

# OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD MEETING

Friday, May 21, 2010 1:00 P.M.		PERS 11410 SW 68 <sup>th</sup> Parkway Tigard, OR	
ITEM		PRESENTER	
<b>A. Administration – 1:00 P.M.</b>			
1.	March 29, 2009 Board Meeting Minutes	CLEARY	
2.	Director's Report		
	a. Forward-Looking Calendar		
	b. Budget Report		
	c. OIC Investment Report		
	d. Quarterly Report of Member Transactions		
	e. 2010 Legislative Concepts Update		
<b>B. Consent Items</b>			
1.	Notice of Disability Rules	RODEMAN	
2.	Notice of Employer Remittance of Employee Contributions Rule		
3.	First Reading of OPSRP Health Insurance Rules		
<b>C. Final Rule Adoption</b>			
1.	Adoption of Divorce Rules	RODEMAN	
2.	Adoption of Housekeeping Updates to Various Rules		
3.	Adoption of Rules to Implement Non-Verification Portions of SB 897		
<b>D. Action and Discussion Items</b>			
1.	2011 Retiree Health Insurance Plan Renewals	MATCHETT DUFRENE/KNOLL MERCER	
2.	2011-13 Preliminary Agency Request Budget		
3.	ETOB Testing Results		
<b>E. Executive Session Pursuant to ORS 192.660(2)(f), (h), and/or ORS 40.225</b>			
1.	Litigation Update	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.

James Dalton, Chair \* Thomas Grimsley, Vice-Chair \* Eva Kripalani \* Mike Pittman \* Laurie Warner  
Paul R. Cleary, Executive Director



## **PERS Board Meeting Forward-Looking Calendar**

### **May 26, 2010**

PERS Board / OIC Asset-Liability Study Joint Meeting

### **July 23, 2010**

Adoption of Disability Rules  
Adoption of Employer Remittance of Employee Contributions Rule  
Adoption of OPSRP Health Insurance Rules  
2011-13 Final Agency Request Budget Approval  
2009 Valuation Results  
Preliminary Actuarial Audit Results  
2010 Financial Modeling Project Initiation  
Audit Committee

### **September 24, 2010**

2011-13 Employer Rate Adoption  
Final Actuarial Audit Results

### **November 19, 2010**

2010 Financial Modeling Project Results  
2011 Session Legislative Concept Approval  
Audit Committee



# OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

Item A.1.

PERS Board Meeting  
March 29, 2010  
Tigard, Oregon  
MINUTES

## Board Members:

James Dalton, Chair  
Tom Grimsley, Vice-Chair  
Eva Kripalani  
Mike Pittman  
Laurie Warner

## Staff:

Donna Allen	Yvette Elledge	Brenda Pearson
Helen Bamford	Brian Harrington	Beth Porter
Paul Brown	Rick Howitt	Bill Ramey
Paul Cleary	Sue Korn	Susan Riswick
David Crosley	Jeff Marecic	Steve Rodeman
Jon DuFrene	Dawn Mittelbach	Susan Sjordal
Joe DeLillo	Dale Orr	Jason Stanley
		Stephanie Vaughn

## Others:

Bruce Adams	Linda Ely	Everett Moreland	Bill Robertson
Kelly Bach	Bruce Griswold	Erich Mueller	Ashley Skaund
Mary Botkin	Greg Hartman	Victor Nolan	Deborah Tremblay
Tom Breitbargh	Keith Kutler	P. Peg	Pat West
Laurie Byerle	Matt Larrabee	Scott Preppernau	David Wimmer
Mike Eliason			Peggy Woolsey

Chair James Dalton called the meeting to order at 1:02 P.M.

## ADMINISTRATION

### A.1. BOARD MEETING MINUTES OF JANUARY 29, 2010

The Board unanimously approved the minutes from the January 29, 2010 Board meeting.

Chair James Dalton welcomed new Board member Laurie Warner.

Chair Dalton and Vice-Chair Tom Grimsley presented a Resolution of Appreciation to Brenda Rocklin for her service on the Board from September 2003 to February 2010. Director Paul Cleary thanked Rocklin for her dedicated service and each Board member offered his/her gratitude. Rocklin extended her appreciation to the Board and staff, and urged the Board to stick to its guiding principles and maintain all the progress made under the 2003 PERS reforms.

### A.2. DIRECTOR'S REPORT

Director Paul Cleary presented the Board's 2010 forward-looking calendar noting the next Board meeting will be May 21, 2010.

Director Cleary reported May agenda items will include Mercer's presentation of the Equal To or Better Than (ETOB) testing results, the 2011-13 preliminary agency request budget and the 2011 retiree health insurance plan renewals.

At the July Board meeting, the system-wide 2009 valuation results will be presented and the Board will approve the 2011-13 final agency request budget for submitting through DAS review and the Governor's recommended budget process. Cleary noted individual employer rates for 2011-13 are scheduled for Board approval at the September Board meeting.

Cleary presented the 2009-11 operating budget report noting a positive variance estimate of \$4.3 million. Of this, \$430,000 is dedicated for the RIMS Conversion Project (RCP) budget. Cleary noted some of the variance may also be used for infrastructure investments and Senate Bill 399 and Senate Bill 897 implementation.

Cleary presented the employer reporting and outreach program report. Cleary noted the 2009 annuals reconciliation process has been streamlined with sole use of the JClarety system and elimination of reconciliation with the legacy RIMS system. Cleary noted the comparison of 2008 to 2009 showed improvement in all data reporting categories.

Cleary presented the annual cost-of-living adjustment (COLA) report. Cleary said statutes require PERS to give a COLA based on the Consumer Price Index (CPI) with a cap of 2%. Cleary noted those who retired August 1, 2009 to July 1, 2010 may receive the lowest one-year COLA on record. The report also outlined the COLAs for those retired in prior years, and for OPSRP retirees. Cleary noted the COLAs reflect the continued economic downturn and the deflationary pressures during the 2009 calendar year.

Cleary presented the details on the actuarial auditor selection and audit timeline. Cleary noted that Gabriel Roeder Smith, Inc. was selected from a group of four national actuarial firms to conduct PERS' actuarial audit, which will be based on the 2009 system valuation.

Cleary provided a recap of the February 2010 Special Session.

Cleary provided an update on the PERS fund investment returns as of February 28, 2010.

## **CONSENT ITEMS**

### **B.1. NOTICE OF HOUSEKEEPING UPDATES TO VARIOUS RULES**

Steve Rodeman, PERS Deputy Director, described the notice of proposed housekeeping updates to various rules. No action was required by the Board.

### **B.2 TEMPORARY ADOPTION AND NOTICE OF RULES TO IMPLEMENT NON-VERIFICATION OF SB 897**

Rodeman described the proposed temporary adoption and notice of permanent rulemaking to implement those provisions of Senate Bill 897 not related to the data verification process. Rodeman noted the main action is to add a reference for OPSRP retirees who are eligible to participate in the PERS Health Insurance Program. Rodeman recommended the Board adopt the proposed temporary rules to comply with the portions of Senate Bill 897 that became effective February 8, 2010.

It was moved by Grimsley and seconded by Kripalani to adopt the temporary modifications to PERS Health Insurance Program rules as recommended. The motion passed unanimously.

### **ACTION AND DISCUSSION ITEMS**

#### **C.1. FIRST READING OF DIVORCE RULES**

Rodeman presented the first reading of divorce rules. These rules have been modified since noticed at the March Board meeting to address domestic partnership and tax implications for dissolutions of such partnerships. Rodeman noted these changes were rather consequential and should be posted for review prior to adopting permanent rule modifications. No action was required by the Board.

#### **C.2. 2011 SESSION PRELIMINARY LEGISLATIVE CONCEPTS**

Susan Riswick, PPLAD Administrator, presented the agency's 2011 Session preliminary legislative concepts. Riswick noted the process involved soliciting ideas from PERS staff that were then discussed with the PERS Board's Legislative Advisory Committee (LAC).

Staff recommended PERS submit two concepts to DAS for further development. The Board requested development of a third concept to eliminate the benefit guarantee provision of SB 897, while retaining the data verification process.

It was moved by Kripalani and seconded by Grimsley for staff to submit to DAS the three 2011 preliminary legislative concepts as described. The motion passed unanimously.

#### **C.3. SENATE BILL 897 DATA VERIFICATION IMPLEMENTATION PLAN**

Rodeman described the agency's Senate Bill 897 implementation plan. The plan outlines the provisions of Senate Bill 897, implementation plan objectives, timeline, and high-level deliverables.

One of the key objectives is to automate as much of the data verification process as possible. Rodeman stated the Senate Bill 897 data verification provisions impact 15% of the JClarety functionality areas that have either been completed in the RIMS Conversion Project or are slated to be completed later this year.

Rodeman said the recommended approach would be to incorporate the Senate Bill 897 functionality in the RIMS Conversion Project. This approach will eliminate large serial deployments and additional regression testing. A detailed cost analysis is being developed and will be completed prior to submitting a Legislative Emergency Board request.

Staff will be requesting expenditure authority for system changes and additional staff positions at the May 2010 Legislative Emergency Board meeting. The Board discussed the agency's Senate Bill 897 implementation plan and planned Emergency Board request. Chair Dalton asked Board members Laurie Warner and Mike Pittman to work with staff on reviewing and finalizing the Emergency Board request.

The Emergency Board request would include increased budget authority and 12 additional positions to establish a Data Verification Team beginning January 1, 2011 so they could be fully trained and prepared to process verification requests effective July 1, 2011.

It was moved by Grimsley and seconded by Kripalani to authorized staff to request the necessary Senate Bill 897 implementation budget and position authority at the May 2010 Legislative Emergency Board. The motion passed unanimously.

#### C.4. 2009 FINAL EARNINGS CREDITING

Rodeman presented staff's 2009 final earnings crediting and reserving recommendations based on the Board's preliminary decision to maintain the current Contingency Reserve balance at \$653.2 million.

The 2009 final earnings were approximately \$5 million more and beginning reserve balances increased by approximately \$43 million since the preliminary earnings crediting in January. Rodeman noted these changes resulted from routine final year-end postings and adjustments.

Dale Orr, Actuarial Services Manager, discussed a policy issue question resulting from a 2008 Internal Audit recommendation. The audit recommendation was for staff to consider alternative approaches for allocating administrative expenses and earnings and to report this issue and its proposed action to the Board.

Orr stated that management reviewed the various alternatives and concluded that no change to the current practice was necessary. The current method results in reproducible and consistent year-to-year application of administrative expenses and earnings allocations.

Staff proposed that no changes be made to in the current process and the Board concurred.

It was moved by Warner and seconded by Grimsley to adopt the staff's recommended final crediting and reserving for 2009 calendar year earnings. The motion passed unanimously.

#### C.5. ETOB STUDY UPDATE

Matt Larrabee, Mercer, provided an update on the Equal To or Better Than (ETOB) testing and a summary of recent Board actions on ETOB.

Larrabee noted in developing the detailed testing methodology, Mercer favors using a more nuanced interpretation of the risk-free rate than originally recommended at the January Board meeting. The basis for the risk-free rate recommended in January was a five-year historical average of 30-year Treasury yielding a risk free rate of 4.7%. Currently, this single basis for the "risk free" rate would be used for all "risk free" rate calculations in the ETOB testing.

Mercer proposed a refinement to the risk-free rate for accumulating historical account balances. The risk-free rate would be tied to the appropriate historical average and the average period would be based on the corresponding PERS benefit tier. Mercer provided the average service by tier and 30-year Treasury rate by tier. The 4.7% risk-free rate would be used for all other testing purposes.

Scott Preppernau, Mercer, described the preliminary determination for the 10 employers subject to ETOB testing. Preppernau noted that two employers were judged to satisfy ETOB via a preliminary determination and said three other employers that did not pass that screening may ultimately be determined to satisfy ETOB.

It was moved by Mike Pittman and seconded by Eva Kripalani to approve the proposed refinement to the risk-free rate presented by Mercer. The motion passed unanimously.

The Board went into Executive session on litigation at 2:29 PM. The Board reconvened at 2:47 PM. Chair Dalton adjourned the meeting at 2:50 PM.

Respectfully submitted,

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

Paul R. Cleary  
Executive Director





# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
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May 21, 2010

TO: Members of the PERS Board  
FROM: Kyle J. Knoll, Business Operations Manager  
SUBJECT: March 2010 Budget Report

### 2009-11 BUDGET UPDATE

Operating expenditures for the month of March 2010 were \$2,789,632, and preliminary April 2010 expenditures are \$2,894,982. Final April expenditures close in the Statewide Financial Management System (SFMS) May 12, 2010, and will be included in the July 23, 2010 Board Report.

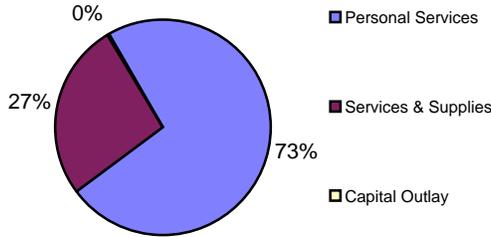
- To-date, through the first ten months (41.67%) of the 2009-11 biennium, the Agency has expended a total of \$28,083,660 or 34.82% of PERS' 2009-11 operating budget.
- The Agency's positive budget variance for this biennium is currently projected at \$3,051,428, of which \$181,151 is RIMS Conversion Project (RCP) budget. The decrease in the positive variance from the \$4,267,093 reported to the Board last March is due to a routine review and update of projected expenditures for 2009-11.

**2009-11 Agency-wide Operations - Budget Execution**  
**Summary Budget Analysis**  
For the Month of: April 2010 (preliminary)

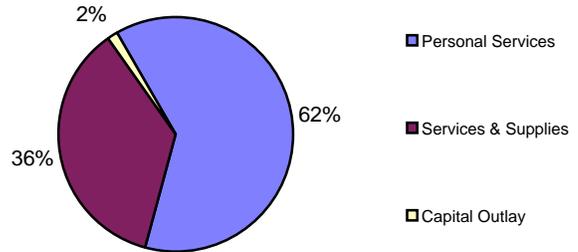
**Biennial Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2009-11 LAB	Variance
Personal Services	20,485,508	30,937,961	51,423,469	52,559,956	1,136,487
Services & Supplies	7,494,718	17,841,679	25,336,397	27,507,084	2,170,687
Capital Outlay	103,434	745,900	849,334	593,588	(255,746)
Special Payments					
<b>Total</b>	<b>28,083,660</b>	<b>49,525,540</b>	<b>77,609,200</b>	<b>80,660,628</b>	<b>3,051,428</b>

**Actual Expenditures**

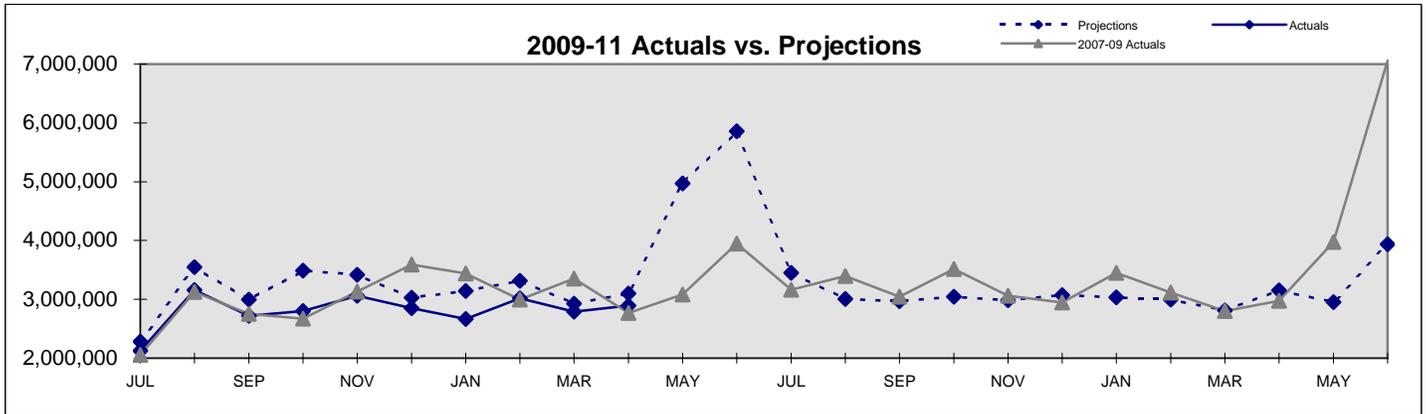


**Projected Expenditures**



**Monthly Summary**

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	2,068,173	2,150,189	82,016	2,048,551	2,209,854
Services & Supplies	811,531	915,427	103,896	749,472	1,274,406
Capital Outlay	15,278	32,000	16,722	10,343	53,279
Special Payments					
<b>Total</b>	<b>2,894,982</b>	<b>3,097,616</b>	<b>202,634</b>	<b>2,808,366</b>	<b>3,537,539</b>



**2007-09 Biennium Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2007-09 LAB	Variance
Personal Services	49,613,038		49,613,038	53,288,261	3,675,223
Services & Supplies	27,421,160		27,421,160	26,553,000	(868,160)
Capital Outlay	350,966		350,966	947,701	596,735
Special Payments					
<b>Total</b>	<b>77,385,163</b>		<b>77,385,163</b>	<b>80,788,962</b>	<b>3,403,799</b>

Returns for periods ending 3/31/2010

Oregon Public Employees Retirement Fund

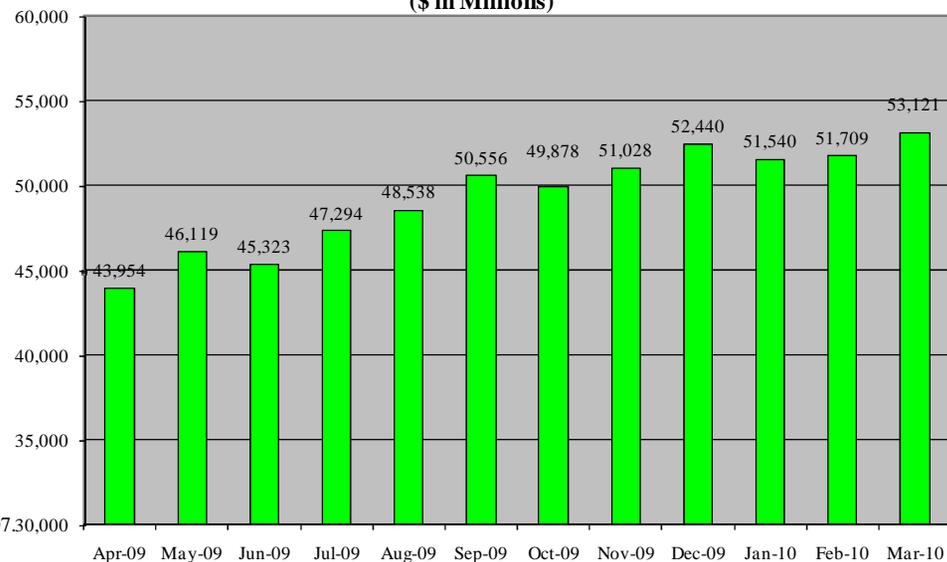
A.2.c.

OPERF	Regular Account			Historical Performance (Annual Percentage)						
	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
Public Equity	41-51%	46%	\$ 22,370,194	42.9%	3.88	58.00	(4.85)	(4.55)	(0.39)	3.74
Private Equity	12-20%	16%	10,327,972	19.8%	5.42	19.63	(4.71)	1.60	6.96	10.68
<b>Total Equity</b>	<b>57-67%</b>	<b>62%</b>	<b>32,698,166</b>	<b>62.7%</b>						
Opportunity Portfolio			1,121,865	2.2%	0.82	39.31	2.44	0.88		
<b>Total Fixed</b>	<b>22-32%</b>	<b>27%</b>	<b>13,375,511</b>	<b>25.7%</b>	<b>3.66</b>	<b>27.54</b>	<b>8.55</b>	<b>6.62</b>	<b>6.85</b>	<b>6.28</b>
Real Estate	8-14%	11%	4,921,362	9.4%	(10.23)	0.07	(16.95)	(10.97)	(3.29)	4.36
			14,319							
Cash	0-3%	0%	16,585	0.0%	0.39	2.24	1.51	2.68	3.34	3.40
<b>TOTAL OPERF Regular Account</b>		<b>100%</b>	<b>\$ 52,133,489</b>	<b>100.0%</b>	<b>2.60</b>	<b>34.78</b>	<b>(3.13)</b>	<b>(1.72)</b>	<b>1.85</b>	<b>4.94</b>
<b>OPERF Policy Benchmark</b>					<b>2.85</b>	<b>29.87</b>	<b>(2.15)</b>	<b>(0.56)</b>	<b>2.69</b>	<b>4.83</b>
Value Added					<b>(0.25)</b>	<b>4.91</b>	<b>(0.98)</b>	<b>(1.16)</b>	<b>(0.84)</b>	<b>0.11</b>
<b>TOTAL OPERF Variable Account</b>			<b>\$ 990,229</b>		<b>3.59</b>	<b>56.70</b>	<b>(5.04)</b>	<b>(6.32)</b>	<b>(2.50)</b>	<b>0.96</b>

Asset Class Benchmarks:

Russell 3000 Index	5.94	52.44	(2.94)	(3.99)	(0.38)	2.39
MSCI ACWI Ex US IMI Net	2.00	63.29	(6.50)	(3.57)	1.91	6.69
MSCI ACWI IMI Net	3.64	58.02	(5.22)	(4.12)	0.47	4.27
Russell 3000 Index + 300 bps--Quarter Lagged	6.58	32.47	(5.86)	(1.35)	3.34	4.54
BC Universal--Custom FI Benchmark	1.95	9.68	5.55	5.88	6.11	5.48
NCREIF Property Index--Quarter Lagged	(2.11)	(16.86)	(11.81)	(3.42)	1.24	4.75
91 Day T-Bill	0.01	0.17	0.69	1.99	2.75	2.91

**TOTAL OPERF NAV**  
(includes variable fund assets)  
One year ending March 2010  
(\$ 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 (or with lagged performance), YTD numbers are "N/A". Performance is reflected in Total OPERF.





# Oregon

Theodore R. Kulongoski, Governor

Item A.2.d

## Public Employees Retirement System

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11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
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May 21, 2010

TO: Members of the PERS Board

FROM: Dale S. Orr, Actuarial Services Manager

SUBJECT: PERS Quarterly Report of Member Transactions

Attached is a new statistical report that reflects production volume and pending information for five key agency activities. This information is being provided to assist the Board in understanding the general workload demands and performance of PERS' operations.

The report provides a breakout of activity on both a quarterly and a cumulative, calendar year-to-date basis. This report will be updated after each quarter end and provided to the Board as a part of the Director's report.

Please note that the 'Retirements', 'Withdrawals', and 'Estimates' activities reflect the combined statistics of Tier One, Tier Two and OPSRP pension. In addition, pending counts do not necessarily reflect a backlog of work, but rather the normal end-of-quarter carry-over of items in the processing pipeline. Staff will provide notification to the Board should a backlog of work occur that threatens PERS' ability to meet established performance standards or statutory deadlines. No such backlog currently exists for these activities.

