is also being changed at this time to conform those practices to this payroll-cycle application schedule.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on August 29, 2007 at 2:00 p.m. in Salem. Lori Sattenspiel, representing the Oregon School Boards Association and Maria Keltner from the Employers PERS Alliance attended and asked several questions during a presentation prepared by Dale Orr and Tom Andrews from the Fiscal Services Division. Ms. Keltner withheld presenting comments verbally and instead said she would submit written comments. She did, however, emphasize the helpfulness of having a staff presentation at the hearing to fully understand the rules and proclaimed that the discussion was invaluable.

The public comment period ended on September 28, 2007 at 5:00 p.m. PERS received written public comment from Maria Keltner dated August 30, 2007 and from Lori Sattenspiel dated September 25, 2007. Their letters are included as attachments with this memo. The majority of the comments from Ms. Keltner and Ms. Sattenspiel related to providing greater clarity and consistency between the three lump-sum payment rules; these changes were incorporated in the final versions of the rules. In addition, Ms. Keltner and Ms. Sattenspiel requested the following material modifications to the rules:

1. Reduce the minimum on surplus lump sum payments from a 100 basis point reduction in the employer's rate to a 50 basis point rate reduction or \$1,000,000, whichever is less (OAR 459-009-0090 only).

**Staff Analysis and Recommendation:** This rule allows fully funded employers to make additional payments for the purpose of creating or increasing an employer's surplus. The purpose for setting the original minimum payment amount at a 100 basis point reduction was to prevent employers from making numerous, non-material payments. Separate side accounts must be established and maintained for each payment made. If employers make a large number of small payments that have minimal impact on rates, a significant administrative burden will be established without an offsetting benefit to the Trust. As such, staff proposes the adoption of the 50 basis point rate reduction minimum recommended by the employer representatives but, in addition, staff proposes decreasing the frequency for making the payments from once every calendar year to once every three calendar years. The \$1,000,000 minimum is not recommended as it would allow larger employers to make payments that might result in a rate offset of less than 50 basis points of payroll.

2. Shorten the processing time for the calculation of lump sum payments from the current 45 days (would affect all three rules). The 45 days encompasses the moment the employer requests a calculation, the generation of an invoice by the actuary, the payment of that invoice by the employer, and the calculation of the lump sum payment. The Alliance did not provide a recommendation on what would be an acceptable timeline.

**Staff Analysis and Recommendation:** Due to the need to coordinate any stakeholder recommendation with the actuaries, staff recommends that the current timeline in the lump sum payment rules not be changed, but rather continue to explore this issue with both the stakeholders and actuaries to see if a shorter timeline is feasible.

### SUMMARY OF MODIFICATIONS TO RULES SINCE FIRST READING

A number of modifications were made as a result of recommendations provided by employer stakeholders. The modifications fall into two categories:

1. Changes made to provide additional clarity to the rules or improved consistency in wording with other related lump sum payment rules. These changes also were consistent with the policy positions contained in the proposed rule modifications.
2. Changes made that resulted in a modification to policy or process from the original draft rule.

The changes to the draft are grouped as follows and apply to all of the rules covered by this report unless otherwise stated:

#### **Non-substantive changes:**

In the rule titles of both 459-009-0084 and –0085, the phrase “Actuarial Group” was changed to “Employer Actuarial Pool.”

“Amortized Amount” was defined in section (1) of all three rules.

In section (1), the definition of “Employer Contribution Account” was deleted from all three rules. This term is already defined in OAR 459-005-0001(12).

In section (11), the phrase “be held in a side account to” was added to clarify where the remainder of the UAL lump-sum payment will be held.

In section (12), the term “transferred” has taken the place of “applied”.

#### **Substantive changes:**

1. Changed frequency of surplus lump-sum payments from one year to three years (section (3) of OAR 459-009-0090). The staff recommendation on this change is discussed above.
2. Changed the measure of the minimum surplus lump-sum payment from a reduction of 100 basis points in an employer’s rate to 50 basis points (section (4) of OAR 459-009-0090). The staff recommendation on this change is discussed above.

### LEGAL REVIEW

The attached draft 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, but the rules are within the authority granted by statute.

**Impact:** The modifications conform to state law and may have a minor fiscal impact on PERS administration.

**Cost:** Employers that elect to make a lump-sum payment under these rules will incur the cost of the actuarial calculation, the lump-sum payment amount, and administrative fees to maintain the resulting side account. There is not expected to be any significant cost incurred by members, PERS administration, or the PERS Fund.

### RULEMAKING TIMELINE

June 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
July 1, 2007	<i>Oregon Bulletin</i> published the Notice.
July 20, 2007	PERS Board notified that staff began the rulemaking process.
August 29, 2007	Rulemaking hearing held at 2:00 p.m. in Salem.
September 21, 2007	First Reading of the rules.
September 28, 2007	Public comment period ended at 5:00 p.m.
November 16, 2007	Board may adopt the rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-009-0084, OAR 459-009-0085, and OAR 459-009-0090, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Conform rules to payroll-based application of side account funds.

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

C.4. Attachment 1 – OAR 459-009-0084, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group*

C.4. Attachment 2 – OAR 459-009-0085, *Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group*

C.4. Attachment 3 – OAR 459-009-0090, *Lump-Sum Payments by Employers in Excess of an Existing Unfunded Actuarial Liability*

C.4. Attachment 4 – August 30, 2007 Comments from Maria Keltner for Employers PERS Alliance

C.4. Attachment 5 – September 25, 2007 Comments from Lori Sattenspiel for OSBA

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 009 – PUBLIC EMPLOYER

1 **459-009-0084**

2 **Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in**  
3 **an Employer Actuarial Pool~~[Group]~~**

4 Purpose. The purpose of this rule is to establish procedures and requirements  
5 *[pursuant to ORS 238.225]* for the adjustment of employer contribution rates when an  
6 *[unfunded actuarial liability lump-sum payment is made by an]* individual public  
7 employer participating in an employer actuarial ~~[group]~~pool makes an unfunded  
8 actuarial liability lump-sum payment.

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

10 (a) “Amortized Amount” means the amount of a Side Account used to offset  
11 contributions due from the employer.

12 (b) “Employer Actuarial Pool” means a grouping of employers for actuarial  
13 purposes such as the School District and the State and Local Government Rate  
14 Pools.

15 *[(a) “Employer Contribution Account” means that portion of the Fund designated*  
16 *by the Board, as a portion of the net assets of the Fund, that is funded by employer*  
17 *contributions which are to be used for the sole benefit of members of the trust with the*  
18 *purpose of paying future retirement and death benefits.]*

19 ~~[(b)]~~(c) “Fair Value UAL” means the unfunded actuarial liability calculated using  
20 the fair market value of assets.

21 ~~[(c)]~~(d) “Transition Unfunded Actuarial Liabilities” means the unfunded actuarial  
22 liabilities attributed to an individual employer for the period *[prior to]*before entry into

1 the Local Government Rate Pool, or the State and Local Government Rate Pool if the  
2 employer did not participate in the Local Government Rate Pool.

3 *[(d)](e)* “Unfunded Actuarial Liability” or “UAL” means the excess of the actuarial  
4 liability over the actuarial value of assets.

5 *[(e)](f)* “Unfunded Actuarial Liability Lump-Sum Payment” means any employer  
6 payment **that is:**

- 7 (A) *[That is n]***N**ot regularly scheduled;
- 8 (B) *[That is n]***N**ot paid as a percentage of salary;
- 9 (C) *[That is m]***M**ade for the express purpose of reducing the employer’s unfunded  
10 actuarial liability; and
- 11 (D) **Paid at the employer’s election instead of at the PERS Board’s direction.**

12 *[Where the employer has control over the timing or whether to make the payment.]*

13 (2) Lump-sum payment amount. If an individual employer elects to make a UAL  
14 lump-sum payment under this rule, the payment must be at least 25 percent of the  
15 individual employer’s UAL calculated under section (6) of this rule or \$1 million,  
16 whichever is less. Alternatively, an employer may elect to pay 100 percent of the  
17 individual employer’s UAL calculated under section (6) of this rule.

18 (3) Requirements. In order to make a UAL lump-sum payment, an employer must  
19 comply with the process described in sections (4) through (10) of this rule.

20 (4) Initiating UAL lump-sum payment process. At least 45 calendar days *[prior to]*  
21 **before** the date the employer intends to make a UAL lump-sum payment, the employer  
22 *[shall]***must** notify the PERS Employer Liability Coordinator in writing that it intends to  
23 make a UAL lump-sum payment. The notification *[shall]***must** specify:

- 1 (a) The amount of the intended lump-sum payment;
- 2 (b) Whether the intended payment is to be for 100 percent of the individual
- 3 employer’s calculated UAL; and
- 4 (c) No more than two potential dates for the payment. PERS staff *[shall]must* notify
- 5 the employer within five business days of receipt of the notification if the notification is
- 6 incomplete or the process cannot be completed by the intended dates of the UAL lump-
- 7 sum payment.

8 (5) Payment to the actuary. The PERS consulting actuary must provide an

9 invoice charging the employer for the cost of the actuarial liability calculation

10 requested by the employer. At least 30 calendar days *[prior to]before* the date the

11 employer intends to make a UAL lump-sum payment, the employer *[shall]must* remit

12 payment for the cost of the UAL calculation directly to the PERS consulting actuary

13 according to the instructions on the invoice *[provided by the PERS consulting actuary]*.

14 Failure to remit payment according to the terms of this section may result in the PERS

15 consulting actuary not completing the employer’s UAL calculation by the proposed UAL

16 lump-sum payment date.

17 (6) Calculation of the individual employer’s UAL. Upon receipt of a complete

18 notification and verification of payment to the actuary for actuarial services, PERS staff

19 shall request that the PERS consulting actuary calculate:

- 20 (a) 100 percent of the employer’s share of the UAL for the employer actuarial
- 21 [group]pool in which the employer is participating. This calculation *[shall]must* be:
- 22 (A) Based on the fair value UAL of the actuarial pool in which the employer
- 23 participates, from the most recent actuarial valuation;

1 (B) Based on the covered salary, as a proportion of the pool, reported by the  
2 employer for the year of most recent actuarial valuation; and

3 (C) Adjusted to reflect the effect of time from the most recent actuarial valuation to  
4 the intended date(s) of payment, using generally recognized and accepted actuarial  
5 principles and practices.

6 (b) The effect of the following UAL lump-sum payment amounts on the individual  
7 employer’s contribution rate using the one or two potential dates for payment specified  
8 by the employer in its notification in section (4) above:

9 (A) 100 percent of the individual employer’s UAL calculated in subsection (6)(a) of  
10 this rule;

11 (B) The UAL lump-sum payment amount specified by the employer in its  
12 notification, if provided; and

13 (C) The minimum amount of the UAL lump-sum payment under section (2) of this  
14 rule.

15 (7) Notification of calculation. PERS staff *[shall] must* notify the employer in  
16 writing of the results of the individual employer’s calculation in section (6) above,  
17 including the effective date(s) for the reduced employer contribution rates based on the  
18 one or two potential dates for payment. In addition, PERS *[shall] must* send the employer  
19 a notification describing risks and uncertainties associated with the calculation of the  
20 individual employer’s UAL.

21 (8) Notification of UAL lump-sum payment. The employer or its agent *[shall] must*  
22 notify the PERS Employer Liability Coordinator in writing at least three business days  
23 *[prior to] before* making a UAL lump-sum payment. This notification shall be in addition

1 to the notification in section (4) of this rule and ~~[shall]~~must specify the amount of the  
2 payment and the date it intends to make the payment.

3 (9) Method of payment. A UAL lump-sum payment must be made by either  
4 electronic transfer or check payable to the Public Employees Retirement System.

5 (10) Receipt of UAL lump-sum payment. In order to adjust the employer  
6 contribution rate to that reported by PERS in section (7) of this rule, PERS must receive  
7 the correct funds no later than five business days after the corresponding intended date of  
8 the UAL lump-sum payment specified in the notification described in section (8) of this  
9 rule.

10 (a) If the UAL lump-sum payment is received by PERS on or before the intended  
11 date specified in the notification described in section (8) of this rule or within the five  
12 business days following the intended date, the new employer contribution rate ~~[will]~~shall  
13 be effective for payrolls dated on or after:

14 (A) The date specified in the notification; or

15 (B) The first of the month following receipt of the UAL lump-sum payment by  
16 PERS, whichever is later.

17 (b) If the UAL lump-sum payment is received by PERS more than five business days  
18 after the intended payment date, the employer’s contribution rate shall be adjusted in the  
19 next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

20 (c) If the UAL lump-sum payment received is other than any amount specified in the  
21 notification under section (8) of this rule, the employer’s contribution rate shall be  
22 adjusted to the rate the payment amount fully funds using the actuarial calculation in  
23 subsection (6)(b) of this rule.

1 (d) If the UAL lump-sum payment received is less than the minimum amount  
2 described in section (2) of this rule, the funds will be returned to the employer and no  
3 adjustment will be made to the employer contribution rate.

4 (e) Nothing in this rule shall be construed to prevent the Board from:

5 (A) Adjusting employer contribution rates based upon the date of receipt of funds or  
6 errors in the notification described in section (7) of this rule; or

7 (B) Taking action pursuant to ORS 238.225.

8 (11) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the  
9 UAL lump-sum payment made by the employer shall first be applied to any transition  
10 unfunded actuarial liabilities. The remainder of the payment shall be held in a side  
11 account to offset any pooled unfunded actuarial liabilities and shall be treated as pre-  
12 funded contributions and additional assets for the payment of obligations of the employer  
13 under ORS chapters 238 or 238A, rather than as a reduction of those obligations of that  
14 employer.

15 *[(a)](12) Side Account.* The amount of an UAL lump-sum payment shall be held in  
16 a Side Account for the benefit of the employer making the UAL lump-sum payment. *[On*  
17 *an annual basis the PERS consulting actuary shall notify PERS staff of the amount of*  
18 *pre-funded contributions held in the Side Account that are to be amortized for that year.]*  
19 The amortized amount for each payroll reporting period shall be transferred from  
20 the Side Account to the appropriate employer actuarial pool in which the employer  
21 is participating.

1        *[(b) After earnings or losses have been credited for the year, the amount amortized*  
 2 *shall be transferred from the Side Account to the Employer Contribution Account of the*  
 3 *actuarial group in which the employer is participating.]*

4        *[(12)](13) Crediting earnings or losses. Side accounts shall be credited with*  
 5 *earnings and losses in accordance with OAR 459-007-0530. [For the purposes of this*  
 6 *rule, Side Accounts shall be credited with all interest and other income received from*  
 7 *investment of the account funds during the calendar year, less any amounts withheld from*  
 8 *earnings for administrative expenses under ORS 238.610 or paid into the reserve account*  
 9 *established under ORS 238.670(1).]*

10       *[(13)](14) Nothing in this rule shall be construed to convey to an employer making a*  
 11 *UAL lump-sum payment any proprietary interest in the Public Employees Retirement*  
 12 *Fund or in the UAL lump-sum payment made to the fund by the employer.*

13       *[(14) Effective date of rule. This rule shall apply to all UAL lump-sum payments*  
 14 *initiated on or after the effective date of this rule.]*

15       Stat. Auth.: ORS 238.650

16       Stats. Implemented: ORS 238.225 to 238.229

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 009 – PUBLIC EMPLOYER

1 **459-009-0085**

2 **Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating**  
3 **in an Employer Actuarial Pool*[Group]***

4 Purpose. The purpose of this rule is to establish procedures and requirements  
5 *[pursuant to ORS 238.225]* for the adjustment of employer contribution rates when an  
6 *[unfunded actuarial liability lump-sum payment is made by an]* individual public  
7 employer not participating in an actuarial group **makes an unfunded actuarial liability**  
8 **lump-sum payment.**

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

10 **(a) “Amortized Amount” means the amount of a Side Account used to offset**  
11 **contributions due from the employer.**

12 *[(a) “Employer Contribution Account” means that portion of the Fund designated*  
13 *by the Board, as a portion of the net assets of the Fund, that is funded by employer*  
14 *contributions which are to be used for the sole benefit of members of the trust with the*  
15 *purpose of paying future retirement and death benefits.]*

16 (b) “Fair Value UAL” means the unfunded actuarial liability calculated using the fair  
17 market value of assets.

18 (c) “Unfunded Actuarial Liability” or “UAL” means the excess of the actuarial  
19 liability over the actuarial value of assets.

20 (d) “Unfunded Actuarial Liability Lump-Sum Payment” means any employer  
21 payment **that is:**

22 (A) *[That is n]***N**ot regularly scheduled;

1 (B) *[That is n]*Not paid as a percentage of salary;

2 (C) *[That is m]*Made for the express purpose of reducing the employer’s unfunded  
3 actuarial liability; and

4 (D) Paid at the employer’s election instead of at the PERS Board’s direction.

5 *[Where the employer has control over the timing or whether to make the payment.]*

6 (2) Lump-sum payment amount. If an employer elects to make a UAL lump-sum  
7 payment under this rule, the payment must be at least 25 percent of the employer’s UAL  
8 calculated under section (6) of this rule or \$1 million, whichever is less. Alternatively, an  
9 employer may elect to pay 100 percent of the employer’s UAL calculated under section  
10 (6) of this rule.

11 (3) Requirements. In order to make a UAL lump-sum payment, an employer must  
12 comply with the process described in sections (4) through (10) of this rule.

13 (4) Initiating UAL lump-sum payment process. At least 45 calendar days *[prior*  
14 *to]*before the date the employer intends to make a UAL lump-sum payment, the  
15 employer shall notify the PERS Employer Liability Coordinator in writing that it intends  
16 to make a UAL lump-sum payment. The notification shall specify:

17 (a) The amount of the intended lump-sum payment;

18 (b) Whether the intended payment is to be for 100 percent of the employer’s  
19 calculated UAL; and

20 (c) No more than two potential dates for the payment. PERS staff *[shall]*must notify  
21 the employer within five business days of receipt of the notification if the notification is  
22 incomplete or the process cannot be completed by the intended dates of the UAL lump-  
23 sum payment.

1 (5) Payment to the actuary. The PERS consulting actuary must provide an  
2 invoice charging the employer for the cost of the actuarial liability calculation  
3 requested by the employer. At least 30 calendar days *[prior to]*before the date the  
4 employer intends to make a UAL lump-sum payment, the employer *[shall]*must remit  
5 payment for the cost of the UAL calculation directly to the PERS consulting actuary  
6 according to the instructions on the invoice *[provided by the PERS consulting actuary]*.  
7 Failure to remit payment according to the terms of this section may result in the PERS  
8 consulting actuary not completing the employer’s UAL calculation by the proposed UAL  
9 lump-sum payment date.

10 (6) Calculation of an employer’s UAL. Upon receipt of a complete notification and  
11 verification of payment to the actuary for actuarial services, PERS staff shall request that  
12 the PERS consulting actuary calculate:

- 13 (a) 100 percent of the employer’s UAL. This calculation *[shall]*must be:  
14 (A) Based on the fair value UAL from the most recent actuarial valuation; and  
15 (B) Adjusted to reflect the effect of time from the most recent actuarial valuation to  
16 the intended date(s) of payment, using generally recognized and accepted actuarial  
17 principles and practices.

18 (b) The effect of the following UAL lump-sum payment amounts on the employer’s  
19 contribution rate using the one or two potential dates for payment specified by the  
20 employer in its notification in section (4) above:

- 21 (A) 100 percent of the employer’s UAL calculated in subsection (6)(a) of this rule;  
22 (B) The UAL lump-sum payment amount specified by the employer in its  
23 notification, if provided; and

1            (C) The minimum amount of the UAL lump-sum payment under section (2) of this  
2 rule.

3            (7) Notification of calculation. PERS staff *[shall]*must notify the employer in  
4 writing of the results of the employer’s calculation in section (6) above, including the  
5 effective date(s) for the reduced employer contribution rates based on the one or two  
6 potential dates for payment. In addition, PERS *[shall]*must send the employer a  
7 notification describing risks and uncertainties associated with the calculation of the  
8 individual employer’s UAL.

9            (8) Notification of UAL lump-sum payment. The employer or its agent *[shall]*must  
10 notify the PERS Employer Liability Coordinator in writing at least three business days  
11 *[prior to]*before making a UAL lump-sum payment. This notification shall be in addition  
12 to the notification in section (4) of this rule and *[shall]*must specify the amount of the  
13 payment and the date it intends to make the payment.

14            (9) Method of payment. A UAL lump-sum payment must be made by either  
15 electronic transfer or check payable to the Public Employees Retirement System.

16            (10) Receipt of UAL lump-sum payment. In order to adjust the employer  
17 contribution rate to that reported by PERS in section (7) of this rule, PERS must receive  
18 the correct funds no later than five business days after the corresponding intended date of  
19 the UAL lump-sum payment specified in the notification described in section (8) of this  
20 rule.

21            (a) If the UAL lump-sum payment is received by PERS on or before the intended  
22 date specified in the notification described in section (8) of this rule or within the five

1 business days following the intended date, the new employer contribution rate will be  
2 effective for payrolls dated on or after:

3 (A) The date specified in the notification; or

4 (B) The first of the month following receipt of the UAL lump-sum payment by  
5 PERS, whichever is later.

6 (b) If the UAL lump-sum payment is received by PERS more than five business days  
7 after the intended payment date, the employer's contribution rate shall be adjusted in the  
8 next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

9 (c) If the UAL lump-sum payment received is other than any amount specified in the  
10 notification under section (8) of this rule, the employer's contribution rate shall be  
11 adjusted to the rate the payment amount fully funds using the actuarial calculation in  
12 subsection (6)(b) of this rule.

13 (d) If the UAL lump-sum payment received is less than the minimum amount  
14 described in section (2) of this rule, the funds will be returned to the employer and no  
15 adjustment will be made to the employer contribution rate.

16 (e) Nothing in this rule shall be construed to prevent the Board from:

17 (A) Adjusting employer contribution rates based upon the date of receipt of funds or  
18 errors in the notification described in section (7) of this rule; or

19 (B) Taking action pursuant to ORS 238.225.

20 (11) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the  
21 UAL lump-sum payment made by the employer shall be treated as pre-funded  
22 contributions and additional assets for the payment of obligations of the employer under  
23 ORS chapters 238 or 238A, rather than as a reduction of those obligations.

1 [(a)](12) Side Account. The UAL lump-sum payment shall be held in a Side  
2 Account for the benefit of the employer making the UAL lump-sum payment. *[On an*  
3 *annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-*  
4 *funded contributions held in the Side Account that are to be amortized for that year.]* The  
5 amortized amount for each payroll reporting period shall be transferred from the  
6 Side Account to the employer’s Employer Contribution Account.

7 *[(b) After earnings or losses have been credited for the year, the amount amortized*  
8 *shall be transferred from the Side Account to the Employer Contribution Account.]*

9 [(12)](13) Crediting earnings or losses. Side accounts shall be credited with  
10 earnings and losses in accordance with OAR 459-007-0530. *[For the purposes of this*  
11 *rule, Side Accounts shall be credited with all interest and other income received from*  
12 *investment of the account funds during the calendar year, less any amounts withheld from*  
13 *earnings for administrative expenses under ORS 238.610 or paid into the reserve account*  
14 *established under ORS 238.670(1).]*

15 [(13)](14) Nothing in this rule shall be construed to convey to an employer making a  
16 UAL lump-sum payment any proprietary interest in the Public Employees Retirement  
17 Fund or in the UAL lump-sum payment made to the fund by the employer.

18 *[(14) Effective date of rule. This rule shall apply to all UAL lump-sum payments*  
19 *initiated on or after the effective date of this rule.]*

20 Stat. Auth.: ORS 238.650

21 Stats. Implemented: ORS 238.225 to 238.229

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 009 – PUBLIC EMPLOYER

1 459-009-0090

2 **Surplus Lump-Sum Payments by Employers**

3 Purpose. The purpose of this rule is to establish procedures and requirements  
4 *[pursuant to ORS 238.225]* for the adjustment of employer contribution rates when an an  
5 **individual public employer that does not have an existing unfunded actuarial**  
6 **liability (UAL) makes a lump-sum payment.** *[lump-sum payment is made by an*  
7 *individual public employer that does not have an existing unfunded actuarial liability, or*  
8 *when an individual employer makes a lump-sum payment in excess of the employer’s*  
9 *unfunded actuarial liability.]* **An employer with an existing unfunded actuarial**  
10 **liability must first submit a lump-sum payment for the full amount of that unfunded**  
11 **actuarial liability under OAR 459-009-0084 or 459-009-0085, as applicable, before**  
12 **the employer may make a payment under this rule.**

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

14 (a) “Actuarial Surplus” means the excess of the actuarial value of an employer’s  
15 assets over the employer’s actuarial liability.

16 **(b) “Allocated Actuarial Liability” means the actuarial liability calculated using**  
17 **the fair market value of assets.**

18 **(c) “Amortized Amount” means the amount of a Side Account used to offset**  
19 **contributions due from the employer.**

20 *[(b) “Employer Contribution Account” means that portion of the Fund designated*  
21 *by the Board, as a portion of the net assets of the Fund, that is funded by employer*

1 *contributions to be used for the sole benefit of members of the trust with the purpose of*  
2 *paying future retirement and death benefits.]*

3 *[(c) “Fair Value UAL” or “Fair Value Actuarial Liability” means the UAL or*  
4 *actuarial liability calculated using the fair market value of assets.]*

5 (d) “IAP” means the Individual Account Program of the Oregon Public Service  
6 Retirement Plan.

7 (e) “Pension Program Contributions” means the total calculated employer  
8 contribution due in any reporting period for both the *[PERS]*[Chapter 238](#) and OPSRP  
9 pension programs, excluding any IAP [or retiree health insurance program](#) contribution  
10 due.

11 (f) “Surplus Lump-Sum Payment” means any employer payment [that is](#):

12 (A) *[That is n]*[N](#)ot regularly scheduled;

13 (B) *[That is n]*[N](#)ot paid as a percentage of salary;

14 (C) *[That is m]*[M](#)ade for the express purpose of creating an actuarial surplus or  
15 increasing an existing actuarial surplus; and

16 (D) [Paid at the employer’s election instead of at the PERS Board’s direction.](#)

17 *[Where the employer has control over the timing or whether to make the payment.]*

18 [\(g\) “UAL” or “Unfunded Actuarial Liability” means the excess of the actuarial](#)  
19 [liability over the actuarial value of assets.](#)

20 *[(g)]*[\(h\)](#) “UAL Lump-Sum Payment” means any employer payment:

21 (A) That is not regularly scheduled;

22 (B) That is not paid as a percentage of salary;

1 (C) That is made for the express purpose of reducing the employer’s unfunded  
2 actuarial liability; and

3 (D) Where the employer has control over the timing or whether to make the  
4 payment.

5 *[(h) “Unfunded Actuarial Liability” or “UAL” means the excess of an employer’s*  
6 *actuarial liability over the actuarial value of assets.]*

7 (2) For employers *[making a combined surplus lump-sum payment and UAL lump-*  
8 *sum payment]* with an existing UAL that wish to make a payment in excess of the  
9 existing UAL, the surplus lump-sum payment must be made after and separately  
10 from the UAL lump-sum payment and the provisions of this rule apply only to the  
11 surplus lump-sum payment *[unless otherwise indicated].*

12 (3) Limitation on surplus lump-sum payments. An employer may make only  
13 one payment per every three calendar years under the provisions of this rule.

14 *[(3)]*(4) Minimum surplus lump-sum payment amount. If an individual employer  
15 elects to make a surplus lump-sum payment under this rule, the payment must *[be at*  
16 *least:]* result in a 50 basis point reduction in the employer’s pension program  
17 contribution rate based on the individual employer’s reported payroll in the most  
18 recent actuarial valuation.

19 *[(a) \$100,000 or 100 percent of the individual employer’s actuarial liability,*  
20 *whichever is less, for an employer whose actuarial liability as calculated under section*  
21 *(9) of this rule is less than \$1 million; or]*

1        *[(b) Ten percent of the individual employer's actuarial liability, for an employer*  
2 *whose actuarial liability as calculated under section (9) of this rule is equal to or greater*  
3 *than \$1 million.]*

4        *[(4)](5)* Maximum surplus lump-sum payment amount. If an individual employer  
5 elects to make a surplus lump-sum payment under this rule, the payment *[shall]*may not  
6 be greater than the amount required to bring the employer's *[total defined-benefit]* lowest  
7 pension program contribution*[s]* rate to zero *[percent of payroll]* based upon the  
8 individual employer's reported payroll in the most recent actuarial valuation.

9        *[(5)](6)* Requirements. In order to make a surplus lump-sum payment, an employer  
10 must comply with the process described in sections *[(6)](7)* through *[(14)](15)* of this  
11 rule.

12        *[(6)](7)* Initiating surplus lump-sum payment process. At least 45 calendar days  
13 *[prior to]*before the date the employer intends to make a surplus lump-sum payment, the  
14 employer *[shall]*must notify the PERS Employer Liability Coordinator in writing that it  
15 intends to make a surplus lump-sum payment. The notification *[shall]*must specify:

16        (a) Whether the intended payment *[is to]*shall be for *[100 percent of the individual*  
17 *employer's calculated actuarial liability]*the maximum payment amount as provided  
18 in section (5) of this rule, or, if other than *[100 percent]*the maximum amount, the  
19 percent of *[the]*payroll reduction in the individual employer's *[calculated actuarial*  
20 *liability]*rate or dollar amount of the intended payment; and

21        (b) No more than two potential dates for the payment.

1        ~~[(7)]~~**(8)** PERS staff ~~[shall]~~**must** notify the employer within five business days of  
2 receipt of the notification if the notification is incomplete or the process cannot be  
3 completed by the intended date(s) of the surplus lump-sum payment.

4        ~~[(8)]~~**(9)** Payment to the actuary. **The PERS consulting actuary must provide an**  
5 **invoice charging the employer for the cost of the rate reduction calculation**  
6 **requested by the employer.** At least 30 calendar days ~~[prior to]~~**before** the date the  
7 employer intends to make a surplus lump-sum payment, the employer ~~[shall]~~**must** remit  
8 payment for the cost of the ~~[actuarial liability]~~**rate reduction** calculation directly to the  
9 PERS consulting actuary according to the instructions on the invoice ~~[provided by the~~  
10 ~~PERS consulting actuary]~~. Failure to remit payment according to the terms of this section  
11 may result in the PERS consulting actuary not completing the employer's ~~[actuarial~~  
12 ~~liability]~~**rate reduction** calculation by the proposed surplus lump-sum payment date.

13        ~~[(9)]~~**(10)** Calculation of the individual employer's actuarial liability. Upon receipt of  
14 a complete notification and verification of payment to the actuary for actuarial services,  
15 PERS staff shall request that the PERS consulting actuary calculate:

16        ~~[(a) 100 percent of the employer's actuarial liability, or 100 percent of the~~  
17 ~~employer's share of the actuarial liability for the actuarial group in which the employer~~  
18 ~~is participating, as applicable;]~~

19        ~~[(b)]~~**(a)** The minimum amount of the surplus lump-sum payment under section  
20 ~~[(3)]~~**(4)** of this rule;

21        ~~[(c)]~~**(b)** The maximum amount of the surplus lump-sum payment under section  
22 ~~[(4)]~~**(5)** of this rule;

1 ~~[(d)](c)~~ The alternative percentage or dollar amount specified by the employer in its  
2 notification under section ~~[(6)](7)~~ of this rule; and

3 ~~[(e)](d)~~ The effect of each of the *[following surplus lump-sum payment amounts]*  
4 amounts calculated in subsections (a) to (d) of this section on the individual  
5 employer’s contribution rate using the potential date(s) for payment specified by the  
6 employer in its notification. *[in section (6) of this rule:]*

7 *[(A) 100 percent of the individual employer’s actuarial liability calculated in*  
8 *subsection (9)(a) of this rule;]*

9 *[(B) The surplus lump-sum payment amount specified by the employer in its*  
10 *notification, if other than 100 percent;]*

11 *[(c) The minimum amount of the surplus lump-sum payment calculated in subsection*  
12 *(9)(b) of this rule; and]*

13 *[(D) The maximum amount of the surplus lump-sum payment calculated in*  
14 *subsection (9)(c) of this rule.]*

15 ~~[(10)](11)~~ The calculations described in section ~~[(9)](10)~~ of this rule *[shall]* must  
16 be:

17 (a) Based on the individual employer’s *[fair value actuarial liability]* pension  
18 program contribution rate from the most recent rate setting actuarial valuation;

19 (b) Based on the covered salary, for the individual employer or as a proportion of the  
20 pool, as applicable, reported by the employer for the year of the most recent actuarial  
21 valuation; and

1            (c) Adjusted to reflect the effect of time from the most recent actuarial valuation to  
2 the intended date(s) of payment, using generally recognized and accepted actuarial  
3 principles and practices.

4            ~~[(11)]~~(12) Notification of calculation. PERS staff ~~[shall]~~must notify the employer in  
5 writing of the results of the individual employer’s calculation under section ~~[(9)]~~(10). In  
6 addition, PERS ~~[shall]~~must send the employer a notification describing risks and  
7 uncertainties associated with making a lump-sum payment.

8            ~~[(12)]~~(13) Notification of payment. The employer or its agent ~~[shall]~~must notify the  
9 PERS Employer Liability Coordinator in writing at least three business days ~~[prior~~  
10 ~~to]~~before making a surplus lump-sum payment. This notification ~~[shall]~~must be in  
11 addition to the notification in section ~~[(6)]~~(7) of this rule and ~~[shall]~~must specify the  
12 dollar amount of the payment and the date the employer intends to make the payment.

13            ~~[(13)]~~(14) Method of payment. A surplus lump-sum payment must be made by  
14 either electronic transfer or check payable to the Public Employees Retirement System.

15            ~~[(14)]~~(15) Receipt of payment. In order to adjust the employer contribution rate to  
16 that reported by PERS in section ~~[(11)]~~(12) of this rule, PERS must receive the correct  
17 funds no later than five business days after the corresponding intended date of the surplus  
18 lump-sum payment specified in the notification described in section ~~[(12)]~~(13) of this  
19 rule.

20            (a) If the surplus lump-sum payment is received by PERS on or before the intended  
21 date specified in the notification described in section ~~[(12)]~~(13) of this rule or within the  
22 five business days following the intended date, the new employer contribution rate

1 ~~will~~shall be effective for payrolls dated on or after the first of the month following  
2 receipt of the payment by PERS.

3 (b) If the surplus lump-sum payment is received by PERS more than five business  
4 days after the intended payment date, the employer’s contribution rate shall be adjusted in  
5 the next actuarial valuation based on the date of receipt of the payment.

6 (c) Except as provided in subsection ~~[(14)](15)~~(d), if the surplus lump-sum payment  
7 received by PERS is other than any amount specified in the notification under section  
8 ~~[(12)](13)~~ of this rule, the employer’s contribution rate shall be adjusted to the rate the  
9 payment amount fully funds using the actuarial calculation in section ~~[(9)](10)~~ of this  
10 rule.

11 (d) If the surplus lump-sum payment received by PERS is less than the minimum  
12 amount described in section ~~[(3)](4)~~ of this rule, or greater than the maximum amount  
13 described in section ~~[(4)](5)~~ of this rule, the funds ~~will~~shall be returned to the employer  
14 and no adjustment ~~will~~shall be made to the employer contribution rate.

15 (e) Nothing in this rule shall be construed to prevent the Board from:

16 (A) Adjusting employer contribution rates based upon the date of receipt of funds or  
17 errors in the notification described in section ~~[(11)](12)~~ of this rule; or

18 (B) Taking action pursuant to ORS 238.225.

19 *[(15) Frequency of surplus lump-sum payments. An employer may make only one*  
20 *surplus lump-sum payment per calendar year.]*

21 (16) Actuarial treatment of the payment. For actuarial purposes, the surplus lump-  
22 sum payment made by the employer shall be treated as pre-funded contributions and

1 additional assets for the payment of obligations of the employer under ORS Chapters 238  
2 or 238A, rather than as a reduction of those obligations.

3 *[(a) If the employer makes a combined surplus lump-sum payment and UAL lump-*  
4 *sum payment, the UAL lump-sum payment amount shall be held in a separate Side*  
5 *Account to which the provisions of OAR 459-009-0084 or 459-009-0085, as applicable,*  
6 *shall apply.]*

7 *[(b)]***(17) Side Account.** The surplus lump-sum payment shall be held in a Side  
8 Account for the benefit of the employer making the surplus lump-sum payment. *[On an*  
9 *annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-*  
10 *funded contributions held in the Side Account that are to be amortized for that year.]* **The**  
11 **amortized amount for each payroll reporting period shall be applied from the Side**  
12 **Account to the Employer Contribution Account of the individual employer or of the**  
13 **employer actuarial pool in which the employer is participating, as applicable. The**  
14 **side account amortization period shall be equal to the remaining period that new**  
15 **Tier One and Tier Two gains and losses were amortized in the last rate-setting**  
16 **valuation.**

17 *[(c) After earnings or losses have been credited for the year, the amount amortized*  
18 *shall be transferred from the Side Account to the Employer Contribution Account of the*  
19 *individual employer or of the actuarial group in which the employer is participating, as*  
20 *applicable.]*

21 *[(17)]***(18) Crediting earnings or losses. Side accounts shall be credited with**  
22 **earnings and losses in accordance with OAR 459-007-0530.***[For the purposes of this*  
23 *rule, Side Accounts shall be credited with all interest and other income received from*

1 *investment of the account funds during the calendar year, less any amounts withheld from*  
 2 *earnings for administrative expenses under ORS 238.610 or paid into the reserve account*  
 3 *established under ORS 238.670(1).]*

4 ~~[(18)]~~(19) Nothing in this rule shall be construed to convey to an employer making a  
 5 surplus lump-sum payment any proprietary interest in the Public Employees Retirement  
 6 Fund or in the surplus lump-sum payment made to the fund by the employer.

7 *[(19) Effective date of rule. This rule shall apply to all surplus lump-sum payments*  
 8 *initiated on or after the effective date of this rule.]*

9 Stat. Auth.: ORS 238.650

10 Stats. Implemented: ORS 238.225 to 238.229

**August 30, 2007**

**To: Michael Pittman, PERS Board Chair, and Members of the PERS Board**

**Re: PERS Rulemaking:**

**Crediting Earnings/Losses to Side Accounts and Employer Lump-Sum Payments**

**OAR 459-007-0530**

**OAR 459-009-0084**

**OAR 459-009-0085**

**OAR 459-009-0090**

**The following comments are submitted by the Employers' PERS Alliance.**

**OAR 459-007-0530 Crediting Earnings to Employer Lump-Sum Payments**

(1) After the word "Definitions" we suggest adding: "For the purposes of this rule:"

(1)(a) Recommend deleting definition of "Employer Contribution Account" from this rule.

Reason for recommendation: "Employer Contribution Account" is defined in OAR 459-005-0001(12). There should be one definition in OAR 459 for the "Employer Contribution Account". Having more than one definition is confusing when it is the same "creature".

(1)(b)(C) We think the definitions for "Employer lump-sum payment" in OAR 459-009-0084 (1)(d)(D) and OAR 459-009-0085(1)(d)(D) and "Surplus Lump-Sum Payment" in OAR 459-0090(1)(f)(D) should match this definition.

(1)(c) We understand the "actual earnings or losses" from investment of side account dollars is adjusted for administrative expenses according to ORS 238.229(3). The word "allocated" needs to be defined. The definition of "UAL factor" needs to specify how the UAL factor is computed. Without a definition for "allocated" and no information on how the UAL factor is computed, the UAL factor could be calculated most anyway.

The UAL factor definition/calculation, used to compute the earnings or losses credited to the side account for the amounts transferred from the Side Account to either the Employer Contribution Account or to the Rate Pool Account, needs to clearly comply with ORS 238.229(2) re earnings crediting to side accounts.

(2) Recommendations: Delete first sentence. Change second sentence to read: "Earnings on the amount of an employer lump-sum payment applied to transition Unfunded Actuarial Liabilities subject to ORS 238.229(4) shall be credited based on the following: (a) (b) (c) "

Note: employer lump sum payment amounts applied to transition unfunded actuarial liabilities is covered in OAR 459-009-0084(11) and -0085(11).

(3) Suggest addition (bold and underlined) to provide clarification: Earnings on an employer lump-sum payment held in a separate **Side Account** subject to ORS 238.229 shall be credited **to the Side Account** based on the following:

Recommend combining sections (3) and (4). Suggest renumbering (4)(a) to become (3)(c) and renumbering (4)(b) to become (3)(d). It all fits under the intro in section (3).

Note: section (4)(b) refers to OAR 459-007-005(4) Employer lump sum payments. We think the reference in OAR 459-007-005(4) to ORS 238.225(9) should now be a reference to ORS 238.229.

(4)(a) It is not clear from reading the rule how this works...  
Need a definition for “amortized amounts” if that term is used.

Suggestion, rewrite section (4)(a) to read something like: “ The Side Account shall receive earnings or losses on amounts transferred from the Side Account to an Employer Contribution Account or to a Rate Pool Account. These earnings or losses will be credited to the Side Account at the annual earnings crediting. The amount credited to the Side Account will be the sum of each amount transferred out of the Side Account during the calendar year times the UAL factor effective as of the first of the calendar month following the date of the transfer.”

Note: We understand the goal is to use the same methodology to credit earnings/losses for transfers out of the side account as is used to credit earnings/losses for mid year transfers out of the Employer Contribution Accounts and out of the Employer Rate Pool Accounts. We also understand the factors applied to Side Account transfers will be different because of ORS 238.229.

**OAR 459- 009-0084 Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group**

Suggestion: change “Actuarial Group” to “Employer Rate Pool” in the title of this rule. Define Employer Rate Pool as: the School District Pool, Local Government Rate Pool, State and Local Government Rate Pool, OPSRP Rate Pool.

Note: “Actuarial Group” needs to be defined if it is used.

If “actuarial group” is intended to include prime/subordinate situations as well as rate pool situations, the definition of “actuarial group” needs to say this. Otherwise, need to cover treatment of prime/subordinate lump sum payment and side account either in a separate rule or in -0084, -0085 and -0090.

(1) (d)(D) should be the same as OAR 459-007-0530 (1)(a)(C).

Sections (3) – (10) see attached payoff calculation process recommendations.

(11) Recommended clarifications:

Add to the end of sentence two: “of that employer.”

Change the last sentence to: “The remainder of the payment shall be held in a side account to offset any pooled unfunded actuarial liabilities and shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapters 238 or 238A, rather than as a reduction of those obligations.”

(12) Side Account.

Change first sentence to: “The amount of an UAL lump-sum payment held in a side account shall be for the benefit of the employer making the UAL lump-sum payment. Reason for suggested change: The rule sounds like all of the UAL lump-sum payment goes into the Side Account -- instead of just the excess after paying off the transition UAL.

Need definition of “amount amortized”... including how it is computed.

Change second sentence: The amount amortized for each payroll reporting period shall be **transferred** from the Side Account to the **Employer Rate Pool Account** in which the employer is participating.

**OAR 459-009-0085 Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group**

(1)(d)(D) should be same as OAR 459-007-0530(1)(a)(C).

Sections (3) through (10) see attached payoff calculation process recommendations

(12) Side Account. need definition and calculation method for “amount amortized”

Change second sentence: The amount amortized for each payroll reporting period shall be (*applied*) **transferred** from the Side Account to the Employer Contribution Account of the individual employer.

**OAR 459-009-0090 Surplus Lump-Sum Payments by Employers**

(1)(f)(D) and (1)(g)(D) should be same as OAR 459-007-0530.

(4) requiring a minimum surplus lump-sum payment of 100 basis points is a huge amount for larger entities. For Metro \$5 million was only 84 basis points. We recommend a minimum surplus lump-sum payment of \$1 million or 100 basis point reduction whichever is less. In the alternative, we recommend a minimum surplus lump-sum payment of 50 basis points.

Need to define “pension program contribution rate” or “pension program contribution rates”. It is not clear if the proposed rule requires a minimum surplus lump sum payment resulting in a 1% reduction in one pension program rate or a 1% reduction in each of the employer’s pension program contribution rates...PERS 238 rate, OPSRP general service rate, OPSRP police/fire rate.

(5) defining the three “pension program contribution rates” .... the OPSRP police/fire rate, the OPSRP general service rate, and the PERS 238 rate will make this section clearer.

Sections (6) through (15) see attached payoff calculation process recommendations.

Thank you for your review and consideration. Let us know if you have questions.

The Employers PERS Alliance  
OSBA  
OCCA  
AOC  
LOC  
SDAO

Attachment to Employer PERS Alliance comments on proposed rules:

Crediting Earnings/Losses to Side Accounts and Employer Lump-Sum Payments

OAR 459-007-0530 OAR 459-009-0085 OAR 459-009-0085 OAR 459-009-0090

**Conceptual recommendations for changes to the process of making a lump-sum payment:**

At least 60 days prior to anticipated payoff, employer must make a request in writing to PERS.

PERS has 5 days after request to check for completeness and forward to Mercer for invoicing. Mercer has three days to forward invoice to employer for payment. If PERS find that the employer request is incomplete, PERS must notify the employer in writing of the lacking items within 5 days after receiving the employer request.

Upon receipt of payment, Mercer has 45 days to send to employer and PERS the calculation for up to two payoff dates for minimum amount, maximum amount and third amount specified by employer.

Employer must alert PERS three days prior to transfer of funds.

To the extent payment is not made on the requested payoff dates, and/or payment is received more than five business days after the intended payment date, Employer may make one updated request of Mercer for two payment dates up to six months following the initial requested payoff date at no additional charge, as long as it is during the same valuation period, such that immediate crediting can occur (rather than waiting for next valuation.). Mercer has 30 days from receipt of the new request to provide the updated information.

Note: If someone misses the opportunity to make a lump-sum payment on the requested payoff dates because the bond market is in a temporary funk, it would be pretty unfortunate to have to go through the same request process all over again for a full second fee. Also, if a lump-sum payment arrives more than five business days after the intended payment date, it is pretty unfortunate to have to wait until the next system valuation before receiving any rate relief.

End.

**MEMORANDUM****PERS Board****TO:****FROM: Lori Sattenspiel, Legislative and Public Affairs Specialist****SUBJ: Lump Sum Rulemaking****DATE: September 25, 2007**

\*Employers are generally supportive of the idea of moving from annual to payroll-to-payroll crediting as a step toward exact and timely recognition of earnings. It's a step in the right direction toward providing more real time information on account values, a big goal of the employer alliance. We have requested more real time information on the crediting process and the value of our accounts for several years, and we applaud this effort as a strong first step. But, there is much more work to be done in this area, and we ask the Board's support in encouraging these efforts.

\*Some of the changes use imprecise language on what the earnings to be credited will be. The statute is very clear that 'actual' earnings and losses be credited. We suggest a tightening of language in keeping with these statutory requirements, eliminating, or defining new terminology (e.g., 'allocated earnings"). Similarly, the definition of "UAL factor" needs to specify how the UAL factor is computed. Without a definition for "allocated" and no information on how the UAL factor is computed, the UAL factor could be calculated most anyway. In the same vein, we suggest the use of more consistent language between and among rules that address similar topics.

\*We understand the desire to set minimums in rule for making surplus contributions, but these minimums need to be reasonable. The current draft of changes to 459-009-0090 sets the minimum surplus lump-sum payment at a level of payroll rate reduction of 100 basis points. This is much too high a bar to set for larger entities who may be interested in depositing millions of dollars in the PERS fund. For example, Metro was considering submitting a lump sum payment of \$5 million in 2005, which calculated to a reduction of only 84 basis points. As an alternative, we recommend a minimum surplus lump-sum payment of \$1 million or 100 basis point reduction whichever is less. In the alternative, we recommend a minimum surplus lump-sum payment of 50 basis points.

\*In the context of these rule revisions, we recommend reconsideration of the process by which employers request and receive payoff calculations. The current process -- by which employers must submit a request to Mercer through PERS for two very precise dates, is way too cumbersome, inflexible and time consuming. It is not unusual for the process to take up to two months from the date of the first request. Given that many of these lump sum payments are funded with bond proceeds which requires positive market conditions to be successful, having such inflexible processes may mean losing an opportunity in a volatile market. In that circumstance, the employer would need to submit the request all over again. We have made suggested changes to staff to streamline this process. We appreciate that the actuary has significant demands on their time, but hope that a more reasonable and streamlined process can be accomplished.



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Adoption of Eligibility Rules

MEETING DATE	11/16/07
AGENDA ITEM	C.5. Eligibility

OAR 459-010-0003, *Eligibility and Membership for the PERS Chapter 238 Program*  
OAR 459-010-0014, *Creditable Service in the PERS Chapter 238 Program*  
OAR 459-010-0035, *Six-Month Waiting Period*  
OAR 459-013-0110, *Eligibility for Early Benefits*

### OVERVIEW

- Action: Adopt modifications to the Eligibility Rules.
- Reason: The rules need to be amended to clarify current practice and administration of membership eligibility standards, accrual of creditable service, and the effect of reaching earliest retirement age.
- Subject: Membership eligibility, accrual of creditable service, and effect of reaching earliest retirement age in the PERS Chapter 238 Program.
- Policy Issue: No policy issues were identified.

### BACKGROUND

To become eligible for benefits in the PERS Chapter 238 Program, an employee must establish membership by completing a waiting period and meet certain other criteria. Once membership is established, the member's employment periods may result in accrual of creditable service, which is used for calculating retirement benefits and establishing eligibility for other aspects of the program, like non-duty disability benefits. Reaching earliest retirement age triggers certain protections that preserve benefit eligibility.

While the statutory criteria for these plan elements have remained relatively constant, PERS' approach to these determinations has evolved through attempts to eliminate complexity and accelerate the process. Now, the EDX reporting system had further evolved the type and nature of information available for these determinations. The employer is now able to clearly communicate their intention as to whether an employee is in a qualifying position, and PERS can track employment segments better to make more timely determinations.

Staff began rulemaking on the following rules to more comprehensively clarify standards and practices in these areas of program administration:

OAR 459-010-0003: This rule outlines the criteria to establish membership in the PERS Chapter 238 Program. The proposed rule modifications streamline and simplify the process and give relevance to an employer's designation of a position as qualifying or non-qualifying.

Acknowledging that the employer can best determine whether a position is qualifying, PERS accepts the employer's designation of a position as qualifying or non-qualifying unless the actual employment record demonstrates that an employee objectively did or did not meet the statutory standard. The proposed Section (5) of the rule reflects provisions on establishing membership moved from OAR 459-010-0035, Six-Month Waiting Period. Those provisions are more appropriately placed in this rule.

OAR 459-010-0014: This rule provides standards used for the determination of accrual of creditable service by an active member of the PERS Chapter 238 Program. The rule was restructured and edited to clarify its existing provisions.

OAR 459-010-0035: This rule outlines the requirements of the six-month waiting period to establish membership in the PERS Chapter 238 Program. The proposed rule modifications incorporate the qualifying position definition of OAR 459-010-0003, clarify the start date of a waiting period, and add provisions on extending the waiting period of school employees for periods during which school is not in session.

OAR 459-013-0010: This rule was last modified in 1999; these modifications delete provisions that are unnecessary or no longer relevant. The proposed rule modifications also clarify the status of a member who reaches earliest retirement age.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 18, 2007 at 10 a.m. at the State Archives in Salem and a second hearing was held on October 23, 2007 at 2 p.m. at PERS headquarters in Tigard. The public comment period ended on October 26, 2007 at 5 p.m.

One comment was received via email, a copy of which is provided with this memo. Scott Winkels, Intergovernmental Relations Associate for the League of Oregon Cities, commented that the League was supportive of the Board's desire to simplify and clarify the eligibility rules. He expressed full support for OAR 459-010-0035 and no objection to OAR 459-013-0110. Mr. Winkels was supportive of the relevance given employer designation of a qualifying position evidenced in OAR 459-010-0003, but offered technical edits for clarity. Those edits were adopted by staff in the modifications of Subsection (1)(c) noted below.

Mr. Winkels also commented on OAR 459-010-0014, suggesting that creditable service be determined by the rules in effect at the time the service was performed. Staff concluded that the standard for the accrual of creditable service has consistently been based upon service in a qualifying position for which salary is paid and contributions to the system made. The method of identifying creditable service has evolved as administrative tools were developed and the information available to make that determination has changed. The deference to employer designation of a qualifying position in the proposed modifications to OAR 459-010-0003 means determinations of creditable service will conform closer to expectations at the time of the service unless objective evidence rebuts or overrules the employer's designation.

### SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

The following modifications have been made to the rules since notice.

#### OAR 459-010-0003:

Subsection (1)(c) was edited for clarity in response to public comment. The word “and” was deleted from the end of paragraph (B) and paragraphs (A) – (C) were punctuated as separate sentences. The text of paragraph (B) was edited to more clearly reflect that a position in a partial year of separation must be continued from a year in which the member performed 600 hours of service to be considered a qualifying position. The memo for Agenda Item C.7. points out that parallel edits are reflected in OAR 459-070-0001 for consistency.