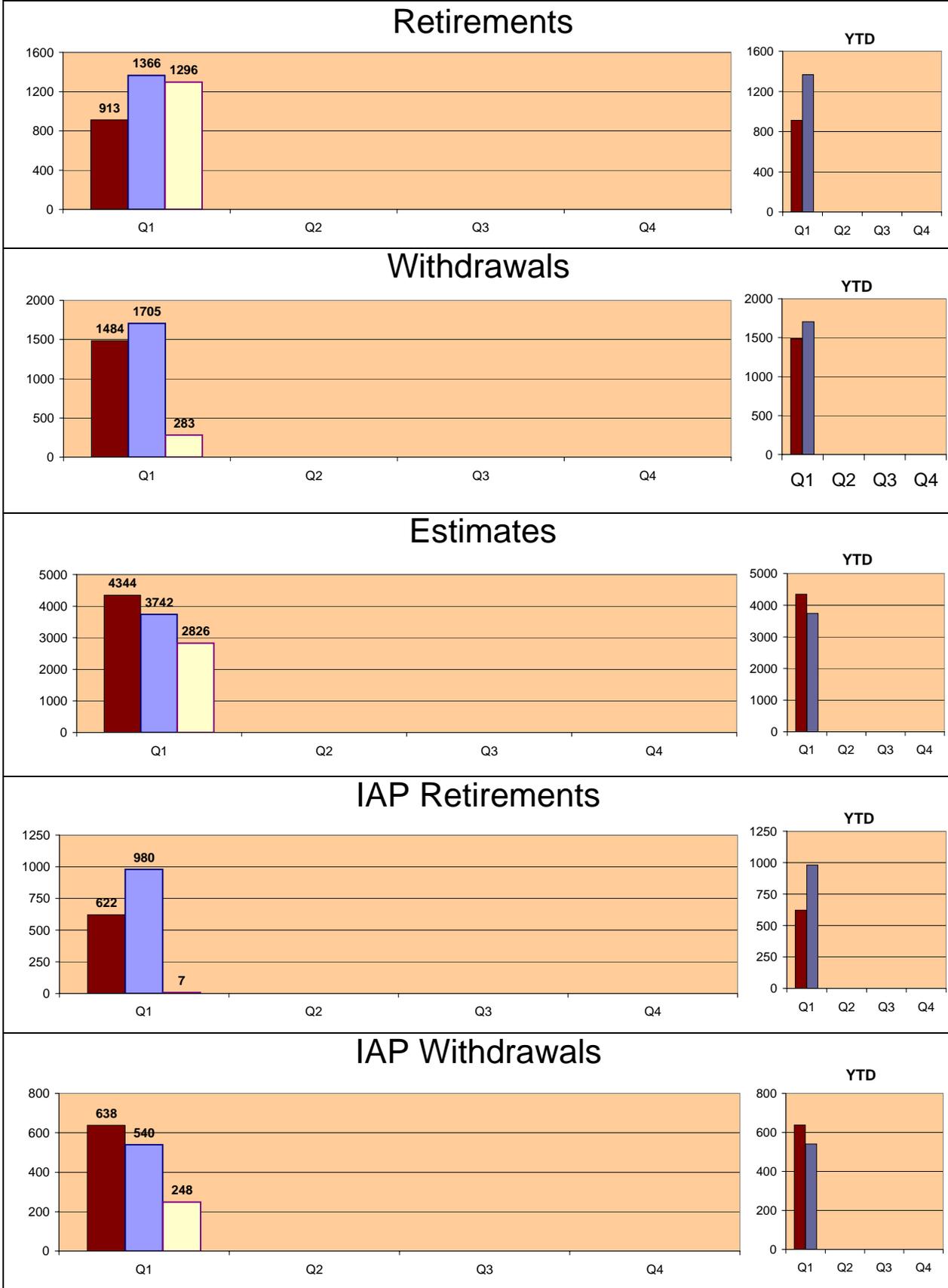
Attachment: PERS Quarterly Report of Member Transactions

# PERS Quarterly Report of Member Transactions

A.2.d.

Thru Quarter Q1 2010

Run Date: 4/30/2010



Incoming     Completed     Pending



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Theodore R. Kulongoski, Governor

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May 21, 2010

TO: Members of the PERS Board  
FROM: Susan Riswick, Administrator, PPLAD  
SUBJECT: 2011 Legislative Concepts Update

As approved by the Board at the March 29, 2010 meeting, PERS submitted to DAS on April 9, 2010, three legislative concepts for possible introduction by the Governor's Office as agency-sponsored bills for the 2011 Legislative Session. The concepts were also further discussed with the Legislative Advisory Committee (LAC) on April 29, 2010 as described below:

- Legislative Concept #1, PERS Housekeeping Bill, was submitted to DAS as presented to the Board in March. The provisions within this concept drew little comment and found general support with the LAC.
- Legislative Concept #2, OPSRP Pension Withdrawal Restrictions, was submitted to DAS as a placeholder. PERS received feedback from the LAC during the April 29<sup>th</sup> meeting on four alternative approaches and will continue to work with the LAC on developing a final position and language for this bill. PERS staff will present the final outcome of those discussions to the Board in July.
- Legislative Concept #3, Repeal of Guarantee of Inaccurate Benefits, was submitted to DAS as requested by the Board during the March 29, 2010 meeting. The member representatives of the LAC reiterated their support for the benefit guarantee as the key provision of the SB 897 data verification process. The employer representatives indicated they needed more time to review the concept.

DAS anticipates notifying agencies by the end of May whether the concepts are approved and submitted to Legislative Counsel for drafting. Placeholder language is due to DAS by July 14, 2010. Draft concepts will be presented to the Board during the November 19, 2010 meeting for final decision on whether to submit any or all of the concepts to the Governor's office for introduction in the 2011 session.





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May 21, 2010

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Notice of Rulemaking for Disability Payments and Benefits Rules:  
459-015-0030, *Hearings on Denial or Discontinuance of Disability Retirement Allowances*  
459-015-0055, *Selection of Benefit Option and Commencement of Allowance*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Align the standards set forth in the administrative rule for disability proposed orders and non-disability proposed orders, and clarify the payment of a disability retirement allowance and selection of a disability benefit option.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

OAR 459-015-0030, *Hearings on Denial or Discontinuance of Disability Retirement Allowances*

In 2008, PERS adopted changes to OAR 459-001-0035, Contested Case Hearing. The rule modifications were made to conform to DOJ model rules and to eliminate overlap and duplicative authorities. When those changes were made, similar changes should have been made to OAR 459-015-0030. In section (4), language is deleted as it is covered by the Office of Administrative Hearing (OAH) procedural rules. The new language in section (4) reflects section (10) of OAR 459-001-0035. Minor edits were made to sections (5) and (6).

OAR 459-015-0055, *Selection of Benefit Option and Commencement of Allowance*

The proposed rule modifications clarify when a disability payment is due, and that the time period of when payment of a disability retirement allowance shall commence refers to business days, not calendar days. Other changes to the rule include eliminating redundant language and clarifying that, if a member's disability retirement allowance is canceled before the first benefit payment or is discontinued, the benefit option selected for that disability retirement allowance is canceled and a different option may be selected upon a subsequent retirement.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on May 25, 2010 at 1:00 p.m. at PERS headquarters in Tigard. The public comment period ends on June 4, 2010 at 5:00 p.m.

### LEGAL REVIEW

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

### IMPACT

Mandatory: Yes, in part. Changes to OAR 459-015-0030 are needed to eliminate overlap and duplicative authorities.

Impact: Clarification of the hearings process.

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

### RULEMAKING TIMELINE

April 15, 2010	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
May 1, 2010	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
May 21, 2010	PERS Board notified that staff began the rulemaking process.
May 25, 2010	Rulemaking hearing to be held at 1:00 p.m. in Tigard.
June 4, 2010	Public comment period ends at 5:00 p.m.
July 23, 2010	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

### NEXT STEPS

A hearing will be held on May 25, 2010 at PERS Headquarters in Tigard. The public comment period ends on June 4, 2010 at 5:00 p.m. The rules are scheduled to be brought before the PERS Board for adoption at the July 23, 2010 Board meeting.

B.1. Attachment 1 – 459-015-0030, *Hearings on Denial or Discontinuance of Disability Retirement Allowances*

B.1. Attachment 2 – 459-015-0055, *Selection of Benefit Option and Commencement of Allowance*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 – DISABILITY RETIREMENT ALLOWANCES**

1 **459-015-0030**

2 **Hearings on Denial or Discontinuance of Disability Retirement Allowances**

3 (1) A final denial of an application for disability benefits, or any decision discontinuing a  
4 previously granted disability retirement allowance may be reviewed in a contested case hearing.

5 (2) A contested case hearing may be requested by a member by filing with the Board a  
6 written request as provided for in OAR 459-001-0035.

7 (3) The contested case hearing shall be heard before an administrative law judge designated  
8 by the Office of Administrative Hearings and conducted in accordance with the Attorney  
9 General's Model Rules of Procedure as adopted by OAR 459-001-0005. The member may  
10 represent himself or be represented by legal counsel. An Assistant Attorney General will appear  
11 at the hearing to assist the staff in presenting its position, and to assist in the development of a  
12 complete hearing record.

13 **(4) The Board generally deliberates and decides on final orders during regularly**  
14 **scheduled board meetings. The Board may instead deliberate and decide at any other time**  
15 **and place allowed by law, as determined on a case-by-case basis, such as electronically or**  
16 **via a telephone conference.**

17 *(4) Following the hearing, the hearings officer shall prepare or direct one of the parties to*  
18 *prepare a Proposed Findings of Fact, Conclusions of Law and Order and serve it on the parties.*  
19 *The administrative law judge's proposed order will become final 90 days following service upon*  
20 *the petitioner, the Director and the Board through the Director, unless objections are filed as*  
21 *provided in this rule. Objections may be filed by the Director or the petitioner within 45 days of*  
22 *service. If the Board determines additional time is necessary to review a proposed order and*

1 *issue an amended order, the Board may extend the time after which the proposed order will*  
2 *become final in accordance with ORS 183.464(3).]*

3 (5) In accordance with OAR 459-001-0040, *[prior to]* before initiating any judicial review  
4 of a final order, an applicant may file with the Board a petition for reconsideration.

5 (6) Any disputed claim concerning a disability retirement allowance or discontinuance of  
6 such allowance may be voluntarily settled on a lump-sum basis subject to recommendation of the  
7 assigned Assistant Attorney General and final approval of the Board. Settlements approved by  
8 the Board shall be paid upon receipt of a "Release and Covenant Not to Sue" signed by the  
9 applicant and *[his or her]* the applicant's attorney, if any.

10 Stat. Auth.: ORS 183.310 - 183.550, 183.600 - 183.690 & 238.650

11 Stats. Implemented: ORS 238.320 - 238.345

**OREGON ADMINISTRATIVE RULE**  
**PUBLIC EMPLOYEES RETIREMENT BOARD**  
**CHAPTER 459**  
**DIVISION 015 – DISABILITY RETIREMENT ALLOWANCES**

1   **459-015-0055**

2   **Selection of Benefit Option and Commencement of Allowance**

3       (1) Upon filing an application for a disability retirement allowance, the member may  
4   make a preliminary designation of beneficiary and a preliminary selection of benefit option.

5       (a) A member may choose from retirement Options 1, 2, 2A, 3, 3A, 15 year certain or  
6   refund annuity as set forth in ORS 238.300 and 238.305, or an optional disability retirement  
7   allowance under ORS 238.325.

8       (b) A member may not choose a lump-sum option.

9       (2) Within 90 days following the Director's, or the Director's designee's, approval of the  
10   application for disability retirement allowance, the member must complete a final designation  
11   of beneficiary and selection of benefit option on forms provided by PERS. Receipt of the final  
12   forms will super[*c*]/sede any preliminary beneficiary designation or benefit option.

13       (a) The final option selected applies only to the corresponding time period the member is  
14   receiving a disability retirement allowance.

15       (b) The beneficiary designation or benefit option may be changed up to 60 days after the  
16   date of the first actual (not estimated) benefit payment as provided in ORS 238.325(2). The  
17   beneficiary or benefit option change will be retroactive to the effective disability  
18   retirement date.

19       (c) If a member's disability retirement allowance is canceled before the first benefit  
20   payment or is discontinued, the option selected for the purposes of that disability retirement  
21   allowance is canceled and a new option may be selected upon a subsequent disability or [*a*]  
22   service retirement.

1           (3) If the member does not complete a final selection of benefit option within 90 days  
2 following the Director’s, or the Director’s designee’s, approval of the application for disability  
3 retirement allowance:

4           (a) The benefit will be the benefit as set forth under ORS 238.320(1); and

5           (b) The latest beneficiary designation on file for the PERS Chapter 238 Program will be  
6 used to determine the default beneficiary. If no designation exists, the beneficiary will be as  
7 provided for under ORS 238.390(2).

8           (4) Purchases. If a member is eligible to purchase additional creditable service or  
9 retirement credit under ORS Chapter 238, the member must submit payment for the  
10 purchase(s) at the time the member submits the final selection of benefit option form required  
11 under section (2) of this rule.

12           (5) The payment of a disability retirement allowance shall commence within *[ten]* 10  
13 business days following receipt by PERS of all of the following items, or the date the first  
14 payment is due, as set forth in Section (6) of this rule, whichever is later:

15           (a) From the member:

16           (A) Final designation of beneficiary and selection of benefit option form;

17           (B) Proof of member’s age;

18           (C) Proof of age for the designated beneficiary if a joint survivor option is elected; and

19           (D) Spousal consent form.

20           (b) From the employer:

21           (A) Financial; and

22           (B) Demographic information indicating the member has separated from PERS-covered  
23 employment.

1 (6) A disability payment is first due on the later of:

2 (a) The first of the calendar month in which the member files a complete application for  
3 disability benefits with PERS; or

4 (b) The first of the month following the first full calendar month after final payment by  
5 the employer of any wages or paid leave benefits to the member, excluding any cash payoff of  
6 accrued vacation or compensatory time; or

7 (c) The first of the calendar month following the date that the disability application is  
8 approved by the Director.

9 *[(d)] (7)* Notwithstanding *[sub]* section*[s (a), (b) and (c)] (6)* of this *[section]* **rule**, no  
10 payment shall be made *[prior to]* **before** the end of the period of 90 consecutive days  
11 beginning with the date of disability *[as defined in OAR 459-015-0001(4);]* and **shall be**  
12 **retroactive to the effective date of disability.**

13 *[(e) A disability retirement allowance shall be retroactive to the effective date of*  
14 *disability.]*

15 *[(7)] (8)* If PERS cannot calculate the actual disability benefit payment, an estimated  
16 payment will be made until PERS receives all the necessary information needed to calculate  
17 the actual benefit payment. The payment will be made retroactive to the effective date of  
18 disability if the benefits become due before the 90 consecutive day period of incapacitation has  
19 elapsed.

20 (a) If the estimated payment results in an underpayment of \$10 or more a month, the  
21 member will receive interest based on the provisions set forth in OAR 459-007-0015.

1 (b) If the estimated payment results in an overpayment of any amount, the overpayments  
 2 may be recovered by decreasing the monthly benefit amount until the difference between the  
 3 amount the member received and the amount the member should have received is recovered.

4 *[(8) Within the 60 day period following the issue date of the first actual (not estimated)*  
 5 *benefit payment, the member may change their benefit option. The Option change will be*  
 6 *retroactive to the effective disability retirement date.]*

7 (9) Minimum disability benefit. A disability benefit will not be less than \$100 per month  
 8 under the non-refund Option 1 benefit or the amount the member would have received for  
 9 service retirement, if eligible, whichever is higher.

10 (10) In the event a member applying for a disability retirement allowance dies *[prior to]*  
 11 before the Director’s approval of the application:

12 (a)(A) If the member has made a preliminary benefit option election, the preliminary  
 13 election shall be effective upon the Director’s approval of the application for disability  
 14 retirement.

15 (B) If the deceased member was eligible to purchase additional creditable service or  
 16 retirement credit under ORS Chapter 238, the beneficiary, if any, designated in the preliminary  
 17 election may make the purchase(s) by submitting the required forms and payment within 90  
 18 days from the date the disability application is approved.

19 (b) If the member has not made a preliminary benefit option election, the member will be  
 20 considered as having died before retirement.

21 (A) If the beneficiary designated under ORS 238.390(1) is the surviving spouse, the  
 22 surviving spouse may, within 90 days from the date the disability application is approved,

1 elect to have either Option 2 or 3 disability benefits or pre-retirement death benefits, as  
2 provided in ORS 238.390 or 238.395, if eligible.

3 (i) Regardless of the election made by the surviving spouse under paragraph (b)(A) of this  
4 section, all benefits will cease upon the surviving spouse's death.

5 (ii) If the deceased member was eligible to purchase additional creditable service or  
6 retirement credit under ORS Chapter 238, a surviving spouse who elects disability benefits  
7 under paragraph (b)(A) of this section, may make the purchase(s) by submitting the required  
8 forms and payment at the time of the election.

9 (B) If the beneficiary designated under ORS 238.390(1) is not the surviving spouse, the  
10 beneficiary will receive pre-retirement death benefits as provided in ORS 238.390 or 238.395,  
11 if eligible.

12 Stat. Auth.: ORS 238.650

13 Stats. Implemented: ORS 238.320, 238.325 & 238.330





# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 21, 2010

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Notice of Rulemaking for Employer Remitting of Employee Contributions Rule: 459-009-0200, *Employer Remitting of Employee Contributions*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: The rule currently addresses employee contributions made under Chapter 238 and needs to be updated to address employee contributions under Chapter 238A and judge member contributions.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

OAR 459-009-0200 covers employer remittance of employee contributions under Chapter 238, which have not existed since January 1, 2004. Employee contributions and employer payment of employee contributions are now governed by Chapter 238A. The proposed edits to the rule address employee contributions under Chapter 238A, remitting of judge member employer contributions, and correct both IRC citations and the reference to the remittance rule, OAR 459-070-0010.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held on May 25, 2010 at 1:00 p.m. at PERS headquarters in Tigard. The public comment period ends on June 4, 2010 at 5:00 p.m.

### LEGAL REVIEW

The attached draft rule was submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rule is presented for adoption.

### IMPACT

Mandatory: Yes; with the statutory re-direction of contributions, the rule should be updated.

Impact: Clarifies employee contributions and employer payment of employee contributions under PERS Chapter 238A and judge member contributions.

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

RULEMAKING TIMELINE

February 12, 2010	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
March 1, 2010	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
May 21, 2010	PERS Board notified that staff began the rulemaking process.
May 25, 2010	Rulemaking hearing to be held at 2:00 p.m. in Tigard.
June 4, 2010	Public comment period ends at 5:00 p.m.
July 23, 2010	Staff will propose adopting the permanent rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

NEXT STEPS

A hearing will be held on May 25, 2010 at PERS Headquarters in Tigard. The public comment period ends on June 4, 2010 at 5:00 p.m. The rule is scheduled to be brought before the PERS Board for adoption at the July 23, 2010 Board meeting.

B.2. Attachment 1 – 459-009-0200, *Employer Remitting of Employee Contributions*

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

1 **459-009-0200**

2 **Employer Remitting of Employee Contributions**

3 (1) *[Except as provided in ORS 238.200(1)(b), a]* A participating employer shall  
 4 remit to PERS in accordance with OAR 459-070-0110 *[459-009-0100 six percent (6%)*  
 5 *of gross salary and wages for each active member employed as]* the contributions  
 6 required *[in]* by ORS *[238.200(1)(a)]* 238A.330. Unless otherwise agreed to as provided  
 7 for in sections (2) or (3) of this rule, the employer shall withhold and remit the required  
 8 contributions on an after-tax basis as defined in OAR 459-005-0001 *[(36)](2)*, *[and]*  
 9 which shall be known as “member paid after-tax contributions (MPAT)”.

10 (2) In accordance with Internal Revenue Code (IRC) Section 414(h), and under  
 11 provision of ORS *[238.205(2)]* 238A.335(2)(b), participating employers may voluntarily  
 12 agree to assume and pay the *[six percent]* employee contribution on behalf of its  
 13 employees, *[and]* which shall be known as “employer paid pre-tax contributions  
 14 (EPPT)”. The employer assumption and payment of the *[uniform six percent]* employee  
 15 contributions shall be subject to the following terms and conditions:

16 (a) The employer’s employment agreement(s) to assume and pay the contributions  
 17 must be evidenced by a certified copy of the employer’s policy established by statute,  
 18 charter, ordinance, administrative rule, executive order, collective bargaining agreement,  
 19 or other written employment policy or agreement. The employer’s employment policy(s)  
 20 or agreement(s) shall specify that:

1 (A) *[That t]* The required PERS employee contribution *[of six percent of salary]* is  
2 deemed to be *[“]*picked up*[”]* for purposes of IRC Section 414(h)(2) and is assumed and  
3 paid for purposes of ORS *[238.205(5)(b)]* 238A.335(2)(b);

4 (B) *[That t]* The employees do not have the option of receiving the assumed amount  
5 directly;

6 (C) *[That e]* Employee compensation *[shall]* may not be reduced and *[that]* the  
7 employer shall provide the additional amounts necessary to make the employee  
8 contributions; and

9 (D) *[That t]* The employer’s employment policy(s) or agreement(s) is not retroactive  
10 in its application.

11 (b) The employer’s employment policy(s) or agreement(s) to assume and pay  
12 employee contributions *[shall]* may not be construed to require an employer to open or  
13 renegotiate a pre-existing collective bargaining agreement or change an employment  
14 policy before its normal expiration date.

15 (c) The employer’s employment policy(s) or agreement(s) must be to assume and  
16 pay the full amount, and not a portion thereof, of the affected employees’ *[six percent]*  
17 contributions required by ORS *[238.200]* 238A.330.

18 (d) The employer’s policy(s) or agreement(s) may apply to all its employees or some  
19 of its employees. If it applies only to some employees, it shall apply uniformly to all  
20 employees of the public employer who are employed in similarly situated positions, such  
21 as, but not limited to:

22 (A) The chief executive officer or administrative head of a public employer.

1 (B) Management personnel, as defined by the public employer, not otherwise  
2 covered by a collective bargaining agreement.

3 (C) Confidential personnel, as defined by the public employer, not otherwise  
4 covered by a collective bargaining agreement.

5 (D) Administrative personnel, as defined by the public employer, not otherwise  
6 covered by a collective bargaining agreement.

7 (E) Personnel covered by a collective bargaining agreement.

8 (F) Other personnel, whether full time, part time, temporary, or as a substitute, who  
9 are not covered by a collective bargaining agreement.

10 (3) *[In accordance with IRC Section 414(h) and u]* Under provision of ORS  
11 *[238.205(3)] 238A.335(2)(a)*, participating employers may voluntarily agree to “pick-up”  
12 the employee contributions withheld, and such picked-up contributions shall be known as  
13 “member paid pre-tax contributions (MPPT)”. The employer “pick-up” of the *[uniform*  
14 *six percent]* employee contributions shall be subject to the following terms and  
15 conditions:

16 (a) The employer’s agreement(s) to “pick-up” the contributions must be evidenced  
17 by a certified copy of the employer’s policy established by statute, charter, ordinance,  
18 administrative rule, executive order, collective bargaining agreement, or other written  
19 employment policy or agreement<sup>[,]</sup>. The employer’s policy(s) or agreement(s) shall  
20 specify that:

21 *[(A) That the required PERS employee contribution of six percent of salary is*  
22 *deemed to be “picked up” for purposes of IRC, Section 414(h)(2) and ORS*  
23 *238.205(5)(a);]*

1 ~~[(B)]~~ (A) ~~[That t]~~ The employees do not have the option of receiving the picked-up  
2 amount directly;

3 ~~[(C)]~~ (B) ~~[That]~~ The employee compensation shall be reduced by the amount  
4 necessary to make the employee contributions; and

5 ~~[(D)]~~ (C) ~~[That t]~~ The employer’s policy(s) or agreement(s) is not retroactive in its  
6 application.

7 (b) The employer’s employment policy(s) or agreement(s) to “pick-up” employee  
8 contributions withheld ~~[shall]~~ may not be construed to require an employer to open or re-  
9 negotiate a pre-existing collective bargaining agreement or change an employment policy  
10 before its normal expiration date.

11 (c) The employer’s policy(s) or agreement(s) must be to “pick-up” the full amount,  
12 and not a portion thereof, of the affected employees’ ~~[six percent]~~ contributions required  
13 by ORS ~~[238.200]~~ 238A.330.

14 (d) The employer’s employment policy(s) or agreement(s) may apply to all its  
15 employees, or some of its employees. If it applies to only some of its employees, it shall  
16 apply uniformly to all employees of the public employer who are employed in similarly  
17 situated positions, such as, but not limited to:

18 (A) The chief executive officer or administrative head of a public employer.

19 (B) Management personnel, as defined by the public employer, not otherwise  
20 covered by a collective bargaining agreement.

21 (C) Confidential personnel, as defined by the public employer, not otherwise  
22 covered by a collective bargaining agreement.

1            (D) Administrative personnel, as defined by the public employer, not otherwise  
2 covered by a collective bargaining agreement.

3            (E) Personnel covered by a collective bargaining agreement.

4            (F) Other personnel, whether full time, part time, temporary, or as a substitute, who  
5 are not covered by a collective bargaining agreement.

6            (4) The notification of the employer’s written employment policy(s) or agreement(s)  
7 to enter into or to revoke (1) the “pick-up”, or (2) to assume and pay contributions on  
8 behalf of employees, shall be submitted to PERS for review and approval, and shall  
9 become effective on the date the notification is received by PERS. Additional  
10 information related to the employer’s policy or agreement shall be provided at the request  
11 of staff and in the manner required by staff. If approved by PERS, such policy and  
12 agreement *[shall]* **may** not be revoked by the employer except with prior written notice  
13 to PERS. All costs to correct any errors caused by failure to give required notice shall be  
14 borne by the employer.