Subsection (4)(b) was edited to be expressed in the past tense, since no one first employed after August 29, 2003 is eligible for the PERS Chapter 238 program. That section also was edited to include a reference to ORS Chapter 341, which provides for an optional retirement plan for certain community college administrative employees.

#### OAR 459-010-0014:

Subsection (3)(b) was edited to reflect that employment beginning on or before the 15<sup>th</sup> day of a month must continue through the end of the month to be presumed service for the major fraction of the month.

Subsection (3)(c) was edited to reflect that employment ending on or after the 16<sup>th</sup> day of a month must begin on or before the first day of the month to be presumed service for the major fraction of the month.

Subsection (3)(d) was edited to reflect that employment ending before the 16<sup>th</sup> day of a month must begin on or before the first day of the month and that the member must be reemployed in a qualifying position before the end of the month for the employment to be presumed service for the major fraction of the month.

Section (4) was edited to more clearly express the rebuttal process.

The memo for Agenda Item C.7. points out that parallel edits are reflected in OAR 459-075-0150 for consistency.

### 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, the Board could retain the existing language, but the rules would be less clear and would inhibit the simplification of these determinations.

**Impact:** Employers, members, and staff will benefit from the rules’ clarification and simplification of the standards used in these determinations. More manageable standards will enhance understanding and efficient administration by employers and staff.

**Cost:** There are no discrete costs attributable to these rules.

### RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 18, 2007	Rulemaking hearing held at 10 a.m. at the State Archives in Salem.
October 23, 2007	Rulemaking hearing held at 2 p.m. in Tigard.
October 26, 2007	Public comment period ended at 5 p.m.
November 16, 2007	Board may adopt the rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-010-0003, 459-010-0014, 459-010-0035, 459-013-0110, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: The rules need to be amended to clarify current practice and administration of membership eligibility standards, accrual of creditable service, and the effect of reaching earliest retirement age.

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

C.5. Attachment 1 – OAR 459-010-0003, *Eligibility and Membership for the PERS Chapter 238 Program*

C.5. Attachment 2 – OAR 459-010-0014, *Creditable Service in the PERS Chapter 238 Program*

C.5. Attachment 3 – OAR 459-010-0035, *Six-Month Waiting Period*

C.5. Attachment 4 – OAR 459-013-0110, *Eligibility for Early Benefits*

C.5. Attachment 5 –Email from League of Oregon Cities dated October 26, 2007

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

1 459-010-0003

2 Eligibility and Membership for the PERS Chapter 238 Program

3 (1) For the purpose of this rule:

4 (a) “Concurrent positions” means *[positions]*employment with two or more *[PERS]*  
5 participating employers *[where the positions occur together]* in *[any given]*the same  
6 calendar year.

7 (b) “Partial year of separation” means a period in the calendar year the  
8 employee separates from employment that begins on January 1 of the year and ends  
9 before the last working day of the year.

10 *[(b)](c)* “Qualifying position” means a position designated by the employer as  
11 qualifying, except:

12 (A) A position or concurrent positions in which an employee performs at least  
13 600 hours of service in a calendar year is qualifying regardless of employer  
14 designation.

15 (B) A position in a partial year of separation is qualifying regardless of  
16 employer designation if the position is continued from an immediately preceding  
17 calendar year in which the employee performed at least 600 hours of service in the  
18 position or concurrent positions.

19 (C) A position with one employer in which the employee is employed for the  
20 entire calendar year and fails to perform at least 600 hours of service in that  
21 position or concurrent positions in the calendar year is non-qualifying regardless of  
22 employer designation.

1        *[(A) For an employee who is employed in a position or in concurrent positions*  
2 *designated as non-qualifying and performs 600 or more total hours of service in a*  
3 *calendar year, the position or concurrent positions will be considered qualifying and the*  
4 *employee shall be considered to have performed service in a qualifying position from the*  
5 *date of employment or January 1 of the calendar year in which the employee performed*  
6 *more than 600 hours of service, whichever is later.]*

7        *[(B) Except as provided in paragraph (C) of this subsection, for an employee who is*  
8 *employed in a position or concurrent positions designated as qualifying and performs*  
9 *less than 600 hours of service in a calendar year, the position or concurrent positions*  
10 *will be considered non-qualifying from the date of employment or January 1 of the*  
11 *calendar year in which the employee performed less than 600 hours of service, whichever*  
12 *is later.]*

13        *[(C) For purposes of determining qualification upon separation from employment,*  
14 *but not for any other purpose, if an employee was employed in a position or concurrent*  
15 *positions for less than a full calendar year and performed less than 600 hours of service*  
16 *in that calendar year, but would have performed 600 hours of service or more if the*  
17 *employee had performed service in the same position or concurrent positions for the full*  
18 *calendar year, and if the employee performed 600 or more hours of service in the*  
19 *previous calendar year, the position or concurrent positions will be considered qualifying*  
20 *up to the date of separation.]*

21        *[(c)](d) “Service” means a**[ny calendar month] period in which* an employee:

22        (A) Is in an employer/employee relationship, as defined in OAR 459-010-0030; and

1 (B) Receive~~[d]~~s a payment of “salary,” as defined in ORS 238.005 or similar  
2 payment from workers compensation or disability.

3 (e) “Working day” means a day that the employer is open for business.

4 (2) At the time an employee is hired, an employer must designate the  
5 employee’s position as qualifying or non-qualifying. An employer must designate a  
6 position as qualifying if the position is one in which an employee would normally  
7 perform at least 600 hours of service in a calendar year.

8 (3) Employer designation of a position as qualifying or non-qualifying must be  
9 determined by PERS from information communicated to PERS by the employer.  
10 An employer designation that is contrary to the provisions of subsection (1)(c) of  
11 this rule in any calendar year will be reversed for that calendar year.

12 ~~[(2)]~~(4) Eligibility. An employee who was employed in a qualifying position  
13 before August 29, 2003 by an employer participating in the PERS Chapter 238  
14 Program was eligible to become a member of that program *[qualifies as a member of*  
15 *PERS under ORS 238.015]* if the employee:

16 (a) Began~~[Has completed a 6]~~ the six-month waiting period described in OAR  
17 459-010-0035 before August 29, 2003;~~[as defined in ORS 238.015(1);]~~

18 ~~[(b) Has been employed in a qualifying position];~~

19 ~~[(c) Is not otherwise ineligible for membership; and]~~

20 ~~[(d)]~~(b) [Has]Did not elect~~[ed]~~ to participate in an optional or alternative retirement  
21 plan as provided in ORS Chapters 243, 341, or ~~[and]~~ 353[.]; and

22 (c) Was not otherwise ineligible for membership.

1 (5) Membership. An employee who meets the requirements of section (4) of this  
2 rule becomes a member of the PERS Chapter 238 Program on the first day of the  
3 calendar month following the completion of the six-month waiting period described  
4 in OAR 459-010-0035 provided that the employee is employed on that date by the  
5 same employer that employed the employee throughout the waiting period.

6 *[(3) An employee shall remain an active member in PERS if the employee is*  
7 *employed in a qualifying position that totals 600 or more hours of service per calendar*  
8 *year.]*

9 *[(4) If an employee hired into a non-qualifying position completed service meeting*  
10 *the definition of “qualifying position” under section (1)(b) of this rule, the employee shall*  
11 *qualify as an active member for that calendar year.]*

12 *[(5)(a) If an active member in a qualifying position is terminated or they separate*  
13 *from employment prior to completing 600 hours of service in a year, the member shall*  
14 *not receive any service credit for that year unless they qualify under section (1)(b)(C)*  
15 *above.]*

16 *[(b) If an active member in a qualifying position is terminated or they separate from*  
17 *employment prior to completing 600 hours of service in a year and do not qualify under*  
18 *section (1)(b)(C), in addition to not receiving any service credit, all contributions for the*  
19 *year, employee and employer, shall be credited to the employer.*

20 *[(6) The provisions of this rule are effective for all eligibility determinations made*  
21 *on or after January 1, 2006.]*

22 Stat. Auth.: ORS 238.650

23 Stats. Implemented: ORS 238.005, 238.015, & 238A.025 [243.800 & 353.250]

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

1 **459-010-0014**

2 **Creditable Service in the PERS Chapter 238 Program**

3 (1) For purposes of this rule:

4 (a) “Active member” has the same meaning as provided in ORS 238.005(12)(b).

5 (b) “Creditable service” has the same meaning as provided in ORS 238.005(5).

6 (c) “Major fraction of a month” means a minimum of 50 hours in any calendar  
7 month in which an active member is being paid a salary by a participating public  
8 employer and for which benefits under ORS Chapter 238 are funded by employer  
9 contributions.

10 (2) An active member accrues one month of creditable service for each month  
11 in which the member performs service for the major fraction of the month.

12 (3) An active member is presumed to have performed service for a major  
13 fraction of a month if:

14 (a) The member performs at least 600 hours of service in the calendar year and  
15 the member’s employer(s) reports salary and hours for a pay period occurring  
16 within the calendar month;

17 (b) The member starts employment on or before the 15th day of the calendar  
18 month and the employment continues through the end of the month;

19 (c) The member starts employment on or before the first day of the calendar  
20 month and ends employment on or after the 16th day of the month; or

1 (d) The member starts employment on or before the first day of the calendar  
2 month and ends employment before the 16th day of the month, but is reemployed in  
3 a qualifying position before the end of the month.

4 (4) A member or employer may seek to rebut the determination of creditable  
5 service based on the presumptions in section (3) by providing to PERS records that  
6 establish that the member did or did not perform service for a major fraction of a  
7 month as defined in subsection (1)(c) of this rule.

8 (5) Sections (2) and (3) of this rule notwithstanding, an active member who is a  
9 school employee will accrue six months of creditable service if the member performs  
10 service for all portions of a school year that fall between January 1 and June 30, and  
11 six months of creditable service if the member performs service for all portions of a  
12 school year that fall between July 1 and December 31.

13 (6) A member may not accrue more than one month of creditable service for  
14 any calendar month and no more than one year of creditable service for any  
15 calendar year.

16 (7) The provisions of this rule are effective for service credit determinations  
17 made on or after January 1, 2008.

18 *[(a) "Service credit" has the same meaning as "creditable service" in ORS*  
19 *238.005(5).]*

20 *[(b) "Major fraction of a month" means a minimum of 50 hours in any calendar*  
21 *month in which an active member is being paid a salary by a participating public*  
22 *employer and contributions are due to the system either by or on behalf of the member.]*

1        *[(2) An active member will be considered to have met the definition of performing*  
2 *service for a major fraction of a calendar month if:]*

3        *[(a) The member has performed at least 600 hours of qualifying service, as defined*  
4 *in OAR Chapter 459, in that same calendar year; and]*

5        *[(b) The member’s employer(s) have reported salary and hours for a pay period*  
6 *occurring within that calendar month.]*

7        *[(3) An active member will not be considered to have met the definition of*  
8 *performing service for a major fraction of a calendar month if the member:]*

9        *[(a) Starts employment after the 15th of a calendar month, or]*

10       *[(b) Ends employment prior to the 16th of a calendar month, unless the member*  
11 *begins employment again in another qualifying position prior to the end of that calendar*  
12 *month.]*

13       *[(4) The granting or denial of creditable service based on the considerations in*  
14 *sections (2) and (3) above can be rebutted by the member or employer providing records*  
15 *that establish that the member did or did not in fact perform service for the requisite*  
16 *number of hours required to be considered a major fraction of a month under section*  
17 *(1).]*

18       *[(5) If the active member is a school employee, they may instead accrue one half*  
19 *year of service credit if the employee:]*

20       *[(a) Is or was employed in a qualifying position as defined in OAR Chapter 459;*  
21 *and]*

22       *[(b) Is employed for all portions of a school year when it is normally in session.]*

1        *[(6) Except as provided for under section (3) of this rule, an employee may not*  
2 *accrue more than one full month of service credit for any number of hours worked in a*  
3 *calendar month and no more than one year of service credit for any number of hours*  
4 *worked in a calendar year.]*

5        *[(7) The provisions of this rule are effective for service credit determinations made*  
6 *on or after January 1, 2006.]*

7        Stat. Auth.: ORS 238.650

8        Stats. Implemented: ORS 238.~~015~~005 & 238.300

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

1 **459-010-0035**

2 **Six-Month Waiting Period**

3 (1) The six-month waiting period required for establishing membership under ORS  
4 238.015 is [shall be] six full calendar months of service *[(uninterrupted by a total of*  
5 *more than 30 working days during such six months) to]* with the same employer *[or*  
6 *concurrent employers]*. The service must be in a qualifying position, as defined in  
7 OAR 459-010-0003. The six full calendar months of service may not be interrupted  
8 by more than 30 consecutive working days. For the purposes of this rule, a working  
9 day is defined as a day that the employer is open for business.

10 (2) The waiting period begins*[six full calendar months]:*

11 (a) *[Begins o]* On the date the employee is hired, and includes the month of hire as  
12 a full calendar month, if the date of hire is the first business day of the month. For  
13 the purposes of this rule, a business day is defined as Monday through Friday when  
14 PERS is open for business; [and]

15 (b) On the first day of the month following the date of hire; or

16 (c) On the first day of the month following the end date of an interruption of  
17 service of more than 30 consecutive working days.

18 *[(b) Includes the month in which the employee is hired if employment begins on the*  
19 *first business day of the month. For the purposes of this rule, a business day is Monday*  
20 *through Friday when PERS is open for business.]*

21 *[(2) Membership in the system shall be established as of the first of the month*  
22 *following six full calendar months of service, as defined in section (1) of this rule,*

1 *provided that the employee is employed on that date by the same employer or employers*  
2 *concurrently employing the employee during that six-month period.]*

3 (3) In the event an employee is on an an [qualified]official leave of absence under  
4 OAR 459-010-0010, the period of absence shall not constitute an interruption of the  
5 waiting period under Section (1) of this rule. The *[six-month]* waiting period shall be  
6 extended by the length of the *[qualified]* leave of absence.

7 (4) Absence from service by an educational employee during periods that the  
8 employing educational institution is not in session does not constitute an  
9 interruption of the waiting period under Section (1) of this rule. The waiting period  
10 shall be extended by the length of the period the educational institution is not in  
11 session.

12 *[(4) The provisions of this rule shall be applied retroactively to August 1, 2003.]*

13 Stat. Auth.: ORS 238.650

14 Stats. Implemented: ORS 238.015 *[& 238A.025]*

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 013 – RETIREMENT BENEFITS

1 459-013-0110

2 Eligibility for Early Benefits

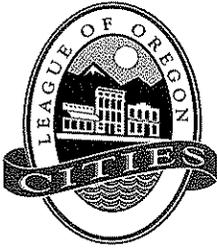
3 A member who reaches earliest retirement age under ORS 238.280 becomes  
4 eligible for a service retirement benefit that will be paid upon written application to  
5 the Board. After becoming eligible under that section, a member may not withdraw  
6 their account under ORS 238.265 nor will their membership terminate by operation  
7 of ORS 238.095(2).

8 *[(1) Any member who is within five years of the earliest service retirement age may*  
9 *terminate employment with all participating employers and become eligible for reduced*  
10 *service benefits, including prior service pension, on reaching the earliest service*  
11 *retirement age by filing a written application with PERS for such benefits. The member's*  
12 *benefit account shall be established on the first day of the month in which the application*  
13 *is received by PERS or the first day of the month following the date of separation,*  
14 *whichever is the later, and in no case shall be retroactive to an earlier date.]*

15 *[(2) Before normal retirement age, a member shall not be eligible to retire unless the*  
16 *member has a severance from employment with all employers participating in PERS and*  
17 *all employers in the same controlled group as a participating employer. For this purpose,*  
18 *a "controlled group" is a group of employers required to be treated as a single employer*  
19 *for purposes of satisfying the requirements for qualified retirement plans under federal*  
20 *law.]*

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238.280 & 238.095



October 26, 2007

Public Employee Retirement System  
c/o Steve Delaney  
11410 SW 68th Parkway  
Tigard, OR 97223

Re: Comments on proposed Eligibility Rules for Chapter 238 Program

Dear Mr. Delaney:

I am writing on behalf of the League of Oregon Cities to express our general support for the proposed changes in OAR's 459-010-0003, 459-010-0014, 459-010-0035 and 459-013-0110. While the League of Oregon Cities appreciates the PERS Board's desire to simplify and clarify the existing eligibility rules, the League would also like to take this opportunity to offer some constructive comments on the proposed changes.

**OAR 459-010-0003:** The League of Oregon Cities is clearly supportive to the concept of giving relevance of the employer's designation as to whether or not an employee is PERS eligible and would offer a technical change and a clarification:

- On line 18, the "and" between (B) and (C) should be removed since both of these things do not need to occur for the employer's designation to be overridden;
- (1)(B) Ought to be re-phrased so that it is clear that an employee must work 600 hours in the previous calendar year in order to be eligible.

**OAR 459-010-0014:** This rule provides standards for the determination of accrual of creditable service by an active member of the PERS Chapter 238 program. While we can appreciate the desire to clarify and simplify the rules the existing provisions, the League would suggest that in determining creditable service, the rules that existed at the time the service was performed be utilized.

**OAR 459-010-0035:** The League is satisfied with this proposed alternation and is in full support.

**OAR 459-013-0110:** The League would offer no objection to this proposed changed.

The League of Oregon Cities appreciates the ongoing efforts of the PERS Board and staff to ensure that Oregon has a public retirement system that meets the needs of employees and employers and are grateful for your due consideration of our comments.

Sincerely,

Scott Winkels  
Intergovernmental Relations Associate

League of Oregon Cities  
Local Government Center  
1201 Court St. NE, Suite 200  
Salem, Oregon 97301-4194

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TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Adoption of Earnings Crediting at Loss of Membership Rules

MEETING DATE	11/16/07
AGENDA ITEM	C.6. LOM

OAR 459-007-0110, *Crediting Earnings at Tier One Loss of Membership*  
OAR 459-007-0160, *Crediting Earnings to Loss of Membership Account for Periods of Active Membership*  
OAR 459-007-0290, *Crediting Earnings at Tier Two Loss of Membership*

### OVERVIEW

- Action: Adoption of the Loss of Membership Earnings Crediting Rules.
- Reason: Section 5 of HB 2619 requires PERS to credit net earnings to Loss of Membership accounts when a former member re-establishes active membership. OAR 459-007-0110 and 459-007-0290 need to be amended to reflect this change and OAR 459-007-0160 is a new rule explaining how the Loss of Membership accounts will be credited.
- Subject: Crediting earnings to Loss of Membership accounts per statutory change.
- Policy Issue: No policy issues were identified.

### BACKGROUND

HB 2619, effective July 16, 2007, includes a provision requiring PERS to credit earnings and losses to Loss of Membership accounts when a former member establishes active membership. Net earnings and losses will be credited only for periods of active membership on and after July 16, 2007. The proposed rules are necessary because of this statutory change.

OAR 459-007-0110: The proposed rule modification provides an exception under which a Tier One member's Loss of Membership account will receive earnings by referencing the new OAR.

OAR 459-007-0290: The proposed rule modification provides an exception under which a Tier Two member's Loss of Membership account will receive earnings by referencing the new OAR.

OAR 459-007-0160: This new rule outlines the manner in which Loss of Membership accounts will be credited with net earnings and losses.

### SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

There have been no modifications to the proposed rule since notice.

### 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.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 18, 2007 at 10 a.m. at the State Archives in Salem, and a second hearing was held on October 23, 2007 at 2 p.m. at PERS headquarters in Tigard. The public comment period ended on October 26, 2007 at 5 p.m. No public comment was received.

### IMPACT

Mandatory: Yes, the existing rules' provisions are contrary to Section 5 of HB 2619. The rule modifications and the creation of the new rule accommodate the statutory change.

Impact: Members will benefit from the crediting of earnings to Loss of Membership accounts during periods they are unable to withdraw these accounts.

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

### RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 18, 2007	Rulemaking hearing held at 10 a.m. at the State Archives in Salem.
October 23, 2007	Rulemaking hearing held at 2 p.m. in Tigard.
October 26, 2007	Public comment period ended at 5 p.m.
November 16, 2007	Board may adopt the rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent rule OAR 459-007-0160 and modifications to OAR 459-007-0110 and 459-007-0290, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: The proposed new rule and modifications conform to the earnings crediting requirements of HB 2619 on Loss of Membership accounts.

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

C.6. Attachment 1 – OAR 459-007-0110, *Crediting Earnings at Tier One Loss of Membership*

C.6. Attachment 2 – OAR 459-007-0160, *Crediting Earnings to Loss of Membership Account for Periods of Active Membership*

C.6. Attachment 3 – OAR 459-007-0290, *Crediting Earnings at Tier Two Loss of Membership*

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

1 **459-007-0110**

2 **Crediting Earnings at Tier One Loss of Membership**

3 When a Tier One member's membership terminates under ORS 238.095(2), earnings  
4 from the effective date of the last annual rate to the first of the month following the  
5 month of loss of membership shall be credited to the member account in the manner  
6 specified in this rule.

7 (1) Earnings on the former member's regular account shall be credited as follows:

8 (a) If earnings for the calendar year *[prior to]*before the date of loss of membership  
9 have not yet been credited, earnings shall be credited for that year based on the latest  
10 year-to-date calculation available for that year.

11 (b) Earnings for the calendar year of loss of membership shall be credited based on  
12 the latest year-to-date calculation as of the first of the month following the date of loss of  
13 membership.

14 (2) If the former member is participating in the Variable Annuity Account, earnings  
15 or losses of the Variable Annuity Account shall be credited to the former member's  
16 variable account as follows:

17 (a) If earnings or losses for the calendar year *[prior to]*before the date of loss of  
18 membership have not yet been credited, earnings or losses for that year shall be credited  
19 based on the latest year-to-date calculation available for that year.

20 (b) Earnings or losses for the calendar year of loss of membership shall be credited  
21 as of the end of the calendar month of loss of membership based on the latest year-to-date  
22 calculation as of the first of the month following the date of loss of membership

1       (3) Except as provided in OAR 459-007-0160, [N]no earnings or losses shall be  
2 credited for any period following the calendar month of loss of membership.

3       Stat. Auth.: ORS 238.650

4       Stats. Implemented: ORS 238.095 & ORS 238.435

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459

DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION

1 459-007-0160

2 Crediting Earnings to Loss of Membership Account for Periods of Active  
3 Membership

4 In accordance with ORS 238.095(5), as amended by section 5, chapter 776,  
5 Oregon Laws 2007, when a former member establishes membership in the system  
6 and has a Loss of Membership account, earnings or losses during dates of active  
7 membership will be credited to the Loss of Membership account in the manner  
8 specified in this rule.

9 (1) Partial year crediting.

10 (a) If active membership begins after the first of the year and continues through  
11 the end of the calendar year, earnings or losses from the date of active membership  
12 to December 31 of that calendar year shall be credited to the Loss of Membership  
13 account based on the Tier Two rate for the calendar year less the latest year to date  
14 Tier Two rate on the date of active membership.

15 (b) If the member is active on January 1 of the calendar year and active  
16 membership ends before December 31 of that calendar year, earnings or losses shall  
17 be credited to the Loss of Membership account based on the latest year to date Tier  
18 Two rate available as of the first of the month in which active membership ends.

19 (c) If active membership begins after the first of the year and ends before  
20 December 31 of that calendar year, earnings or losses shall be credited to the Loss of  
21 Membership account based on the latest year to date Tier Two rate available as of

1 the first of the month in which active membership ends less the latest year to date  
2 Tier Two rate available on the date of active membership.

3 (2) Full year crediting. Earnings or losses for full calendar years of active  
4 membership will be credited based on the Tier Two rate for the year.

5 (3) The effective date of this rule is July 17, 2007. No earnings or losses will be  
6 credited to a Loss of Membership account for periods of active membership before  
7 July 17, 2007.

8 Stat. Auth.: ORS 238.650

9 Stats. Implemented: ORS 238.095, 238.435 & OL 2007 Ch. 776

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

**DIVISION 007 – EARNINGS AND INTEREST DISTRIBUTION**

1    **459-007-0290**

2    **Crediting Earnings at Tier Two Loss of Membership**

3        When a Tier Two member's membership terminates under ORS 238.095(2), earnings  
4    from the effective date of the last annual rate through the end of the month of loss of  
5    membership shall be credited to the member account in the manner specified in this rule.

6        (1) Earnings or losses on the former member's regular account shall be credited as  
7    follows:

8        (a) If earnings or losses for the calendar year prior to the date of loss of membership  
9    have not yet been credited, earnings or losses shall be credited for that year based on the  
10   latest year-to-date calculation available for that year.

11       (b) Earnings or losses for the calendar year of loss of membership shall be credited  
12   based on the latest year-to-date calculation as of the end of the month of the date of loss  
13   of membership

14       (2) If the former member is participating in the Variable Annuity Account, earnings  
15   or losses of the Variable Annuity Account shall be credited to the former member's  
16   variable account as follows:

17       (a) If earnings or losses for the calendar year prior to the date of loss of membership  
18   have not yet been credited, earnings or losses for that year shall be credited based on the  
19   latest year-to-date calculation for that year.

1 (b) Earnings or losses for the calendar year of loss of membership shall be credited  
2 as of the end of the month of loss of membership based on the latest year-to-date  
3 calculation as of the first of the month following the date of loss of membership.

4 (3) Except as provided in 459-007-0160, [N]no earnings or losses shall be credited  
5 for any period following the calendar month of loss of membership.

6 Stat. Auth.: ORS 238.650

7 Stats. Implemented: ORS 238.095



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Adoption of Elimination of Break in Service /  
Accrual of Retirement Credit Rules

MEETING DATE	11/16/07
AGENDA ITEM	C.7. BIS

OAR 459-011-0050, *Forfeiture and Restoration of Service Rights*  
OAR 459-070-0001, *Definitions*  
OAR 459-075-0010, *Eligibility and Membership*  
OAR 459-075-0150, *OPSRP Retirement Credit*

### OVERVIEW

- Action: Adopt modifications to rules affected by HB 2285, Elimination of Break in Service/Accrual of Retirement Credit.
- Reason: These rules were originally drafted to accommodate provisions of ORS Chapter 238A regarding “Break in Service” and the full-time equivalency (FTE) accrual method for OPSRP Pension Program retirement credit. The rules need to be amended to comply with the elimination of these concepts by HB 2285.
- Subject: Elimination of “Break in Service” and Accrual of OPSRP Pension Program Retirement Credit.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

HB 2285 eliminates the statutory provisions for “Break in Service.” “Break in Service” established special conditions under which a PERS Chapter 238 Program member would become a member of the OPSRP Pension Program upon returning to PERS-covered employment. HB 2285 applies retroactively to treat “Break in Service” as if it had never existed. A PERS Chapter 238 Program member remains a member of that program unless that membership is terminated under the provisions of ORS 238.095.