15            **(5) Notwithstanding sections (1) to (4) of this rule, judge member contributions**  
16 **shall be made in accordance with ORS 238.515.**

17            Stat. Auth.: ORS 238.650 **& 238A.450**

18            Stats. Implemented: ORS *[238.205]* **238.515, 238A.330 & 238A.335**





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Theodore R. Kulongoski, Governor

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May 21, 2010

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director

SUBJECT: First Reading of OPSRP Health Insurance Rules:  
 OAR 459-035-0000, *Policy and Goals*  
 OAR 459-035-0001, *Definitions*  
 OAR 459-035-0020, *Eligibility, General*  
 OAR 459-035-0030, *Eligibility, Retirement Health Insurance Account*  
 OAR 459-035-0040, *Eligibility, Retiree Health Insurance Premium Account*

### OVERVIEW

- Action: None. This is the first reading of Health Insurance Program rules impacted by SB 897.
- Reason: To update several Health Insurance rules to comply with the expanded eligibility provisions of SB 897, effective February 8, 2010.
- Policy Issue: No policy issues have been identified at this time.

### BACKGROUND

Senate Bill 897, which became effective on February 8, 2010, allows OPSRP Pension Program retired members, their spouses, and eligible dependents to participate in the PERS Health Insurance Program. The modifications necessary to include those persons were adopted as temporary rules at the PERS Board's March 29, 2010 meeting.

Originally, adoption of permanent rule modifications on this subject was scheduled for the Board's May 21 Board meeting, but a delay in adoption is now advisable. Modifications to these rules that would allow PERS to extend health insurance participation to registered domestic partners are part of the plan determination submission currently under consideration by the IRS. Those modifications were adopted by the Board but not filed until the IRS ruled on our plan's compliance. In the hopes that the IRS may provide definitive guidance before permanent rules must be adopted, staff recommends postponing adoption until the July 23, 2010 Board meeting.

- B.3. Attachment 1 – 459-035-0000, *Policy and Goals*
- B.3. Attachment 2 – 459-035-0001, *Definitions*
- B.3. Attachment 3 – 459-035-0020, *Eligibility, General*
- B.3. Attachment 4 – 459-035-0030, *Eligibility, Retirement Health Insurance Account*
- B.3. Attachment 5 – 459-035-0040, *Eligibility, Retiree Health Insurance Premium Account*



**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1 **459-035-0000**

2 **Policy and Goals**

3 (1) The health insurance plans of the Public Employees Retirement System (PERS)  
4 are established and shall be administered as provided in ORS 238.410, 238.415, *[and]*  
5 238.420 and 238A.050. The Public Employees Retirement Board (Board) may enter into  
6 one or more contracts with health insurance carriers licensed to do business in the State  
7 of Oregon, or certified in another state that is operating under the laws of that state, to  
8 obtain health insurance coverage for eligible retirees, and their spouses or dependents.

9 (2) Benefits shall be provided under the Board's health insurance programs for  
10 eligible persons through retiree contributions and any other available funding to cover the  
11 Board's costs of health care coverage and administration under insurance contract  
12 between the Board and insurance carriers.

13 Stat. Auth.: ORS 238.410, *[&]* ORS 238.650 & 238A.450

14 Stats. Implemented: ORS 238.410, ORS 238.415, *[&]* ORS 238.420 & 238A.050



**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1   **459-035-0001**

2   **Definitions**

3       The words and phrases used in this division have the same meaning given them in  
4   ORS Chapters 238 and 238A. Additional terms are defined as follows unless the context  
5   requires otherwise.

6       (1) “Board” means the Public Employees Retirement Board as established in ORS  
7   238.630.

8       (2) “Carrier” *[shall have]* **has** the same meaning as provided in ORS 238.410(1)(a).

9       (3) “Competitive Negotiations” means the procurement method whereby proposals  
10   are requested from a number of sources and the Request for Proposals is publicized.

11       (4) “Creditable Service” *[shall have]* **has** the same meaning as provided in ORS  
12   238.005(5).

13       (5) “Dependent” means a PERS member’s or retiree’s dependent child who has  
14   never married. For the purpose of this rule a “child” is defined as follows:

15       (a) A natural child.

16       (b) A legally adopted child, or a child placed in the home pending adoption.

17       (c) A step-child who resides in the household of the stepparent who is an eligible  
18   retired member.

19       (d) A grandchild, provided that at the time of birth, at least one of the grandchild’s  
20   parents was covered under a PERS-sponsored health insurance plan as a dependent child  
21   of the PERS member or retiree and resides in the household of the member or retiree.

1 (6) “Dependent Domestic Partner of a PERS Retiree” means a person who has a  
2 relationship with a PERS retiree that has the characteristics described below. To qualify  
3 as a “dependent domestic partner of a PERS retiree,” the person and the PERS retiree  
4 must:

5 (a) Share a close personal relationship and be responsible for each other’s common  
6 welfare, including but not limited to having joint financial responsibilities;

7 (b) Be each other’s sole domestic partner;

8 (c) Not be married to anyone, nor have had another domestic partner within the  
9 previous 12 months;

10 (d) Not be related by blood so closely as to bar marriage in the State of Oregon;

11 (e) Have jointly shared the same regular and permanent residence for at least 12  
12 months immediately preceding the effective date of coverage with the intent to continue  
13 doing so indefinitely; and

14 (f) Have the PERS retiree providing over one-half of the financial support for the  
15 person and qualify as a dependent of the PERS retiree as determined under section 105(b)  
16 of the Internal Revenue Code, 26 USC 105(b)[, *as amended by the Working Families Tax*  
17 *Relief Act of 2004, P.L. 108-311*].

18 (7) “Eligible Person” means a person who is eligible for coverage under a PERS-  
19 sponsored health insurance plan. The conditions for such eligibility are set forth in OAR  
20 459-035-0020.

21 (8) “Eligible Retired Member” means an eligible person who is eligible for payments  
22 toward the cost of the Medicare Companion Plan from RHIA. The conditions for such  
23 eligibility are set forth in OAR 459-035-0030.

1            (9) “Eligible Retired State Employee” means an eligible person who is eligible for  
2 non-Medicare insurance premium payments from the RHIPA. Conditions for such  
3 eligibility are set forth in OAR 459-035-0040.

4            (10) “Fund” *[shall have]* has the same meaning as the Public Employees Retirement  
5 Fund in ORS 238.660.

6            (11) “Health Insurance” means insurance for health care, as that term is defined in  
7 ORS 238.410(1)(c).

8            (12) “Medicare” means the federal health care insurance plan established under Title  
9 XVIII of the Social Security Act as amended.

10           (13) “Medicare Companion Plan” means a PERS-sponsored health insurance plan  
11 for eligible persons who are eligible for and enrolled in Medicare.

12           (14) “Non-Competitive Negotiation” means procurement through solicitation of a  
13 proposal from only one source.

14           (15) “PEBB” means the Public Employees’ Benefit Board established under ORS  
15 243.061.

16           (16) “PERS” *[shall have]* has the same meaning as the Public Employees  
17 Retirement System in ORS 238.600.

18           (17) “PERS Member” *[shall have]* has the same meaning as “member” provided in  
19 ORS 238.005(12) and 238A.005(10).

20           (18) “Plan Year” means a 12-month period beginning January 1 and ending  
21 December 31.

22           (19) “Qualifying Service” means:

1 (a) *[c]*Creditable service, as defined in ORS 238.005(5), plus any periods of  
2 employment with an employer participating in PERS that are required of the employee  
3 before becoming a PERS member*[.]*; or

4 (b) Periods of employment in a qualifying position, as that term is defined in  
5 ORS 238A.005(14).

6 (20) “Retiree” means a PERS member who is receiving a service or disability  
7 retirement allowance or benefit under PERS or who received a*[n optional]* lump sum  
8 payment under ORS 238.305(3), 238.315, or 238A.195, or payment(s) under ORS  
9 238A.400, or a person who is receiving retirement pay or pension calculated under ORS  
10 1.314 to 1.380 (1989 Edition).

11 (21) “RHIA” means the Retirement Health Insurance Account established under  
12 ORS 238.420 to help defray the cost of the Medicare Companion Plan.

13 (22) “RHIPA” means the Retiree Health Insurance Premium Account established  
14 under ORS 238.415 to help defray the cost of PERS-sponsored health plans other than  
15 the Medicare Companion Plan.

16 (23) “Small Purchase Procedures” (informal bidding) means the relatively simple  
17 and informal procurement methods whereby price and rate quotations are obtained from  
18 at least three sources and selection is made on the basis of cost and other applicable  
19 criteria.

20 (24) “SRHIA” means the Standard Retiree Health Insurance account established  
21 *[within the Public Employees Retirement Fund separate from the General Funds]* to  
22 administer employee and the employer contributions to the PERS sponsored health  
23 insurance program.

1 (25) “Staff” means the employees of the Public Employees Retirement System.

2 (26) “Third Party Administrator” means the individual or organization that the Board  
3 contracts with to provide administrative services as specified in the contract.

4 Stat. Auth.: ORS 238.410, ~~238.650~~ & 238A.450

5 Stats. Implemented: ORS 238.410, 238.415, ~~238.420~~ & 238A.050



**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1 **459-035-0020**

2 **Eligibility, General**

3 This rule describes the eligibility requirements for a person to be eligible to  
4 participate in a PERS-sponsored health insurance plan. An “eligible person” includes a  
5 retiree, a spouse, a dependent, a dependent domestic partner, and a surviving spouse or  
6 dependent. Each category of “eligible person” is defined as follows:

7 (1) A retiree as defined in OAR 459-035-0001 ~~[(20)]~~(21).

8 (2) A spouse means the spouse of an eligible retiree.

9 (3) A dependent means a dependent child as defined in OAR 459-035-0001(5) ~~],~~  
10 ~~and] who~~ satisfies one of the following requirements: ~~[listed in subsections (a), (b), or~~  
11 ~~(c) that follow]:~~

12 (a) The child is less than 19 years of age ~~].];~~

13 (b) The child is less than 24 years of age, and is regularly enrolled and attending  
14 school; e.g. an academic, trade or vocational school ~~].]; or~~

15 (c) The child is 19 years of age or more and has either been continuously dependent  
16 upon the retiree since childhood due to disability or physical handicap, or has been  
17 covered under a health care insurance plan as the retiree’s dependent for at least 24  
18 consecutive months immediately ~~[prior to] before~~ enrollment in a PERS sponsored  
19 health insurance plan. In either case, the following additional requirements must also be  
20 satisfied:

1            (A) The child is not able to achieve self-support through his or her work due to a  
2 developmental disability, mental retardation or physical handicap as verified by a  
3 physician and accepted by the carrier; and

4            (B) The incapacity is continuous and began *[prior to]* before the date the child  
5 would otherwise have ceased to be an eligible dependent.

6            (4) A dependent domestic partner of a PERS retiree as defined in OAR 459-035-  
7 0001(6).

8            (5) A surviving spouse or dependent means:

9            (a) The surviving spouse or dependent of a deceased retired PERS member; or

10           (b) The surviving spouse or dependent of a deceased PERS member who was not  
11 retired but who was eligible to retire at the time of death; or

12           (c) The surviving spouse or dependent of a deceased retiree who was receiving a  
13 retirement payment or benefit, or a pension calculated under ORS 1.314 to 1.380 (1989  
14 Edition), provided that the surviving spouse or dependent was covered under a PERS  
15 sponsored health insurance plan at the time of the retiree’s death.

16           (6) In no event shall an eligible person as defined in this rule be entitled to coverage  
17 under more than one PERS-sponsored health insurance plan other than a medical, *[and a]*  
18 dental, *[plan]* or long term care plan.

19           (7) In no event shall an eligible person as defined in this rule be entitled to coverage  
20 as both a retiree and a spouse, dependent, or depend*[a]*ent domestic partner.

21           Stat. Auth: ORS 238.410, *[&]* 238.650 & 238A.450

22           Stats. Implemented: ORS 238.410, 238.415, *[&]* 238.420 & 238A.050

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1 **459-035-0030**

2 **Eligibility, Retirement Health Insurance Account**

3 This rule describes the requirements for an “eligible retired member” participating in  
4 a PERS-sponsored Medicare Companion Plan to be eligible for contributions from the  
5 RHIA toward the cost of premiums for that plan. The amount of the contribution is  
6 defined in OAR 459-035-0060. An “eligible retired member” must be a Tier One or  
7 Tier Two member and *[shall]* includes the following:

8 (1) A retiree who is enrolled in Parts A and B of Medicare and who:

9 (a) Is retired, is receiving a PERS service or disability retirement allowance, and had  
10 eight or more years of qualifying service as defined in OAR 459-035-0001(19)(a) at the  
11 time of retirement; or

12 (b) Is receiving a PERS disability retirement allowance computed as if he or she had  
13 eight years or more of creditable service as defined in ORS 238.005(5).

14 (2) A surviving spouse or dependent of a deceased eligible retired member as  
15 described in section (1) of this rule, who is enrolled in Parts A and B of Medicare, and  
16 who:

17 (a) Is receiving a retirement allowance or benefit from PERS; or

18 (b) Was covered under the retired member’s PERS-sponsored health insurance plan  
19 and the deceased retired member retired before May 1, 1991.

20 (3) An eligible surviving spouse or dependent receiving benefits under the 15-year  
21 certain optional form of benefit payment (ORS 238.305 Option 4) will be entitled to

1 contributions from the RHIA only until the remainder of the 180 monthly benefit  
2 payments are paid, unless he or she meets the requirements in subsection (2)(b) this rule.

3       (4) If both an eligible surviving spouse and an eligible surviving dependent are  
4 receiving benefits at the same time under the 15-year certain optional form of benefit  
5 payment (ORS 238.305 Option 4), only the eligible surviving spouse shall be entitled to  
6 contributions from the RHIA unless the surviving spouse, in writing, waives the  
7 contribution in favor of the eligible surviving dependent.

8       Stat. Auth: ORS 238.650

9       Stats. Implemented: ORS 238.420

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 035 – HEALTH INSURANCE PROGRAMS**

1 **459-035-0040**

2 **Eligibility, Retiree Health Insurance Premium Account**

3 This rule describes the eligibility requirements for an “eligible retired state  
4 employee” participating in a PERS-sponsored health insurance plan, exclusive of dental  
5 coverage and long term care coverage, to be eligible for a contribution from the RHIPA  
6 toward the cost of premiums for that health insurance plan. The amount of the  
7 contribution is established in OAR 459-035-0050.

8 **(1)** An “eligible retired state employee” **is a Tier One or Tier Two member** *[shall*  
9 *include the following:*

10 *(1) A retiree]* **who is not eligible for Medicare,** *[who]* was **an active** state employee  
11 at the time of retirement, and **immediately applies for PERS retirement effective the**  
12 **first of the month following termination of state employment** *[and who is not eligible*  
13 *for Medicare]*, and who:

14 (a) Is receiving a PERS service or disability retirement allowance *[or benefit]*, and  
15 had **[8] eight** or more years of qualifying service as defined in OAR 459-035-  
16 0001(19)**(a)** at the time of retirement; or

17 (b) Is receiving a PERS disability retirement allowance *[or benefit]* computed as if  
18 the member had eight or more years of creditable service as defined in ORS 238.005(5),  
19 and has attained the earliest service retirement age under ORS 238.280.

20 (2) A surviving spouse or dependent of a deceased eligible retired state employee, as  
21 described in section (1) of this rule, who is not eligible for Medicare, and who:

22 (a) Is receiving a retirement allowance *[or benefit]* from PERS; or

1 (b) Was covered under the eligible retired state employee’s PERS-sponsored health  
2 insurance plan, and the eligible retired state employee retired on or after September 29,  
3 1991.

4 (3) An eligible surviving spouse or dependent receiving benefits under the 15-year  
5 certain optional form of benefit payment (ORS 238.305 Option 4) will be entitled to  
6 contributions from the RHIPA only until the remainder of the 180 monthly benefit  
7 payments are paid, unless he or she meets the requirement of subsection (2)(b) of this  
8 rule.

9 (4) If both an eligible surviving spouse and an eligible surviving dependent are  
10 receiving benefits at the same time under the 15-year certain optional form of benefit  
11 payment (ORS 238.305 Option 4), only the eligible surviving spouse shall be entitled to  
12 contributions from the RHIPA unless the surviving spouse, in writing, waives the  
13 contribution in favor of the eligible surviving dependent.

14 Stat. Auth: ORS 238.650

15 Stats. Implemented: ORS 238.415



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 21, 2010

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director

SUBJECT: Adoption of Domestic Relations Orders Rules:  
459-045-0000, *Authority and Purpose*  
459-045-0001, *Definitions*  
459-045-0010, *Chapter 238 Tier One/Tier Two Division of Benefits*  
459-045-0012, *OPSRP Pension Program Division of Benefits*  
459-045-0014, *Individual Account Program (IAP) Division of Benefits*  
459-045-0020, *Court Orders*  
459-045-0030, *General Administration for Chapter 238 Tier One/Tier Two*  
459-045-0032, *General Administration for OPSRP Pension Program*  
459-045-0034, *General Administration for Individual Account Program (IAP)*  
459-045-0040, *Requesting Information from PERS*  
459-045-0050, *Application Requirements for Alternate Payees*  
459-045-0060, *General Rules for Calculating Benefits*  
459-045-0080, *PERS Notifications*  
459-045-0090, *PERS Administrative Fee*

### OVERVIEW

- Action: Adopt new rules and modifications to existing rules in Division 45, Domestic Relations Orders.
- Reason: Create new rules to address domestic relations orders for members of Chapter 238A OPSRP Pension Program and Individual Account Program (IAP); modify existing rules to reference Chapter 238A and PERS divorce forms; address domestic partner issues; and edit for clarity.
- Policy Issue: No policy issues were identified.

### BACKGROUND

ORS 238.465 provides for an award to an alternate payee of a portion of the benefits of a PERS member due to annulment, separation, divorce, or a property settlement, pursuant to a court order. By reference, this provision applies to benefits provided under both ORS Chapter 238 and 238A. In 2008, PERS received 1,017 court orders; processed 683 retirement calculations for members/alternate payees; provided 695 divorce related estimates; and split 324 accounts.

PERS reviews all court orders to determine if its provisions can be administered under PERS laws and rules. The rules in this division are intended to provide direction and clarity so practitioners can more readily develop court orders that can be administered.

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These proposed rule modifications update references to add the OPSRP Pension Program and the Individual Account Program (IAP) under Chapter 238A by adding two new rules to address the general administration for each program as well as two new rules on the division of benefits for those programs. All the other rule modifications were edits for clarity; to eliminate repetitive language; and to add references to the Chapter 238A programs.

Additionally, these rules were delayed from a projected adoption at the Board's March 29, 2010 meeting because additional modifications could be included addressing the administration of court orders issued in connection with a registered domestic partnership. Public comment was extended, and adoption delayed until this meeting. No comments were received on these new provisions, so staff recommends proceeding with adoption at this meeting.

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

459-045-0010(2)(a), (3)(a) and (4)(a), Chapter 238 Tier One / Tier Two Division of Benefits  
459-045-0012(2)(a), (3)(a) and (4)(a), OPSRP Pension Program Division of Benefits  
459-045-0014(2)(a) and (3)(a), Individual Account Program (IAP) Division of Benefits

A sentence was added to subsection (a) of each method for dividing benefits, to clarify that if the court order did not specify a date of annulment, separation, divorce, or property settlement, PERS will use the date the judge signed the court order.

There were no substantive changes to other rules since first reading.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on December 22, 2009 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The first public comment period ended on March 10, 2010 at 5:00 p.m. The second public comment period ended on April 30, 2010 at 5:00 p.m. No public comment was received.

#### LEGAL REVIEW

The attached draft rules were submitted to the Department of Justice for legal review and any comments or changes are incorporated in the rules as presented for adoption.

#### IMPACT

Mandatory: Yes. No existing rules provide for the administration of domestic relations orders for the OPSRP Pension Program and Individual Account Program.

Impact: Members, their attorneys, employers, and staff will benefit from clear and consistent rules that address the complexities of the different programs when it comes to administering a domestic relations order.

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

#### RULEMAKING TIMELINE

October 14, 2009                      Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.

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November 1, 2009	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
December 22, 2009	Rulemaking hearing held at 2:00 p.m. in Tigard.
January 29, 2010	PERS Board notified that staff began the rulemaking process.
March 10, 2010	First public comment period ended at 5:00 p.m.
March 29, 2010	First reading of the rules.
April 30, 2010	Second public comment period ended at 5:00 p.m.
May 21, 2010	Board may adopt the modifications to the rules.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to Domestic Relations Orders Rules, as presented.”
2. Direct staff to make other changes to the rule or explore other options.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: New rules are needed to address domestic relations orders for members of the Chapter 238A OPSRP Pension Program and Individual Account Program (IAP); and modifications are needed to existing rules to reference Chapter 238A and PERS divorce forms; address domestic partner issues; and edits for clarity.

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.1. Attachment 1 – 459-045-0000, *Authority and Purpose*
- C.1. Attachment 2 – 459-045-0001, *Definitions*
- C.1. Attachment 3 – 459-045-0010, *Chapter 238 Tier One/Tier Two Division of Benefits*
- C.1. Attachment 4 – 459-045-0012, *OPSRP Pension Program Division of Benefits*
- C.1. Attachment 5 – 459-045-0014, *Individual Account Program (IAP) Division of Benefits*
- C.1. Attachment 6 – 459-045-0020, *Court Orders*
- C.1. Attachment 7 – 459-045-0030, *General Administration for Chapter 238 Tier One/Tier Two*
- C.1. Attachment 8 – 459-045-0032, *General Administration for OPSRP Pension Program*
- C.1. Attachment 9 – 459-045-0034, *General Administration for Individual Account Program (IAP)*
- C.1. Attachment 10 – 459-045-0040, *Requesting Information from PERS*
- C.1. Attachment 11 – 459-045-0050, *Application Requirements for Alternate Payees*
- C.1. Attachment 12 – 459-045-0060, *General Rules for Calculating Benefits*
- C.1. Attachment 13 – 459-045-0080, *PERS Notifications*
- C.1. Attachment 14 – 459-045-0090, *PERS Administrative Fee*

*This Item has been modified, please see the Walk-in Packet modifications following Item C.1.Attachment 14.*



**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **[459-045-0000**

2 ***Authority and Purpose***

3 *(1) In accordance with ORS 238.465(3), the provisions of ORS 238.465 (Oregon Laws*  
4 *1993, Chapter 715) shall be administered by the Public Employees Retirement System and*  
5 *under the policies and procedures established by the Public Employees Retirement Board. To*  
6 *this end, the Board and the staff shall:*

7 *(a) Provide for the administration of a separate account in PERS in the name of an*  
8 *alternate payee when so ordered by the court.*

9 *(b) Establish criteria to determine whether or not domestic relations orders, judgments of*  
10 *dissolution, divorce decrees, and marital property agreements comply with ORS 238.465.*

11 *(c) Establish definitions and procedures for the effective and efficient administration of*  
12 *ORS 238.465.*

13 *(2) The rules of this division are intended to provide a clear and complete description of*  
14 *the division of benefits payable under PERS and on how those divided benefits may be paid as*  
15 *provided for in ORS 238.465.*

16 *(3) PERS is a defined benefit plan and benefits are attributable to both employee and*  
17 *employer contributions.*

18 *(4) The rules contained in division 045 pertain to PERS benefits covered in ORS Chapter*  
19 *238, and not to the State's Deferred Compensation plan addressed in ORS Chapter 243.*

20 *Stat. Auth.: ORS 238.465(3) & 238.650*

21 *Stats. Implemented: ORS 238.465]*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0001**

2 **Definitions**

3 The words and phrases used in this division *[shall]* have the same meaning given  
4 them in ORS Chapters 238 and 238A. Specific and additional terms for purposes of this  
5 division are defined as follows unless context requires otherwise.

6 (1) “Administrable” means that the language in a final court order that outlines  
7 an alternate payee award can be administered within the provisions of ORS  
8 Chapters 238, 238A, and this division.

9 (2) “Alternate payee” means the recipient of an award of a portion or all of a  
10 PERS member’s account(s) or benefits as provided for in the terms of any judgment  
11 of annulment, dissolution of marriage, dissolution of registered domestic  
12 partnership, or separation, or the terms of any court order or court-approved  
13 property settlement agreement incident to any judgment of annulment, dissolution  
14 of marriage, dissolution of registered domestic partnership, or separation.

15 (3) “Alternate payee account” means a court-ordered separate account created  
16 under ORS 238.465 in the name of an alternate payee.

17 (4) “Alternate payee release” means a written statement that is signed by the  
18 alternate payee and received by PERS authorizing the release of information, and  
19 directing to whom and where the information is to be sent pertaining to:

20 (a) The alternate payee’s interest in the member’s account(s) or member’s  
21 vested interest in the Fund;

1 (b) The alternate payee’s account and benefit information if a separate account  
2 has been created in the name of the alternate payee;

3 (c) Benefit information applicable to either subsection (a) or (b) of this section;  
4 and

5 (d) Award information contained in any draft or final court order in regard to  
6 the alternate payee on record with PERS.

7 (5) “Award” means the portion of a member’s account(s) or of the member’s  
8 benefits under ORS Chapter 238 or 238A awarded to an alternate payee by a final  
9 court order.

10 (6) “Court order” means a court decree or judgment of annulment, dissolution  
11 of marriage, dissolution of registered domestic partnership, or separation, or the  
12 terms of any court order or court-approved property settlement agreement incident  
13 to any judgment of annulment, dissolution of marriage, dissolution of registered  
14 domestic partnership, or separation, which includes the content of any PERS  
15 divorce forms attached as exhibits.

16 (7) “Deduction” means an alternate payee’s award is subtracted from the  
17 member’s benefit(s) after tax.

18 (8) “Draft court order” means an order for dividing a PERS account(s) or  
19 benefits that has been prepared but not approved or signed by the court or filed  
20 with the court clerk, which includes the content of any PERS divorce forms attached  
21 as exhibits.

1        (9) “Final court order” means a court order that has been signed by a judge  
2 and shows the stamp of the court clerk or trial court administrator indicating the  
3 order is a certified copy of the original record that is on file with the court.

4        (10) “Joint and survivor annuity” means any retirement annuity option under  
5 which a monthly lifetime annuity is payable to a surviving beneficiary of a member.

6        (11) “Married time ratio” means the fraction in which the numerator is the  
7 years and months of creditable service time or retirement credit accrued by the  
8 member while married to or in a registered domestic partnership with the alternate  
9 payee as provided in the court order and the denominator is the member’s total  
10 creditable service time or retirement credit accrued by the member at the time of  
11 retirement.

12        (12) “Member” means a person described in ORS 238.005(12), 238.500(3), or  
13 238A.005(10), who is the current or former spouse or partner of an alternate payee.

14        (13) “Member release” means a written statement that is signed by a member  
15 and received by PERS authorizing the release of information, and directing to  
16 whom and where information is to be sent pertaining to:

17        (a) The member’s account(s);

18        (b) The member’s interest in the Fund;

19        (c) Benefit information applicable to either subsection (a) or (b) of this section;

20 and

21        (d) Award information contained in any draft or final court order in regard to  
22 the member on record with PERS.

23        (14) “Partner” has the same meaning as defined in ORS 106.310(2)

1        **(15) “PERS divorce forms” means the forms provided by PERS that must be**  
2        **completed to describe a court order’s provisions relating to administration of a**  
3        **member’s benefit that is subject to that order.**

4        **(16) “Reduction” means an alternate payee’s award is subtracted from the**  
5        **member’s benefit(s) before tax.**

6        **(17) “Registered domestic partnership” has the same meaning as domestic**  
7        **partnership as defined in ORS 106.310(1).**

8        *[(1) “Board” shall have the same meaning as the Public Employees Retirement*  
9        *Board as defined in ORS 238.630.]*

10        *[(2) “PERS” shall have the same meaning as the Public Employees Retirement*  
11        *System as defined in ORS 238.600.]*

12        *[(3) “Fund” shall have the same meaning as the Public Employees Retirement Fund*  
13        *in ORS 238.660.]*

14        *[(4) “Staff” means the employees of the Public Employees Retirement System as*  
15        *provided in ORS 238.645.]*

16        *[(5) “Member” means a person described in ORS 238.005(12) and 238.500(3), and*  
17        *who is the current or former spouse of an alternate payee.]*

18        *[(6) “Alternate payee” means a spouse or former spouse of a PERS member, who is*  
19        *awarded a portion of the member’s PERS benefits by a court.]*

20        *[(7) “Member’s PERS account” means:]*

21        *[(a) The member’s individual account in the Fund as defined in ORS 238.250; and]*

22        *[(b) The member’s account in the Variable Annuity Account in the Fund as defined*  
23        *in ORS 238.260.]*

1        *[(c) The accounts described in subsections (a) and (b) of section consist of:]*  
2        *[(A) Member before-tax contributions paid to PERS under ORS 238.200;]*  
3        *[(B) Member after-tax contributions paid to PERS under ORS 238.205; and]*  
4        *[(C) Interest and earnings credited to each of the accounts described in paragraphs*  
5        *(A) and (B) of this subsection.]*

6        *[(d) Shall apply only to an active or an inactive member, and shall not apply to a*  
7        *retired member.]*

8        *[(8) “PERS funds” means the member’s PERS account [as defined in section (7) of*  
9        *this rule] and the member’s vested interest in employer contributions paid into the Fund*  
10        *in accordance with ORS 238.225, but shall not include:]*

11        *[(a) Employer contributions for police and fire benefit units pursuant to ORS*  
12        *238.440.]*

13        *[(b) Employer contributions paid into the Fund that the member is not vested in*  
14        *pursuant to ORS 238.265.]*

15        *[(9) “Alternate Payee Account” means a court-ordered separate account created*  
16        *under ORS 238.465 in the name of an alternate payee, and established as of the award*  
17        *date stated in the court order. The award date shall be before, or at the time refund,*  
18        *death, service or disability retirement benefits become payable to the member or the*  
19        *member’s beneficiary.]*

20        *[(10) “Alternate payee’s award” is the portion of a member’s PERS account or of*  
21        *the member’s PERS funds awarded to an alternate payee by a court order, and may*  
22        *include the creation of a separate account in the Fund in the name of the alternate*  
23        *payee.]*

1        *[(11) “Member Release” means a written statement that is signed by a member and*  
2 *received by staff authorizing the release of information, and directing to whom and where*  
3 *information is to be sent:*

4        *(a) Pertaining to the member’s PERS account;*

5        *(b) Pertaining to the member’s interest in the Fund; or*

6        *(c) Pertaining to benefit information applicable to either subsection (a) or (b) of this*  
7 *section.*

8        *(d) Pertaining to award information contained in any draft or final court order in*  
9 *regard to the member on record with PERS.]*

10       *[(12) “Alternate Payee Release” means a written statement that is signed by the*  
11 *alternate payee and received by staff authorizing the release of information, and*  
12 *directing to whom and to where the information is to be sent:*

13       *(a) Pertaining to the alternate payee’s interest in the member’s PERS account or*  
14 *member’s vested interest in the Fund;*

15       *(b) Pertaining to the alternate payee’s account and benefit information if a separate*  
16 *account has been created in the name of the alternate payee; or*

17       *(c) Pertaining to benefit information applicable to either subsection (a) or (b) of this*  
18 *section.*

19       *(d) Pertaining to award information contained in any draft or final court order in*  
20 *regard to the alternate payee on record with PERS.]*

21       *[(13) A “Member Release” and an “Alternate Payee Release” shall include a valid*  
22 *subpoena or court order requiring PERS to provide information to someone other than*  
23 *the member or the alternate payee.]*

1        *[(14) “Vested” has the same meaning as provided in ORS 239.005(24). Whether or*  
2 *not a member is considered to be vested shall be determined solely by ORS 238.265*  
3 *regardless of any language that may be contained in any type of court order received by*  
4 *PERS.]*

5        *[(15) “Separation from service” means the member separates from PERS covered*  
6 *employment due to death, service retirement, disability retirement, or termination of*  
7 *employment for which the requirements set forth in ORS 238.265 have been met.]*

8        *[(16) “Service retirement” shall have the same meaning as provided in ORS*  
9 *238.300.]*

10       *[(17) “Disability retirement” shall have the same meaning as provided in ORS*  
11 *238.320.]*

12       *[(18) “Joint and survivor annuity” shall mean any retirement annuity option under*  
13 *which a monthly lifetime annuity is payable to a surviving beneficiary of a member. The*  
14 *current joint and survivor annuities payable under PERS are Options 2, 2A, 3, and 3A*  
15 *described in ORS 238.305, and 238.325.]*

16       *[(19) “Integration” shall have the same meaning as provided in ORS 238.035,*  
17 *238.680 and 238.690.]*

18       *[(20) “Estimate” means a projection of benefits prepared by staff of a service or*  
19 *disability retirement allowance, a death or a refund payment. An estimate is not a*  
20 *guarantee or promise of actual benefits that eventually may become due and payable and*  
21 *PERS is not bound by any estimates it provides.]*

22       *[(21) “The earliest date the member would be eligible to receive retirement” shall*  
23 *have the same meaning as provided in ORS 238.005(6), or 238.280, or the date the*

1 *member is approved for disability retirement prior to reaching earliest service retirement*  
2 *eligibility.]*

3 *[(22) "PERS Plan Year" means a calendar year beginning January 1, and ending*  
4 *December 31.]*

5 *[(23) "PERS Administrative Fee" means the fee, not to exceed \$300, that shall be*  
6 *charged in accordance with ORS 238.465(9) to the member and/or alternate payee for*  
7 *actual and reasonable administrative cost incurred by PERS for establishing benefits for*  
8 *an alternate payee.]*

9 *[(24) "Fraction of the benefit" used to allocate expenses and costs under ORS*  
10 *238.465(9) means the percentage or ratio of a member's PERS account or member's*  
11 *vested interest in the Fund that is awarded by court decree or order to the alternate*  
12 *payee and the member as of the date of divorce, separation or annulment.]*

13 *[(25) "Court Order" means a court decree or judgment of dissolution of marriage,*  
14 *separation, or annulment, or the terms of any court order or court approved marital*  
15 *property settlement agreement, incident to any court decree or judgment of dissolution of*  
16 *marriage, separation, or annulment.]*

17 *[(26) "Final Court Order" means a court order or judgment that has been signed by*  
18 *a judge, and which shows the stamp of the court clerk or trial court administrator*  
19 *indicating the order is a certified copy of the original record that is on file with the*  
20 *court.]*

21 *[(27) "Draft Court Order" means an order for dividing a PERS account or benefits*  
22 *has been prepared but not approved or signed by the court or filed with the court clerk*  
23 *that contains proposed language on how PERS benefits are to be divided.]*

- 1 Stat. Auth.: ORS 238.465 ~~[(3) &]~~, 238.650 & 238A.450
- 2 Stats. Implemented: ORS 238.465

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0010**

2 **Chapter 238 Tier One / Tier Two Division of Benefits**

3 **(1) A final court order that provides for a division of benefits must use a**  
4 **method described in this rule.**

5 **(a) The method must be identified on PERS divorce forms.**

6 **(b) The PERS divorce forms must be attached as exhibits to the court order,**  
7 **and incorporated by reference in the court order.**

8 **(2) Award of Alternate Payee Account (Non-Retired Member). If a final court**  
9 **order provides an award of an alternate payee account, the court order must**  
10 **provide:**

11 **(a) The date of annulment, separation, divorce, or property settlement. If no**  
12 **date is provided, PERS will use the date the judge signed the court order. The**  
13 **separate account will be established as of December 31 of the calendar year before**  
14 **this date unless:**

15 **(A) A prior year is provided in the court order; or**

16 **(B) The date is December 31.**

17 **(b) That a separate account be established in an alternate payee's name.**

18 **(c) The method by which the award is to be calculated. One of the following**  
19 **methods must be used:**

20 **(A) A percentage, expressed in whole numbers; or**

21 **(B) A dollar amount.**

22 **(d) Whether an alternate payee is awarded matching employer dollars.**

1 (e) That an alternate payee may elect to receive the award at any time after the  
2 member's earliest retirement eligibility.

3 (3) Award of Payment from Member's Monthly Benefit (Non-Retired Member).  
4 If a final court order awards an alternate payee a reduction or deduction amount  
5 from the monthly service or disability retirement benefit that shall be paid in the  
6 future to the member, the court order must provide:

7 (a) The date of annulment, separation, divorce, or property settlement. If no  
8 date is provided, PERS will use the date the judge signed the court order.

9 (b) Whether the award is a reduction or deduction from the member's benefit.  
10 If the award is a reduction, the court order must provide whether the alternate  
11 payee is eligible to elect a separate benefit option at any time after the member  
12 reaches earliest retirement eligibility.

13 (c) The method by which the monthly award is to be calculated. One of the  
14 following methods must be used:

15 (A) A percentage, expressed in whole numbers only; or

16 (B) A dollar amount; or

17 (C) A percentage of the married time ratio. The court order must provide:

18 (i) The percentage, expressed in whole numbers; and

19 (ii) The years and months of creditable service time accrued by the member  
20 while married to the alternate payee.

21 (d) If there is a specific end date or dollar amount limit to the award, and what  
22 that date or limit is.

1 (e) Whether the award applies to service retirement benefits, disability  
2 retirement benefits, or withdrawal benefits.

3 (f) Whether the member is restricted from withdrawing as a member under  
4 ORS 238.265.

5 (g) Whether the member must select a specific benefit payment option at  
6 retirement.

7 (h) Whether the member is required to designate the alternate payee as a  
8 beneficiary:

9 (A) Before retirement.

10 (B) At retirement.

11 (i) Whether an alternate payee award continues after the death of:

12 (A) The member.

13 (B) The alternate payee.

14 (4) Award of Monthly Benefit (Retired Member). If a final court order awards  
15 an alternate payee an amount payable from a retired member's monthly service or  
16 disability retirement benefit, the court order must provide:

17 (a) The date of annulment, separation, divorce, or property settlement. If no  
18 date is provided, PERS will use the date the judge signed the court order.

19 (b) Whether an alternate payee award is a reduction or deduction from the  
20 member's monthly benefit.

21 (c) The method by which the monthly award is to be calculated. One of the  
22 following methods must be used:

23 (A) A percentage, expressed in whole numbers; or

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(B) A dollar amount.

(d) If there is a specific end date or dollar amount limit to the award, and what that date or limit is.

(e) Whether the member may or must change their beneficiary designation. If the member's beneficiary designation is changed, the member's monthly benefit must be recalculated.

(f) Whether a member who elected Option 2A or 3A under ORS 238.305(1) is allowed to receive the Option 1 benefit under ORS 238.305(6).

(g) Whether an alternate payee award continues after the death of:

(A) The member.

(B) The alternate payee.

*[The purpose of this rule is to describe methods for determining an alternate payee's award from a member's PERS account and PERS Funds, which are administrable by PERS.]*

*[(1) Pre Retirement Division Method: A final court order or judgment which establishes a separate account in the Fund in the name of the alternate payee at the time of the award.]*

*[(a) The court order must be received by the Divorce Decree Unit at the PERS Portland Headquarters office prior to the issue date of any payment to, or on behalf of a member, of a service or disability retirement, refund, or death benefit.]*

*[(b) The Pre Retirement Division Method shall not be used if a court order allows any option for a member to subsequently buy out the alternate payee's interest in the member's PERS funds.]*

1            *[(c) The court order must include a specific percentage or dollar amount, either*  
2 *directly or pursuant to a formula resulting in a percentage or dollar amount to be*  
3 *awarded to the alternate payee.]*

4            *[(d) The court order must direct PERS to transfer the amount of the award from the*  
5 *member's account and to deposit it in a separate account in the Fund in the name of the*  
6 *alternate payee as of a court provided date.]*

7            *[(e) The court order shall specify a date between January 1, and through December*  
8 *31, on which to base the transfer of the alternate payee's award from the member's PERS*  
9 *account. If a court order directs PERS to transfer a certain percentage to the alternate*  
10 *payee, it shall be converted into a dollar amount. The converted dollar amount or the*  
11 *dollar amount stated in the court order that is awarded to the alternate payee shall be*  
12 *applied against the last audited PERS member account balance on record as of the end*  
13 *of the plan year (December 31) on or immediately preceding the award date specified in*  
14 *the court order and then it shall be deposited into a separate account in the name of the*  
15 *alternate payee.]*

16            *[(f) If a date is not given in a court order on which PERS is to base the transfer of an*  
17 *alternate payee's award from a member's PERS member account then PERS shall use the*  
18 *date the court order was signed by the court and base the transfer as of the end of the*  
19 *plan year (December 31) immediately preceding the date the order was signed by the*  
20 *court. If the date the order was signed by the court is December 31 then the last audited*  
21 *account balance as of December 31 of the plan year in which the order was signed shall*  
22 *be used.]*

1            *[(g) A percentage award that is due an alternate payee shall be applied against the*  
2 *member's individual account, and in the Variable Annuity Account in the Fund. Specific*  
3 *dollar amounts awarded to an alternate payee shall be applied against the member's*  
4 *individual account, and in the Variable Annuity Account in the Fund on a pro-rata*  
5 *basis.]*

6            *[(h) Once the value of the alternate payee's award is established, the portion of the*  
7 *award that is attributable to the member's account in the Variable Annuity Account in the*  
8 *Fund shall be transferred to the separate account established in the name of the alternate*  
9 *payee, which shall earn a regular or fixed interest rate as established by the Board, from*  
10 *the transfer date to the date benefits are effective for the alternate payee.]*

11           *[(i) Interest on a separate alternate payee account after the division and transfer*  
12 *takes place shall be credited in accordance with OAR chapter 459, division 007.]*

13           *[(j) Under the Pre Retirement Division Method an alternate payee would be eligible*  
14 *for benefits based on the member's eligibility for benefits regardless of whether or not the*  
15 *member elects to begin receiving benefits.]*

16           *[(2) At Time of Payment Division Method: a court order that awards an alternate*  
17 *payee a portion of future benefits that become due and payable by PERS to a member,*  
18 *expressed as a percentage:]*

19           *[(a) The court order awards an alternate payee a percentage of the total PERS funds*  
20 *that were accrued during the marriage.]*

21           *[(b) The award is computed using either formula (A) which uses years and months,*  
22 *or formula (B), which uses member contributions and interest credited to the member's*  
23 *PERS account. Each of these formulas is then multiplied by a subsequent percentage as*

1 *described in sub-paragraph (C). Any court order that PERS receives that utilizes the*  
2 *ratio method must spell out in full the formula that is to be used for determining the*  
3 *alternate payee's award.]*

4 *[(A) The numerator is the creditable service time accrued as an active member*  
5 *during the marriage, (MCS). The denominator is the total of the member's total*  
6 *creditable service, (TCS) as defined in ORS 238.005(5), at the time benefits become due*  
7 *and payable to either the member or the alternate payee, expressed as the equation:]*

8 *[MCS = Ratio of benefits accrued during the marriage.*

9 *TCS]*

10 *[(i) Example: Assume a member had 12 years and 3 months of creditable service*  
11 *accrued during the marriage, the numerator would equal 147 months.]*

12 *[(ii) Assume further that the member has 25 years and 8 months of total creditable*  
13 *service as of the date the member and/or alternate payee applies for payment, then the*  
14 *denominator would equal 308 months.]*

15 *[(iii) 147 divided by 308 equals 47.7273 percent.]*

16 *[(B) The numerator is the amount of the contributions and the interest credited to the*  
17 *member's PERS account during the marriage, (married account = MA). The denominator*  
18 *is the total of the member's PERS account (total account as determined by PERS = TA) at*  
19 *the time benefits become due and payable to either the member or the alternate payee,*  
20 *expressed as the equation:]*

21 *[MA = Ratio of benefits accrued during the marriage.*

22 *TA]*

1        *[(i) Example: Assume a member has a PERS member account of \$23,511.82 as of*  
2 *the end of the plan year (December 31) immediately preceding the date of marriage then*  
3 *the numerator would equal \$23,511.82.]*

4        *[(ii) Assume further that the total member PERS account as of the end of the plan*  
5 *year (December 31) immediately preceding the date of divorce or date an alternate payee*  
6 *elects to begin receiving payment, equals \$45,650.33. The denominator then would equal*  
7 *\$45,650.33.]*

8        *[(iii) \$23,511.82 divided by \$45,650.33 equals 51.5042 percent.]*

9        *[(C) Court orders may direct that the ratio in either paragraphs (A) or (B) of this*  
10 *subsection be multiplied by another percentage and the result equals the alternate*  
11 *payee's award, expressed as the equation:]*

12        *[(i) Ratio from paragraphs (A) or (B) multiplied by (C) of this subsection equals*  
13 *amount of alternate payee's award.]*

14        *[(ii) 147 months divided by 308 months equals 47.7273 percent multiplied by court*  
15 *awarded percentage of 50 percent equals 23.8637 percent due the alternate payee when*  
16 *benefits become payable.]*

17        *[(c) The alternate payee's award is not computed until the member or member's*  
18 *beneficiaries elect to receive funds due to refund, service or disability retirement, or*  
19 *death.]*

20        *[(3) A court order that uses the Division Methods described in Sections (1) and (2)*  
21 *of this rule may include language that would allow:]*

22        *[(a) An alternate payee to elect to receive his or her award in the form of retirement*  
23 *payment option on or after the member's earliest eligibility for service retirement*

1 *benefits, regardless of whether or not the member actually retires, and/or the member or*  
2 *the member's beneficiaries elects to begin receiving benefits.]*

3 *[(b) An alternate payee to elect to have a separate account established in the Fund*  
4 *in the name of the alternate payee.]*

5 *[(c) If an alternate payee elects to have a separate account established in the fund in*  
6 *his or her name regular or fixed interest shall be credited and posted up until the*  
7 *alternate payee elects to receive his or her award in accordance with OAR chapter 459,*  
8 *division 007.]*

9 *[(d) When an alternate payee exercises the election under paragraph (2)(d)(A) or*  
10 *(B) of this rule pursuant to a court order that utilizes the formula described in paragraph*  
11 *(2)(b)(A) of this rule, the total creditable service that shall be used for the denominator*  
12 *shall be based as if a member who is active had terminated as of the date payments are*  
13 *effective for the alternate payee. If a member is inactive and has already terminated on*  
14 *some other date prior to the alternate payee's election, then the inactive member's total*  
15 *actual creditable service time shall be used as the denominator.]*

16 *[(e) When an alternate payee exercises the election under paragraph (2)(d)(A) or*  
17 *(B) of this rule pursuant to a court order that utilizes the formula described in paragraph*  
18 *(2)(b)(B) of this rule, the denominator that shall be used for an active or an inactive*  
19 *member shall be the total member's PERS account as of December 31 of the year prior to*  
20 *the date payments are effective for the alternate payee. If a member is retiring at the*  
21 *same time an alternate payee is exercising an election under paragraph (2)(c)(A) of this*  
22 *rule, then the actual total member PERS account shall be used as the denominator.]*

1           *[(4) The Payment Division Deduction Method: This method can be used in regard to*  
2 *a member prior to retirement, or in regard to a member who has retired and has started*  
3 *receiving payment. A court order provides an award, which is stated as a flat or set*  
4 *dollar amount, or as a percentage, either directly or pursuant to a formula, that is to be*  
5 *paid to an alternate payee from the service or disability retirement benefit that shall be*  
6 *paid in the future to a member, or that is presently being paid by PERS to a retired*  
7 *member.]*

8           *[(a) The flat or set dollar amount or percentage that is awarded to the alternate*  
9 *payee shall be deducted out of the retired member's gross monthly benefit.]*

10           *[(b) Under this method an alternate payee's award shall not be based on the*  
11 *alternate payee's age or life expectancy.]*

12           *[(c) A court order may direct that a member select a specific payment option and*  
13 *designate the alternate payee as the primary beneficiary, if the member has not retired as*  
14 *of the date PERS receives a final court order. If a court order provides for this type of an*  
15 *award, payment to the member at the time the member retires shall be based on the age*  
16 *difference between the member and the alternate payee. The alternate payee award shall*  
17 *then be deducted from the member's gross monthly benefit, at the time the member*  
18 *retires.]*

19           *[(d) If a member has retired and has been receiving payment for more than the time*  
20 *period allowed in ORS 238.305(1) PERS shall not allow a change of payment option*  
21 *from what was originally selected by the member, regardless of any direction to the*  
22 *contrary that may be contained in a court order.]*

1        *[(e) If a member has retired and been receiving payment for more than the period*  
2 *allowed in ORS 238.305(1) PERS shall only allow a change in the beneficiary*  
3 *designation if the option originally selected by the member allows for a change of*  
4 *beneficiary, regardless of any direction to the contrary that may be contained in a court*  
5 *order.]*

6        *[(f) An alternate payee cannot convert their award to their own separate payment*  
7 *option independent from the member's.]*

8        *[(g) PERS shall continue to send a separate check in the name of the alternate payee*  
9 *for as long as there is a benefit being paid by PERS to a member or a member's*  
10 *beneficiary.]*

11        *[(5) A division of benefits must be in accordance with one of the methods described*  
12 *in this rule.]*

13        *[(6) For the purposes of this rule, benefits paid by PERS to a member are:]*

14        *[(a) "Retirement benefits" means benefits payable on retirement under PERS law for*  
15 *service or disability.]*

16        *[(b) "Refund" means a refund of a member's PERS account, and includes payment*  
17 *made due to loss of membership under ORS 238.095.]*

18        *[(c) "Death benefits" means benefits that are payable to a beneficiary pursuant to*  
19 *ORS 238.390 and 238.395.]*

20        Stat. Auth.: ORS 238.465 *[(3)]* & 238.650

21        Stats. Implemented: ORS 238.465

*This Item has been modified, please see the Walk-in Packet modifications following Item C.1.Attachment 14.*



**OREGON ADMINISTRATIVE RULE**  
**PUBLIC EMPLOYEES RETIREMENT BOARD**  
**CHAPTER 459**  
**DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0012**

2 **OPSRP Pension Program Division of Benefits**

3 **(1) A final court order that provides for a division of pension benefits or**  
4 **disability benefits must use a method described in this rule.**

5 **(a) The method must be identified on PERS divorce forms.**

6 **(b) The PERS divorce forms must be attached as exhibits to the court order, and**  
7 **incorporated by reference in the court order.**

8 **(2) Award of Pension Benefits (Non-Retired Member). If a final court order**  
9 **awards an alternate payee a reduction or deduction amount from the monthly**  
10 **pension benefit that shall be paid in the future to the member, a court order must**  
11 **provide:**

12 **(a) The date of annulment, separation, divorce, or property settlement. If no date**  
13 **is provided, PERS will use the date the judge signed the court order.**

14 **(b) Whether the award is a reduction or deduction from the member's monthly**  
15 **pension. If the award is a reduction, the court order must provide whether the**  
16 **alternate payee is eligible to elect a separate benefit option at any time after the**  
17 **member reaches earliest retirement eligibility.**

18 **(c) The method by which the monthly award is to be calculated. One of the**  
19 **following methods must be used:**

20 **(A) A percentage, expressed in whole numbers only; or**

21 **(B) A dollar amount; or**

1        (C) A percentage of the married time ratio. If this method is used, the court  
2        order must provide:

3        (i) The percentage, expressed in whole numbers; and

4        (ii) The years and months of retirement credit accrued by the member while  
5        married to the alternate payee.