HB 2285 also retroactively eliminates the FTE accrual method of OPSRP Pension Program retirement credit and establishes an accrual method that parallels the accrual of creditable service in the PERS Chapter 238 Program.

The proposed modifications to these rules accommodate those provisions of HB 2285.

OAR 459-011-0050: A PERS Chapter 238 Program member who withdraws and returns to PERS-covered employment may, under certain circumstances, restore the membership and service rights forfeited by the withdrawal. The proposed rule modifications eliminate provisions applying “Break in Service” to the restoration of rights under this rule.

OAR 459-070-0001: This rule provides definitions to be used in the OARs in Divisions 070, 075, and 080 regarding OPSRP. The proposed rule modifications remove “Break in Service” from the OPSRP definitions and, in addition, clarify standards for determining a qualifying position in the OPSRP Pension Program. The revised definitions of “qualifying position” and “service” reflect the same standards as in OAR 459-010-0003, which would result in parallel and consistent determinations in the OPSRP Pension and PERS Chapter 238 Programs.

OAR 459-075-0010: This rule outlines the criteria to establish membership in the OPSRP Pension Program. The proposed rule modifications delete text regarding the effect of “Break in Service” on eligibility. The remaining eligibility provisions have been restructured for clarity and to include provisions addressing employment of a PERS Chapter 238 Program member by an employer participating only in the OPSRP Pension Program. The waiting period and membership provisions have been edited to provide for parallel administration of eligibility and membership in the PERS Chapter 238 Program provisions in OARs 459-010-0003 and 459-010-0035 to the extent permitted by statute.

459-075-0150: This rule was extensively rewritten to eliminate provisions regarding the FTE accrual method for OPSRP Pension Program retirement credit. The proposed modifications mirror the accrual method for creditable service in the PERS Chapter 238 Program, again providing for parallel and consistent administration of the programs.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 18, 2007 at 10 a.m. at the State Archives in Salem, and a second hearing was held on October 23, 2007 at 2 p.m. at PERS headquarters in Tigard. The public comment period ended on October 26, 2007 at 5 p.m. No public comment was received.

#### SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

The following modifications have been made to the rules since notice.

##### OAR 459-070-0001:

Section (14) was edited to parallel edits made to OAR 459-010-0003(1)(c) in response to public comment on that rule. The public comment and edits to that rule are set forth in the memo on Agenda Item C.5. for this meeting. The edits are clarifying and non-substantive in nature, duplicated in this rule to enhance parallel administration.

##### OAR 459-075-0010:

Subsection (1)(c) was edited to also reference ORS Chapter 341, which provides for an optional retirement plan for certain community college administrative employees.

OAR 459-075-0150:

The title of the rule was modified to more clearly address retirement credit in the OPSRP Pension Program and to parallel the structure of OAR 459-010-0014, Creditable Service in the PERS Chapter 238 Program.

Subsections (3)(b)-(d) were edited to clarify that continuity of employment before or after the relevant dates is a factor in establishing the presumption that the member provided service for a major fraction of a month. These edits parallel edits made to the creditable service rule for the PERS Chapter 238 Program.

Section (4) was edited for clarity and to parallel edits made to the creditable service rule for the PERS Chapter 238 Program.

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:** Yes, the rules' provisions regarding "Break in Service" and the accrual of OPSRP Pension Program retirement credit are contrary to the provisions of HB 2285. If not modified to accommodate the statutory changes, the rules will become inaccurate.

**Impact:** Members, employers, and staff will benefit from comprehensive guidance regarding the implementation of HB 2285 and the parallel administration of programs.

**Cost:** There are no discrete costs attributable to these rules. Parallel administration of programs may provide administrative savings.

RULEMAKING TIMELINE

- |                    |  |
|--------------------|--|
| August 15, 2007    | Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State. |
| September 1, 2007  | <i>Oregon Bulletin</i> published the Notice.   |
| September 21, 2007 | PERS Board notified that staff began the rulemaking process.                                   |
| October 18, 2007   | Rulemaking hearing held at 10 a.m. at the State Archives in Salem.                             |
| October 23, 2007   | Rulemaking hearing to be held at 2 p.m. in Tigard.   |
| October 26, 2007   | Public comment period ends at 5 p.m.   |
| November 16, 2007  | Board may adopt the rule modifications.  |

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-011-0050, OAR 459-070-0001, OAR 459-075-0010, and OAR 459-075-0150, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: These rules were originally drafted to accommodate provisions of ORS Chapter 238A regarding “Break in Service” and the full-time equivalency (FTE) accrual method for OPSRP Pension Program retirement credit. The rules need to be amended to comply with the elimination of these concepts by HB 2285.

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

C.7. Attachment 1 – OAR 459-011-0050, *Forfeiture and Restoration of Service Rights*

C.7. Attachment 2 – OAR 459-070-0001, *Definitions*

C.7. Attachment 3 – OAR 459-075-0010, *Eligibility and Membership*

C.7. Attachment 4 – OAR 459-075-0150, *OPSRP Retirement Credit*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 011 – RETIREMENT CREDIT**

1 **459-011-0050**

2 **Forfeiture and Restoration of Service Rights**

3 (1) A member who, pursuant to ORS 238.265, withdraws the amount credited to the  
4 member's account forfeits all membership rights accrued under ORS chapter 238 *[prior*  
5 *to]*before the date of the withdrawal, including any service rights attributable to  
6 employment *[prior to]*before the date of the withdrawal.

7 (2) Any such person who reenters the service of a participating employer within five  
8 years from the date of the last separation from employment that preceded the member's  
9 withdrawal may, at any time during the one-year period immediately following the date  
10 of reemployment, repay to PERS, in a single lump sum payment, an amount equal to the  
11 amount withdrawn plus the earnings the amount withdrawn would have accumulated  
12 from the date of withdrawal to the date of repayment. *[A person who makes a repayment*  
13 *as described in this section shall establish or reestablish membership in the system as*  
14 *provided in section (3) or (4) of this rule.]*

15 (3) *[If the date of the former member's repayment under section (2) is before the date*  
16 *on which the former member incurs a "Break in Service" under ORS 238A.025, the]*  
17 Upon repayment as described in section (2) of this rule, the PERS Chapter 238  
18 Program membership and service rights forfeited by the withdrawal will be **restored**  
19 *[vived]*. The former member will reestablish membership in the PERS Chapter 238  
20 Program on the first day of the month following the date of the repayment. Service by  
21 the former member from date of reemployment to the date membership is

1 reestablished shall be attributed to the PERS Chapter 238 Program. The withdrawn  
2 member account will be reestablished in the amount of the repayment.

3 *[(4) If the date of the former member's repayment under section (2) occurs on or*  
4 *after the date the former member incurs a "Break in Service" under ORS 238A.025, the*  
5 *PERS Chapter 238 membership and service rights forfeited by the withdrawal will be*  
6 *restored to the extent they existed immediately prior to the withdrawal. The withdrawn*  
7 *member account will be reestablished in the amount of the repayment. Membership and*  
8 *service subsequent to the date of reemployment will be subject to the provisions of the*  
9 *OPSRP Pension Program. The former member will establish membership in the OPSRP*  
10 *Pension Program on the earlier of:]*

11 *[(a) The date the former member establishes membership pursuant to ORS*  
12 *238A.100; or]*

13 *[(b) The first day of the month following the date of the repayment.]*

14 *[(5)]*(4) Notwithstanding the provisions of this rule, a member who withdraws  
15 pursuant to ORS 238.265 and receives an additional amount pursuant to section 2,  
16 chapter 276, Oregon Laws 2003, may not reestablish membership under section (2) of  
17 this rule.

18 Stat. Auth.: ORS 238.650

19 Stats. Implemented: ORS 238.105 & OL 2007 Ch. 769

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

**DIVISION 070 – OREGON PUBLIC SERVICE RETIREMENT PLAN, GENERALLY**

1 **459-070-0001**

2 **Definitions**

3 The words and phrases used in this Division have the same meaning given them in  
4 ORS 238A.005 unless otherwise indicated *[in this rule]*. Specific and additional terms for  
5 purposes of Divisions 70, 75 and 80 are defined as follows unless context requires  
6 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 section 20 of OL 2005 Ch. 332, but are subject  
12 to the membership requirements under ORS 238A.100 and OAR 459-075-0010.

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

17 *[(2) “Break in Service” means a period concluding on or after August 29, 2003,*  
18 *during which a member of PERS performs no service with a participating public*  
19 *employer in a qualifying position for a duration of:]*

20 *[(a) Six or more consecutive calendar months; or]*

21 *[(b) 12 or more consecutive calendar months under one of the following*  
22 *circumstances:]*

1 *[(A) The member of PERS ceases performance of service for purposes that have*  
2 *qualified the member for family leave, as described in ORS 238A.025(3)(c), as*  
3 *determined by the employer; or]*

4 *[(B) The member of PERS ceases performance of service for career development*  
5 *purposes, as described in ORS 238A.025(3)(d); or]*

6 *[(C) The member ceases performance of service on or after August 29, 2003 due to*  
7 *the seasonal nature of the employee’s employment and does not return to the same*  
8 *employer.]*

9 *[(3)](2)* “Calendar month” means a full month beginning on the first calendar day of  
10 a month and ending on the last calendar day of the same month.

11 *[(4)](3)* “Calendar year” means 12 calendar months beginning on January 1 and  
12 ending on December 31 following.

13 *[(5)](4)* “Employee” has the same meaning as “eligible employee” in ORS  
14 238A.005(4).

15 *[(6)](5)* “Employee class” means a group of similarly situated employees whose  
16 positions have been designated by their employer in a policy or collective bargaining  
17 agreement as having common characteristics.

18 *[(7)](6)* “Employee contributions” means contributions made to the individual  
19 account program by an eligible employee under ORS 238A.330, or on behalf of the  
20 employee under ORS 238A.335.

21 *[(8)](7)* “Final Average Salary” (FAS) has the same meaning given the term in:

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

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

3 ~~[(9)]~~**(8)** “Member” has the same meaning given the term in ORS 238A.005(10).

4 ~~[(10)]~~**(9)** “Member account” means the account of a member of the individual  
5 account program.

6 ~~[(11)]~~**(10)** “Member of PERS” has the same meaning as “member” in ORS  
7 238.005(12)(a), but does not include retired members.

8 ~~[(12)]~~**(11)** “OPSRP” means the Oregon Public Service Retirement Plan.

9 ~~[(13)]~~**(12)** “Overtime” means the salary or hours, as applicable, that an employer has  
10 designated as overtime.

11 **(13) “Partial year of separation” means a period in the calendar year the**  
12 **employee separates from employment that begins on January 1 of the year and ends**  
13 **before the last working day of the year.**

14 *[(14) “PERS” means the retirement system established under ORS chapter 238.]*

15 ~~[(15)]~~**(14)**~~[(a)]~~ “Qualifying position” means a position **designated by the employer**  
16 **as qualifying, except:**

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

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

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

6 *[(b) An academic employee of a community college who is employed .375 full-time*  
7 *equivalent (FTE) on a 12-month basis or .50 FTE on a 9-month basis is deemed to have*  
8 *performed 600 hours or more in the calendar year.]*

9 *[(c) If an employee is employed in a position or positions not designated as*  
10 *qualifying and performs 600 or more total hours of service in a calendar year, the*  
11 *position or positions will be considered qualifying and the employee shall be considered*  
12 *to have performed service in a qualifying position from the date of employment or*  
13 *January 1 of the calendar year in which the employee performed more than 600 hours of*  
14 *service, whichever is later.]*

15 *[(d) Except as provided in subsection (e) of this section, if an employee is employed*  
16 *in a position or positions designated as qualifying and performs less than 600 hours of*  
17 *service in a calendar year, the position will be considered non-qualifying from the date of*  
18 *employment or January 1 of the calendar year in which the employee performed less than*  
19 *600 hours of service, whichever is later.]*

20 *[(e) For purposes of determining qualification upon separation from employment in*  
21 *a position or positions, but not for any other purpose, if an employee was employed in a*  
22 *position or positions for less than a full calendar year and performed less than 600 hours*  
23 *of service in that calendar year, but would have performed 600 hours of service or more*  
24 *if the employee had performed service in the same position or positions for the full*

1 *calendar year, and if the employee performed 600 or more hours of service in the*  
2 *previous calendar year, the position or positions will be considered qualifying as of the*  
3 *date of separation.]*

4 *[(16)](15)* “Salary” has the same meaning given the term in ORS 238A.005(16).

5 *[(17)](16)* “School employee” has the meaning given the term in ORS 238A.140(7).

6 *[(18)](17)* “Service[.]” **means a period in which an employee:**

7 **(a) Is in an employer/employee relationship, as defined in OAR 459-010-0030;**

8 **and**

9 **(b) Receives a payment of “salary,” as defined in ORS 238.005A(16) or similar**

10 **payment from workers’ compensation or disability.** *[Except as provided in subsection*

11 *(c) of this section, a person is still providing “service,” for purposes of determining*

12 *whether a “Break in Service” has occurred under Section 2a, Chapter 733, Oregon laws*

13 *2003, during any calendar month that a member:]*

14 *[(a) Is in an employer/employee relationship; and]*

15 *[(b) Receives a payment of “salary,” as that term is defined in ORS 238.005(21) or*  
16 *similar payment from workers compensation or disability.]*

17 *[(c) A member who is a school employee will be considered to provide “service”*

18 *during any calendar month the institution is not normally in session so long as the*

19 *member is in an employer/employee relationship both before and after the period the*

20 *institution is not normally in session.]*

21 *[(19)](18)* The provisions of this rule are effective on January 1, 2004.

22 Stat. Auth.: 238A.450

23 Stats. Implemented: 238A.005, 238A.025, 238A.140, 238A.330, *[&]* 238A.335 **&**

24 **OL 2007 Ch. 769**

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 075 – OPSRP PENSION PROGRAM**

1 **459-075-0010**

2 **Eligibility and Membership**

3 (1) Eligibility. An employee who is employed in a qualifying position on or after  
4 August 29, 2003 by an employer participating in the OPSRP Pension Program is  
5 eligible to become a member of that program unless the employee:

6 (a) Has established membership in the PERS Chapter 238 Program before  
7 August 29, 2003 under the terms of ORS 238A.025 and has not terminated  
8 membership in that program under ORS 238.095;

9 (b) Is a judge member as defined in ORS 238.500;

10 (c) Elects to participate in an optional or alternative retirement plan as  
11 provided in ORS Chapters 243, 341, or 353; or

12 (d) Is otherwise ineligible for membership.

13 *[An employee is eligible to become a member and receive benefits under the OPSRP*  
14 *pension program, and ineligible to become (or remain) a member of PERS or accrue*  
15 *benefits under PERS, if the employee:]*

16 *[(a) Begins employment in a qualifying position with a participating public employer*  
17 *on or after August 29, 2003;]*

18 *[(b) Was not a member of PERS before August 29, 2003; and]*

19 *[(c) Did not perform any period of service before August 29, 2003, that is credited to*  
20 *the six-month period required under ORS 238.015 for membership in PERS; or]*

21 *[(d) Was an active or inactive member of PERS on August 28, 2003, and incurs a*  
22 *"Break in Service."]*

1 (2) Notwithstanding section (1) of this rule, an employee who established  
2 membership in the PERS Chapter 238 Program before August 29, 2003 under the  
3 terms of ORS 238A.025 and has not terminated membership in that program under  
4 ORS 238.095 may nevertheless be eligible to establish membership in the OPSRP  
5 Pension Program if employed by a public employer that is participating in the  
6 pension program and is not participating in the PERS Chapter 238 Program.

7 *[(2) "Break in Service":]*

8 *[(a) For purposes of this section, ORS 238A.025 and section 2a of chapter 733,*  
9 *Oregon Laws 2003:]*

10 *[(A) "Active member of PERS" means an employee who is a member of PERS and*  
11 *not separated from service in a qualifying position with a participating public employer.]*

12 *[(B) "Inactive member of PERS" means an employee who is a member of PERS but*  
13 *was separated from service in a qualifying position with a participating public employer,*  
14 *including a member who was on a leave of absence without pay as described in OAR*  
15 *459-010-0010.]*

16 *[(b) An employee will not incur a "Break in Service" if the employee was an inactive*  
17 *vested member of PERS on August 28, 2003, and returns to a qualifying position before*  
18 *January 1, 2006 with the same participating public employer the employee was employed*  
19 *with before the employee became inactive.]*

20 *[(c) If an employee who was an active member of PERS on August 28, 2003, incurs a*  
21 *"Break in Service", the employee shall be entitled to benefits under PERS for all service*  
22 *performed prior to the "Break in Service", and benefits under the OPSRP pension*  
23 *program for all service performed after the "Break in Service."]*

1        *[(d) If an employee who was an inactive member of PERS on August 28, 2003,*  
2 *incurs a "Break in Service" concluding prior to January 1, 2004, the employee shall be*  
3 *entitled to benefits under PERS for all service performed prior to the "Break in Service"*  
4 *and benefits under the OPSRP pension program for all service performed on or after*  
5 *January 1, 2004.]*

6        *[(e) If an employee who was an inactive member of PERS on August 28, 2003,*  
7 *incurs a "Break in Service" concluding on or after January 1, 2004, the employee shall*  
8 *be entitled to benefits under PERS for all service performed prior to the "Break in*  
9 *Service" and benefits under the OPSRP pension program for all service performed after*  
10 *the "Break in Service"]*

11        *[(f) If a member of PERS ceases performance of service for one of the reasons*  
12 *described in ORS 238A.025(3)(c) or (d), the member returns to a qualifying position if*  
13 *the member resumes performance of hours of service: and]*

14        *[(A) Performs 600 hours of service in the calendar year(s) of absence; or]*

15        *[(B) Performs a total of 600 hours of service in the calendar year prior to leaving*  
16 *service, with no less than 50 hours per month performed in the last six months of that*  
17 *year, and performs 600 hours of service in the calendar year following the return to*  
18 *service, with no less than 50 hours per month performed in the first six months of that*  
19 *year.]*

20        *[(g) If a member of PERS ceases performance of service for reasons other than those*  
21 *described in ORS 238A.025(3)(c) or (d), the member returns to a qualifying position if*  
22 *the member resumes performance of service and performs 600 hours in the calendar year*  
23 *of the return to service.]*

1        *[(h) If a member of PERS ceases performance of service to serve as a legislator, the*  
2 *absence from regular employment for that purpose shall not be considered a "Break in*  
3 *Service."]*

4        *[(i) If a member of PERS ceases performance of service to serve in the uniformed*  
5 *services, as defined in the 1994 federal Uniformed Services Employment and*  
6 *Reemployment Rights Act (USERRA), and meets the eligibility requirements for*  
7 *reemployment under USERRA, the absence from service for that purpose shall not be*  
8 *considered a "Break in Service."]*

9        *[(j) If a member of PERS ceases performance of service and receives a disability*  
10 *retirement allowance under ORS 238.320, the absence from regular employment during*  
11 *that period, regardless of when the disability period begins or ends, shall not be*  
12 *considered a "Break in Service."]*

13        *[(k) If a member of PERS ceases performance of service on or after August 29, 2003,*  
14 *due to the seasonal nature of the employee's employment, the absence from regular*  
15 *employment during that period shall not be considered a "Break in Service" as long as*  
16 *the employee returns to the same public employer before 12 full calendar months have*  
17 *elapsed.]*

18        (3) Membership:

19        (a) *[Except as provided in subsection (c) of this section, a]*An employee who meets  
20 the requirements in section (1) or (2) of this rule *[shall]* becomes a member of the OPSRP  
21 *[p]*Pension *[p]*Program on the first day of the calendar month *[after]* following the  
22 employee's completion[es] of a waiting period of six full calendar months of  
23 *[employment]* service in a qualifying*[ied]* position with the same participating public

1 employer. The six full calendar months of service may not be interrupted by more  
2 than 30 consecutive working days. For the purposes of this rule, a working day is  
3 defined as a day that the employer is open for business.

4 (b) The waiting period begins:

5 (A) On the date the employee is hired, and includes the month of hire as a full  
6 calendar month, if the date of hire is the first business day of the month. For the  
7 purposes of this rule, a business day is defined as Monday through Friday when  
8 PERS is open for business;

9 (B) On the first day of the month following the date of hire; or

10 (C) On the first day of the month following the end date of an interruption of  
11 service of more than 30 consecutive working days.

12 *[If the six months required by subsection (a) of this section are interrupted by 30 or*  
13 *more consecutive working days in which the employee performs no paid service for the*  
14 *same participating public employer, the period of employment prior to the interruption*  
15 *shall not count toward the six-month requirement.]*

16 (c) In the event an employee is on an official leave of absence as described in  
17 OAR 459-010-0010, the period of absence shall not constitute an interruption of the  
18 waiting period under subsection (a) of this section. The waiting period shall be  
19 extended by the length of the leave of absence.

20 *[An employee who was an active or inactive member of PERS on August 28, 2003,*  
21 *and incurred a "Break in Service." shall become a member of the OPSRP pension*  
22 *program on the first day of the calendar month after the return to employment.]*

1            (d) Absence from service by an educational employee during periods that the  
2 employing educational institution is not in session shall not constitute an  
3 interruption of the waiting period under subsection (a) of this section. The waiting  
4 period shall be extended by the length of the period the educational institution is not  
5 in session.

6            Stat. Auth.: ORS 238A.450

7            Stats. Implemented: ORS 238A.025, 238A.100 & OL 2007 Ch. 769 [3 *Ch 733(2)(a)*]

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 075 – OPSRP PENSION PROGRAM

1 459-075-0150

2 Retirement Credit in the OPSRP Pension Program

3 (1) For purposes of this rule:

4 (a) “Active member” has the same meaning as provided in ORS 238A.005(1).

5 (b) “Major fraction of a month” means a minimum of 50 hours in any calendar  
6 month in which an active member is being paid a salary by a participating public  
7 employer and for which benefits under ORS Chapter 238A are funded by employer  
8 contributions.

9 (2) An active member accrues one month of retirement credit for each month in  
10 which the member performs service for the major fraction of the month.

11 (3) An active member is presumed to have performed service for a major  
12 fraction of a month if:

13 (a) The member performs at least 600 hours of service in the calendar year and  
14 the member's employer(s) reports salary and hours for a pay period occurring  
15 within the calendar month;

16 (b) The member starts employment on or before the 15th day of the calendar  
17 month and the employment continues through the end of the month;

18 (c) The member starts employment on or before the first day of the calendar  
19 month and ends employment on or after the 16th day of the month; or

20 (d) The member starts employment on or before the first day of the calendar  
21 month and ends employment before the 16th day of the month, but is reemployed in  
22 a qualifying position before the end of the month.

1 (4) A member or employer may seek to rebut the determination of creditable  
2 service based on the presumptions in section (3) by providing to PERS records that  
3 establish that the member did or did not perform service for a major fraction of a  
4 month as defined in subsection (1)(c) of this rule.

5 (5) Sections (2) and (3) of this rule notwithstanding, an active member who is a  
6 school employee will accrue six months of retirement credit if the member performs  
7 service for all portions of a school year that fall between January 1 and June 30, and  
8 six months of creditable service if the member performs service for all portions of a  
9 school year that fall between July 1 and December 31.

10 (6) A member may not accrue more than one month of retirement credit for  
11 any calendar month and no more than one year of retirement credit for any  
12 calendar year.

13 *[(1)](7)* Credit for the six-month waiting period required by OAR 459-075-  
14 0010*[(3)](2)*.

15 (a) Upon establishing membership in the pension program, a member shall receive  
16 credit for the *[hours of service]*waiting period required to establish membership under  
17 OAR 459-075-0010*[(3)](2)*.

18 *[(b) The amount of credit awarded under this section shall be determined in*  
19 *accordance with subsections (1) and (3) through (6), section 11, chapter 733, Oregon*  
20 *Laws 2003 (Enrolled HB 2020)].*

21 *[(c)](b)* If the member's *[period of employment prior to]*waiting period before  
22 establishment of membership included an interruption of service as described in OAR

1 459-075-0010[(3)](2)(b), no credit shall be awarded for the period of employment *[prior*  
2 *to]before* the interruption.

3 *[(d) No credit shall be awarded for hours of service performed prior to January 1,*  
4 *2004.]*

5 *[(2) Retirement credit. A member shall accrue retirement credit in accordance with*  
6 *section 11, chapter 733, Oregon Laws 2003 (Enrolled HB 2020)].*

7 *[(a) Retirement credit for school employees. If a member performs a combined total*  
8 *of 600 or more hours in a calendar year in one or more positions as a school employee,*  
9 *prorated retirement credit will be calculated for each position by dividing the number of*  
10 *the member's hours of service in each position by the number of hours of service*  
11 *required of a full-time school employee for that same position or comparable position.]*

12 *[(b) Retirement credit for school employees employed in another qualifying position*  
13 *in a calendar year. If a member performs a combined total of 600 or more hours of*  
14 *service in one or more positions as a school employee and another qualifying position or*  
15 *positions in a calendar year, prorated retirement credit will be calculated for each*  
16 *position in the following manner:]*

17 *[(A) For each position as a school employee, by using the method described in*  
18 *section (2)(a) of this rule; and]*

19 *[(B) For each non-school qualifying position, by dividing the number of the*  
20 *member's hours of service in each non-school qualifying position by 2000.]*

21 *[(3) A member only accrues retirement credit for calendar years in which the*  
22 *member performs 600 or more total hours of service in one or more qualifying positions.*

1 *No member may receive more than one full year of retirement credit for any calendar*  
2 *year.]*

3 **(8) The provisions of this rule are effective for retirement credit determinations**  
4 **made on or after January 1, 2008.**

5 Stat. Auth.: *[OL 2003 Ch. 733]***238A.450**

6 Stats. Implemented: *[OL 2003 Ch. 733]***OL 2007 Ch. 769**



# Oregon

Theodore R. Kulongoski, Governor

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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Adoption of Alternate Payee Rules

MEETING DATE	11/16/07
AGENDA ITEM	C.8. Alternate Payees

OAR 459-050-0080, *Distribution of Funds After a Severance of Employment*  
OAR 459-050-0220, *Distribution of an Alternate Payee Account*

### OVERVIEW

- Action: Adopt modifications to the Alternate Payee Rules.
- Reason: Update rules to reflect legislative changes.
- Subject: Alternate payee account distributions from OSGP.
- Policy Issue: No policy issues were identified.