6        (d) If there is a specific end date or dollar amount limit to the award, and what  
7        that date or limit is.

8        (e) Whether the member must select a specific benefit payment option at  
9        retirement.

10       (f) Whether the member must designate the alternate payee as beneficiary.

11       (g) Whether the alternate payee and any minor children are awarded a  
12       percentage of any pre-retirement death benefit pursuant to ORS 238A.230.

13       (h) Whether the alternate payee award continues or ends after the member  
14       retires if:

15       (A) The member dies before the alternate payee and the member's beneficiary is  
16       not the alternate payee.

17       (B) If the alternate payee dies before the member.

18       (3) Award of Pension Benefits (Retired Member). If a final court order awards  
19       an alternate payee an amount to be paid from a retired member's monthly pension,  
20       the court order must provide:

21       (a) The date of annulment, separation, divorce, or property settlement. If no date  
22       is provided, PERS will use the date the judge signed the court order.

23       (b) Whether the award is a reduction or deduction from the member's monthly  
24       pension.

1        (c) The method by which the monthly award is to be calculated. One of the  
2 following methods must be used:

3        (A) A percentage, expressed in whole numbers only; or

4        (B) A dollar amount.

5        (d) If there is a specific end date or dollar amount limit to the award, and what  
6 that date or limit is.

7        (e) Whether the member may or must change the beneficiary designation. If the  
8 member's beneficiary is changed, the member's pension must be recalculated.

9        (f) Whether a member, who elected to receive their pension under ORS  
10 238A.190(1)(b) or (d), is allowed to receive the higher pension benefit under ORS  
11 238A.190(2)(b).

12        (g) Whether the alternate payee will be the sole beneficiary or any remaining  
13 share not awarded to the alternate payee shall be paid to the member's secondary  
14 beneficiary if the member dies before the alternate payee and the alternate payee was  
15 the member's beneficiary.

16        (h) Whether an alternate payee award continues or ends if:

17        (A) The member dies before the alternate payee and the member's beneficiary is  
18 not the alternate payee.

19        (B) The alternate payee dies before the member.

20        (4) Award of Disability Benefits. If a final court order awards an alternate payee  
21 an amount to be paid from the monthly disability benefit that is being paid or may be  
22 paid in the future to the member, the court order must provide:

23        (a) The date of annulment, separation, divorce, or property settlement. If no date  
24 is provided, PERS will use the date the judge signed the court order.

1        **(b) Whether the award is a reduction or deduction from the member's monthly**  
2        **disability benefit.**

3        **(c) A percentage, expressed in whole numbers only, of the member's monthly**  
4        **disability benefit that is awarded to the alternate payee.**

5        **Stat. Auth.: ORS 238.465, 238.650 & 238A.450**

6        **Stats. Implemented: ORS 238.465**

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0014**

2 **Individual Account Program (IAP) Division of Benefits**

3 **(1) A final court order that provides for a division of benefits must use a**  
4 **method described in this rule.**

5 **(a) The method must be identified on PERS divorce forms.**

6 **(b) The PERS divorce forms must be attached as exhibits to the court order,**  
7 **and incorporated by reference in the court order.**

8 **(2) Award of IAP Alternate Payee Account (Non-Retired Member). If a final**  
9 **court order provides an award of an alternate payee account to be established from**  
10 **the account balance of a member, the court order must provide:**

11 **(a) The date of annulment, separation, divorce, or property settlement. If no**  
12 **date is provided, PERS will use the date the judge signed the court order.**

13 **(A) The separate account will be established from the member's account**  
14 **balance as of December 31 of the calendar year before this date unless:**

15 **(i) A prior year is provided in the court order; or**

16 **(ii) The date is December 31.**

17 **(B) If the date in subsection (a) of this section is other than December 31,**  
18 **contributions made during that calendar year will not be included in the calculation**  
19 **of the alternate payee's award.**

20 **(b) That the separate account be established in an alternate payee's name.**

21 **(c) The method by which the award is to be calculated. One of the following**  
22 **methods must be used:**

1 (i) A percentage, expressed in whole numbers; or

2 (ii) A dollar amount.

3 (d) Whether the member may change their pre-retirement beneficiary

4 designation, if the alternate payee was named as beneficiary.

5 (3) Award of IAP Alternate Payee Account (Retired Member). If a final court

6 order provides an award of an alternate payee account to be established from the

7 remaining account balance of a retired member receiving installment payments, to

8 be effective on the date that PERS establishes the alternate payee account, the court

9 order must provide:

10 (a) The date of annulment, separation, divorce, or property settlement. If no

11 date is provided, PERS will use the date the judge signed the court order.

12 (b) That a separate account be established in an alternate payee's name.

13 (A) The effective date of the alternate payee account shall be as soon as

14 administratively feasible after PERS receives and approves a final court order as

15 administrable.

16 (B) The alternate payee will be notified when the account has been established.

17 (C) The alternate payee account shall be distributed in a lump sum payment.

18 (D) Any installment payments paid to the member before the alternate payee

19 account is established will not be included in the award.

20 (c) The award as a percentage, expressed in whole numbers.

21 (d) Whether the member may or must change their beneficiary designation.

22 Stat. Auth.: ORS 238.465, 238.650 & 238A.450

23 Stats. Implemented: ORS 238.465

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0020**

2 **Court Orders**

3 **(1) A final court order must be received by PERS and approved as**  
4 **administrable before an alternate payee award can be established.**

5 **(a) PERS shall provide a written response as to whether a final court order is**  
6 **administrable to the member, the alternate payee, and their attorneys.**

7 **(b) Award information shall be provided to attorneys or other representatives**  
8 **of a member or an alternate payee only if a member release or an alternate payee**  
9 **release has been received by PERS.**

10 **(2) In the absence of a final court order, a restraining order or stay must be**  
11 **filed with PERS to prevent the distribution of any funds to a member.**

12 **(3) PERS shall establish an alternate payee award from a retired member's**  
13 **monthly benefit as soon as administratively feasible on a prospective basis only.**  
14 **Court orders that purport to award retroactive benefits or benefits to be paid before**  
15 **the final court order was received by PERS cannot be administered.**

16 **(4) If a final court order is received by PERS after a member has withdrawn**  
17 **from PERS under ORS 238.265, 238.545, 238A.120 or 238A.375, the final court**  
18 **order will be rejected as unadministrable.**

19 *[(1) A final court order or judgment must clearly specify the amount awarded to an*  
20 *alternate payee from the member's account and the member's PERS funds, and the*  
21 *language must be administrable under ORS Chapter 238 and OAR Chapter 459, Division*  
22 *045.]*

1           *[(2) If a court order is unclear or silent as to whether or not an alternate payee is*  
2           *entitled to all portions of the member's PERS funds, PERS shall not approve the court*  
3           *order until a court order is received that gives complete detail on what comprises the*  
4           *alternate payee's award. PERS shall not include as part of the alternate payee's award*  
5           *those benefits an alternate payee is not eligible for as described in OAR 459-045-*  
6           *0030(3), (5), (6), (7), (8), (9), (10), (11), regardless of whether or not a court order does*  
7           *or does not award them.]*

8           *[(3) A court order shall also address any award an alternate payee is to receive*  
9           *from a member's voluntary purchase of service credits, and/or additional service credits*  
10           *allowed by law due to a member's retirement for disability.]*

11           *[(4) In the absence of a final court order, a restraining order or stay must be filed*  
12           *with PERS, in order to prevent the distribution of any funds to a member,*  
13           *notwithstanding ORS 238.455. A subsequent court order shall be required in order to*  
14           *allow future distributions.]*

15           *[(5) PERS shall not divide a member's PERS account, or make a payment to or on*  
16           *behalf of an alternate payee upon receipt of a draft court order by PERS, until PERS*  
17           *Divorce Decree Unit has received a subsequent:*

18           *(a) Certified copy of a final court order, that specifies what PERS is to do in regard*  
19           *to an alternate payee award. All certified copies must be subsequently reviewed and*  
20           *approved by staff as administerable pursuant to ORS 238.005 to ORS 238.715, and OAR*  
21           *Chapter 459, Division 045, before PERS will make a payment to anyone. Staff shall*  
22           *provide a written response as soon as practicable, on whether or not a final court order*  
23           *can be administered by PERS to both the member and the alternate payee, as well as to*

1 *their attorneys. Case-specific award information shall be provided to attorneys or other*  
2 *representatives of a member or an alternate payee only if a member release or an*  
3 *alternate payee release has been received by PERS, as described in 459-045-0005(11)*  
4 *and (12).*

5 *(b) A written and notarized confirmation signed by both the member and the*  
6 *alternate payee, stating that divorce actions have been dropped and that no final decree*  
7 *or court order will be forth-coming, if no restraining order is previously on file with*  
8 *PERS.*

9 *(c) If PERS does not receive a final court order within 12 months from the date a*  
10 *draft court order was received by PERS, then PERS shall consider that no award was*  
11 *made to an alternate payee from the member's PERS funds. There shall be no further*  
12 *obligation or responsibility on PERS to correspond or communicate with any person*  
13 *other than the member and no payment shall be distributed to anyone other than the*  
14 *member or the member's beneficiary(s).]*

15 *[(6) If a court order states that another court order shall follow, a certified copy of*  
16 *the subsequent court order must be received and approved by staff before any payment*  
17 *shall be made pursuant to the court order.]*

18 *[(7) PERS upon request, may review draft court orders that contain language on*  
19 *how to divide a member's PERS account or the member's PERS funds, that the member is*  
20 *or may become entitled to. Staff shall provide a written response as soon as practicable*  
21 *to both the member and the alternate payee on whether or not a draft court order can be*  
22 *administered by PERS, as well as to their attorneys.]*

1           *[(8) Final court orders must be received by the PERS Divorce Decree Unit, either by*  
2 *mail, or delivered in person, before PERS will commence paying benefits to or on behalf*  
3 *of an alternate payee. PERS at its discretion may accept a legible photocopy of a final*  
4 *court order, either by mail or in person, as long as PERS can confirm it was filed with*  
5 *the court.]*

6           *[(9) All court orders, whether draft or final, that are received by PERS are*  
7 *microfilmed and the document that was received is discarded. PERS staff cannot modify,*  
8 *return, or sign and return, any document that is received by PERS.]*

9           *[(10) PERS at its discretion may accept or reject any court order, or accept or reject*  
10 *any portion thereof, in regard to a specific member. PERS shall provide a written*  
11 *response as soon as practicable, of any rejection to both the member and the alternate*  
12 *payee, as well as to their attorneys.]*

13           *[(11) A court approved modification may be required in order for PERS to comply*  
14 *with the parties' intent and in order to administer according to PERS retirement law.]*

15           *[(12) If PERS has already generated benefit checks for the first of the month*  
16 *following the date the final court order was received by PERS, then PERS shall:*

17           *(a) Pay benefits to the member, notwithstanding the court order.*

18           *(b) Make payment of future benefits to an alternate payee as soon as*  
19 *administratively feasible.]*

20           *[(13) If a final court order is received by the PERS Divorce Decree Unit after a*  
21 *service or disability retirement benefit has been generated, the benefit payment shall be*  
22 *deemed by PERS as received by the member. PERS shall establish an alternate payee's*  
23 *award on a prospective basis only and shall not pay retroactive benefits of any kind.]*

1            *[(14) If a final court order is received by PERS after a member has received a*  
2            *refund of his or her member PERS account no funds shall be distributed to an alternate*  
3            *payee by PERS, and PERS shall not invoice the member for any funds that may have*  
4            *been awarded to the alternate payee.]*

5            Stat. Auth: ORS 238.465 ~~[(3) &]~~, 238.650 & 238A.450

6            Stats. Implemented: ORS 238.465

*This Item has been modified, please see the Walk-in Packet modifications following Item C.1.Attachment 14.*



**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0030**

2 **General Administration for Chapter 238 Tier One / Tier Two**

3 **(1) Alternate payee account.**

4 **(a) A percentage award will be applied against the member's regular account**  
5 **and if applicable, Variable Annuity Account. A dollar award will be applied**  
6 **proportionately against the member's regular account and if applicable, Variable**  
7 **Annuity Account.**

8 **(A) Once the amount of an alternate payee's award is determined, funds will be**  
9 **transferred to an alternate payee account.**

10 **(B) An alternate payee may not participate in the Variable Annuity Account**  
11 **program.**

12 **(C) Earnings and losses on the alternate payee's account will be based on**  
13 **regular account earning rates in accordance with OAR chapter 459, division 007**  
14 **after the transfer.**

15 **(b) At the time of the alternate payee's death, if the provisions of ORS 238.395**  
16 **are met by the member, the alternate payee's beneficiary will receive matching**  
17 **employer dollars regardless of whether a final court order awarded matching**  
18 **employer dollars.**

19 **(c) An alternate payee is not entitled to matching employer dollars if the**  
20 **alternate payee elects to receive the award in the form of a withdrawal, regardless of**  
21 **whether a final court order awarded matching employer dollars.**

1 (d) At retirement, an alternate payee may elect one of the following benefit  
2 payment options, as described in ORS 238.305:

3 (A) Refund Annuity.

4 (B) Option 1.

5 (C) Option 4 (15 Year Certain).

6 (D) Lump-sum Option 1.

7 (E) Total lump-sum option.

8 (e) An alternate payee has 60 days from the date of the first actual, not  
9 estimated, payment to change the retirement option, except that the designation of  
10 beneficiary under the Refund Annuity or Option 4 (15 Year Certain) may be  
11 changed at any time before an alternate payee's death.

12 (f) An alternate payee whose total benefit is less than \$200 per month under  
13 Option 1 shall receive a one time lump-sum payment as provided under ORS  
14 238.315.

15 (2) If a retired member changes the beneficiary designation pursuant to a final  
16 court order, the member's monthly benefit must be recalculated.

17 (a) The benefit recalculation shall be effective the first of the month after the  
18 month in which PERS receives a written request from the member to change  
19 beneficiary.

20 (b) The request must provide the full name, a copy of proof of birth, and the  
21 relationship of the new beneficiary to the member.

1 (3) If a final court order provides that a retired member may elect to receive the  
2 Option 1 benefit pursuant to ORS 238.305(6), in order to make that election the  
3 member must submit a written request to PERS.

4 (4) A member is released from a court ordered benefit payment option:

5 (a) If the alternate payee award is a reduction, and

6 (b) The alternate payee is eligible to elect a separate benefit option at any time  
7 after the member's earliest retirement eligibility and elects to do so.

8 (5)(a) PERS shall provide to the alternate payee a written summary of the  
9 information used in calculating the alternate payee's retirement allowance or  
10 benefit. An alternate payee may dispute the accuracy of the information used in  
11 making the calculation of the retirement allowance or benefit by filing a written  
12 notice by the later of:

13 (A) The 30th day after the date on which the calculation and information is  
14 provided to the alternate payee; or

15 (B) The 30th day after the issue date of the first actual, not estimated, payment  
16 of a retirement allowance or benefit to the alternate payee.

17 (b) Upon receiving a notice described above, PERS shall determine the  
18 accuracy of the disputed information and make a written decision either affirming  
19 the accuracy of the original information and calculation or changing the calculation  
20 using corrected information. PERS shall provide the alternate payee a copy of the  
21 decision and a written explanation of any applicable statutes and rules.

22 (c) The filing of a notice under this section extends the time allowed for election  
23 of an optional form of retirement allowance or benefit until the 30th day after the

1 conclusion of the dispute proceeding or review results in a change in the calculation  
2 of the retirement allowance or benefit.

3 (d) This section does not limit any authority of PERS to correct an incorrect  
4 calculation of any retirement allowance or benefit.

5 (6) If an alternate payee was a partner of the member, the award to the  
6 alternate payee is a distribution to the member for federal tax purposes. Therefore:

7 (a) An award of a monthly benefit amount as described in OAR 459-045-  
8 0010(3)(b) and (4)(b) is only administrable as a deduction from the member's  
9 monthly payment.

10 (b) An award of an alternate payee account as described in OAR 459-045-  
11 0010(2) will not be distributed until such distribution would not jeopardize the  
12 plan's tax qualified status.

13 *[(1) An alternate payee's award is payable to the alternate payee if the member*  
14 *would be eligible to receive benefits upon separation from service. The member is not*  
15 *required to be separated from service.]*

16 *[(2) A court order may restrict an alternate payee's award to be payable only when*  
17 *the member applies for and receives benefits.]*

18 *[(3) Unless prohibited by court order, an alternate payee who requests a withdrawal*  
19 *shall receive an additional 50 percent of the alternate payee award as of the effective*  
20 *date of withdrawal if:*

21 *(a) The alternate payee's effective date of withdrawal is on or after July 1, 2004, and*  
22 *before June 30, 2006; and*

1           ***(b) As of the alternate payee's effective date of withdrawal, the member has met the***  
2 ***requirements of OAR 459-010-0055(4), or would meet them except that the member has***  
3 ***not withdrawn that portion of the member account that may be withdrawn.]***

4           ***[(4) Under no circumstance may an alternate payee withdraw less than the entire***  
5 ***alternate payee award.]***

6           ***[(5) The alternate payee may revoke the request for withdrawal if PERS receives a***  
7 ***written request to revoke before the date of distribution.]***

8           ***[(6) The separate account in the name of the alternate payee shall be credited with***  
9 ***earnings in accordance with OAR chapter 459, division 007 to the earlier of:***

10           ***(a) The date of distribution of the separate account; or***

11           ***(b) The date a non-vested member ceases to be a member as provided in ORS***  
12 ***238.095(2).]***

13           ***[(7) An alternate payee who is awarded a separate account in the Fund in the***  
14 ***alternate payee's own name shall not be allowed to participate in the Variable Annuity***  
15 ***Account in the Fund, as described in ORS 238.260, regardless of whether the member***  
16 ***participated in the Variable Annuity Account in the Fund. Once a separate account is***  
17 ***established for the alternate payee, those funds shall no longer receive variable annuity***  
18 ***account earnings.]***

19           ***[(8) At the time of the division and establishment of the alternate payee accord, the***  
20 ***alternate payee account shall be administered under Tier One pursuant to ORS 238.250***  
21 ***and 238.255 if:***

1           (a) *The member established membership in PERS or performed any period of service*  
2 *for a participating public employer that is credited to the six month period of employment*  
3 *required of an employee under ORS 238.015 before January 1, 1996; or*

4           (b) *The member ceased to be a member of PERS under the provisions of ORS*  
5 *238.095 or 238.105, but restored part or all of the forfeited creditable service from*  
6 *before January 1, 1996, under the provisions of ORS 238.115 or 238.105, after January*  
7 *1, 1996.].*

8           *[(9) At the time of the division and establishment of the alternate payee account, the*  
9 *alternate payee account shall be administered under Tier Two pursuant to ORS 238.250*  
10 *and 238.435, if the provisions of section (8)(a) and (b) of this rule are not applicable to*  
11 *the member.]*

12           *[(10) The provisions of this rule do not apply to judge members under ORS 238.500*  
13 *to 238.585.]*

14           *[(11) The provisions of this rule do not apply to the benefits provided by the Oregon*  
15 *Public Service Retirement Plan Pension Program under ORS Chapter 238A.]*

16           *[(12) An alternate payee who elects to begin receiving an award pursuant to a court*  
17 *order that uses the Division Methods described in OAR 459-045-0010(1) and (2), may*  
18 *select any retirement payment option available to the member, other than a joint and*  
19 *survivor annuity, but only if a court order allows the alternate payee to make any*  
20 *elections. The retirement payment to an alternate payee must be:*

21           (a) *Contingent on the member's eligibility for retirement benefits, regardless of*  
22 *whether the member actually retires;*

1           (b) Separate and independent from the member's payment date and payment option;  
2    and

3           (c) Actuarially computed based on the age and life expectancy of the alternate  
4    payee.]

5           [(13) The alternate payee's may elect to convert the Refund Annuity Option as  
6    described in ORS 238.300 to one of the following optional forms:

7           (a) Option 1, as described in ORS 238.305(1);

8           (b) Option 4, as described in ORS 238.305(1); or

9           (c) The lump-sum payment option, as described in ORS 238.305(2)(a) and (b) and  
10    238.305(3).]

11           [(14) Alternate payees are provided 60 days from the date of their first payment to  
12    change the option or designation of beneficiary, except that the designation of  
13    beneficiary under the Refund Annuity Option or Option 4 may be changed by the  
14    alternate payee at any time before the alternate payee's death.]

15           [(15) An alternate payee whose total award is less than \$200 per month under  
16    Option 1, defined in ORS 238.305(1), shall receive in lieu of any and all allowances or  
17    other benefits or form of payment described in section (13) of this rule, a one time lump-  
18    sum payment equal to the actuarial value as of the effective date of the alternate payee's  
19    retirement, as is the case for a member under ORS 238.315.]