### BACKGROUND

HB 2286 amended provisions in the Oregon Savings Growth Plan at ORS 243.507 to allow an alternate payee to take a distribution from his or her account prior to the date the employee would be eligible to receive a distribution. These changes were made to conform to governmental deferred compensation plan regulations enacted pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 that allow an alternate payee to take a distribution without a qualifying event, if allowed in a Qualified Domestic Relations Order. These rule modifications are necessary to comply with the statutory changes. While the rules are open, definitions are also being re-ordered so that the terms are listed alphabetically.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 18, 2007 at 10 a.m. at the State Archives in Salem, and a second hearing was held on October 23, 2007 at 2 p.m. at PERS headquarters in Tigard. The public comment period ended on October 26, 2007 at 5 p.m. No public comment was received.

### SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

There have been no modifications to the proposed rules since notice.

### 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: Yes, the rule modifications are necessary to conform to the statutory changes.

Impact: Consistent use of terms will benefit members and staff.

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

### RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 18, 2007	Rulemaking hearing held at 10 a.m. at the State Archives in Salem.
October 23, 2007	Rulemaking hearing held at 2 p.m. in Tigard.
October 26, 2007	Public comment period ended at 5 p.m.
November 16, 2007	Board may adopt the rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-050-0080 and OAR 459-050-0220, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Update rules to reflect legislative changes.

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

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 050 – DEFERRED COMPENSATION**

1 **459-050-0080**

2 **Distribution of Funds After a Severance of Employment**

3 The purpose of this rule is to establish the criteria and process for obtaining a  
4 distribution of deferred compensation funds after a participant’s severance of employment  
5 as defined herein. Distribution under the Deferred Compensation Program shall be made  
6 in accordance with any minimum distribution or other limitations required by Internal  
7 Revenue Code (IRC) section 401(a)(9), ~~[(1)26 U.S.C. 401(a)(9)]~~ and related regulations.

8 (1) Definitions. The following definitions apply for the purpose of this rule:

9 *[(a) “Severance of Employment” means a participant has ceased rendering services*  
10 *as an employee or an independent contractor of a plan sponsor for a minimum of 30*  
11 *consecutive days, including services as a temporary employee, and has no intention to*  
12 *return to work for the plan sponsor.]*

13 *[(b) “Intention to return to work” means a written or oral, formal or informal*  
14 *agreement has been made with the plan sponsor to return to work on a full time, part time*  
15 *or temporary basis at the time the severance is effective. If a participant returns to work*  
16 *with the plan sponsor within 30 calendar days of severance, then a rebuttable*  
17 *presumption exists that the participant intended to return to work as of the date of*  
18 *severance.]*

19 ~~[(c)]~~**(a)** “Commencement date” means the month and year that a participant *[or an*  
20 *alternate payee]* will begin receiving a distribution(s) from the Deferred Compensation  
21 Program, whether by operation of the participant’s *[or alternate payee’s]* election or  
22 under the terms of the plan. *[The commencement date may be no earlier than the second*

1 *calendar month following the month in which severance from employment became*  
2 *effective.]* The commencement date is not the date that the necessary funds are liquidated  
3 for distribution.

4 *[(d) “Liquidation of funds” means the conversion of the necessary funds from the*  
5 *investments in the Deferred Compensation Program into cash for payment under a*  
6 *specified manner of distribution.]*

7 *[(e) “Liquidation date” means the date the Deferred Compensation Program*  
8 *designates for liquidation of funds. Generally, the liquidation date will not be earlier than*  
9 *the 25th day of the calendar month preceding the commencement date. The Deferred*  
10 *Compensation Program may determine the liquidation date based on normal business*  
11 *practices. The Deferred Compensation Program is not liable to a participant for failure*  
12 *to liquidate an investment on a specified date.]*

13 *[(f)](b)* “Date of distribution” means the date funds are distributed to the participant,  
14 alternate payee, beneficiary, or other recipient in accordance with the plan, regardless of  
15 the mechanism by which those funds are distributed.

16 **(c) “Intention to return to work” means a written or oral, formal or informal**  
17 **agreement has been made with the plan sponsor to return to work on a full time,**  
18 **part time or temporary basis at the time the severance is effective. If a participant**  
19 **returns to work with the plan sponsor within 30 calendar days of severance, then a**  
20 **rebuttable presumption exists that the participant intended to return to work as of**  
21 **the date of severance.**

22 **(d) “Liquidation date” means the date the Deferred Compensation Program**  
23 **designates for liquidation of funds. Generally, the liquidation date will not be earlier**

1 than the 25th day of the calendar month preceding the commencement date. The  
 2 Deferred Compensation Program may determine the liquidation date based on  
 3 normal business practices. The Deferred Compensation Program is not liable to a  
 4 participant for failure to liquidate an investment on a specified date.

5 (e) “Liquidation of funds” means the conversion of the necessary funds from the  
 6 investments in the Deferred Compensation Program into cash for payment under a  
 7 specified manner of distribution.

8 ~~[(g)]~~(f) “Manner of distribution” means the manner elected by the participant,  
 9 alternate payee, or beneficiary in accordance with the terms of the plan, in which a  
 10 distribution is to be paid out of the Deferred Compensation Program.

11 ~~[(h)]~~(g) “Required beginning date” means April 1 of the calendar year following the  
 12 later of:

- 13 (A) The calendar year in which the participant reaches 70-1/2 years of age; or
- 14 (B) The calendar year in which the participant retires.

15 (h) “Severance of Employment” means a participant has ceased rendering  
 16 services as an employee or an independent contractor of a plan sponsor for a  
 17 minimum of 30 consecutive days, including services as a temporary employee, and  
 18 has no intention to return to work for the plan sponsor.

19 (2) Manner of distribution. Subject to the provisions of sections (3) through (5) set  
 20 out below, a participant, surviving beneficiary, or alternate payee may elect a manner of  
 21 distribution, designate one or more beneficiaries, and change beneficiaries at any time.  
 22 The total amount distributed may not exceed the total account value. The following  
 23 manners of distribution are available:

1            (a) Total distribution of the account value in a lump sum. A lump-sum distribution is  
2 not eligible for direct deposit;

3            (b) Single distribution of a portion of the account value in a lump sum. This form of  
4 lump-sum distribution is not eligible for direct deposit. Funds not distributed shall  
5 continue to receive earnings or losses based on the performance of investment option(s)  
6 in which funds are held;

7            (c) Systematic withdrawal distribution for a specific number of years, which may be  
8 paid annually, semiannually, quarterly or monthly. Any funds remaining after each  
9 periodic payment shall continue to receive earnings or losses based on the performance of  
10 investment option(s) in which the funds are held. The remaining number of periodic  
11 distributions shall not change. However, the amount of distributions shall be adjusted  
12 depending on the earnings or losses experienced;

13           (d) Periodic specified dollar amount distribution. This distribution may be paid  
14 annually, semiannually, quarterly or monthly, and may be paid in specific dollar amounts  
15 in \$5 increments. Any funds remaining after each periodic payment shall continue to  
16 receive earnings or losses based on the performance of investment option(s) in which the  
17 funds are held. The amount of each periodic distribution will remain the same throughout  
18 the withdrawal period. However, the withdrawal period may vary depending on the  
19 earnings or losses experienced;

20           (e) Required minimum distribution, which will provide an annual distribution of the  
21 minimum amount required in IRC section 401(a)(9), *[(26 U.S.C. 401(a)(9))]*. This  
22 manner of distribution is available only to those who defer distribution to age 70-1/2  
23 years of age (no later than April of the year following the year reaching 70-1/2 years of

1 age) or a participant who continues to work and severs employment after 70-1/2 years of  
2 age. Funds not distributed shall continue to receive earnings or losses based on the  
3 performance of investment option(s) in which funds are held; or

4 (f) Mandatory single lump-sum distribution of an account balance of less than  
5 \$1,000. This distribution shall be made to any participant or alternate payee with an  
6 account balance of less than \$1,000 within one year of the participant's severance of  
7 employment.

8 (3) Application Requirements. Application shall be made on forms provided by, or  
9 other methods approved by, the Deferred Compensation Program. No distribution may be  
10 paid unless a timely and complete application is filed with the Deferred Compensation  
11 Program as follows:

12 (a) An application for distribution or to change the manner of distribution will be  
13 considered filed in a timely manner if it is received in writing or other method approved  
14 by the Deferred Compensation Program at least 30 days *[prior to]*before the requested  
15 commencement date. The commencement date may be no earlier than the second  
16 calendar month following the month of severance of employment.

17 (b) An application for distribution or to change the manner of distribution may be  
18 made by a participant, surviving beneficiary, or alternate payee or the authorized  
19 representative of a participant, surviving beneficiary or alternate payee. A valid document  
20 appointing an authorized representative such as a power of attorney, guardianship or  
21 conservatorship appointment, must be submitted to the Deferred Compensation Program.  
22 The Deferred Compensation Program retains the discretion to determine whether the  
23 document is valid for purposes of this rule.



1 Compensation Program under the Internal Revenue Code and regulations adopted  
2 pursuant to the Internal Revenue Code and ORS Chapter 243.

3 (5) Changing the manner of distribution. A participant, surviving beneficiary or  
4 alternate payee may change or discontinue the manner of distribution only as follows and  
5 subject to the requirements of section (3) above:

6 (a) Manners of distribution under sections (2)(c), (2)(d) and (2)(e) of this rule may be  
7 changed at any time upon application as required under section (3) of this rule.

8 (b) Distributions under sections (2)(c) and (2)(d) of this rule may be discontinued  
9 upon written notification or by other methods approved by the Deferred Compensation  
10 Program. The participant, surviving beneficiary, or alternate payee must submit an  
11 application, as required in section (3) of this rule, to restart distributions and elect a  
12 manner of distribution for the remaining account.

13 (c) Subject to the requirements of this rule, a participant, surviving beneficiary or  
14 alternate payee who has commenced receiving a required minimum distribution may  
15 apply under the requirements of section (3) of this rule:

16 (A) For one or more additional distributions in a lump sum not to exceed the total  
17 value of the account; and

18 (B) To change the manner of distribution so long as future distributions will be  
19 continuous and equal to or greater than the minimum distribution required.

20 *[[Publications: Publications referenced are available from the agency.]]*

21 Stat. Auth: ORS 243.470

22 Stats. Implemented: ORS 243.401 - 243.507, [& OL 2007 Ch. 54](#)

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 050 – DEFERRED COMPENSATION**

1 **459-050-0220**

2 **Distribution of an Alternate Payee Account**

3 (1) Commencement date of distribution. Subject to other requirements set forth in  
4 this division of administrative rules, a distribution to an alternate payee may commence  
5 *[no earlier than 60 days after the participant's date of severance from employment but no*  
6 *later than the alternate payee's required beginning date in accordance with IRC*  
7 *401(a)(9) and OAR 459-050-0080]* **earlier than the date an employee would be eligible**  
8 **to receive payments under the plan if and to the extent expressly provided for in the**  
9 **terms of any judgment of annulment or dissolution of marriage or of separation, or**  
10 **the terms of any court order or court-approved property settlement agreement**  
11 **incident to any judgment of annulment or dissolution of marriage or of separation.**

12 (2) Distribution options. Subject to the rules and regulations pertaining to required  
13 minimum distributions, the alternate payee may elect to receive payment in any manner  
14 available to the participant under the Deferred Compensation Plan and OAR 459-050-  
15 0080, without regard to the form of payment elected by the participant.

16 (3) Application. The alternate payee must file an application for distribution, or  
17 request to change a distribution option with the Deferred Compensation Program at least  
18 30 days *[prior to]* **before** the requested date of the change or the distribution  
19 commencement date *[as prescribed in OAR 459-050-0080]*.

20 (4) Life expectancy factor. The life expectancy of the alternate payee shall be used  
21 anytime the form of payment elected by the alternate payee is based on a life expectancy  
22 factor.

1           (5) Tax liability. If the alternate payee is a spouse or former spouse, the alternate  
2 payee shall be solely responsible for the total amount of state and federal taxes at the time  
3 of distribution of an alternate payee's account effective January 1, 2002. If an alternate  
4 payee is someone other than the spouse or former spouse of the participant, the  
5 participant shall be solely responsible for the total amount of state and federal taxes at  
6 time of distribution of their alternate payee's account.

7           Stat. Auth: ORS 243.470

8           Stats. Implemented: ORS 243.401 - ORS 243.507, [& OL 2007 Ch. 54](#)



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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator  
SUBJECT: Update on Review of ETOB Rules

MEETING DATE	<b>11/16/07</b>
AGENDA ITEM	<b>C.9. ETOB</b>

OAR 459-030-0011, *Equal To or Better Than Exemption*  
OAR 459-030-0025, *Standards for Review of Police Officers and Firefighters  
Retirement Plans*  
OAR 459-030-0030, *Board Action on Petition and Review of Order*

These rule modifications were drafted to administer the requirements of HB 2280, which changed the timing and standard for testing retirement plans for employers of police and fire members that are exempt from PERS because the employer's plan has been determined to be equal to or better than (ETOB) the benefits provided under PERS. Staff needs to further develop and evaluate the ETOB rules in light of HB 2280's changes, so we are not presenting these rules for adoption at this meeting.



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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Adoption of IAP Account Installments Rule  
OAR 459-080-0250, *IAP Account Installments*

MEETING DATE	11/16/07
AGENDA ITEM	C.10. IAP

### OVERVIEW

- Action: Adopt modifications to OAR 459-080-0250, *IAP Account Installments*.
- Reason: Update rule to include new IAP distribution option provided in HB 2679.
- Subject: IAP Estimated Lifetime Installment Option.
- Policy Issue: Which estimated lifetime calculation method should PERS adopt?

### BACKGROUND

HB 2679 provided a new distribution option for retirement benefits paid from the IAP account. This new option, to pay installments based on the member's estimated life expectancy, allows PERS to report on their 1099-R a known exception to the penalty for distributions made under this option to retired members under age 59½.

### POLICY ISSUE

*Which estimated lifetime calculation method should PERS adopt?*

The estimated lifetime distribution option is not an annuity, nor is it a guarantee that payments will continue for the member's actual lifetime. Instead, the payment stream is based on the member's estimated life expectancy. There are three methods the IRS permits:

- 1) Required Minimum Distribution Method
  - a. The account balance is divided by the individual's life expectancy, using one of three IRS' mortality tables, resulting in the amount to be distributed for the year.
  - b. This amount would be divided by 12 to determine the monthly amount, or by four to determine a quarterly amount (depending on the member's request and subject to the \$200 minimum payment amount provided by ORS 238A.400).
  - c. The account will continue to be subject to market gains and losses.
  - d. Under this method, the annual distribution amount is recalculated each year.
  - e. Distributions cease once the account reaches a zero balance.
- 2) Amortization Method
  - a. Amortizes the member's account for a period of years equal to the member's life expectancy, based on one of three IRS mortality tables.

- b. An interest rate is applied to calculate the payments. The rate used is not a guarantee, but is used only to determine the distribution amount.
  - c. The account balance will continue to change based on actual earnings and losses.
  - d. Under this method, the distribution amount is set and does not change. The payment will be monthly, quarterly, or annually (depending on the member's request and subject to the \$200 minimum payment provided by ORS 238A.400)
  - e. Once the account has a zero balance, distributions cease.
- 3) Annuitization Method
- a. Determines the amount of the distribution by multiplying the member's account balance by an annuity factor. This factor must be used from a particular IRS mortality table. The factor is based on the member's age when distributions begin.
  - b. The interest rate used must be reasonable, based on the federal mid-term rate. The rate used is not a guarantee, but is used only to determine the distribution amount.
  - c. The account balance will continue to change based on actual earnings and losses.
  - d. Under this method, the distribution amount is set and does not change. The payment will be monthly, quarterly, or annually (depending on the member's request and subject to the \$200 minimum payment provided by ORS 238A.400)
  - e. Once the account has a zero balance, distributions cease.

Staff Recommendation: Of the three possible methods, staff recommends using the first option, the Required Minimum Distribution Method. Only under this method is the annual distribution amount recalculated every year, more accurately reflecting the actual earnings and losses posted to the member's account. Payment duration will more closely match the schedule originally set, although the amount will fluctuate with market shifts. While this method does impose the most substantial administrative burden, it closely parallels one with which staff is already familiar.

#### SUMMARY OF CHANGES SINCE NOTICE

Section (3) was edited to more accurately reflect how accounts are adjusted for members receiving installment payments.

#### LEGAL REVIEW

The attached rule was submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rule as presented for adoption.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 18, 2007 at 10 a.m. at the State Archives in Salem, and a second hearing was held on October 23, 2007 at 2 p.m. at PERS headquarters in Tigard. The public comment period ended on October 26, 2007 at 5 p.m. One public comment was received.

Steve Manton, representing City of Portland, testified at the October 23, 2007 hearing in Salem that he agrees with the staff's recommended method to determine lifetime distribution amounts.

### IMPACT

**Mandatory:** Yes, the new statutory provisions create an estimated lifetime distribution option.

**Impact:** Members are benefited by an additional distribution option. There is no impact to employers, and staff will be benefited by clear direction on the method by which to calculate the estimated lifetime distribution amounts.

**Cost:** There will be an administrative cost impact in adopting this new payment schedule. The scope and nature of those costs depend on which method is used to calculate the payments. Staff costs will probably be similar under any of the three methods; the second or third methods would incur additional actuarial services costs to either develop the amortization assumptions and procedure or to calculate the actuarial factors.

### RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 18, 2007	Rulemaking hearing held at 10 a.m. at the State Archives in Salem.
October 23, 2007	Rulemaking hearing held at 2 p.m. in Tigard.
October 26, 2007	Public comment period ended at 5 p.m.
November 16, 2007	Board may adopt the rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-080-0250, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Update rule to include new IAP distribution option provided in HB 2679.

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

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459

DIVISION 080 – OPSRP INDIVIDUAL ACCOUNT PROGRAM

1 **459-080-0250**

2 **IAP Account Installments**

3 (1) Definitions.

4 (a) “Estimated Life Expectancy” means the member’s life expectancy as  
5 determined by the applicable IRS mortality table.

6 (b) “Payout Period” means the span of years over which the member elects to  
7 receive installment payments under section (2) of this rule.

8 (2) Upon retirement, a member of the individual account program who elects to  
9 receive the amounts in the member’s employee and employer accounts in installments  
10 under ORS 238A.400(2) shall designate the number of years over which the installments  
11 are to be paid, selecting a period of 5, 10, 15, or 20 years, or a period equal to the  
12 member’s estimated life expectancy. The member may also request that installments be  
13 made on a monthly, quarterly, or annual basis.

14 (3) *[Installments]* Account balances will be adjusted *[at]* each *[payment]* month to  
15 reflect investment gains and losses on the unpaid balance.

16 (a) The amount of each 5-, 10-, 15-, or 20-year installment will be determined by  
17 dividing the member’s adjusted balance *[will be divided]* by the number of remaining  
18 installment payments *[left to determine the amount to be paid to that member]*.

19 (b) The installment amount for the member’s estimated life expectancy will be  
20 determined once a year by dividing the member’s adjusted balance on the  
21 anniversary of their effective retirement date by the member’s remaining estimated  
22 life expectancy, which amount will then be paid monthly, quarterly, or annually.

1 (4) If a member requests installments under section (2) of this rule, but the amount of  
2 the requested installment would be less than \$200 as determined at the time of the initial  
3 request, the frequency and Payout Period of the installment payment will be modified so  
4 that the amount of the installment is at least \$200. If the member's account balance is  
5 \$1,000 or less at the time of the initial request, the member will not be eligible for  
6 installments and the balance will be paid in a lump sum.

7 (5) Notwithstanding the Payout Period selected by the member under section (2) of  
8 this rule, any distribution will be adjusted to comply with the required minimum  
9 distribution requirements of 26 U.S.C. 401(a)(9) and regulations implementing that  
10 section, as in effect August 29, 2003.

11 (6) Members who elect a five year Payout Period or a lump sum payment may elect  
12 to directly roll over any portion of their IAP installment or lump sum payment to an  
13 eligible retirement plan, subject to the following limitations:

14 (a) Members will not be permitted to directly roll over any IAP installment payments  
15 if the total annual distribution from their IAP account is reasonably expected to total less  
16 than \$200.

17 (b) If members elect to have a portion of their IAP installment or lump sum payment  
18 paid directly to them and a portion directly rolled over, the portion to be rolled over  
19 cannot be less than \$500 or that portion will be paid directly to the member.

20 (7) Members who elect a 10-, 15-, or 20-year, or an estimated life expectancy  
21 Payout Period cannot elect to have any portion of their installment payments rolled over.

1           (8) Members who are subject to the required minimum distribution requirements  
2   referenced in section (5) of this rule may only roll over that portion of their installment or  
3   lump sum payments that exceeds required minimum distribution requirements.

4           Stat. Auth.: ORS 238A.450

5           Stats. Implemented: ORS 238A.400 [& OL 2007 Ch. 412](#)



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Adoption of Notice of Contest Rule  
OAR 459-045-0030, *General Administration*

MEETING DATE	11/16/07
AGENDA ITEM	C.11. Contest

### OVERVIEW

- Action: Adopt modifications to the Notice of Contest rule.
- Reason: Update rule to reflect legislative change in terminology.
- Subject: Notice of Contest.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

The rule currently uses the term “notice of contest,” which House Bill 2282 changed to “notice of dispute.” While the rule is open for rulemaking, changes for grammar and terminology are also being proposed.

### LEGAL REVIEW

The attached rule was submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rule as presented for adoption.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 18, 2007 at 10 a.m. at the State Archives in Salem, and a second hearing was held on October 23, 2007 at 2 p.m. at PERS headquarters in Tigard. The public comment period ended on October 26, 2007 at 5 p.m. No public comment was received.

### IMPACT

Mandatory: No, the Board need not adopt the rule.

Impact: Consistent use of terms will benefit members and staff.

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

### RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 18, 2007	Rulemaking hearing held at 10 a.m. at the State Archives in Salem.
October 23, 2007	Rulemaking hearing held at 2 p.m. in Tigard.
October 26, 2007	Public comment period ended at 5 p.m.
November 16, 2007	Board may adopt the rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-045-0030, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: Update rule to reflect legislative change in terminology.

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

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0030**

2 **General Administration**

3 (1) An alternate payee's award is payable to the alternate payee if the member would  
4 be eligible to receive benefits upon separation from service. The member is not required  
5 to be separated from service.

6 (2) A court order may restrict an alternate payee's award to be payable only when the  
7 member applies for and receives benefits.

8 (3) Unless prohibited by court order, an alternate payee who requests a withdrawal  
9 shall receive an additional 50 percent of the alternate payee award as of the effective date  
10 of withdrawal if:

11 (a) The alternate payee's effective date of withdrawal is on or after July 1, 2004, and  
12 before June 30, 2006; and

13 (b) As of the alternate payee's effective date of withdrawal, the member has met the  
14 requirements of OAR 459-010-0055(4), or would meet them except that *[he or she]*the  
15 member has not withdrawn that portion of the member account that may be withdrawn.

16 (4) Under no circumstance may an alternate payee withdraw less than the entire  
17 alternate payee award *[and payment under this section constitutes payment in full]*.

18 (5) The alternate payee may revoke the request for withdrawal if PERS receives a  
19 written request to revoke *[prior to]*before the date of distribution.

20 (6) The separate account in the name of the alternate payee shall be credited with  
21 earnings in accordance with OAR chapter 459, division 007 *[as follows]*to the earlier of:

22 (a) T*[o t]*he date of distribution of the separate account; or

1 (b) T[*o t*]he date a non-vested member ceases to be a member as provided in ORS  
2 238.095(2)[, *whichever is earlier*].

3 (7) An alternate payee who is awarded a separate account in the Fund in [*his or*  
4 *her*]the alternate payee's own name shall not be allowed to participate in the Variable  
5 Annuity Account in the Fund, as described in ORS 238.260, regardless of whether the  
6 member participated in the Variable Annuity Account in the Fund. Once a separate  
7 account is established for the alternate payee, those funds [*will*]shall no longer receive  
8 variable annuity account earnings.

9 (8) At the time of the division and establishment of the alternate payee accord, the  
10 alternate payee account [*will*]shall be administered under Tier One pursuant to ORS  
11 238.250 and 238.255 if:

12 (a) The member established membership in PERS or performed any period of  
13 service for a participating public employer that is credited to the six month period of  
14 employment required of an employee under ORS 238.015 [*prior to*]before January 1,  
15 1996; or

16 (b) The member ceased to be a member of PERS under the provisions of ORS  
17 238.095[, ] or 238.105, but restored part or all of the forfeited creditable service from  
18 before January 1, 1996, under the provisions of ORS 238.115 or 238.105, after January 1,  
19 1996.

20 (9) At the time of the division and establishment of the alternate payee account, the  
21 alternate payee account [*will*]shall be administered under Tier Two pursuant to ORS  
22 238.250 and 238.435, if the provisions of section[*s*] (8)(a) and (b) of this rule are not  
23 applicable to the member.

1            (10) The provisions of this rule do not apply to judge members under ORS 238.500  
2            *[through]*to 238.585.

3            (11) The provisions of this rule do not apply to the benefits provided *[under]*by the  
4            Oregon Public Service Retirement Plan Pension Program under ORS Chapter 238A.

5            (12) An alternate payee who elects to begin receiving *[his or her]*an award pursuant  
6            to a court order that uses the Division Methods described in OAR 459-045-0010  
7            *[Sections ]*(1) and (2), may select any retirement payment option available to the  
8            member, other than a joint and survivor annuity, but only if a court order allows the  
9            alternate payee to make any elections. The retirement payment to an alternate payee  
10           *[shall]*must be:

11           (a) Contingent on the member's eligibility for retirement benefits, regardless of  
12           whether the member actually retires;

13           (b) *[Shall be s]*Separate and independent from the member's payment date and  
14           payment option; and

15           (c) *[Shall be a]*Actuarially computed based on the age and life expectancy of the  
16           alternate payee.

17           (13) The alternate payee may elect to convert the Refund Annuity Option as  
18           described in ORS 238.300 to one of the following optional forms:

19           (a) Option 1, as described in ORS 238.305(1);

20           (b) Option 4, as described in ORS 238.305(1); or

21           (c) The lump-sum payment option, as described in ORS 238.305(2)(a) and (b) and  
22           238.305(3).

1 (14) Alternate payees are provided 60 days from the date of their first payment to  
2 change the option or designation of beneficiary, except that the designation of beneficiary  
3 under the Refund Annuity Option or Option 4 may be changed by the alternate payee at  
4 any time before the alternate payee's death.

5 (15) An alternate payee whose total award is less than \$200 per month under Option  
6 1, defined in ORS 238.305(1), shall receive in lieu of any and all allowances or other  
7 benefits or form of payment described in section (13) of this rule, a one time lump-sum  
8 payment equal to the actuarial value as of the effective date of the alternate payee's  
9 retirement, as is the case for a member under ORS 238.315.

10 (16)(a) PERS shall provide to the alternate payee a written summary of the  
11 information used in making a retirement computation. An alternate payee may  
12 *[contest]*dispute the accuracy of the factual information used by PERS in making the  
13 computation of the retirement allowance or benefit by filing a written notice of  
14 *[contest]*dispute with PERS not later than *[whichever of the following days occurs*  
15 *last]*the later of:

16 (A) The 30th day after the date on which the computation and information is  
17 provided to the alternate payee under this section; or

18 (B) The 30th day after the date on which the retirement allowance or benefit to  
19 which the alternate payee is entitled first becomes payable.

20 (b) The filing of a notice of *[contest]*dispute under this section extends the time  
21 allowed for election of an optional form of retirement allowance or benefit until the 30th  
22 day after the conclusion of the *[contest]*dispute proceeding or review results in a change  
23 in the computation of the retirement allowance or benefit.

1            (c) Upon receiving a notice of *[contest]*dispute under this section, PERS shall  
2 determine the accuracy of the *[contested]*disputed information and make a written  
3 decision either affirming the accuracy of the information and computation based thereon  
4 or changing the computation using corrected information. PERS shall provide to the  
5 member a copy of the decision and a written explanation of any applicable statutes and  
6 rules.

7            (d) This section does not affect any authority of PERS, on its own initiative, to  
8 correct an incorrect computation of any retirement allowance or benefit.

9            (17) An alternate payee *[shall]*may not receive any cost of living increase under  
10 ORS 238.360, or special ad-hoc increase that may be granted by the Legislature under  
11 238.365 or 238.385, or any other type of increase that may be granted to PERS retirees  
12 until benefits are first paid by PERS to or on behalf of the member.

13            (18) An alternate payee *[shall]*is not *[be]* entitled to health insurance benefits under  
14 ORS 238.410, 238.415, and 238.420 regardless of whether a court order awards these  
15 benefits to an alternate payee.

16            (19) An alternate payee *[shall]*is not *[be]* entitled to any benefits derived from the  
17 optional purchase of police officer and fire fighter unit benefits under 238.440 regardless  
18 of whether a court order awards these benefits to an alternate payee.

19            (20) If an alternate payee begins receiving a payment *[prior to]*before the member,  
20 the alternate payee is not entitled to any further increases in retirement credit that the  
21 member may earn or become entitled to *[prior to]*before the member's actual retirement  
22 due to continued employment, earnings, or other benefits earned as a member  
23 participating in PERS.

1            (21) Alternate payee court awards made after a member has retired under ORS  
2 238.300 or 238.320 *[shall]***must** be paid as deductions from the retired member's  
3 retirement allowance or lump-sum benefit or from the member's beneficiary's retirement  
4 allowance or lump sum payment. No alternate payee account *[will]***shall** be established.

5            (22) A court order may require a member who retired under ORS 238.300 or  
6 238.320 to change the designated beneficiary outside the timeframe allowed under ORS  
7 238.305(5) or 238.325(2). The retirement allowance *[will]***shall** be adjusted based on the  
8 new beneficiary's age to ensure the value of the benefits *[will]***is** not *[be]* greater than the  
9 allowance the member is otherwise eligible to receive.

10           (23) Members who retire for disability under ORS 238.320 or 238.325 are  
11 considered retired members and all the provisions of sections (12) through (21) of this  
12 rule apply to the alternate payee.

13           (24) Death benefits payable from an alternate payee account are as follows:

14           (a) If an alternate payee dies before payout or retirement, the alternate payee award  
15 is payable to the alternate payee's designated beneficiary or estate as provided by ORS  
16 238.390 and 238.395. No employer death benefits are payable under ORS 238.395 unless  
17 the member would have been eligible for employer death benefits had the member died  
18 on the same date as the alternate payee.

19           (b) If an alternate payee has begun receiving retirement benefits or dies after the first  
20 payment is due, the benefits due the designated beneficiary or estate, if any, *[will]***shall**  
21 be based on the option selected by the alternate payee.

22           (c) If an alternate payee dies after applying for a monthly retirement benefit but  
23 before the first of the month following the effective retirement date, the account shall be

1 treated as if the alternate payee died before retirement and benefits ~~will~~ shall be paid  
2 under subsection (a) above.

3 (d) If the alternate payee is awarded a percentage of a benefit, as long as the award is  
4 payable the award ~~will~~ shall continue to be paid to the alternate payee's designated  
5 beneficiary, unless the court decree specifies otherwise.

6 (25) If the member predeceases the alternate payee, the benefits payable to the  
7 alternate payee are as follows:

8 (a) The alternate payee who has a separate account becomes eligible to withdraw his  
9 or her account in the form of a death benefit under ORS 238.390 and 238.395 (if  
10 eligible). If the alternate payee elects a death benefit under ORS 238.390 and 238.395 (if  
11 eligible), the death benefit shall be in lieu of any withdrawal, service or disability  
12 retirement or any other benefit. If the alternate payee does not elect a death benefit, the  
13 alternate payee shall be eligible to withdraw the separate account, or to leave the account  
14 in the Fund and elect to draw benefits under one of the optional retirement choices  
15 described in section (13) of this rule, any time on or after the date the member would  
16 have reached earliest retirement age.

17 (b) If the alternate payee is awarded a percentage of a benefit, as long as the award is  
18 payable the award shall be paid according to the decree of divorce or separation or  
19 annulment unless the court decree provides for no alternate payee death benefits from the  
20 member's account.

21 (26) Benefit payments to either the member or the alternate payee, or to both  
22 simultaneously, that exceed the allowable limits set forth in Section 415 of the Internal  
23 Revenue Code (IRC) shall be deducted from the benefit payment(s) to the member or the

1 alternate payee, or both. Unless a final court order specifies the allocation of the  
2 deduction for benefits that exceed the limits in IRC Section 415, PERS shall pro rate the  
3 amount that exceed those limits in the same proportions that benefits were awarded to the  
4 member and the alternate payee as specified in a final court order.

5 (27) Distributions of benefits under OAR chapter 459, division 045 must not  
6 jeopardize the status of the programs as being part of a tax-qualified governmental plan.

7 Stat. Auth.: ORS 238.465 & 238.650

8 Stats. Implemented: ORS [238.450](#), 238.465 [*& OL 2003 Ch. 276 Sec. 2*] & [OL 2007](#)

9 [Ch. 53](#)



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Adoption of Reemployment of Retirees Rule  
OAR 459-017-0060, *Reemployment of Retired Members*

MEETING DATE	<b>11/16/07</b>
AGENDA ITEM	<b>C.12. Reemployment</b>

### OVERVIEW

- Action: Adopt modifications to OAR 459-017-0060, Reemployment of Retired Members.
- Reason: The current rule needs to be amended to accommodate legislative changes and reflect the most recent Social Security annual compensation limitations.
- Subject: Reemployment of retired members of the PERS Chapter 238 Program.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

The categories of retired members who can return to work after retirement in the PERS Chapter 238 Program and exceed the 1039-hour limit listed under ORS 238.082 were amended by several bills passed by the 2007 legislative session. Specifically:

HB 2184: Adds the deputy director or assistant director of the Department of Human Services if the Governor approves the exception.

HB 2585: Adds an exception for retired members employed as a teacher or administrator by a community college district located in a county of 35,000 inhabitants or less. Clarifies the exception for retired members employed as a teacher or administrator by an education service district (ESD) by eliminating the requirement that the ESD be located in a county of 35,000 inhabitants or less and by adding that the primary duties of the retired member must be performed in a county of 35,000 inhabitants or less. Exempts retired members employed as a speech-language pathologist or speech-language pathologist assistant by a school district or education service district (This provision sunsets January 2, 2016). Also provides that these provisions, as well as the current exception for employment as a teacher or administrator by a school district located in a county of 35,000 inhabitants or less, are available to members who took early retirement if employment in the position is at least six months after the member's retirement date.

HB 2619: Clarifies that hours worked while employed by the Legislative Assembly or Oregon State Police for service during a legislative session are not counted toward the 1039-hour limitation. The bill also removes the requirement that retired members be age 65 or older to be eligible for exception.

SB 4: Creates an exception for a retired member who is a nurse and is employed as a nurse or for the purpose of teaching nursing, during a declared nursing workforce shortage.

SB 342: Exempts a registered nurse who is hired as a nursing instructor from the 1039-hour limitation. Also, exempts a retired member hired by the Department of Public Safety Standards and Training to provide training under ORS 181.610 - 181.712. Both provisions sunset January 2, 2016.

Also, HB 2401 created a new eligibility standard for early retirement for telecommunicators. As most exceptions to the limitations of ORS 238.082 are not available to members who retired early, this bill also affects the provisions of the rule.

The proposed rule modifications incorporate the most recent Social Security compensation limits, which also affect the number of hours that can be worked under ORS 238.082

The proposed rule modifications clarify the effect if a retired member exceeds the 1039-hour limit of ORS 238.082 in the first six months following retirement.

The proposed modifications also clarify that a retired member who received a lump sum payment in lieu of a small allowance under ORS 238.315, commonly called an AS Refund, are subject to the same return to work restrictions as a retired member who elected the total lump sum option.

#### LEGAL REVIEW

The attached rule was submitted to the Department of Justice for legal review and any comments or changes have been incorporated in the rule as presented for adoption.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on October 18, 2007 at 10 a.m. at the State Archives in Salem, and a second hearing was held on October 23, 2007 at 2:00 p.m. at PERS headquarters in Tigard. The public comment period ended on October 26, 2007 at 5:00 p.m. One comment was received via email, a copy of which is provided with this memo.

Brenda Wilson, Intergovernmental Relations Director for the City of Eugene, commented that Section (3)(c), pertaining to the restrictions for speech language pathologists and speech language pathologist assistants, should be edited to clarify that a retired member who took early retirement was eligible to work under this exception only if the member was not so employed until more than six months after the member's effective retirement date. Staff amended Section (3)(c) to clarify the exception.

#### SUMMARY OF MODIFICATIONS TO RULE SINCE NOTICE

The following modifications have been made to the rule since notice:

Section (2) has been edited for clarity and consistency of structure.

Section (3)(c) was modified as described in public comment.

Sections (5) and (6) were modified to include existing policy that retired members who receive an AS Refund are subject to the same return to work restrictions as a retired member who elected the total lump sum option.

### IMPACT

**Mandatory:** Yes, the rule should be updated to reflect the statutory changes. Otherwise, the rule would provide incomplete guidance regarding reemployed retired members and outdated Social Security annual compensation limits.

**Impact:** Members, employers, and staff will benefit from more comprehensive guidance in an area that has become increasingly complex. Retired members will benefit from the updated Social Security annual compensation limits. The impact upon any individual retired member will be specific to the retired member's retirement and reemployment situation.

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

### RULEMAKING TIMELINE

August 15, 2007	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
September 1, 2007	<i>Oregon Bulletin</i> published the Notice.
September 21, 2007	PERS Board notified that staff began the rulemaking process.
October 18, 2007	Rulemaking hearing held at 10 a.m. at the State Archives in Salem.
October 23, 2007	Rulemaking hearing held at 2 p.m. in Tigard.
October 26, 2007	Public comment period ended at 5 p.m.
November 16, 2007	Board may adopt the rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt the modifications to OAR 459-017-0060, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

### STAFF RECOMMENDATIONS

Staff recommends the Board choose Option #1.

- Reason: The current rule needs to be amended to accommodate legislative changes and reflect the most recent Social Security annual compensation limitations.

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

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

**DIVISION 017 – REEMPLOYED RETIRED MEMBERS**

1 **459-017-0060**

2 **Reemployment of Retired Members**

3 (1) Reemployment under ORS 238.082. A retired member of the system receiving a  
4 service retirement allowance, who has elected an option other than the total lump sum  
5 option under ORS 238.305(3), including those who have retired at a reduced benefit  
6 under ORS 238.280(1), *[or]* (2), or (3), as amended by section 1, chapter 404, Oregon  
7 Laws 2007, may be employed under ORS 238.082 by a participating employer without  
8 loss of retirement benefits provided:

9 (a) The period or periods of employment with one or more public employers  
10 participating in the system do not exceed 1039 hours in a calendar year; or

11 (b) If the retired member is receiving retirement, survivors, or disability benefits  
12 under the federal Social Security Act, the period or periods of employment do not exceed  
13 the greater of 1039 hours in a calendar year or the total number of hours in a calendar  
14 year that, at the retired member's specified hourly rate of pay, limits the annual  
15 compensation of the retired member to an amount that does not exceed the following  
16 Social Security annual compensation limits:

17 (A) For retired members who have not reached full retirement age under the Social  
18 Security Act, the annual compensation limit is \$12,960*[480]*; or

19 (B) For the calendar year in which the retired member reaches full retirement age  
20 under the Social Security Act and only for compensation for the months *[prior to]*before  
21 reaching full retirement age, the annual compensation limit is \$34,440*[3,240]*.

1 (2) The limitations on employment in section (1) of this rule do not apply if the  
2 *[A] retired member [described in section (1) of this rule who]* has reached full retirement  
3 age under the Social Security Act *[may work an unlimited number of hours without loss*  
4 *of retirement benefits]*.

5 (3) The limitations on employment in section (1) of this rule do not apply if:

6 (a) The retired member meets the requirements *[under]of* ORS 238.082(3), (4), (5),  
7 or (6), section 1, chapter 307, Oregon Laws 2007, or section 4, chapter 789, Oregon  
8 Laws 2007, and did not retire at a reduced benefit under the provisions of ORS  
9 238.280(1), *[or ]*(2), or (3), as amended by section 1, chapter 404, Oregon Laws 2007;  
10 *[or]*

11 (b) The retired member is employed in a position that meets the requirements  
12 of ORS 238.082(3), as amended by section 1, chapter 774, Oregon Laws 2007, the  
13 date of employment is more than six months after the member’s effective retirement  
14 date, and the member’s retirement otherwise meets the standard of a bona fide  
15 retirement;

16 (c) The retired member is employed by a school district or education service  
17 district as a speech-language pathologist or speech-language pathologist assistant  
18 and;

19 (A) The retired member did not retire at a reduced benefit under the provisions  
20 of ORS 238.280(1), (2), or (3), as amended by section 1, chapter 404, Oregon Laws  
21 2007; or

22 (B) If the retired member retired at a reduced benefit under the provisions of  
23 ORS 238.280(1), (2), or (3), as amended by section 1, chapter 404, Oregon Laws

1 2007, the retired member is not so employed until more than six months after the  
2 member’s effective retirement date and the member’s retirement otherwise meets  
3 the standard of a bona fide retirement;

4 (d) The retired member meets the requirements of section 2, chapter 499,  
5 Oregon Laws 2007;

6 (e) The retired member is employed for service during a legislative session  
7 under ORS 238.092(2), as amended by section 4, chapter 776, Oregon Laws 2007; or

8 *[(b)](f)* The retired member is on active state duty in the organized militia and meets  
9 the requirements under ORS 399.075(8).

10 (4) If a retired member is reemployed subject to the limitations of ORS 238.082 and  
11 section (1) of this rule, *[but ]*the period or periods of employment subsequently exceed  
12 those limitations, *[the following will occur if]*and employment continues into the month  
13 following the date the limitations are exceeded:

14 (a) If the member has been retired for six or more calendar months:

15 *[(a)](A)* PERS will cancel the member's retirement. The last monthly service  
16 retirement allowance payment the member is entitled to will be for the month in which  
17 the limitations were exceeded. A member who receives benefits to which he or she is not  
18 entitled must repay those benefits to PERS.

19 *[(b)](B)* The member will reestablish active membership as required by ORS  
20 238.078 the first of the calendar month following the date the limitations were exceeded.

21 *[(c)](C)* The member's account shall be rebuilt in accordance with the provisions of  
22 section (9) of this rule.

23 (b) If the member has been retired for less than six calendar months:

1 (A) PERS will cancel the member's retirement effective the date of the  
2 member's reemployment.

3 (B) All retirement benefits received by the member must be repaid to PERS in a  
4 single payment before the member can be reemployed.

5 (C) The member will reestablish active membership as required by ORS  
6 238.078 effective the date the member is reemployed.

7 (D) The member account shall be rebuilt as of the date that PERS receives the  
8 single payment. The amount in the member account shall be the same as the amount  
9 in the member account at the time of the member's retirement.

10 (5) Reemployment of retired member who elected the total lump sum option or who  
11 received a lump sum payment in lieu of a small allowance (AS Refund). A retired  
12 member who *[has]* elected the total lump sum option under ORS 238.305(3) or who  
13 received a lump sum payment in lieu of a small allowance under ORS 238.315 (AS  
14 Refund) may return to work with a participating employer in the six month period  
15 following the member's effective retirement date without having to repay the retirement  
16 benefits paid to them provided:

17 (a) The retired member is designated by the employer(s) as a casual, emergency, or  
18 seasonal worker as defined in OAR 459-005-0001; and

19 (b) The period or periods of employment with one or more public employers  
20 participating in the system do not exceed 599 hours.

21 (6) The return to work in a qualifying or other position after six months following  
22 the retirement date of a member who elected the total lump sum option or who received

1 [an AS Refund](#) has no effect on the retirement status of that member and, upon such  
2 reemployment, the member is not required to repay retirement benefits.

3 (7) If a retired member described in section (5) of this rule, is working subject to the  
4 limitation of subsection (5)(b) of this rule and the member exceeds that limitation, the  
5 member's retirement will be cancelled. The member will be required to repay to PERS in  
6 a single payment the total amount of all retirement benefits received. The member will  
7 reestablish active membership as required by ORS 238.078 effective the first of the  
8 calendar month following the date the member exceeded that limitation. The member's  
9 account shall be rebuilt in accordance with ORS 238.078(2) and subsection (10)(d) of this  
10 rule. Upon subsequent retirement, the member may choose a different retirement  
11 payment option.

12 (8) Limitations on hours of employment in sections (1) and (5) of this rule will be  
13 based on the number of hours employed on and after the retired member's effective  
14 retirement date.

15 (9) Reemployment under ORS 238.078(1). If a member has been retired for service  
16 for more than six calendar months and is reemployed in a qualifying position by a  
17 participating employer under the provisions of ORS 238.078(1), the following will occur:

18 (a) PERS will cancel the member's retirement effective the date of the member's  
19 reemployment.

20 (b) The member will reestablish active membership as required by ORS 238.078 on  
21 the date the member is reemployed.

22 (c) If the member elected an option other than a lump sum option under ORS  
23 238.305(2) or (3), the member need not repay any service retirement allowance payment

1 received that is attributable to the period the member was separated from service. The last  
2 monthly service retirement allowance payment to which the member is entitled will be  
3 for the month *[prior to]*before the calendar month in which the member is reemployed.

4 A member who receives benefits to which he or she is not entitled must repay those  
5 benefits to PERS. Upon subsequent retirement, the member may choose a different  
6 retirement option.

7 (A) The member's account shall be rebuilt as required by ORS 238.078 effective the  
8 date active membership is reestablished.

9 (B) Amounts distributed from the Benefits-In-Force Reserve (BIF) under the  
10 provisions of subsection (A) shall be credited with earnings at the BIF rate or the  
11 assumed rate, whichever is less, from the date of retirement to the date of active  
12 membership.

13 (d) If the member elected a partial lump sum option under ORS 238.305(2), the  
14 member need not repay any service retirement allowance payment received that is  
15 attributable to the period the member was separated from service. The last monthly  
16 service retirement allowance payment to which the member is entitled will be for the  
17 month *[prior to]*before the calendar month in which the member is reemployed. A  
18 member who receives benefits to which he or she is not entitled must repay those benefits  
19 to PERS. No repayment of lump sum payment(s) received during the period the member  
20 was separated from service is required. Upon subsequent retirement, the member may not  
21 choose a different retirement option unless the member has repaid to PERS an amount  
22 equal to the lump sum payment(s) received and the interest that would have accumulated  
23 on that amount.

1            (A) The member's account shall be rebuilt as required by ORS 238.078 effective the  
2 date active membership is reestablished.

3            (B) Amounts distributed from the BIF under the provisions of subsection (A),  
4 excluding any amounts attributable to any lump sum repayment(s) by the member, shall  
5 be credited with earnings at the BIF rate or the assumed rate, whichever is less, from the  
6 date of retirement to the date of active membership.

7            (e) If the member elected the total lump sum option under ORS 238.305(3), no  
8 repayment of the total lump sum payment received is required. Upon subsequent  
9 retirement, the member may not choose a different retirement option unless the member  
10 has repaid to PERS in a single payment an amount equal to the total lump sum payment  
11 received and the interest that would have accumulated on that amount.

12            (A) If the member repays PERS as described in subsection (e) the member's account  
13 shall be rebuilt as required by ORS 238.078 effective the date that PERS receives the  
14 single payment.

15            (B) Amounts distributed from the BIF under the provisions of subsection (A) shall  
16 not be credited with earnings for the period from the date of retirement to the date of  
17 active membership.

18            (10) Reemployment under ORS 238.078(2). If a member has been retired for service  
19 for less than six calendar months and is reemployed in a qualifying position by a  
20 participating employer under the provisions of ORS 238.078(2), the following will occur:

21            (a) PERS will cancel the member's retirement effective the date of the member's  
22 reemployment.

1 (b) All retirement benefits received by the member must be repaid to PERS in a  
2 single payment before the member can be reemployed.

3 (c) The member will reestablish active membership as required by ORS 238.078  
4 effective the date the member is reemployed.

5 (d) The member account shall be rebuilt *[effective]*as of the date that PERS receives  
6 the single payment. The amount in the member account shall be the same as the amount  
7 in the member account at the time of the member's retirement.

8 (e) Upon subsequent retirement, the member may choose a different retirement  
9 payment option.

10 (11) Upon the subsequent retirement of any member who reestablished active  
11 membership under ORS 238.078, the retirement benefit of the member shall be calculated  
12 using the actuarial equivalency factors in effect on the effective date of the subsequent  
13 retirement.

14 (12) The provisions of subsections (9)(c)(B), (9)(d)(B), and (9)(e)(B) of this rule are  
15 applicable to members who reestablish active membership under ORS 238.078 whose  
16 initial effective retirement date is on or after the effective date of this rule.

17 (13) Reporting requirement. The employer shall notify PERS under which statute a  
18 retiree is reemployed in a format acceptable to PERS.

19 (a) Upon request by PERS, a participating employer shall certify to PERS that a  
20 retired member has not exceeded the number of hours allowed in ORS 238.082 and  
21 sections (1) and (5) of this rule.

1 (b) Upon request by PERS a participating employer shall provide PERS with  
2 business and employment records to substantiate the actual number of hours a retired  
3 member was employed.

4 (c) Participating employers shall provide the information requested in this section  
5 within 30 days of the date of the request.

6 (14) Sick leave. Accumulated unused sick leave reported by the employer to PERS  
7 upon a member's retirement, as provided in ORS 238.350, shall not be made available to  
8 a retired member returning to employment under sections (1) or (9) of this rule.

9 **(15) Subsections (3)(c) and (3)(d) of this rule are repealed effective January 2,**  
10 **2016.**

11 Stat. Auth.: ORS 238.650

12 Stats. Implemented: ORS 238.078, ~~[&]~~ 238.082, **238.092, 399.075, OL 2007 Chs.**  
13 **307, 404, 499, 774, 776 & 789.**

**From:** Brenda.S.Wilson@ci.eugene.or.us  
**To:** "Rivas, Daniel"  
**Subject:** 459-017-0060

10/17/2007 3:00 PM

Comment:

Under (3)(c) - I see that this is in response to recent legislation - but it appears to me that the proposed language says:

The 1039 limitation doesn't apply to speech-language folks if they didn't retire with a reduced benefit **OR** they were reemployed more than 6 months after their retirement. ("or" is used in the rule)

This reads to me that if you are a speech-language person, you can exceed 1039 as long as you didn't retire with a reduced benefit **OR** you were reemployed more than 6 months after their retirement.

But the bill also appears to state that it doesn't apply to a speech-language person who retired with a reduced benefit UNLESS they were reemployed more than 6 months after their retirement.

This reads to me that if you are a speech-language person, you can exceed 1039 even if you retired with a reduced benefit **as long as** you were reemployed more than 6 months after their retirement.

Stating that it doesn't apply if they did not retire with a reduced benefit - a double negative - is not as clear as saying: "doesn't apply if they retire with an unreduced benefit" - make sense?

I think it would be clearer either to: 1. Use negatives both before and after the "or" - or positive both before and after the "or." 2. Eliminate the "or" and put in a separate sentence so that it is clear.

So...The 1039 limitation doesn't apply to speech-language folks if they retired with an unreduced benefit **OR** if they retired with a reduced benefit and were reemployed more than 6 months after their retirement...is much **much** clearer.



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

Headquarters:  
11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
Mailing Address:  
P.O. Box 23700  
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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Update on Review of Employer Disputes and Prior Period Contributions Rules

MEETING DATE	11/16/07
AGENDA ITEM	C.13. Emp. Disputes

OAR 459-001-0030, *Review of Staff Actions and Determination*  
OAR 459-001-0035, *Contested Case Hearing*  
OAR 459-001-0040, *Petitions for Reconsideration*  
OAR 459-009-0130, *Invoicing for Delinquent Employee Contributions*

Rulemaking was commenced on the above referenced rules to address concerns employers raised with the dispute resolution processes and other issues related to invoicing employers for prior period contributions. At the PERS Board's September 21, 2007 meeting, comments were distributed from interested parties that raised several concerns about these rules as presented.

The Legislative Advisory Committee met on October 25, 2007 to discuss the policy issues presented by these proposed rule modifications. After discussing those issues, the consensus of the LAC members at that meeting was to proceed with a revised rulemaking on the Administrative Review and Appeal Processes rules. The revision will be to clearly separate the review process for employers from members where appropriate by creating a separate rule for employers. These rules will recognize that, when the review involves interests of both the employer and members in the same dispute, the review processes will be coordinated so all those interests are addressed in the same forum. Staff will re-draft proposed rule modifications for review by the LAC before we return to the Board for further consideration or adoption.

The issues presented by the Prior Period Contribution rule required some additional analysis and consideration before the LAC members present could reach consensus on proceeding further with that rulemaking. Staff will attempt to isolate the issues and options in further consultation with the LAC and work toward achieving their consensus before returning to the PERS Board for further consideration or adoption.