20           [(16)(a) PERS shall provide to the alternate payee a written summary of the  
21    information used in making a retirement computation. An alternate payee may dispute  
22    the accuracy of the factual information used by PERS in making the computation of the

1 *retirement allowance or benefit by filing a written notice of dispute with PERS not later*  
2 *than the later of:*

3 *(A) The 30th day after the date on which the computation and information is*  
4 *provided to the alternate payee under this section; or*

5 *(B) The 30th day after the date on which the retirement allowance or benefit to*  
6 *which the alternate payee is entitled first becomes payable.*

7 *(b) The filing of a notice of dispute under this section extends the time allowed for*  
8 *election of an optional form of retirement allowance or benefit until the 30th day after the*  
9 *conclusion of the dispute proceeding or review results in a change in the computation of*  
10 *the retirement allowance or benefit.*

11 *(c) Upon receiving a notice of dispute under this section, PERS shall determine the*  
12 *accuracy of the disputed information and make a written decision either affirming the*  
13 *accuracy of the information and computation based thereon or changing the computation*  
14 *using corrected information. PERS shall provide to the member a copy of the decision*  
15 *and a written explanation of any applicable statutes and rules.*

16 *(d) This section does not affect any authority of PERS, on its own initiative, to*  
17 *correct an incorrect computation of any retirement allowance or benefit.]*

18 *[(17) An alternate payee may not receive any cost of living increase under ORS*  
19 *238.360, or special ad-hoc increase that may be granted by the Legislature under*  
20 *238.365 or 238.385, or any other type of increase that may be granted to PERS retirees*  
21 *until benefits are first paid by PERS to or on behalf of the member.]*

1           *[(18) An alternate payee is not entitled to health insurance benefits under ORS*  
2           *238.410, 238.415, and 238.420 regardless of whether a court order awards these benefits*  
3           *to an alternate payee.]*

4           *[(19) An alternate payee is not entitled to any benefits derived from the optional*  
5           *purchase of police officer and fire fighter unit benefits under 238.440 regardless of*  
6           *whether a court order awards these benefits to an alternate payee.]*

7           *[(20) If an alternate payee begins receiving a payment before the member, the*  
8           *alternate payee is not entitled to any further increases in retirement credit that the*  
9           *member may earn or become entitled to before the member's actual retirement due to*  
10          *continued employment, earnings, or other benefits earned as a member participating in*  
11          *PERS.]*

12          *[(21) Alternate payee court awards made after a member has retired under ORS*  
13          *238.300 or 238.320 must be paid as deductions from the retired member's retirement*  
14          *allowance or lump-sum benefit or from the member's beneficiary's retirement allowance*  
15          *or lump sum payment. No alternate payee account shall be established.]*

16          *[(22) A court order may require a member who retired under ORS 238.300 or*  
17          *238.320 to change the designated beneficiary outside the time frame allowed under ORS*  
18          *238.305(5) or 238.325(2). The retirement allowance shall be adjusted based on the new*  
19          *beneficiary's age to ensure the value of the benefits is not greater than the allowance the*  
20          *member is otherwise eligible to receive.]*

21          *[(23) Members who retire for disability under ORS 238.320 or 238.325 are*  
22          *considered retired members and all the provisions of sections (12) through (21) of this*  
23          *rule apply to the alternate payee.]*

1        *[(24) Death benefits payable from an alternate payee account are as follows:*

2        *(a) If an alternate payee dies before payout or retirement, the alternate payee award*  
3 *is payable to the alternate payee's designated beneficiary or estate as provided by ORS*  
4 *238.390 and 238.395. No employer death benefits are payable under ORS 238.395 unless*  
5 *the member would have been eligible for employer death benefits had the member died*  
6 *on the same date as the alternate payee.*

7        *(b) If an alternate payee has begun receiving retirement benefits or dies after the*  
8 *first payment is due, the benefits due the designated beneficiary or estate, if any, shall be*  
9 *based on the option selected by the alternate payee.*

10        *(c) If an alternate payee dies after applying for a monthly retirement benefit but*  
11 *before the first of the month following the effective retirement date, the account shall be*  
12 *treated as if the alternate payee died before retirement and benefits shall be paid under*  
13 *subsection (a) above.*

14        *(d) If the alternate payee is awarded a percentage of a benefit, as long as the award*  
15 *is payable the award shall continue to be paid to the alternate payee's designated*  
16 *beneficiary, unless the court decree specifies otherwise.]*

17        *[(25) If the member predeceases the alternate payee, the benefits payable to the*  
18 *alternate payee are as follows:*

19        *(a) The alternate payee who has a separate account becomes eligible to withdraw*  
20 *his or her account in the form of a death benefit under ORS 238.390 and 238.395 (if*  
21 *eligible). If the alternate payee elects a death benefit under ORS 238.390 and 238.395 (if*  
22 *eligible), the death benefit shall be in lieu of any withdrawal, service or disability*  
23 *retirement or any other benefit. If the alternate payee does not elect a death benefit, the*

1 *alternate payee shall be eligible to withdraw the separate account, or to leave the*  
2 *account in the Fund and elect to draw benefits under one of the optional retirement*  
3 *choices described in section (13) of this rule, any time on or after the date the member*  
4 *would have reached earliest retirement age.*

5 *(b) If the alternate payee is awarded a percentage of a benefit, as long as the award*  
6 *is payable the award shall be paid according to the decree of divorce or separation or*  
7 *annulment unless the court decree provides for no alternate payee death benefits from the*  
8 *member's account.]*

9 *[(26) Benefit payments to either the member or the alternate payee, or to both*  
10 *simultaneously, that exceed the allowable limits set forth in Section 415 of the Internal*  
11 *Revenue Code (IRC) shall be deducted from the benefit payment(s) to the member or the*  
12 *alternate payee, or both. Unless a final court order specifies the allocation of the*  
13 *deduction for benefits that exceed the limits in IRC Section 415, PERS shall pro rate the*  
14 *amount that exceed those limits in the same proportions that benefits were awarded to the*  
15 *member and the alternate payee as specified in a final court order.]*

16 *[(27) Distributions of benefits under OAR chapter 459, division 045 must not*  
17 *jeopardize the status of the programs as being part of a tax-qualified governmental plan.]*

18 Stat. Auth.: ORS 238.465 & 238.650

19 Stats. Implemented: ORS 238.450, 238.465[, *OL 2007 Ch. 53*]

*This Item has been modified, please see the Walk-in Packet modifications following Item C.1.Attachment 14.*



**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0032**

2 **General Administration for OPSRP Pension Program**

3 **(1) If a retired member changes the beneficiary designation pursuant to a final**  
4 **court order, the member's monthly benefit must be recalculated.**

5 **(a) The benefit recalculation shall be effective the first of the month after the**  
6 **month in which PERS receives a written request from the member to change**  
7 **beneficiary.**

8 **(b) The request must provide the full name, a copy of proof of birth, and the**  
9 **relationship of the new beneficiary to the member.**

10 **(2) If a final court order provides that a retired member may elect to receive the**  
11 **higher benefit pursuant to ORS 238A.190(2), in order to make that election the**  
12 **member must submit a written request to PERS.**

13 **(3) A member is released from a court ordered benefit payment option:**

14 **(a) If the alternate payee award is a reduction, and**

15 **(b) The alternate payee is eligible to elect a separate benefit option at any time**  
16 **after the member's earliest retirement eligibility and elects to do so on or before the**  
17 **member's effective retirement date.**

18 **(4) An alternate payee award of a member's disability benefit must end when**  
19 **the member is no longer eligible for a disability benefit pursuant to ORS**  
20 **238A.235(4).**

1 (5) An alternate payee award of a pre-retirement death benefit is payable only  
2 if, at the time of the member's death, a benefit would be otherwise payable under  
3 ORS 238A.230(1).

4 (6)(a) PERS shall provide to the alternate payee a written summary of the  
5 information used in calculating the alternate payee's pension or benefit. An  
6 alternate payee may dispute the accuracy of the information used in making the  
7 calculation by filing a written notice with PERS by the later of:

8 (A) The 30th day after the date on which the calculation and information is  
9 provided to the alternate payee under this section; or

10 (B) The 30th day after the issue date of the first actual, not estimated, payment  
11 of a pension or benefit to the alternate payee.

12 (b) Upon receiving a notice as described above, PERS shall determine the  
13 accuracy of the disputed information and make a written decision either affirming  
14 the accuracy of the original information and calculation or changing the calculation  
15 using corrected information. PERS shall provide the alternate payee a copy of the  
16 decision and a written explanation of any applicable statutes and rules.

17 (c) This section does not limit any authority of PERS to correct an incorrect  
18 computation of any retirement allowance or benefit.

19 (7) If an alternate payee was a partner of the member, the award to the  
20 alternate payee is a distribution to the member for federal tax purposes. Therefore  
21 an award of a monthly benefit amount as described in OAR 459-045-0012(2)(b),  
22 (3)(b), and (4)(b) is only administrable as a deduction from the member's monthly  
23 payment.

1 [Stat. Auth.: ORS 238.465 & ORS 238A.450](#)

2 [Stats. Implemented: ORS 238.450, 238.465, 238A.450](#)

*This Item has been modified, please see the Walk-in Packet modifications following Item C.1.Attachment 14.*



**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0034**

2 **General Administration for Individual Account Program (IAP)**

3 **(1) A percentage award will be applied against the member's account(s) to the**  
4 **extent the member is vested in the account(s). A dollar amount will be applied on a**  
5 **pro-rata basis against the member's account(s) to the extent the member is vested in**  
6 **the account(s).**

7 **(2) An alternate payee account shall be credited with earnings and losses in**  
8 **accordance with OAR chapter 459, division 007.**

9 **(3)(a) At the time of distribution to the alternate payee, PERS shall provide the**  
10 **alternate payee a written summary of the information used in making the**  
11 **calculation for the distribution of benefits. An alternate payee may dispute the**  
12 **accuracy of the information used in making the calculation of the distribution of**  
13 **benefits by filing a written notice with PERS by the later of:**

14 **(A) The 30th day after the date on which the information and calculation is**  
15 **provided to the alternate payee under this section; or**

16 **(B) The 30th day after the issue date of the first distribution of benefits to the**  
17 **alternate payee.**

18 **(b) Upon receiving a notice as described above, PERS shall determine the**  
19 **accuracy of the disputed information and make a written decision either affirming**  
20 **the accuracy of the original information and calculation or changing the calculation**  
21 **using corrected information. PERS shall provide the alternate payee with a copy of**  
22 **the decision and a written explanation of any applicable statutes and rules.**

1        (c) This section does not limit any authority of PERS to correct an incorrect  
2 calculation of any benefit.

3        (4) If an alternate payee was a partner of the member, the award to the  
4 alternate payee is a distribution to the member for federal tax purposes. Therefore,  
5 an award of an alternate payee account as described in OAR 459-045-0014(2) and  
6 (3) will not be distributed until such distribution would not jeopardize the plan's tax  
7 qualified status.

8        Stat. Auth.: ORS 238.465, 238.650 & 238A.450

9        Stats. Implemented: ORS 238.465 & 238A.450

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0040

2 Requesting Information *[for Dividing]* from PERS *[Benefits]*

3 (1) PERS may not provide member information or alternate payee information  
4 to anyone other than the member or alternate payee respectively, including  
5 representatives of the member or alternate payee, unless PERS receives:

6 (a) A member release.

7 (b) An alternate payee release.

8 (c) A judicial order, subpoena, or administrative order pursuant to OAR 459-  
9 060-0030.

10 (2) A subpoena must be made out to the Oregon Public Employees Retirement  
11 System and served at PERS Tigard Headquarters. Faxed subpoenas will not be  
12 accepted. PERS reserves the right to object to any subpoena for reasons that include  
13 but are not limited to:

14 (a) The subpoena fails to provide a reasonable time for preparation and travel.

15 (b) The subpoena is otherwise unreasonable or oppressive.

16 (c) That service was improper.

17 (3) An alternate payee with a final court order that has been received and  
18 approved as administrable by PERS may submit a written request for an estimate  
19 under the provisions of OAR 459-005-0250(1).

20 *[(1) PERS shall provide estimates for divorce purposes only upon written request*  
21 *and receipt of a member release. The estimates may be generated by computer or by*  
22 *hand depending on what staff deems most appropriate.]*

1        *[(2) An estimate is not a guarantee or a promise of actual benefits that eventually*  
2 *may become due and payable, and PERS shall not be bound by any estimates it*  
3 *provides.]*

4        *[(3) PERS shall not prepare or provide present value studies.]*

5        *[(4) PERS may provide estimates of future payments due an alternate payee that*  
6 *were awarded to an alternate payee in a final court order only if PERS has received a*  
7 *written request and a signed release from the alternate payee.]*

8        *[(5) Any and all faxed documents or information requests that are sent to PERS shall*  
9 *be followed up by sending a hard copy to PERS, before PERS will provide or send out*  
10 *any information.]*

11        *[(6) In the event a subpoena is necessary for domestic relations purposes, it must be*  
12 *made out to the Oregon Public Employees Retirement System. PERS reserves the right to*  
13 *object to any subpoena on the ground that the subpoena fails to provide a reasonable*  
14 *time for preparation and travel, is otherwise unreasonable or oppressive, or that service*  
15 *was improper. Faxed subpoenas are not acceptable even if they are followed up with a*  
16 *hard copy. To facilitate prompt processing, copies of subpoenas should be served at the*  
17 *PERS Headquarters office.]*

18        *[(7) PERS must receive a written release from the member or the alternate payee to*  
19 *provide any person including a representative of the member or the alternate payee, any*  
20 *information except as provided for in OAR 459-045-0020(5)(a) and (8).]*

21        Stat. Auth: ORS 238.465 *[(3) &]* , ORS 238.650, [& ORS 238A.450](#)

22        Stats. Implemented: ORS 238.465

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0050

2 **[Filing] Application** Requirements for Alternate Payees

3 **(1) An alternate payee must apply for benefits on PERS forms.**

4 **(2) An application for benefits must be accompanied by a final court order that**  
5 **is administrable by PERS, unless an administrable final court order is already on**  
6 **file with PERS.**

7 **(3)(a) An alternate payee's effective retirement date is the later of:**

8 **(A) The first day of the calendar month specified on the alternate payee's**  
9 **retirement application; or**

10 **(B) The first day of the calendar month following the date an application was**  
11 **received by PERS.**

12 **(b) If a final court order allows the alternate payee to commence benefits under**  
13 **ORS 238.465(2)(a), the effective retirement date can be no earlier than the first of**  
14 **the month following the month in which the member reaches earliest retirement**  
15 **eligibility.**

16 **(4) A request to cancel an application for benefits must be:**

17 **(a) In writing;**

18 **(b) Signed by the alternate payee; and**

19 **(c) Received by PERS no later than the day before the issue date of the first**  
20 **payment.**

21 **(5) An alternate payee may not apply for alternate payee benefits due to his or**  
22 **her own disability.**

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**(6) Alternate payees must keep PERS informed of their current mailing address at all times. A change of mailing address must be submitted to PERS in writing and signed by the alternate payee.**

*[(1) An alternate payee is required to file for payments from PERS on PERS approved forms. Key forms that must be received before PERS can establish payments for an alternate payee are:*

- (a) An Alternate Payee Retirement Application form, completed and signed before a notary, and*
- (b) An Acknowledgment of Receipt of Federal Tax Information on Service Retirements form, completed and signed, and*
- (c) A Retirement Benefit Distribution Election form, or*
- (d) An Account Balance Refund Request Packet completed and signed before a notary.*
- (e) Verification of age of the alternate payee.*
- (f) Verification of age of the member if required for computation of benefits.*
- (g) A Notice of Divorce Decree Administrative Fee form, completed and signed, and*
- (h) An Alternate Payee Election Request and/or Option Release form.]*

*[(2) A request for payments must be accompanied by acceptable court documents if not already on file with PERS. If an order already on file states another type of order was to follow, a certified copy of the other court order must be received by PERS. An alternate payee account shall not be established nor shall any payments be made to an alternate payee until PERS has accepted and approved all supporting court documents.]*

1            *[(3) An alternate payee's retirement payments shall be effective the first of the month*  
2 *in which the alternate payee wants payments to start as indicated on the Alternate Payee*  
3 *Retirement Application form, or the first of the month in which the member reaches*  
4 *earliest service retirement age eligibility, whichever is later. The alternate payee cannot*  
5 *elect a retirement date earlier than the first of the month in which the alternate payee*  
6 *retirement application was received by PERS.]*

7            *[(4) If there is a delay in processing, payments that are due the alternate payee shall*  
8 *be retroactive to the effective retirement date of the alternate payee. All retirement dates*  
9 *for alternate payees and members shall be on the first of a month.]*

10           *[(5) Alternate payees must keep PERS aware of their current mailing address at all*  
11 *times by sending it in writing to PERS whenever a change in mailing address occurs.]*

12           Stat. Auth.: ORS 238.465 *[(3) &]*; ORS 238.650, [& ORS 238A.450](#)

13           Stats. Implemented: ORS 238.465

*This Item has been modified, please see the Walk-in Packet modifications following Item C.1.Attachment 14.*



OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0060

2 General *[Assumptions]* Rules for *[Computing]* Calculating Benefits

3 (1) If an alternate payee award is a reduction and the alternate payee elects to  
4 begin receiving their benefit before the member retires, the calculation of the  
5 alternate payee benefit:

6 (a) Must use creditable service or retirement credit accrued by the member as  
7 of the alternate payee's effective retirement date.

8 (b) May not include any potential increase attributable to unused sick leave  
9 under ORS 238.350 or voluntary purchases of retirement credit.

10 (2) Benefit payments to either the member or the alternate payee, or to both  
11 simultaneously, that exceed the allowable limits set forth in Section 415 of the  
12 Internal Revenue Code (IRC) shall be deducted from the benefit payment(s) to the  
13 member or the alternate payee, or both. Unless a final court order specifies the  
14 allocation of the deduction for benefits that exceed the limits in IRC Section 415,  
15 PERS shall pro rate the amount that exceeded those limits in the same proportions  
16 that benefits were awarded to the member and the alternate payee as specified in a  
17 final court order.

18 (3) If PERS determines that an alternate payee has received benefits in excess of  
19 the amount to which the alternate payee is entitled, PERS shall recover any  
20 overpayment in accordance with ORS 238.715.

21 (4) Payment of benefits under this division must not jeopardize the status of the  
22 programs as a tax-qualified governmental plan.

1           *[(1) If a final court order allows an alternate payee to elect to begin receiving*  
2 *payment based on the member's earliest eligibility for retirement benefits, the alternate*  
3 *payee's payments shall be computed in accordance with the following assumptions*  
4 *regardless of whether or not the member separates from service and retires:*

5           *(a) If the formula in the court order refers to the date of retirement total creditable*  
6 *service, the date that shall be used shall be the date the alternate payee elects to begin*  
7 *receiving benefits. All PERS retirement effective dates are the first of each calendar*  
8 *month.*

9           *(b) For calculation purposes, any final average salary computations shall be based*  
10 *on the three high calendar year salaries of the member prior to the date of the alternate*  
11 *payee's retirement election, if the member has not separated from the service of all*  
12 *participating PERS employers.*

13           *(c) For calculation purposes, any final salary computations shall be based on the*  
14 *greater of the average salary per calendar year paid by a public employer to an*  
15 *employee who is an active member of the system for the three calendar years the member*  
16 *was paid the highest salary, or the total salary paid by a public employer to an active*  
17 *member of the system in the last 36 calendar months of active membership before the*  
18 *effective date of retirement for the member, provided the member has actually separated*  
19 *from all PERS covered employment and has filed for retirement benefits.*

20           *(d) Alternate payees shall receive no credit for accumulated unused sick leave hours*  
21 *belonging to the member or for any voluntary purchases a member may have available to*  
22 *them if the member is not retiring at the same time the alternate payee elects to begin*

1 *receiving payment, as these additional retirement credits can only be computed at the*  
2 *time a member actually retires.]*

3 *[(2) If a court order allows an alternate payee to elect to begin receiving payment on*  
4 *or after the member's earliest eligibility for retirement benefits, PERS shall allocate the*  
5 *cost and the increase resulting from a purchase between an alternate payee and a*  
6 *member only if specific language regarding the division of any voluntary purchases that*  
7 *may be available to the member is contained in the final court order and only if:*

8 *(a) The effective date of payments is the same for both the alternate payee and the*  
9 *member, and*

10 *(b) The final court order is explicit in its direction on how PERS is to allocate the*  
11 *cost of any purchase and increased payment resulting from a purchase between the*  
12 *alternate payee and the member.*

13 *(c) If the final court order submitted to PERS does not contain specific language on*  
14 *how PERS is to allocate the cost of any purchase and the increased benefit payment as a*  
15 *result of either a single or multiple purchase between the member and the alternate*  
16 *payee, PERS shall not allocate, or pro-rate, the cost of any purchase or purchases, or the*  
17 *resulting increase in benefit payment between the member and the alternate payee. In the*  
18 *absence of any language to the contrary in regard to purchases, the full cost and amount*  
19 *that is due in regard to a purchase shall be billed solely to the member and the full*  
20 *increase in any benefit payment resulting from a single or multiple purchase shall be*  
21 *paid entirely to the member by PERS.]*

22 *[(3) An alternate payee who is allowed to select his or her own form of payment*  
23 *option may elect to change from the initial option that was chosen to another form of*

1 *payment option described in OAR 459-045-0030(8), if the election to change options is*  
2 *made in writing and received by PERS within 60 days from the issue date of the first*  
3 *payment made under the initial option that was selected by the alternate payee.]*

4 *[(4) The alternate payee may not cancel the election to receive benefits once the first*  
5 *payment has been generated.]*

6 *[(5) The alternate payee may not apply for benefits due to his or her own disability.]*

7 *[(6) If PERS determines that the payment being made to an alternate payee is in*  
8 *excess of the amount the alternate payee is entitled to PERS shall recover any*  
9 *overpayment in accordance with ORS 238.715, as is the case for any excess payment that*  
10 *is made to a member.]*

11 Stat. Auth.: ORS 238.465 ~~[(3) &]~~, ORS 238 .650, & ORS 238A.450

12 Stats. Implemented: ORS 238 .465

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0080**

2 **PERS Notifications**

3 (1) PERS is *[a]* separate *[entity]* from other public employer retirement plans and  
4 deferred compensation plans, and notification to other plans does not constitute notice to  
5 PERS. *[Similarly,]* PERS is not responsible for notifying other plans of member or  
6 alternate payee changes in address, changes in eligibility, *[or that an]* application for  
7 *[retirement or refund]* benefits *[have been received]*, or *[that a PERS member or an*  
8 *alternate payee has died]* death.

9 (2) PERS shall send a written notification acknowledging receipt of a final court  
10 order to the submitting party. *[and]* PERS shall send a copy of the acknowledgment to  
11 the other persons named in the court order only if those persons' mailing addresses are  
12 provided to PERS *[if mailing addresses are provided]*.

13 (3) *[PERS shall notify an alternate payee of his or her eligibility for payments [when*  
14 *a member terminates all PERS covered employment before retiring or upon the death of*  
15 *a member prior to retirement. It is the alternate payee's responsibility to contact PERS in*  
16 *order to begin receiving payment on or after the date the member has reached earliest*  
17 *retirement age.]* PERS will notify an alternate payee of an event described in ORS  
18 238.465(2)(a)(B), unless the alternate payee has already commenced receiving  
19 alternate payee benefits.

20 (4) PERS shall issue the applicable tax reporting forms directly to the recipient of  
21 any funds that are issued by PERS pursuant to a final court order *[for domestic relations*  
22 *purposes]*.

1 (5) PERS shall notify the member *[and /]* or the alternate payee, **or both**, of any  
2 *[reduction in]* benefit payments *[payable to the member and/or the alternate payee]* that  
3 **are reduced** *[is made]* by PERS pursuant to Section 415 of the Internal Revenue Code  
4 *[as provided in OAR 459-045-0030(15)]*.

5 *[(6) PERS shall process deductions from alternate payee payments for federal and*  
6 *state taxes and other support obligations provided for in ORS 238.445.]*

7 *[(7) PERS shall allocate a member's after tax contributions (member cost) between*  
8 *the member and the alternate payee in accordance with IRC Section 72(m)(10) in the*  
9 *same proportion that benefits are divided between the member and the alternate payee as*  
10 *specified in the final court order.]*

11 *[(8) All alternate payees who are awarded a separate account in the Fund in their*  
12 *own name shall receive an annual statement on their account until they have received a*  
13 *refund payment or started receiving retirement or death benefit payments. PERS shall*  
14 *make a reasonable attempt to send the alternate payee an annual statement of account by*  
15 *May 31, for the prior calendar year's activity.]*

16 *[(9) Alternate payees who are awarded payments other than by separate account*  
17 *may request information about their award by sending their request in writing to PERS.*  
18 *Staff shall make a reasonable attempt to provide written information about the award*  
19 *within 90 days of receiving the written request.]*

20 Stat. Auth.: ORS 238.465 *[(3) &]*, ORS 238.650, **& ORS 238A.450**

21 Stats. Implemented: ORS 238.465

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0090**

2 **PERS Administrative Fee**

3 *[(1)]* The Board has determined that actual and reasonable administrative expenses  
4 incurred by PERS for obtaining data and making calculations to administer an alternate  
5 payee award will always exceed \$300.00. At the time of benefit payment, PERS shall  
6 allocate the administrative fee under the provisions of ORS 238.465(9). *[when PERS*  
7 *establishes a separate alternate payee account under the Pre Retirement Division method*  
8 *or the At The Time of Payment Division method, or when establishing payment for an*  
9 *alternate payee or a member pursuant to a court order that uses the At The Time of*  
10 *Payment Division method. Therefore, PERS shall charge an administrative fee of*  
11 *\$300.00 for the costs related to establishing a separate account in the Fund in the name*  
12 *of the alternate payee, or for establishing payment for an alternate payee or a member*  
13 *pursuant to a court order that uses the Pre Retirement Division or At The Time of*  
14 *Payment Division methods.]*

15 *[(2) If a court order awards a separate account to an alternate payee pursuant to the*  
16 *Pre Retirement Division Method, then PERS shall allocate expenses and costs under the*  
17 *provisions of ORS 238.465(9), and OAR 459-045-0001(23) and (24).]*

18 *[(3) If a final court order uses the At The Time Of Payment Division method for*  
19 *determining an alternate payee's award, PERS shall allocate the fraction of the benefit*  
20 *awarded to the member and the alternate payee under the provisions of ORS 238.465(9),*  
21 *and OAR 459-045-0001(23). The fraction of the administrative fee that is owed by the*

1 *alternate payee and the member shall be calculated at the time the alternate payee elects*  
2 *to have a separate account established, or elects to begin receiving a monthly payment.]*

3 *[(a) If the At The Time Of Payment Division Method used the years and months*  
4 *formula described in OAR 459-045-0010(2)(b)(A) then the numerator shall be the*  
5 *creditable service time accrued by the member during the marriage, and the denominator*  
6 *shall be the total creditable service accrued by the member at the time benefits become*  
7 *due and payable to either the member or the alternate payee. To determine the fee owed*  
8 *by the alternate payee, this fraction shall then be multiplied by the percentage awarded*  
9 *to the alternate payee under the final court order, as described in OAR 459-045-*  
10 *0010(2)(b)(C). The remainder of the \$300 administrative fee shall be allocated to the*  
11 *member. Amounts owed by the parties for the administrative fee shall be deducted from*  
12 *the respective parties' benefits when those benefits become payable.]*

13 *[(b) If the At the Time of Payment Division method used the member contributions*  
14 *and interest formula described in OAR 459-045-0010(2)(b)(B) then the numerator shall*  
15 *be the contributions and interest that accrued during the marriage, and the denominator*  
16 *shall be the contributions and interest in the member account balance as of December 31*  
17 *immediately prior to the alternate payee election date, or the actual member account*  
18 *balance if the member elects to receive benefits at the same time as the alternate payee.*  
19 *To determine the percentage of the fee owed by the alternate payee, this fraction shall*  
20 *then be multiplied by the percentage awarded to the alternate payee under the final court*  
21 *order, as described in OAR 459-045-0010(2)(b)(C). The remainder of the \$300*  
22 *administrative fee shall be allocated to the member. Amounts owed by the parties for the*

1 *administrative fee shall be deducted from the respective parties' benefits when those*  
2 *benefits become payable.]*

3 *[(4) The fee that shall be charged for dividing a PERS member's account or benefits*  
4 *shall not be contingent on the number of days it takes for PERS to complete its review of*  
5 *any type of court order that is received by PERS.]*

6 Stat. Auth.: ORS 238.465 *[(9) &]*, ORS 238.650, [& ORS 238A.450](#)

7 Stats. Implemented: ORS 238.465

*This Item has been modified, please see the Walk-in Packet modifications following Item C.1.Attachment 14.*



**ADDITIONAL ITEMS FOR PERS BOARD  
May 21, 2010**

**Agenda Item C.1.**

**May 21, 2010 Steve Rodeman Supplemental Memo on  
Adoption of Modified Domestic Relations Order Rules:**

- |                       |  |
|-----------------------|--|
| Modified Attachment 2 | 459-045-0001, <i>Definitions</i>   |
| Modified Attachment 3 | 459-045-0010, <i>Chapter 238 Tier One/Tier Two Division of Benefits</i>    |
| Modified Attachment 4 | 459-045-0012, <i>OPSRP Pension Program Division of Benefits</i>            |
| Modified Attachment 5 | 459-045-0014, <i>Individual Account Program (IAP) Division of Benefits</i> |

*Walk-in Packet modifications to Item C.1.*





# Oregon

Theodore R. Kulongoski, Governor

Walk-in Packet modifications to Item C.1.

## Public Employees Retirement System

Headquarters:  
11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR  
Mailing Address:  
P.O. Box 23700  
Tigard, OR 97281-3700  
(503) 598-7377  
TTY (503) 603-7766  
[www.oregon.gov/pers](http://www.oregon.gov/pers)

May 21, 2010

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Deputy Director  
SUBJECT: Adoption of Modified Domestic Relations Orders Rules:  
459-045-0001, *Definitions*  
459-045-0010, *Chapter 238 Tier One/Tier Two Division of Benefits*  
459-045-0012, *OPSRP Pension Program Division of Benefits*  
459-045-0014, *Individual Account Program (IAP) Division of Benefits*

During the week of May 17, 2010, PERS received email comments from two attorneys whose practice relates to domestic relations with comments on the proposed rule modifications that are presented for adoption at the Friday, May 21, 2010 PERS Board meeting. In response, the agency re-opened the public comment period to extend until May 21, 2010 to allow for admission of those comments.

The PERS staff suggests making two modifications to the rules as originally published in the May 21, 2010 board packet to address these comments:

1. The rules as presented required that benefits divided on a percentage basis only use a “whole percentage.” The comments supported expanding that to allow up to two decimal points to allow for a more precise division of benefits. PERS has agreed and modified the following sections of three rules (highlighted in Attachments 3-5<sup>1</sup> to this memo) to allow for percentages up to two decimal points:
  - 459-045-0010(2)(c)(A), (3)(c)(A) and (C)(i), and (4)(c)(A)
  - 459-045-0012(2)(c)(A) and (C)(i), (3)(c)(A) and (4)(c)
  - 459-045-0014(2)(a) and (3)(a)
2. As presented, the term “married time ratio” only allowed inclusion of benefits accrued during the actual period of marriage. The comments suggesting allowing more flexibility, as practitioners may use the point of separation or the date of trial rather than the actual date of the divorce. PERS agrees to modify the definition of “married time ratio” in OAR 459-045-0001(11) (highlighted in the Attachment 2 to this memo) to include whatever period is specified in the court order, so the parties can use the parameters the court deems to be appropriate. Correspondingly, OAR 459-045-0010(3)(c)(C)(ii) and 459-045-0012(2)(c)(C)(ii) would be modified as highlighted in Attachments 3 and 4 to this memo.

The comments also raised concerns with the requirement to use the calendar year end balance of the IAP since the parties may want to allow for contributions or earnings since the end of the

<sup>1</sup> For consistency, the attachments to this memo are numbered the same as the corresponding rules as presented with the original May 21, 2010 Board meeting memo.

05/21/10

Page 2 of 2

prior year. However, PERS staff cannot administer a mid-year division; to do so would require allocating contributions and earnings on an inherently arbitrary or inconsistent basis. Rather, with the ability to specify an account split based on a certain dollar amount or a percentage (now to be revised to allow up divisions out to two decimal points), practitioners should have the information available to them to allocate the calendar year end balance to allow for any variances they want to include in the allocation. Consequently, no rule modifications are proposed as to these comments.

### LEGAL REVIEW

The attached draft rules were submitted to the Department of Justice for legal review and any comments or changes are incorporated in the rules as presented for adoption.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to Domestic Relations Orders Rules, including the further modifications presented at the PERS Board’s May 21, 2010 meeting.”
2. Direct staff to make other changes to the rule or explore other options.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: In addition to the overall changes needed to address domestic relations orders, these further modifications will allow practitioners more flexibility within PERS administrative constraints to fashion asset divisions more precisely.

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.1. Attachment 2 Modified – 459-045-0001, *Definitions*

C.1. Attachment 3 Modified – 459-045-0010, *Chapter 238 Tier One/Tier Two Division of Benefits*

C.1. Attachment 4 Modified – 459-045-0012, *OPSRP Pension Program Division of Benefits*

C.1. Attachment 5 Modified – 459-045-0014, *Individual Account Program (IAP) Division of Benefits*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS**

1 **459-045-0001**

2 **Definitions**

3 The words and phrases used in this division *[shall]* have the same meaning given  
4 them in ORS Chapters 238 and 238A. Specific and additional terms for purposes of this  
5 division are defined as follows unless context requires otherwise.

6 (1) “Administrable” means that the language in a final court order that outlines  
7 an alternate payee award can be administered within the provisions of ORS  
8 Chapters 238, 238A, and this division.

9 (2) “Alternate payee” means the recipient of an award of a portion or all of a  
10 PERS member’s account(s) or benefits as provided for in the terms of any judgment  
11 of annulment, dissolution of marriage, dissolution of registered domestic  
12 partnership, or separation, or the terms of any court order or court-approved  
13 property settlement agreement incident to any judgment of annulment, dissolution  
14 of marriage, dissolution of registered domestic partnership, or separation.

15 (3) “Alternate payee account” means a court-ordered separate account created  
16 under ORS 238.465 in the name of an alternate payee.

17 (4) “Alternate payee release” means a written statement that is signed by the  
18 alternate payee and received by PERS authorizing the release of information, and  
19 directing to whom and where the information is to be sent pertaining to:

20 (a) The alternate payee’s interest in the member’s account(s) or member’s  
21 vested interest in the Fund;

1 (b) The alternate payee’s account and benefit information if a separate account  
2 has been created in the name of the alternate payee;

3 (c) Benefit information applicable to either subsection (a) or (b) of this section;  
4 and

5 (d) Award information contained in any draft or final court order in regard to  
6 the alternate payee on record with PERS.

7 (5) “Award” means the portion of a member’s account(s) or of the member’s  
8 benefits under ORS Chapter 238 or 238A awarded to an alternate payee by a final  
9 court order.

10 (6) “Court order” means a court decree or judgment of annulment, dissolution  
11 of marriage, dissolution of registered domestic partnership, or separation, or the  
12 terms of any court order or court-approved property settlement agreement incident  
13 to any judgment of annulment, dissolution of marriage, dissolution of registered  
14 domestic partnership, or separation, which includes the content of any PERS  
15 divorce forms attached as exhibits.

16 (7) “Deduction” means an alternate payee’s award is subtracted from the  
17 member’s benefit(s) after tax.

18 (8) “Draft court order” means an order for dividing a PERS account(s) or  
19 benefits that has been prepared but not approved or signed by the court or filed  
20 with the court clerk, which includes the content of any PERS divorce forms attached  
21 as exhibits.

1 (9) “Final court order” means a court order that has been signed by a judge  
 2 and shows the stamp of the court clerk or trial court administrator indicating the  
 3 order is a certified copy of the original record that is on file with the court.

4 (10) “Joint and survivor annuity” means any retirement annuity option under  
 5 which a monthly lifetime annuity is payable to a surviving beneficiary of a member.

6 (11) “Married time ratio” means the fraction in which the numerator is the  
 7 years and months of creditable service time or retirement credit accrued by the  
 8 member during a specified period or while married to or in a registered domestic  
 9 partnership with the alternate payee as provided in the court order and the  
 10 denominator is the member’s total creditable service time or retirement credit  
 11 accrued by the member at the time of retirement.

12 (12) “Member” means a person described in ORS 238.005(12), 238.500(3), or  
 13 238A.005(10), who is the current or former spouse or partner of an alternate payee.

14 (13) “Member release” means a written statement that is signed by a member  
 15 and received by PERS authorizing the release of information, and directing to  
 16 whom and where information is to be sent pertaining to:

17 (a) The member’s account(s);

18 (b) The member’s interest in the Fund;

19 (c) Benefit information applicable to either subsection (a) or (b) of this section;

20 and

21 (d) Award information contained in any draft or final court order in regard to  
 22 the member on record with PERS.

23 (14) “Partner” has the same meaning as defined in ORS 106.310(2)

1 (15) “PERS divorce forms” means the forms provided by PERS that must be  
2 completed to describe a court order’s provisions relating to administration of a  
3 member’s benefit that is subject to that order.

4 (16) “Reduction” means an alternate payee’s award is subtracted from the  
5 member’s benefit(s) before tax.

6 (17) “Registered domestic partnership” has the same meaning as domestic  
7 partnership as defined in ORS 106.310(1).

8 *[(1) “Board” shall have the same meaning as the Public Employees Retirement*  
9 *Board as defined in ORS 238.630.]*

10 *[(2) “PERS” shall have the same meaning as the Public Employees Retirement*  
11 *System as defined in ORS 238.600.]*

12 *[(3) “Fund” shall have the same meaning as the Public Employees Retirement Fund*  
13 *in ORS 238.660.]*

14 *[(4) “Staff” means the employees of the Public Employees Retirement System as*  
15 *provided in ORS 238.645.]*

16 *[(5) “Member” means a person described in ORS 238.005(12) and 238.500(3), and*  
17 *who is the current or former spouse of an alternate payee.]*

18 *[(6) “Alternate payee” means a spouse or former spouse of a PERS member, who is*  
19 *awarded a portion of the member’s PERS benefits by a court.]*

20 *[(7) “Member’s PERS account” means:]*

21 *[(a) The member’s individual account in the Fund as defined in ORS 238.250; and]*

22 *[(b) The member’s account in the Variable Annuity Account in the Fund as defined*  
23 *in ORS 238.260.]*

1        *[(c) The accounts described in subsections (a) and (b) of section consist of:]*  
2        *[(A) Member before-tax contributions paid to PERS under ORS 238.200;]*  
3        *[(B) Member after-tax contributions paid to PERS under ORS 238.205; and]*  
4        *[(C) Interest and earnings credited to each of the accounts described in paragraphs*  
5        *(A) and (B) of this subsection.]*

6        *[(d) Shall apply only to an active or an inactive member, and shall not apply to a*  
7        *retired member.]*

8        *[(8) “PERS funds” means the member’s PERS account [as defined in section (7) of*  
9        *this rule] and the member’s vested interest in employer contributions paid into the Fund*  
10       *in accordance with ORS 238.225, but shall not include:]*

11       *[(a) Employer contributions for police and fire benefit units pursuant to ORS*  
12       *238.440.]*

13       *[(b) Employer contributions paid into the Fund that the member is not vested in*  
14       *pursuant to ORS 238.265.]*

15       *[(9) “Alternate Payee Account” means a court-ordered separate account created*  
16       *under ORS 238.465 in the name of an alternate payee, and established as of the award*  
17       *date stated in the court order. The award date shall be before, or at the time refund,*  
18       *death, service or disability retirement benefits become payable to the member or the*  
19       *member’s beneficiary.]*

20       *[(10) “Alternate payee’s award” is the portion of a member’s PERS account or of*  
21       *the member’s PERS funds awarded to an alternate payee by a court order, and may*  
22       *include the creation of a separate account in the Fund in the name of the alternate*  
23       *payee.]*

1        *[(11) “Member Release” means a written statement that is signed by a member and*  
2 *received by staff authorizing the release of information, and directing to whom and where*  
3 *information is to be sent:*

4        *(a) Pertaining to the member’s PERS account;*

5        *(b) Pertaining to the member’s interest in the Fund; or*

6        *(c) Pertaining to benefit information applicable to either subsection (a) or (b) of this*  
7 *section.*

8        *(d) Pertaining to award information contained in any draft or final court order in*  
9 *regard to the member on record with PERS.]*

10       *[(12) “Alternate Payee Release” means a written statement that is signed by the*  
11 *alternate payee and received by staff authorizing the release of information, and*  
12 *directing to whom and to where the information is to be sent:*

13       *(a) Pertaining to the alternate payee’s interest in the member’s PERS account or*  
14 *member’s vested interest in the Fund;*

15       *(b) Pertaining to the alternate payee’s account and benefit information if a separate*  
16 *account has been created in the name of the alternate payee; or*

17       *(c) Pertaining to benefit information applicable to either subsection (a) or (b) of this*  
18 *section.*

19       *(d) Pertaining to award information contained in any draft or final court order in*  
20 *regard to the alternate payee on record with PERS.]*

21       *[(13) A “Member Release” and an “Alternate Payee Release” shall include a valid*  
22 *subpoena or court order requiring PERS to provide information to someone other than*  
23 *the member or the alternate payee.]*

1        *[(14) “Vested” has the same meaning as provided in ORS 239.005(24). Whether or*  
2 *not a member is considered to be vested shall be determined solely by ORS 238.265*  
3 *regardless of any language that may be contained in any type of court order received by*  
4 *PERS.]*

5        *[(15) “Separation from service” means the member separates from PERS covered*  
6 *employment due to death, service retirement, disability retirement, or termination of*  
7 *employment for which the requirements set forth in ORS 238.265 have been met.]*

8        *[(16) “Service retirement” shall have the same meaning as provided in ORS*  
9 *238.300.]*

10       *[(17) “Disability retirement” shall have the same meaning as provided in ORS*  
11 *238.320.]*

12       *[(18) “Joint and survivor annuity” shall mean any retirement annuity option under*  
13 *which a monthly lifetime annuity is payable to a surviving beneficiary of a member. The*  
14 *current joint and survivor annuities payable under PERS are Options 2, 2A, 3, and 3A*  
15 *described in ORS 238.305, and 238.325.]*

16       *[(19) “Integration” shall have the same meaning as provided in ORS 238.035,*  
17 *238.680 and 238.690.]*

18       *[(20) “Estimate” means a projection of benefits prepared by staff of a service or*  
19 *disability retirement allowance, a death or a refund payment. An estimate is not a*  
20 *guarantee or promise of actual benefits that eventually may become due and payable and*  
21 *PERS is not bound by any estimates it provides.]*

22       *[(21) “The earliest date the member would be eligible to receive retirement” shall*  
23 *have the same meaning as provided in ORS 238.005(6), or 238.280, or the date the*

1 *member is approved for disability retirement prior to reaching earliest service retirement*  
2 *eligibility.]*

3 *[(22) “PERS Plan Year” means a calendar year beginning January 1, and ending*  
4 *December 31.]*

5 *[(23) “PERS Administrative Fee” means the fee, not to exceed \$300, that shall be*  
6 *charged in accordance with ORS 238.465(9) to the member and/or alternate payee for*  
7 *actual and reasonable administrative cost incurred by PERS for establishing benefits for*  
8 *an alternate payee.]*

9 *[(24) “Fraction of the benefit” used to allocate expenses and costs under ORS*  
10 *238.465(9) means the percentage or ratio of a member’s PERS account or member’s*  
11 *vested interest in the Fund that is awarded by court decree or order to the alternate*  
12 *payee and the member as of the date of divorce, separation or annulment.]*

13 *[(25) “Court Order” means a court decree or judgment of dissolution of marriage,*  
14 *separation, or annulment, or the terms of any court order or court approved marital*  
15 *property settlement agreement, incident to any court decree or judgment of dissolution of*  
16 *marriage, separation, or annulment.]*

17 *[(26) “Final Court Order” means a court order or judgment that has been signed by*  
18 *a judge, and which shows the stamp of the court clerk or trial court administrator*  
19 *indicating the order is a certified copy of the original record that is on file with the*  
20 *court.]*

21 *[(27) “Draft Court Order” means an order for dividing a PERS account or benefits*  
22 *has been prepared but not approved or signed by the court or filed with the court clerk*  
23 *that contains proposed language on how PERS benefits are to be divided.]*

- 1      Stat. Auth.: ORS 238.465 ~~[(3) &]~~, 238.650 & 238A.450
- 2      Stats. Implemented: ORS 238.465

*Walk-in Packet modifications to Item C.1.*



OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 **459-045-0010**

2 **Chapter 238 Tier One / Tier Two Division of Benefits**

3 **(1) A final court order that provides for a division of benefits must use a**  
4 **method described in this rule.**

5 **(a) The method must be identified on PERS divorce forms.**

6 **(b) The PERS divorce forms must be attached as exhibits to the court order,**  
7 **and incorporated by reference in the court order.**

8 **(2) Award of Alternate Payee Account (Non-Retired Member). If a final court**  
9 **order provides an award of an alternate payee account, the court order must**  
10 **provide:**

11 **(a) The date of annulment, separation, divorce, or property settlement. If no**  
12 **date is provided, PERS will use the date the judge signed the court order. The**  
13 **separate account will be established as of December 31 of the calendar year before**  
14 **this date unless:**

15 **(A) A prior year is provided in the court order; or**

16 **(B) The date is December 31.**

17 **(b) That a separate account be established in an alternate payee's name.**

18 **(c) The method by which the award is to be calculated. One of the following**  
19 **methods must be used:**

20 **(A) A percentage, expressed with up to two decimal points; or**

21 **(B) A dollar amount.**

22 **(d) Whether an alternate payee is awarded matching employer dollars.**

1 (e) That an alternate payee may elect to receive the award at any time after the  
2 member's earliest retirement eligibility.

3 (3) Award of Payment from Member's Monthly Benefit (Non-Retired Member).

4 If a final court order awards an alternate payee a reduction or deduction amount  
5 from the monthly service or disability retirement benefit that shall be paid in the  
6 future to the member, the court order must provide:

7 (a) The date of annulment, separation, divorce, or property settlement. If no  
8 date is provided, PERS will use the date the judge signed the court order.

9 (b) Whether the award is a reduction or deduction from the member's benefit.  
10 If the award is a reduction, the court order must provide whether the alternate  
11 payee is eligible to elect a separate benefit option at any time after the member  
12 reaches earliest retirement eligibility.

13 (c) The method by which the monthly award is to be calculated. One of the  
14 following methods must be used:

15 (A) A percentage, expressed with up to two decimal points; or

16 (B) A dollar amount; or

17 (C) A percentage of the married time ratio. The court order must provide:

18 (i) The percentage, expressed with up to two decimal points; and

19 (ii) The years and months of creditable service time accrued by the member  
20 during a specified period or while married to the alternate payee.

21 (d) If there is a specific end date or dollar amount limit to the award, and what  
22 that date or limit is.

1 (e) Whether the award applies to service retirement benefits, disability  
2 retirement benefits, or withdrawal benefits.

3 (f) Whether the member is restricted from withdrawing as a member under  
4 ORS 238.265.

5 (g) Whether the member must select a specific benefit payment option at  
6 retirement.

7 (h) Whether the member is required to designate the alternate payee as a  
8 beneficiary:

9 (A) Before retirement.

10 (B) At retirement.

11 (i) Whether an alternate payee award continues after the death of:

12 (A) The member.

13 (B) The alternate payee.

14 (4) Award of Monthly Benefit (Retired Member). If a final court order awards  
15 an alternate payee an amount payable from a retired member's monthly service or  
16 disability retirement benefit, the court order must provide:

17 (a) The date of annulment, separation, divorce, or property settlement. If no  
18 date is provided, PERS will use the date the judge signed the court order.

19 (b) Whether an alternate payee award is a reduction or deduction from the  
20 member's monthly benefit.

21 (c) The method by which the monthly award is to be calculated. One of the  
22 following methods must be used:

23 (A) A percentage, expressed with up to two decimal points; or

1 (B) A dollar amount.

2 (d) If there is a specific end date or dollar amount limit to the award, and what  
3 that date or limit is.

4 (e) Whether the member may or must change their beneficiary designation. If  
5 the member's beneficiary designation is changed, the member's monthly benefit  
6 must be recalculated.

7 (f) Whether a member who elected Option 2A or 3A under ORS 238.305(1) is  
8 allowed to receive the Option 1 benefit under ORS 238.305(6).

9 (g) Whether an alternate payee award continues after the death of:

10 (A) The member.

11 (B) The alternate payee.