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November 16, 2007

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Delegation of Subpoena Authority

MEETING DATE	11/16/07
AGENDA ITEM	C.14. Subpoena

### OVERVIEW

When PERS staff is trying to recover overpayments or erroneous payments that occur in the normal course of administration, two circumstances present significant challenges. The first occurs when PERS is not informed in a timely manner that a benefit recipient passed away. This event triggers a change in the benefit structure, either stopping the payment stream or diverting it to another recipient. We are often then in the position of recovering the payments made after the death but before we were notified. The second circumstance is when a benefit recipient claims that a check was not received but the check has in fact been negotiated. The check was probably diverted from the intended recipient and fraudulently presented for payment.

In both these circumstances, PERS staff needs access to the records of the financial institution where the payment was either received as a direct deposit or where the benefit check was negotiated. Financial institutions routinely, and understandably, refuse to release account information merely upon staff's request.

The PERS Board has authority under ORS 238.655 to subpoena and examine records necessary to determine facts necessary to the administration of the system. One of the facts necessary to administer the recovery of these payments is who received the benefit of the funds at issue. A subpoena would be an appropriate legal process to compel the financial institution to release the necessary records.

For a subpoena to be issued in a timely manner under these limited circumstances, staff is requesting that the PERS Board delegate the authority provided by ORS 238.655 to the Executive Director, who can then authorize an investigation and resulting subpoena under limited conditions. This delegated authority could only be exercised under these criteria:

1. The authority would only be exercised in an investigation incident to the determination that an erroneous payment or overpayment has occurred either after the recipient's death or upon learning that the benefit check may have been fraudulently negotiated;
2. PERS staff is unable to recover the payments because it cannot determine who received benefit of the funds in question;
3. The financial institution that received the benefits either via direct deposit or by negotiating the checks involved will not provide the necessary information;

4. The Executive Director determines that the requested information is necessary to pursue recovery of payments and that issuing a subpoena would be necessary to obtain the information needed to administer the recovery process.

#### SUBPOENA PROCESS

Should the PERS Board decide to delegate this subpoena authority in these limited circumstances, the process would proceed as follows:

1. The Executive Director determines, based on the stated criteria, that a subpoena should be issued under the delegated authority.
2. Staff drafts the subpoena request and supporting documents, using forms developed by the Department of Justice, and engages the DOJ to file the request as an ex parte motion to the appropriate court.
3. After DOJ obtains a court order approving issuance of the subpoena, DOJ provides that order to PERS staff, who then issues the subpoena to the financial institution.
4. If the financial institution complies with subpoena, PERS staff uses the records provided to assist in its recovery efforts. If the financial institution does not comply, PERS staff would contact DOJ for enforcement of the subpoena.

#### STAFF RECOMMENDATION

The PERS Board adopt a motion to: “Delegate the authority provided by ORS 238.655 to the Executive Director to authorize an investigation and request a subpoena if:

1. An erroneous payment or overpayment was made either after the recipient’s death or that may have been fraudulently negotiated;
2. PERS staff is unable to recover the payments because it cannot determine who received benefit of the funds in question;
3. The financial institution that received the benefits either via direct deposit or by negotiating the checks involved will not provide the necessary information;
4. The Executive Director determines that the requested information is necessary to pursue recovery of payments and that issuing a subpoena would be necessary to obtain the information needed to administer the recovery process.

#### BOARD OPTIONS

The Board may:

1. Adopt the staff recommendation as presented above.
2. Direct the staff to further refine the criteria or process by which its subpoena authority under ORS 238.655 would be delegated.
3. Take no action.

# MERCER

Consulting. Outsourcing. Investments.



MARSH MERCER KROLL  
GUY CARPENTER OLIVER WYMAN

October 19, 2007

## **December 31, 2006 Actuarial Valuation** Oregon Public Employees Retirement System

Bill Hallmark and Matt Larrabee



## Contents

- Key Findings
- Pension Valuation
  - Demographics
  - Assets
  - Liabilities
  - Funded Status
  - Advisory Contribution Rates
- Retiree Medical Valuation
- Next Steps

## Key Findings

### Overview

- **Employer contribution rates are getting smaller**
  - Normal cost rates are increasing as Money Match members retire
  - PUC UAL rates increased slightly as no contributions have yet been credited toward this portion of the UAL
  - Regular UAL rates have decreased significantly reflecting 2006 investment returns
- **Including side accounts, funded status has improved from 104% to 110%**
  - Excluding side accounts, funded status improved from 90% to 96%
- **Break-in-Service legislation**
  - Approximately 4,300 members have been moved from OPSRP back to Tier 1/Tier 2.
  - The net effect was a decrease in normal cost of \$1 million and an increase in accrued liability of \$24 million. There was no net impact on rates.
- **Arken and Robinson litigation**
  - We have made no adjustment to these valuation results to reflect any interpretation of Judge Kantor's June 20, 2007 ruling in the Arken and Robinson cases.

## Key Findings

### Overview

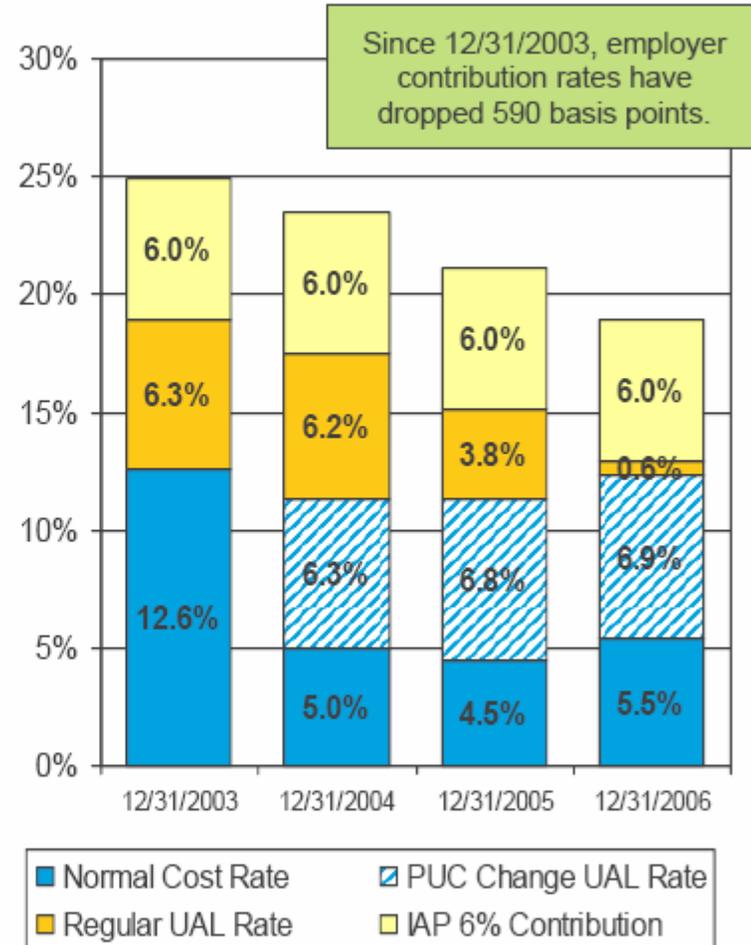
#### ▪ Tier 2 member census

- Approximately 5,000 members were added to Tier 2 who had not been previously included in a system-wide valuation
- It is not clear at this time if all of them are eligible for Tier 2 benefits, and the individual data available when the valuation was conducted was very limited
- To be conservative, we included all 5,000 in the valuation with assumed dates of birth and salary
- The net effect was an increase in payroll of \$211 million, an increase in normal cost of \$11 million, an increase in accrued liability of \$40 million, a net increase in contributions of \$14 million, and a net decrease in contribution rates of 0.18%

## Key Findings

### Average Contribution Rates Including Retiree Healthcare and IAP

- The average normal cost rate increased since the prior valuation primarily due to expected increases as the system gradually shifts from Money Match dominance to Full Formula dominance.
- The UAL rate for the change to the PUC method increased slightly because no contributions are being credited toward this portion of the UAL until 7/1/2007.
- The regular UAL rate decreased reflecting actual 2006 earnings greatly in excess of expectations.
- These rates do not reflect the impact of side accounts or pre-SLGRP liabilities or surpluses.



## Key Findings

### Average Employer Contribution Rates (Includes Retiree Healthcare)

Average Employer Rates	SLGRP	School Districts	Independents*	OPSRP General	OPSRP P&F	System-Wide
7/1/2007 Actual Rates	14.3%	17.6%	9.2%	16.3%	19.6%	14.8%
7/1/2009 Advisory Rates	12.5%	15.3%	8.6%	13.7%	16.6%	13.1%
Net Change in Rates	(1.8%)	(2.3%)	(0.6%)	(2.6%)	(3.0%)	(1.7%)
7/1/2009 Advisory Adjustments**	(7.0%)	(9.9%)	(0.8%)	(7.1%)	(7.1%)	(7.1%)
7/1/2009 Net Advisory Rates	5.5%	5.4%	7.8%	6.6%	9.5%	6.0%

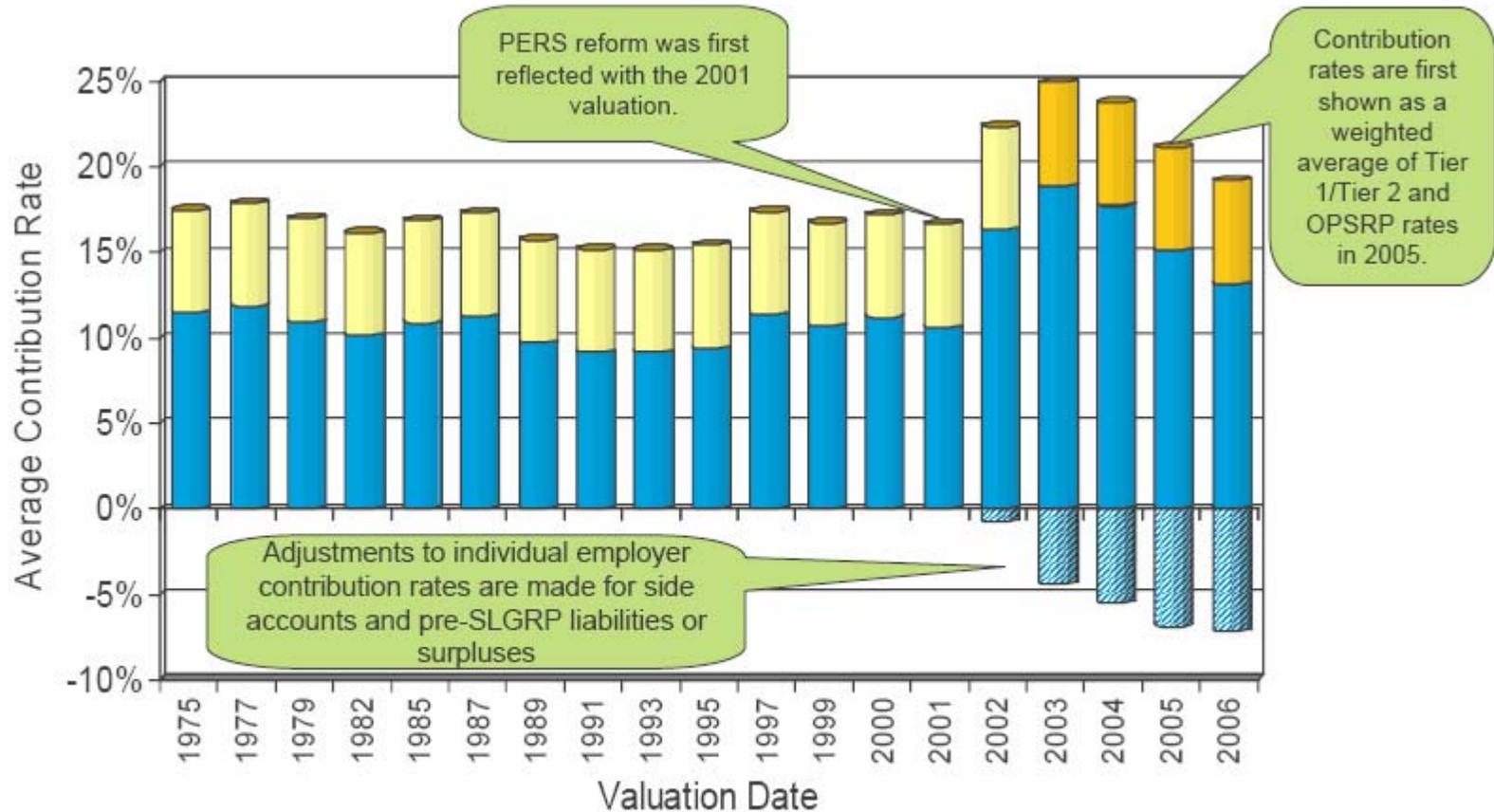
- The 7/1/2009 advisory rates shown above are based on the 12/31/2006 valuation. The actual rates that become effective 7/1/2009 will be based on the 12/31/2007 valuation.
- System-wide rates have dropped 170 basis points since the last valuation. Assuming an 8% return is achieved in 2007, this is a reasonable approximation of where rates are expected to be when we complete the 12/31/2007 actuarial valuation.
- Changes in rates can vary significantly by individual employer and to a lesser extent by pool.

\* *Independents includes Judiciary, and average rates do not reflect the rate collar or 6% individual employer minimum.*

\*\* *Adjustments are for side accounts and pre-SLGRP liabilities/(surpluses)*

## Key Findings

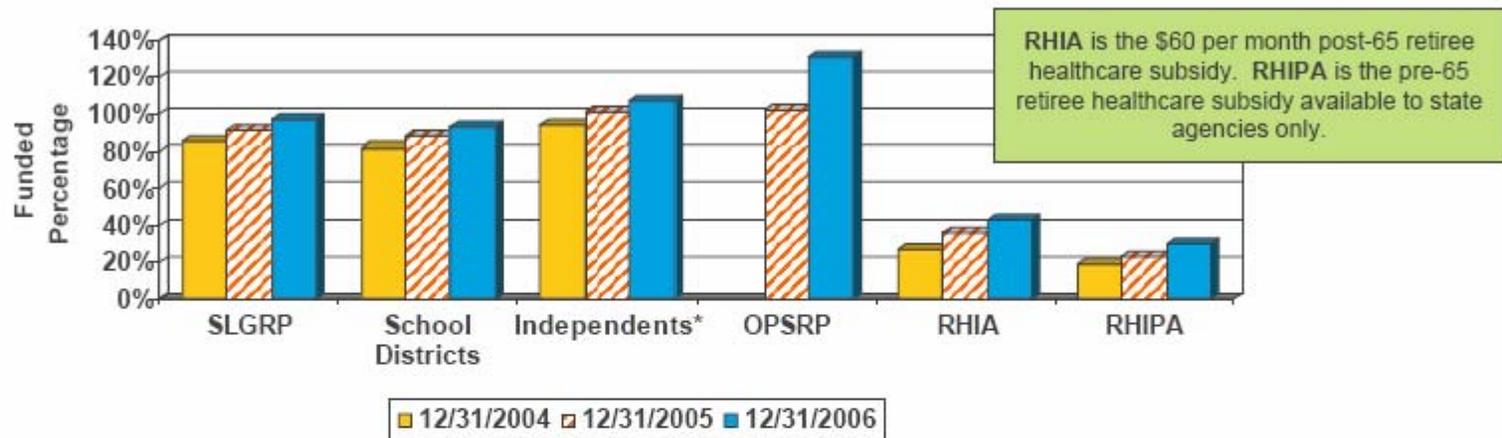
### Historical Perspective on Employer and Member Contribution Rates



■ Employer Contribution 
 ▨ Average Adjustment 
 ■ Member 6% Contribution 
 ■ IAP 6% Contribution

## Key Findings

### Recent Funded Status By Rate Pool



- Funded status for rate pools has continued to improve with the good investment returns over the last four years.
- Side accounts now account for a significant portion of assets which are not included in the graph above. Including side accounts, the system is in a surplus position.
- While its funded status continues to improve, RHIPA assets represent only 38 months of expected benefit payments. Changes in State Agency participation rates could dramatically hasten the use of current assets.

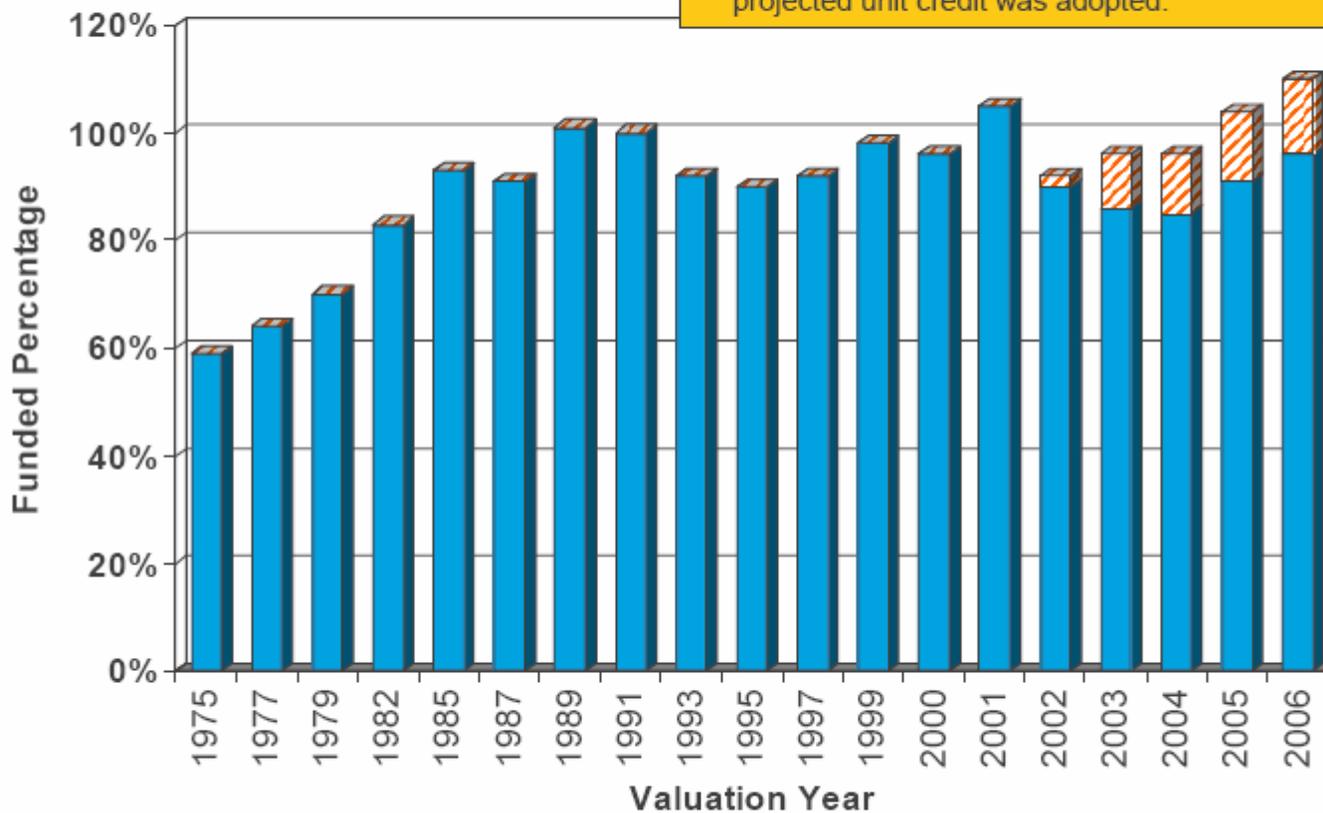
\* Independent employers, including Judiciary, are treated as a single pool for purposes of this exhibit.

## Key Findings

### Historical Pension Funded Status

When comparing historical funded status, please note that there have been a number of changes including:

- Money Match benefits were not valued until the mid 1990s.
- A smoothed value of assets was used from 2000 through 2003.
- PERS reform was valued beginning in 2001.
- The entry age normal cost method was used until 2004 when projected unit credit was adopted.



■ Actuarial Value    ▨ Side Accounts

## Key Findings

### Value at Risk

Percentile	One-Year Return	Funded %	Projected	
			UAL (billions)	Rate Change (Without Collar)
5 <sup>th</sup>	-12.2%	81%	\$9.8	8.3%
10 <sup>th</sup>	-7.8%	85%	\$7.9	6.4%
25 <sup>th</sup>	-0.3%	91%	\$4.8	3.3%
50 <sup>th</sup>	8.0%	98%	\$1.2	-0.1%
75 <sup>th</sup>	16.3%	104%	\$(2.3)	-3.6%
90 <sup>th</sup>	23.8%	110%	\$(5.5)	-6.7%
95 <sup>th</sup>	28.2%	114%	\$(7.4)	-8.5%

- Investment returns have significantly improved the funded status of the system over the last 4 years.
- However, investment returns, particularly in the short-term are extremely volatile.
- The table shows the probability of investment returns over a one-year time horizon and the impact they would have on the system (ignoring side accounts and the rate collar).
- The rate collar would limit the immediate impact on contribution rates, but employers with side accounts would receive the full impact of the investment return on their side account rate.
- It is interesting to note that in the last 10 years, the actual return for PERS has not been within 500 basis points of the median.

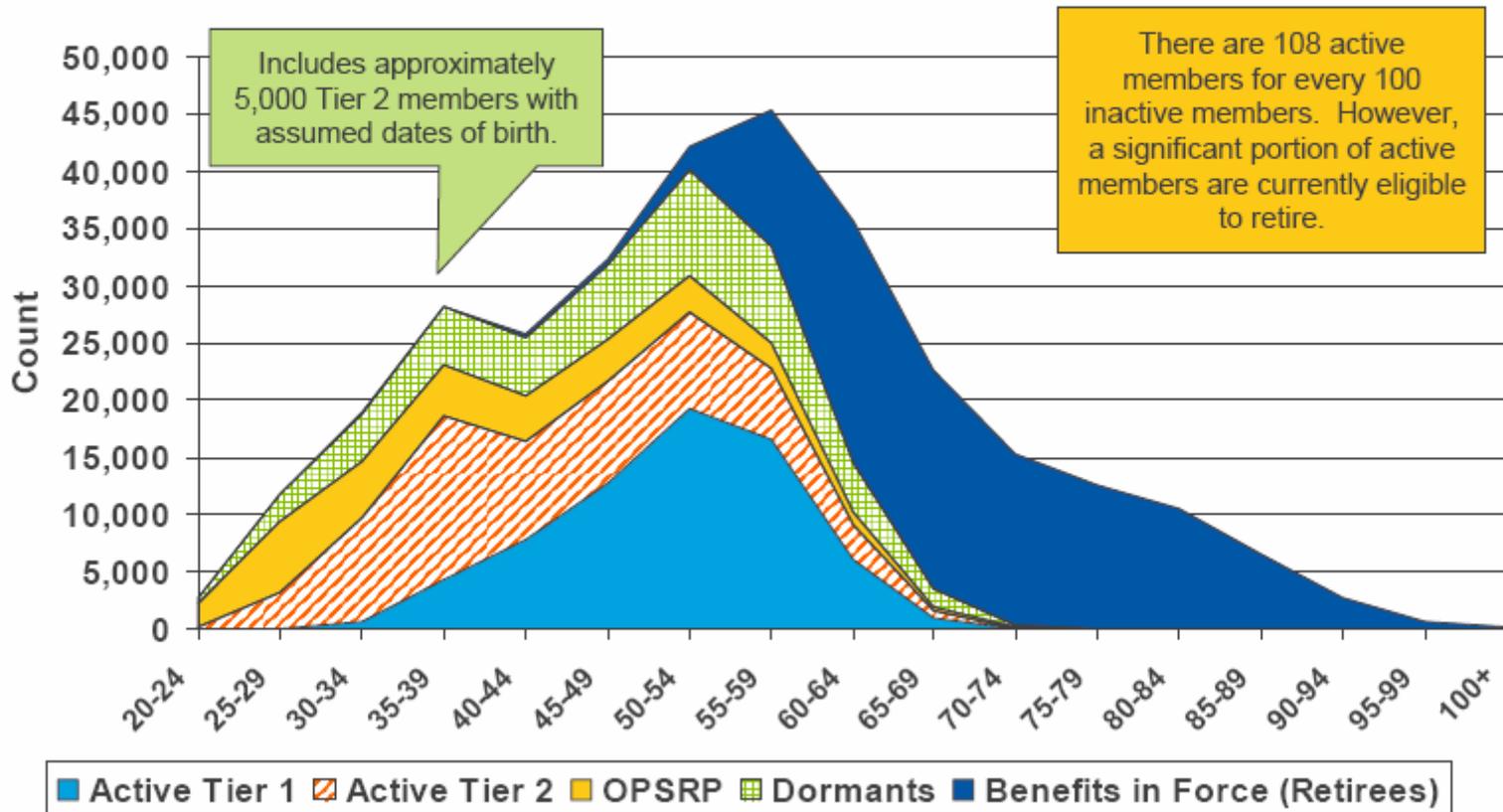
# **12/31/2006 Pension Valuation**

Oregon Public Employees Retirement System

# 12/31/2006 Pension Valuation

## Demographics

### Age Distribution



## 12/31/2006 Pension Valuation

### Assets



- Tier 1/Tier 2 valuation assets grew from approximately \$45 billion to approximately \$49 billion in the last year. In addition, side accounts grew from \$6.7 billion to \$7.2 billion.
- OPSRP valuation assets grew significantly from \$55 million to \$151 million in the last year, but are still less than 0.4% of Tier 1/Tier 2 assets.
- The Rate Guarantee Reserve also grew significantly from \$1.0 billion to \$1.6 billion.
- Valuation assets used to set pooled employer contribution rates exclude:
  - The Contingency and Capital Preservation Reserves,
  - The Rate Guarantee Reserve,
  - Side accounts, and
  - Pre-SLGRP liabilities and surpluses

## 12/31/2006 Pension Valuation Assets

Changes in Pension Plan Assets



- Investment earnings are the primary determinant of changes in assets for all accounts except OPSRP.
- For Tier 1/Tier 2,
  - 56% of contributions came directly from employers and 44% came from side accounts
  - Investment earnings were 6.6 times greater than contributions
  - Benefit payments were 2.75 times greater than contributions
- For OPSRP, contributions were 5.6 times greater than investment earnings

## 12/31/2006 Pension Valuation

### Normal Cost

- The average normal cost rate increased 94 basis points since the last valuation.
- Since reform, anyone expected to retire under Money Match has a 0% normal cost. As a result, Tier 1 General Members have the lowest normal cost rate.
- Expected increases due primarily to Money Match members retiring and being replaced with OPSRP members increased the normal cost approximately 73 basis points.
- Assumption changes were responsible for most of the remaining increase.

Valuation		
	12/31/2006	12/31/2005
T-1, General	2.88%	2.18%
T-1, P&F	11.56%	9.99%
<b>T-1, Average</b>	<b>3.86%</b>	<b>3.08%</b>
T-2, General	6.33%	5.12%
T-2, P&F	12.10%	10.88%
<b>T-2, Average</b>	<b>7.04%</b>	<b>5.86%</b>
OPSRP, General	6.00%	6.09%
OPSRP, P&F	8.87%	9.41%
<b>OPSRP, Average</b>	<b>6.23%</b>	<b>6.33%</b>
<b>System Average</b>	<b>5.33%</b>	<b>4.39%</b>

## 12/31/2006 Pension Valuation

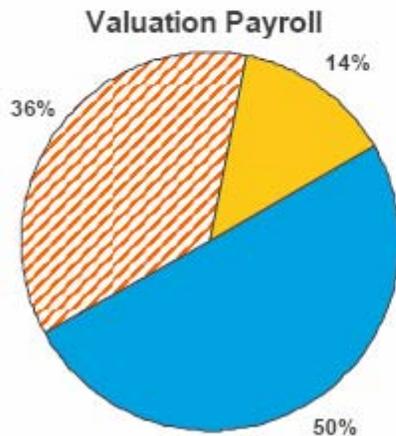
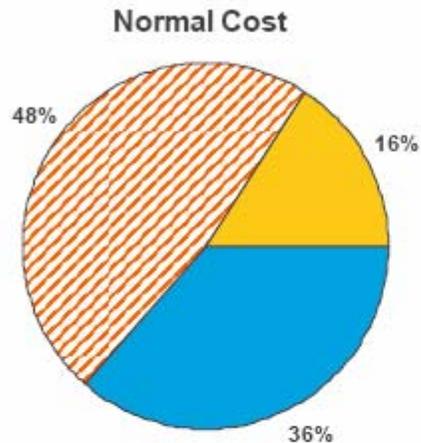
### Actuarial Accrued Liabilities

	Valuation	
	12/31/2006	12/31/2005
T-1, General	\$15,464	\$15,269
T-1, P&F	\$1,796	\$1,801
<b>T-1, Total</b>	<b>\$17,260</b>	<b>\$17,070</b>
T-2, General	\$1,785	\$1,472
T-2, P&F	\$341	\$309
<b>T-2, Total</b>	<b>\$2,126</b>	<b>\$1,781</b>
OPSRP, General	\$102	\$47
OPSRP, P&F	\$13	\$6
<b>OPSRP Total</b>	<b>\$115</b>	<b>\$53</b>
Dormant	\$4,450	\$4,187
Benefits in Force	\$27,303	\$26,202
<b>Inactive Total</b>	<b>\$31,753</b>	<b>\$30,389</b>
<b>System Total</b>	<b>\$51,254</b>	<b>\$49,293</b>

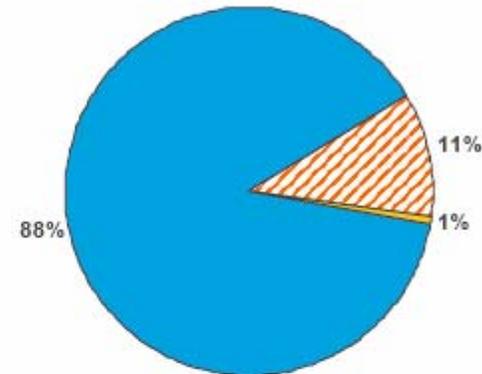
Amounts in millions

- Total system liabilities grew about 4% in the last year
  - 1% growth in Tier 1
  - 19% growth in Tier 2
  - 117% growth in OPSRP
  - 6% growth in dormant liabilities
  - 4% growth in benefits in force
- We expect Tier 1 liabilities to begin to decline while Tier 2, OPSRP and inactive liabilities continue to grow

## 12/31/2006 Pension Valuation Active Liabilities



Actuarial Accrued Liability



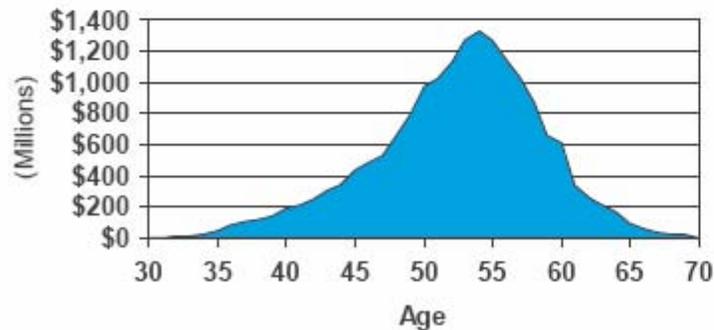
- While Tier 1 represents 88% of the accrued liability, it is only 50% of the payroll and 36% of the normal cost
- Tier 2 represents 11% of the accrued liability, 36% of the payroll and 48% of the normal cost.
- OPSRP represents 13% of the payroll and 16% of the normal cost, but less than 1% of the liability.

## 12/31/2006 Pension Valuation

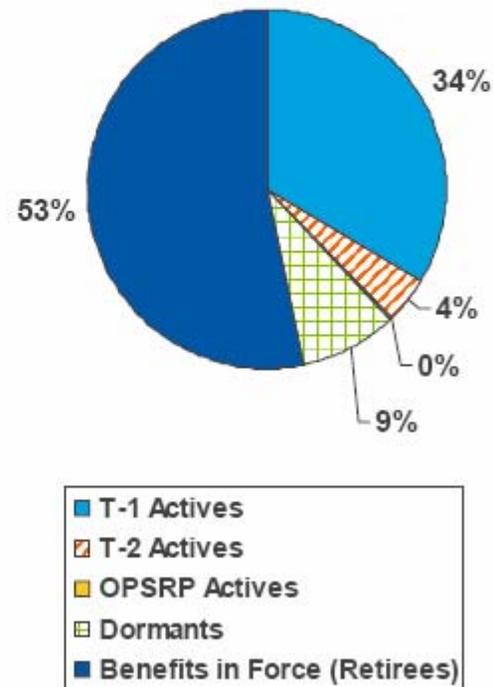
### Actuarial Accrued Liabilities

- While Tier 1 members represent the predominant portion of the active liability, 62% of the System's total accrued liability is for members who are no longer actively working in covered employment.
- Approximately 40% of the Tier 1 active liability is for members over age 55, and almost 75% of the Tier 1 active liability is for members over age 50.

Distribution of Tier 1 Active Liability



Actuarial Accrued Liability by Member Category



## 12/31/2006 Pension Valuation

### Funded Status Measures

- **Unfunded Accrued Liability Before Side Accounts**
  - The UAL before side accounts is used to calculate the employer contribution rates for the SLGRP and School District pools.
  - The side accounts are treated as prepaid contributions for the individual employers who have made supplemental contributions.
  
- **Unfunded Accrued Liability After Side Accounts**
  - The UAL after side accounts is used to report the funded status of the system as a whole.
  - Side accounts are held within the PERS Trust and are available to pay PERS benefits.
  
- **Employer Net Obligation**
  - The employer net obligation is the UAL after side accounts adjusted for the outstanding principal on pension obligation bonds
  - This measure is not used by PERS, but can be used in a broader financial context to understand the outstanding obligations related to PERS

## 12/31/2006 Pension Valuation

### Unfunded Accrued Liability

	12/31/2006 Valuation					12/31/2005
	SLGRP	School Districts	Independents	OPSRP	System-Wide*	System-Wide*
Accrued Liability	\$25,390	\$20,825	\$4,860	\$115	\$51,254	\$49,293
Assets	\$24,669	\$19,412	\$5,212	\$151	\$49,368	\$44,715
<b>Unfunded Accrued Liability</b>	<b>\$721</b>	<b>\$1,413</b>	<b>\$(352)</b>	<b>\$(36)</b>	<b>\$1,886</b>	<b>\$4,578</b>
Side Accounts	\$3,508	\$3,622	\$118	N/A	\$7,248	\$6,667
<b>UAL – Side Accounts</b>	<b>\$(2,787)</b>	<b>\$(2,209)</b>	<b>\$(470)</b>	<b>\$(36)</b>	<b>\$(5,362)</b>	<b>\$(2,089)</b>
POBs	\$3,341	\$2,587	\$235	N/A	\$6,164	\$6,202
<b>Employer Net Obligations</b>	<b>\$554</b>	<b>\$378</b>	<b>\$(235)</b>	<b>\$(36)</b>	<b>\$802</b>	<b>\$4,113</b>

\* System-wide results include Multnomah Fire District #10

Amounts In Millions

## 12/31/2006 Pension Valuation

### Unfunded Accrued Liability

	12/31/2006 Valuation					12/31/2005
	SLGRP	School Districts	Independents	OPSRP	System-Wide*	System-Wide*
Payroll (T1/T2 + OPSRP)	\$3,702	\$2,563	\$1,062	\$7,327	\$7,327	\$6,792
UAL	\$721	\$1,413	\$(352)	\$(36)	\$1,886	\$4,578
<b>UAL as % of Payroll</b>	<b>19%</b>	<b>55%</b>	<b>(33%)</b>	<b>(0%)</b>	<b>26%</b>	<b>67%</b>
UAL – Side Accounts	\$(2,787)	\$(2,209)	\$(470)	\$(36)	\$(5,362)	\$(2,089)
<b>Net UAL as % of Payroll</b>	<b>(75%)</b>	<b>(86%)</b>	<b>(44%)</b>	<b>(0%)</b>	<b>(73%)</b>	<b>(31%)</b>
UAL – Side Accounts + POBs	\$554	\$378	\$(235)	\$(36)	\$802	\$4,113
<b>Employer Net Obligation as % of Payroll</b>	<b>15%</b>	<b>15%</b>	<b>(22%)</b>	<b>(0%)</b>	<b>11%</b>	<b>61%</b>

Amounts In Millions

\* System-wide results include Multnomah Fire District #10

## 12/31/2006 Pension Valuation

### 7/1/2009 Advisory Employer Pension Contribution Rates

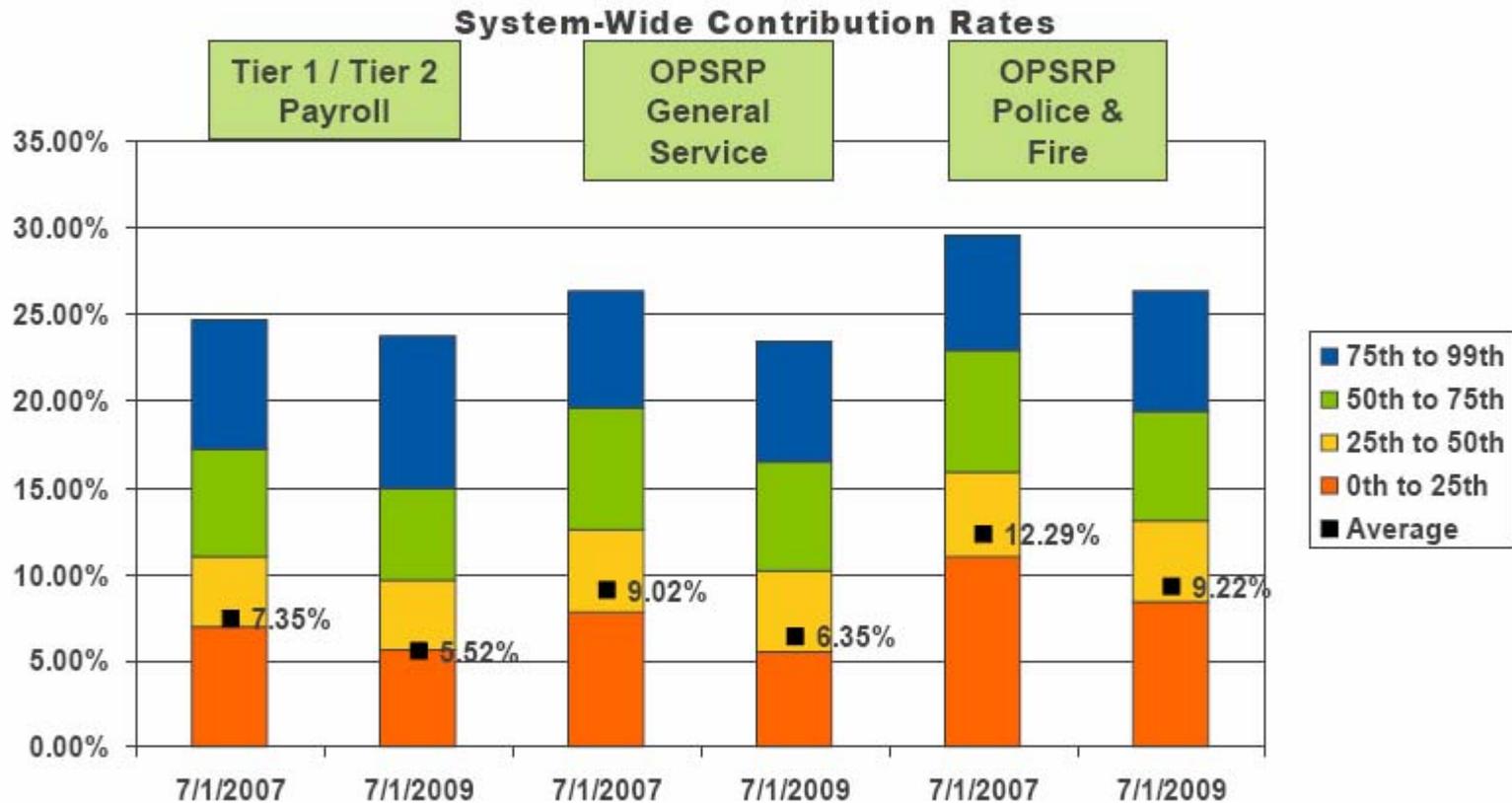
	<b>SLGRP</b>	<b>School Districts</b>	<b>Indepen -dents *</b>	<b>OPSRP General</b>	<b>OPSRP P&amp;F</b>	<b>System-Wide</b>
<b>Pension</b>						
Normal Cost	5.40%	4.48%	6.22%	6.00%	8.87%	5.33%
T1/T2 UAL	6.72%	10.56%	2.07%	7.52%	7.52%	7.52%
OPSRP UAL	(0.04%)	(0.04%)	(0.04%)	(0.04%)	(0.04%)	(0.04%)
<b>Gross Pension Rate</b>	<b>12.08%</b>	<b>15.00%</b>	<b>8.25%</b>	<b>13.48%</b>	<b>16.35%</b>	<b>12.81%</b>
<b>Adjustments</b>						
Side Accounts	(6.67%)	(9.94%)	(0.78%)	(6.96%)	(6.96%)	(6.96%)
Pre-SLGRP Liabs	(0.33%)	N/A	N/A	(0.17%)	(0.17%)	(0.17%)
<b>Average Adjustment</b>	<b>(7.00%)</b>	<b>(9.94%)</b>	<b>(0.78%)</b>	<b>(7.13%)</b>	<b>(7.13%)</b>	<b>(7.13%)</b>
<b>Net Pension Rate</b>	<b>5.08%</b>	<b>5.06%</b>	<b>7.47%</b>	<b>6.35%</b>	<b>9.22%</b>	<b>5.68%</b>

The 7/1/2009 advisory rates shown above are based on the 12/31/2006 valuation. The actual rates that become effective 7/1/2009 will be based on the 12/31/2007 valuation.

*\*Independent employers, including Judiciary, are treated as a single pool for purposes of this exhibit.*

# 12/31/2006 Pension Valuation

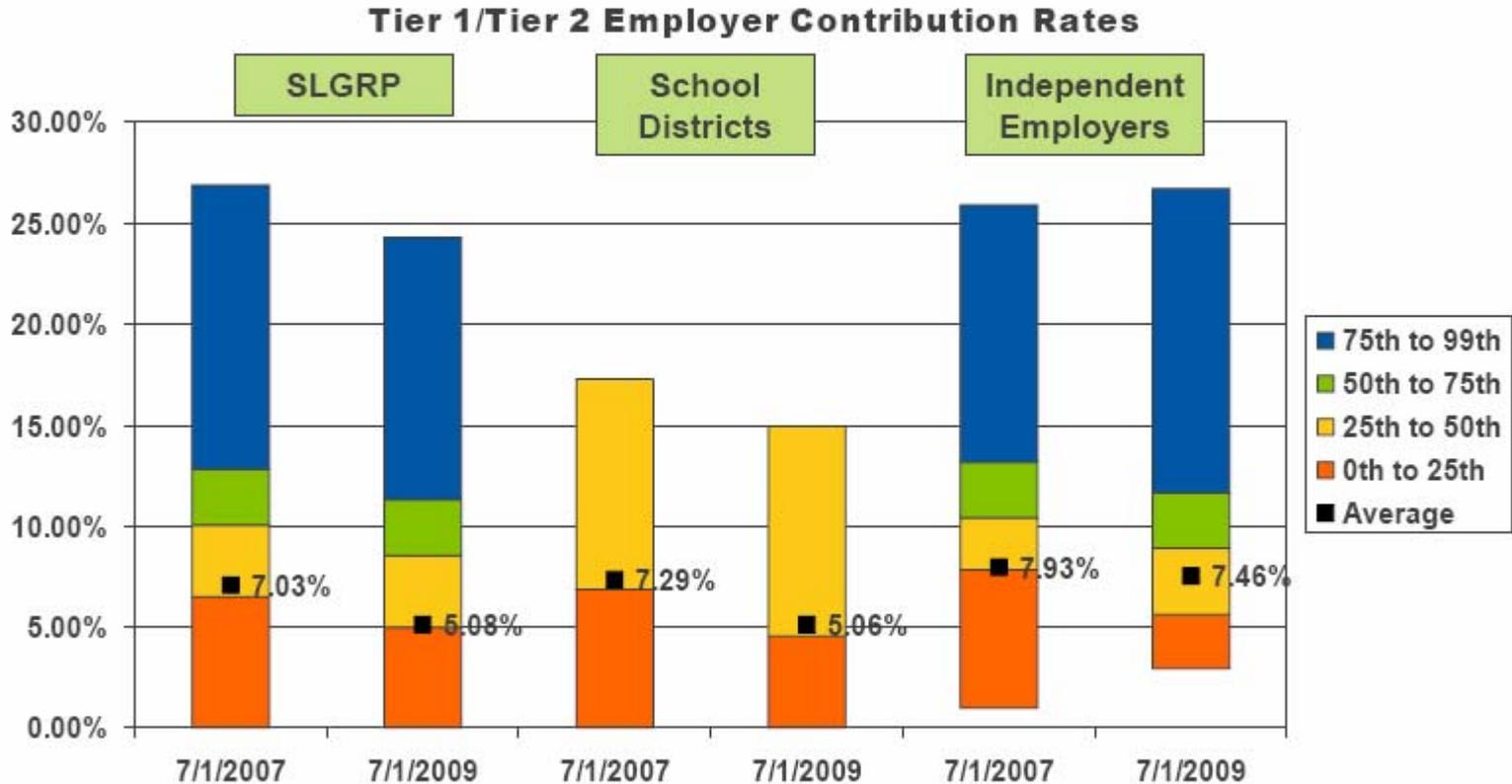
## Distribution of Advisory Employer Pension Contribution Rates



The 7/1/2009 advisory rates shown above are based on the 12/31/2006 valuation. The actual rates that become effective 7/1/2009 will be based on the 12/31/2007 valuation.

# 12/31/2006 Pension Valuation

## Distribution of Advisory Employer Pension Contribution Rates

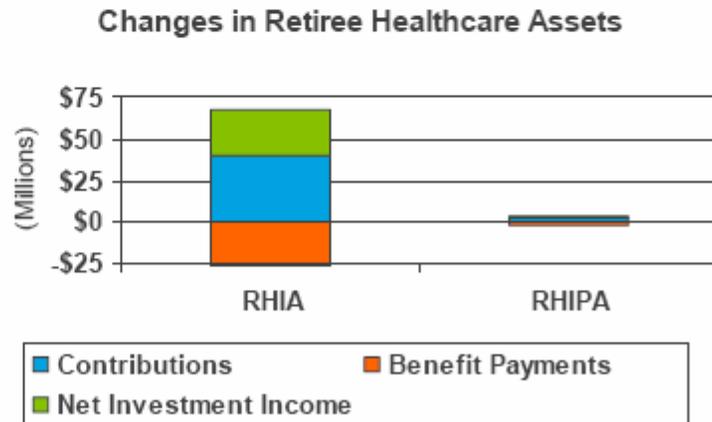
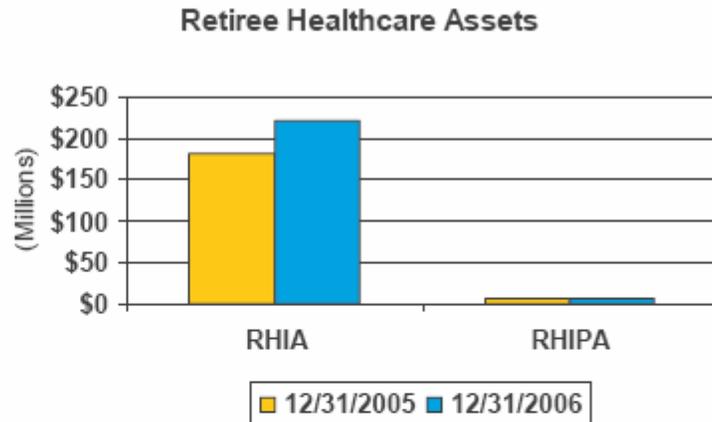


The 7/1/2009 advisory rates shown above are based on the 12/31/2006 valuation. The actual rates that become effective 7/1/2009 will be based on the 12/31/2007 valuation.

**12/31/2006 Retiree Medical Valuation**  
Oregon Public Employees Retirement System

## 12/31/2006 Retiree Healthcare Valuation Assets

- RHIA assets increased approximately 22% and RHIPA assets increased approximately 15%
- For RHIA, contributions are about 50% larger than benefit payments, so the net increase is a combination of contributions and investment earnings.
- For RHIPA, contributions are about equal to benefit payments, so the net increase in assets is primarily driven by investment earnings.



## 12/31/2006 Retiree Healthcare Valuation

### Normal Cost

	RHIA		RHIPA		System	
	12/31/2006	12/31/2005	12/31/2006	12/31/2005	12/31/2006	12/31/2005
Normal Cost	\$6.6	\$6.5	\$0.9	\$1.1	\$7.5	\$7.6
Normal Cost Payroll	\$6,336.4	\$6,111.2	\$1,665.7	\$1,701.0	\$6,336.4	\$6,111.2
<b>Normal Cost Rate</b>	<b>0.10%</b>	<b>0.11%</b>	<b>0.06%</b>	<b>0.06%</b>	<b>0.12%</b>	<b>0.13%</b>

- Normal cost rates for RHIA and RHIPA have remained relatively stable.
- These rates, however, are very sensitive to the participation assumption.

## 12/31/2006 Retiree Healthcare Valuation Unfunded Accrued Liability

Funded status is improving, but lags significantly behind the funded status of the pension plan.

	RHIA		RHIPA		System	
	12/31/2006	12/31/2005	12/31/2006	12/31/2005	12/31/2006	12/31/2005
Accrued Liability	\$511.8	\$495.9	\$23.4	\$27.0	\$535.2	\$522.9
Assets	\$221.5	\$181.0	\$7.0	\$6.1	\$228.5	\$187.1
UAL	\$290.4	\$314.9	\$16.4	\$20.9	\$306.8	\$335.8
<b>Funded Percentage</b>	<b>43%</b>	<b>36%</b>	<b>30%</b>	<b>23%</b>	<b>43%</b>	<b>36%</b>
Combined Valuation Payroll	\$7,326.8	\$6,791.9	\$1,946.8	\$1,827.0	\$7,326.8	\$6,791.9
<b>UAL Rate</b>	<b>0.22%</b>	<b>0.26%</b>	<b>0.01%</b>	<b>0.03%</b>	<b>0.22%</b>	<b>0.26%</b>

## 12/31/2006 Retiree Healthcare Valuation

### Advisory Contribution Rates

- Advisory contribution rates are slightly lower than the rates in effect 7/1/2007.
- For retiree healthcare, the PUC change rate reduces the overall UAL rate significantly.
- As the PUC change UAL is paid off, overall UAL rates are expected to increase 6 to 7 basis points each for RHIA and RHIPA.
- Changes in actual participation rates can have a significant effect on the UAL.

<b>Payroll</b>	<b>Tier 1 / Tier 2</b>	<b>OPSRP General</b>	<b>OPSRP P&amp;F</b>
Normal Cost Rate	0.12%	N/A	N/A
UAL Rate	0.22%	0.22%	0.22%
<b>Total Rate</b>	<b>0.34%</b>	<b>0.22%</b>	<b>0.22%</b>

# MERCER



MARSH MERCER KROLL  
GUY CARPENTER OLIVER WYMAN



# Oregon

Theodore R. Kulongoski, Governor

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November 16, 2007

TO: Members of the PERS Board

FROM: Dale S. Orr, Coordinator, Actuarial Analysis Section

SUBJECT: 2006 Actuarial Equivalency Factors

MEETING DATE	<b>11/16/07</b>
AGENDA ITEM	<b>D.2. Mercer</b>

ORS 238.607 requires that the PERS Board adopt actuarial equivalency factor (AEF) tables every two years for the purpose of computing member benefit payments. On November 16, 2007, Bill Hallmark and Matthew Larrabee of Mercer will present their analysis and recommendation regarding the AEFs to be used for retirement benefits dated January 1, 2008 through December 31, 2009.

New AEFs are derived from the latest experience study. Mercer's recommendation will be based on the results of the 2006 Experience Study. Beginning with calendar year 2006, Mercer began conducting its experience studies based on even numbered years vs. odd numbered years, as was the historical practice. This change was made to permit annual valuations to be conducted on a schedule that would provide more timely rate and reporting information to employers. With its review of the 2006 AEFs, the Board will also be re-aligning the review and approval of AEFs with future even-numbered year experience studies.

PERS staff anticipates that Mercer will recommend that the Board readopt the 2005 AEFs as the 2006 AEFs. Mortality and earnings assumptions that affect the actuarial equivalency factors did not change sufficiently between the 2005 and 2006 Experience Studies to warrant a change in the AEFs. Although the AEFs are expected to remain the same, the Board must still take specific action adopting the 2006 AEFs in order to re-align the review process and subsequently comply with the two-year review as required by statute.

We will forward the actuaries' presentation to the Board prior to the meeting.