12 *[The purpose of this rule is to describe methods for determining an alternate payee's*  
13 *award from a member's PERS account and PERS Funds, which are administrable by*  
14 *PERS.]*

15 *[(1) Pre Retirement Division Method: A final court order or judgment which*  
16 *establishes a separate account in the Fund in the name of the alternate payee at the time*  
17 *of the award.]*

18 *[(a) The court order must be received by the Divorce Decree Unit at the PERS*  
19 *Portland Headquarters office prior to the issue date of any payment to, or on behalf of a*  
20 *member, of a service or disability retirement, refund, or death benefit.]*

21 *[(b) The Pre Retirement Division Method shall not be used if a court order allows*  
22 *any option for a member to subsequently buy out the alternate payee's interest in the*  
23 *member's PERS funds.]*

1        *[(c) The court order must include a specific percentage or dollar amount, either*  
 2 *directly or pursuant to a formula resulting in a percentage or dollar amount to be*  
 3 *awarded to the alternate payee.]*

4        *[(d) The court order must direct PERS to transfer the amount of the award from the*  
 5 *member's account and to deposit it in a separate account in the Fund in the name of the*  
 6 *alternate payee as of a court provided date.]*

7        *[(e) The court order shall specify a date between January 1, and through December*  
 8 *31, on which to base the transfer of the alternate payee's award from the member's PERS*  
 9 *account. If a court order directs PERS to transfer a certain percentage to the alternate*  
 10 *payee, it shall be converted into a dollar amount. The converted dollar amount or the*  
 11 *dollar amount stated in the court order that is awarded to the alternate payee shall be*  
 12 *applied against the last audited PERS member account balance on record as of the end*  
 13 *of the plan year (December 31) on or immediately preceding the award date specified in*  
 14 *the court order and then it shall be deposited into a separate account in the name of the*  
 15 *alternate payee.]*

16        *[(f) If a date is not given in a court order on which PERS is to base the transfer of an*  
 17 *alternate payee's award from a member's PERS member account then PERS shall use the*  
 18 *date the court order was signed by the court and base the transfer as of the end of the*  
 19 *plan year (December 31) immediately preceding the date the order was signed by the*  
 20 *court. If the date the order was signed by the court is December 31 then the last audited*  
 21 *account balance as of December 31 of the plan year in which the order was signed shall*  
 22 *be used.]*

1        *[(g) A percentage award that is due an alternate payee shall be applied against the*  
2 *member's individual account, and in the Variable Annuity Account in the Fund. Specific*  
3 *dollar amounts awarded to an alternate payee shall be applied against the member's*  
4 *individual account, and in the Variable Annuity Account in the Fund on a pro-rata*  
5 *basis.]*

6        *[(h) Once the value of the alternate payee's award is established, the portion of the*  
7 *award that is attributable to the member's account in the Variable Annuity Account in the*  
8 *Fund shall be transferred to the separate account established in the name of the alternate*  
9 *payee, which shall earn a regular or fixed interest rate as established by the Board, from*  
10 *the transfer date to the date benefits are effective for the alternate payee.]*

11        *[(i) Interest on a separate alternate payee account after the division and transfer*  
12 *takes place shall be credited in accordance with OAR chapter 459, division 007.]*

13        *[(j) Under the Pre Retirement Division Method an alternate payee would be eligible*  
14 *for benefits based on the member's eligibility for benefits regardless of whether or not the*  
15 *member elects to begin receiving benefits.]*

16        *[(2) At Time of Payment Division Method: a court order that awards an alternate*  
17 *payee a portion of future benefits that become due and payable by PERS to a member,*  
18 *expressed as a percentage:]*

19        *[(a) The court order awards an alternate payee a percentage of the total PERS funds*  
20 *that were accrued during the marriage.]*

21        *[(b) The award is computed using either formula (A) which uses years and months,*  
22 *or formula (B), which uses member contributions and interest credited to the member's*  
23 *PERS account. Each of these formulas is then multiplied by a subsequent percentage as*

1 *described in sub-paragraph (C). Any court order that PERS receives that utilizes the*  
2 *ratio method must spell out in full the formula that is to be used for determining the*  
3 *alternate payee's award.]*

4 *[(A) The numerator is the creditable service time accrued as an active member*  
5 *during the marriage, (MCS). The denominator is the total of the member's total*  
6 *creditable service, (TCS) as defined in ORS 238.005(5), at the time benefits become due*  
7 *and payable to either the member or the alternate payee, expressed as the equation:]*

8 *[MCS = Ratio of benefits accrued during the marriage.*

9 *TCS]*

10 *[(i) Example: Assume a member had 12 years and 3 months of creditable service*  
11 *accrued during the marriage, the numerator would equal 147 months.]*

12 *[(ii) Assume further that the member has 25 years and 8 months of total creditable*  
13 *service as of the date the member and/or alternate payee applies for payment, then the*  
14 *denominator would equal 308 months.]*

15 *[(iii) 147 divided by 308 equals 47.7273 percent.]*

16 *[(B) The numerator is the amount of the contributions and the interest credited to the*  
17 *member's PERS account during the marriage, (married account = MA). The denominator*  
18 *is the total of the member's PERS account (total account as determined by PERS = TA) at*  
19 *the time benefits become due and payable to either the member or the alternate payee,*  
20 *expressed as the equation:]*

21 *[MA = Ratio of benefits accrued during the marriage.*

22 *TA]*

1        *[(i) Example: Assume a member has a PERS member account of \$23,511.82 as of*  
2 *the end of the plan year (December 31) immediately preceding the date of marriage then*  
3 *the numerator would equal \$23,511.82.]*

4        *[(ii) Assume further that the total member PERS account as of the end of the plan*  
5 *year (December 31) immediately preceding the date of divorce or date an alternate payee*  
6 *elects to begin receiving payment, equals \$45,650.33. The denominator then would equal*  
7 *\$45,650.33.]*

8        *[(iii) \$23,511.82 divided by \$45,650.33 equals 51.5042 percent.]*

9        *[(C) Court orders may direct that the ratio in either paragraphs (A) or (B) of this*  
10 *subsection be multiplied by another percentage and the result equals the alternate*  
11 *payee's award, expressed as the equation:]*

12        *[(i) Ratio from paragraphs (A) or (B) multiplied by (C) of this subsection equals*  
13 *amount of alternate payee's award.]*

14        *[(ii) 147 months divided by 308 months equals 47.7273 percent multiplied by court*  
15 *awarded percentage of 50 percent equals 23.8637 percent due the alternate payee when*  
16 *benefits become payable.]*

17        *[(c) The alternate payee's award is not computed until the member or member's*  
18 *beneficiaries elect to receive funds due to refund, service or disability retirement, or*  
19 *death.]*

20        *[(3) A court order that uses the Division Methods described in Sections (1) and (2)*  
21 *of this rule may include language that would allow:]*

22        *[(a) An alternate payee to elect to receive his or her award in the form of retirement*  
23 *payment option on or after the member's earliest eligibility for service retirement*

1 *benefits, regardless of whether or not the member actually retires, and/or the member or*  
2 *the member's beneficiaries elects to begin receiving benefits.]*

3 *[(b) An alternate payee to elect to have a separate account established in the Fund*  
4 *in the name of the alternate payee.]*

5 *[(c) If an alternate payee elects to have a separate account established in the fund in*  
6 *his or her name regular or fixed interest shall be credited and posted up until the*  
7 *alternate payee elects to receive his or her award in accordance with OAR chapter 459,*  
8 *division 007.]*

9 *[(d) When an alternate payee exercises the election under paragraph (2)(d)(A) or*  
10 *(B) of this rule pursuant to a court order that utilizes the formula described in paragraph*  
11 *(2)(b)(A) of this rule, the total creditable service that shall be used for the denominator*  
12 *shall be based as if a member who is active had terminated as of the date payments are*  
13 *effective for the alternate payee. If a member is inactive and has already terminated on*  
14 *some other date prior to the alternate payee's election, then the inactive member's total*  
15 *actual creditable service time shall be used as the denominator.]*

16 *[(e) When an alternate payee exercises the election under paragraph (2)(d)(A) or*  
17 *(B) of this rule pursuant to a court order that utilizes the formula described in paragraph*  
18 *(2)(b)(B) of this rule, the denominator that shall be used for an active or an inactive*  
19 *member shall be the total member's PERS account as of December 31 of the year prior to*  
20 *the date payments are effective for the alternate payee. If a member is retiring at the*  
21 *same time an alternate payee is exercising an election under paragraph (2)(c)(A) of this*  
22 *rule, then the actual total member PERS account shall be used as the denominator.]*

1        *[(4) The Payment Division Deduction Method: This method can be used in regard to*  
2 *a member prior to retirement, or in regard to a member who has retired and has started*  
3 *receiving payment. A court order provides an award, which is stated as a flat or set*  
4 *dollar amount, or as a percentage, either directly or pursuant to a formula, that is to be*  
5 *paid to an alternate payee from the service or disability retirement benefit that shall be*  
6 *paid in the future to a member, or that is presently being paid by PERS to a retired*  
7 *member.]*

8        *[(a) The flat or set dollar amount or percentage that is awarded to the alternate*  
9 *payee shall be deducted out of the retired member's gross monthly benefit.]*

10       *[(b) Under this method an alternate payee's award shall not be based on the*  
11 *alternate payee's age or life expectancy.]*

12       *[(c) A court order may direct that a member select a specific payment option and*  
13 *designate the alternate payee as the primary beneficiary, if the member has not retired as*  
14 *of the date PERS receives a final court order. If a court order provides for this type of an*  
15 *award, payment to the member at the time the member retires shall be based on the age*  
16 *difference between the member and the alternate payee. The alternate payee award shall*  
17 *then be deducted from the member's gross monthly benefit, at the time the member*  
18 *retires.]*

19       *[(d) If a member has retired and has been receiving payment for more than the time*  
20 *period allowed in ORS 238.305(1) PERS shall not allow a change of payment option*  
21 *from what was originally selected by the member, regardless of any direction to the*  
22 *contrary that may be contained in a court order.]*

1        *[(e) If a member has retired and been receiving payment for more than the period*  
2 *allowed in ORS 238.305(1) PERS shall only allow a change in the beneficiary*  
3 *designation if the option originally selected by the member allows for a change of*  
4 *beneficiary, regardless of any direction to the contrary that may be contained in a court*  
5 *order.]*

6        *[(f) An alternate payee cannot convert their award to their own separate payment*  
7 *option independent from the member's.]*

8        *[(g) PERS shall continue to send a separate check in the name of the alternate payee*  
9 *for as long as there is a benefit being paid by PERS to a member or a member's*  
10 *beneficiary.]*

11        *[(5) A division of benefits must be in accordance with one of the methods described*  
12 *in this rule.]*

13        *[(6) For the purposes of this rule, benefits paid by PERS to a member are:]*

14        *[(a) "Retirement benefits" means benefits payable on retirement under PERS law for*  
15 *service or disability.]*

16        *[(b) "Refund" means a refund of a member's PERS account, and includes payment*  
17 *made due to loss of membership under ORS 238.095.]*

18        *[(c) "Death benefits" means benefits that are payable to a beneficiary pursuant to*  
19 *ORS 238.390 and 238.395.]*

20        Stat. Auth.: ORS 238.465 *[(3)]* & 238.650

21        Stats. Implemented: ORS 238.465

*Walk-in Packet modifications to Item C.1.*



OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0012

2 OPSRP Pension Program Division of Benefits

3 (1) A final court order that provides for a division of pension benefits or  
4 disability benefits must use a method described in this rule.

5 (a) The method must be identified on PERS divorce forms.

6 (b) The PERS divorce forms must be attached as exhibits to the court order, and  
7 incorporated by reference in the court order.

8 (2) Award of Pension Benefits (Non-Retired Member). If a final court order  
9 awards an alternate payee a reduction or deduction amount from the monthly  
10 pension benefit that shall be paid in the future to the member, a court order must  
11 provide:

12 (a) The date of annulment, separation, divorce, or property settlement. If no date  
13 is provided, PERS will use the date the judge signed the court order.

14 (b) Whether the award is a reduction or deduction from the member's monthly  
15 pension. If the award is a reduction, the court order must provide whether the  
16 alternate payee is eligible to elect a separate benefit option at any time after the  
17 member reaches earliest retirement eligibility.

18 (c) The method by which the monthly award is to be calculated. One of the  
19 following methods must be used:

20 (A) A percentage, expressed with up to two decimal points; or

21 (B) A dollar amount; or

1 (C) A percentage of the married time ratio. If this method is used, the court  
2 order must provide:

3 (i) The percentage, expressed with up to two decimal points; and

4 (ii) The years and months of retirement credit accrued by the member during a  
5 specified period or while married to the alternate payee.

6 (d) If there is a specific end date or dollar amount limit to the award, and what  
7 that date or limit is.

8 (e) Whether the member must select a specific benefit payment option at  
9 retirement.

10 (f) Whether the member must designate the alternate payee as beneficiary.

11 (g) Whether the alternate payee and any minor children are awarded a  
12 percentage of any pre-retirement death benefit pursuant to ORS 238A.230.

13 (h) Whether the alternate payee award continues or ends after the member  
14 retires if:

15 (A) The member dies before the alternate payee and the member's beneficiary is  
16 not the alternate payee.

17 (B) If the alternate payee dies before the member.

18 (3) Award of Pension Benefits (Retired Member). If a final court order awards  
19 an alternate payee an amount to be paid from a retired member's monthly pension,  
20 the court order must provide:

21 (a) The date of annulment, separation, divorce, or property settlement. If no date  
22 is provided, PERS will use the date the judge signed the court order.

23 (b) Whether the award is a reduction or deduction from the member's monthly  
24 pension.

1 (c) The method by which the monthly award is to be calculated. One of the  
2 following methods must be used:

3 (A) A percentage, expressed with up to two decimal points; or

4 (B) A dollar amount.

5 (d) If there is a specific end date or dollar amount limit to the award, and what  
6 that date or limit is.

7 (e) Whether the member may or must change the beneficiary designation. If the  
8 member’s beneficiary is changed, the member’s pension must be recalculated.

9 (f) Whether a member, who elected to receive their pension under ORS  
10 238A.190(1)(b) or (d), is allowed to receive the higher pension benefit under ORS  
11 238A.190(2)(b).

12 (g) Whether the alternate payee will be the sole beneficiary or any remaining  
13 share not awarded to the alternate payee shall be paid to the member’s secondary  
14 beneficiary if the member dies before the alternate payee and the alternate payee was  
15 the member’s beneficiary.

16 (h) Whether an alternate payee award continues or ends if:

17 (A) The member dies before the alternate payee and the member’s beneficiary is  
18 not the alternate payee.

19 (B) The alternate payee dies before the member.

20 (4) Award of Disability Benefits. If a final court order awards an alternate payee  
21 an amount to be paid from the monthly disability benefit that is being paid or may be  
22 paid in the future to the member, the court order must provide:

23 (a) The date of annulment, separation, divorce, or property settlement. If no date  
24 is provided, PERS will use the date the judge signed the court order.

1 (b) Whether the award is a reduction or deduction from the member's monthly  
2 disability benefit.

3 (c) A percentage, expressed with up to two decimal points, of the member's  
4 monthly disability benefit that is awarded to the alternate payee.

5 Stat. Auth.: ORS 238.465, 238.650 & 238A.450

6 Stats. Implemented: ORS 238.465

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 045 – DOMESTIC RELATIONS ORDERS

1 459-045-0014

2 Individual Account Program (IAP) Division of Benefits

3 (1) A final court order that provides for a division of benefits must use a  
4 method described in this rule.

5 (a) The method must be identified on PERS divorce forms.

6 (b) The PERS divorce forms must be attached as exhibits to the court order,  
7 and incorporated by reference in the court order.

8 (2) Award of IAP Alternate Payee Account (Non-Retired Member). If a final  
9 court order provides an award of an alternate payee account to be established from  
10 the account balance of a member, the court order must provide:

11 (a) The date of annulment, separation, divorce, or property settlement. If no  
12 date is provided, PERS will use the date the judge signed the court order.

13 (A) The separate account will be established from the member's account  
14 balance as of December 31 of the calendar year before this date unless:

15 (i) A prior year is provided in the court order; or

16 (ii) The date is December 31.

17 (B) If the date in subsection (a) of this section is other than December 31,  
18 contributions made during that calendar year will not be included in the calculation  
19 of the alternate payee's award.

20 (b) That the separate account be established in an alternate payee's name.

21 (c) The method by which the award is to be calculated. One of the following  
22 methods must be used:

1 (A) A percentage, expressed with up to two decimal points; or

2 (B) A dollar amount.

3 (d) Whether the member may change their pre-retirement beneficiary

4 designation, if the alternate payee was named as beneficiary.

5 (3) Award of IAP Alternate Payee Account (Retired Member). If a final court  
6 order provides an award of an alternate payee account to be established from the  
7 remaining account balance of a retired member receiving installment payments, to  
8 be effective on the date that PERS establishes the alternate payee account, the court  
9 order must provide:

10 (a) The date of annulment, separation, divorce, or property settlement. If no  
11 date is provided, PERS will use the date the judge signed the court order.

12 (b) That a separate account be established in an alternate payee's name.

13 (A) The effective date of the alternate payee account shall be as soon as  
14 administratively feasible after PERS receives and approves a final court order as  
15 administrable.

16 (B) The alternate payee will be notified when the account has been established.

17 (C) The alternate payee account shall be distributed in a lump sum payment.

18 (D) Any installment payments paid to the member before the alternate payee  
19 account is established will not be included in the award.

20 (c) The award as a percentage, expressed with up to two decimal points.

21 (d) Whether the member may or must change their beneficiary designation.

22 Stat. Auth.: ORS 238.465, 238.650 & 238A.450

23 Stats. Implemented: ORS 238.465



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 21, 2010

TO: Members of the PERS Board

FROM: Steven Patrick Rodeman, Deputy Director

SUBJECT: Adoption of Housekeeping Updates to Various Rules:  
Effective Date of Withdrawal: 459-005-0001, *Definitions*  
Disability Granted Service: 459-015-0001, *Definitions*; 459-015-0005, *Eligibility for Disability Retirement Allowances*  
Leave Without Pay, Creditable Service and Retirement Credit: 459-010-0010, *Leave of Absence Without Pay*; 459-010-0014, *Creditable Service in the PERS Chapter 238 Program*; 459-075-0150, *Retirement Credit*  
Repeal of Obsolete Rules: 459-009-0120, *Employer Recordkeeping for Multiple Qualified Retirement Plans*; 459-014-0100, *Distribution in Event of Death*

### OVERVIEW

- Action: Adopt permanent modifications to various rules and repeal obsolete rules.
- Reason: Modify “effective date of withdrawal” definition to reduce incidence of mandatory repayment. Define “granted service” and clarify its application to disability retirement allowance calculations. Clarify the interaction of the leave without pay (LWOP), creditable service, and retirement credit rules. Rules addressing employer recordkeeping for multiple qualified retirement plans and distribution of a member’s account in the event of death have been rendered obsolete by changes in state and federal law.
- Policy Issue: No policy issues have been identified.

### BACKGROUND

*Modify “Effective Date of Withdrawal” definition - OAR 459-005-0001:*

A member is eligible to receive a withdrawal from a PERS program only if the member has been absent from all PERS employment for at least one full calendar month following the month in which the member terminated employment. A member who returns to employment during this period must repay the amount withdrawn. PERS may not issue a withdrawal payment before the effective date of withdrawal. The proposed modification reduces the risk of a member being forced to repay by requiring the effective date of the withdrawal be no earlier than the first day following the mandatory repayment period. Also, the references to the regular and variable accounts are deleted as those accounts are specific to Tier One/Tier Two members. The defined term is relevant to withdrawals from all programs.

*Define, clarify “Granted Service” - OARs 459-015-0001, 459-015-0005:*

A Tier One/Tier Two disability retirement allowance is calculated as if the member had worked continuously until normal retirement age. The additional service time included in the calculation is not accrued by the member’s actual service, but is characterized as “granted service.” A member receiving a disability retirement allowance may also be eligible for a tax remedy increase under ORS 238.380 or 238.385, commonly referred to as HB 3349/SB 656 remedies. The use of “granted service” for those calculations needs clarification. “Granted service” is excluded from the ORS 238.380 calculation because it was not accrued by actual service. The standard under ORS 238.385, however, is not actual service, but creditable service, which includes any period of time treated as creditable service under ORS chapter 238. Granted service is treated as creditable service in the disability retirement calculation, so it is included in the ORS 238.385 calculation.

The proposed modifications to OAR 459-015-0001 define “granted service,” delete a definition of “qualifying position” as that term is now defined in statute, and make minor edits for clarity and consistency. The proposed modifications to OAR 459-015-0005 delete unnecessary introductory text and definition references and clarify the use of “granted service” in the tax remedy calculations.

*Clarify LWOP, Creditable Service, and Retirement Credit - OARs 459-010-0010, 459-010-0014, and 459-075-0150:*

Minor edits to these rules reconcile perceived conflicting standards for the accrual of service credit and the loss of service credit for periods of Leave Without Pay (LWOP). The primary modifications clarify that an LWOP of at least 11 business days in a calendar month precludes the accrual of creditable service in the PERS Chapter 238 Program or retirement credit in the OPSRP Pension Program for that month. The proposed modifications also clarify the standards for accrual of Educational Service Credit. Other minor edits are proposed for clarity and consistency. The proposed modifications accommodate current practice and functionality.

*Repeal - OARs 459-009-0120, 459-014-0100:*

OAR 459-009-0120 addresses recordkeeping requirements based on a repealed subsection of Internal Revenue Code section 415. The rule is obsolete and should be repealed.

OAR 459-014-0100, last modified in 1996, is unnecessary. Subsequent amendments to the implemented statute, ORS 238.390, more clearly outline the administration of death benefits and render the rule redundant and obsolete.

Note: The repeal of these rules was noticed to the public subsequent to the March 29, 2010 PERS Board Meeting. The public notice is sufficient to permit repeal by the Board at this meeting. See the Rulemaking Timeline for more information.

SUMMARY OF MODIFICATIONS TO RULES SINCE NOTICE

OAR 459-015-0005: Subsection (5)(c) was changed to section (6) for clarity.

PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on April 27, 2010 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The first public comment period ended on April 29, 2010 at 5:00 p.m. The second public comment period ended on May 20, 2010 at 5:00 p.m. No public comment was received.

LEGAL REVIEW

The attached draft rules were submitted to the Department of Justice for legal review and any comments or changes are incorporated in the rules as presented for adoption.

IMPACT

Mandatory: No, but staff, members, and employers will benefit from clarifications.

Impact: Modifies “effective date of withdrawal” definition to reduce incidence of mandatory repayment. Defines “granted service” and clarifies its application to disability retirement allowance calculations. Clarifies the interaction of the LWOP, creditable service, and retirement credit rules. Repeals obsolete rules.

Cost: There are no discrete costs attributable to the proposed modifications. The modifications accommodate current practice and functionality.

RULEMAKING TIMELINE

February 12, 2010	Staff began the rulemaking process for the Effective Date of Withdrawal and Disability Granted Service rules by filing Notice of Rulemaking with the Secretary of State.
March 1, 2010	<i>Oregon Bulletin</i> published the Notice. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
March 15, 2010	Staff began the rulemaking process for the Leave Without Pay, Creditable Service and Retirement Credit rules by filing Notice of Rulemaking with the Secretary of State.
March 29, 2010	PERS Board notified that staff began the rulemaking process.
April 1, 2010	<i>Oregon Bulletin</i> published the Notice for the Leave Without Pay, Creditable Service and Retirement Credit rules. Notice was mailed to employers, legislators, and interested parties. Public comment period began.
April 2, 2010	Staff began the rulemaking process to repeal the obsolete rules by emailing notice to employers, legislators, and interested parties. Public comment period began.

April 15, 2010	Staff filed a Notice of Rulemaking to repeal the obsolete rules with the Secretary of State.
April 27, 2010	Rulemaking hearing held at 1:00 p.m. in Tigard.
April 29, 2010	Public comment period ended at 5:00 p.m.
May 1, 2010	<i>Oregon Bulletin</i> published the Notice of Rulemaking for the two proposed rule repeals.
May 20, 2010	Public comment period for obsolete rule repeals ended at 5:00 p.m.
May 21, 2010	Board may adopt the permanent rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt permanent modifications to rules, as presented, and repeal OARs 459-009-0120 and 459-014-0100.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: Staff, members, and employers will benefit from clarification of standards

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 – 459-005-0001, *Definitions*

C.2. Attachment 2 – 459-015-0001, *Definitions*

C.2. Attachment 3 – 459-015-0005, *Eligibility for Disability Retirement Allowances*

C.2. Attachment 4 – 459-010-0010, *Leave of Absence Without Pay*

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

C.2. Attachment 6 – 459-075-0150, *Retirement Credit*

C.2. Attachment 7 – 459-009-0120, *Employer Recordkeeping for Multiple Qualified Retirement Plans*

C.2. Attachment 8 – 459-014-0100, *Distribution in Event of Death*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 005 – ADMINISTRATION**

1 **459-005-0001**

2 **Definitions, Generally**

3 The words and phrases used in chapter 459, Oregon Administrative Rules, have the  
4 same meaning given them in ORS 238.005 to 238.750. Specific and additional terms used  
5 in chapter 459 generally are defined as follows unless context of a particular division or  
6 rule within this chapter requires otherwise:

7 (1) “Ad hoc” means one-time for a specific purpose, case, or situation without  
8 consideration of a broader application.

9 (2) “After-tax” contributions means:

10 (a) Member contributions required or permitted by ORS 238.200 or 238.515, which  
11 a participating employer has not elected to “pick up,” assume or pay in accordance with  
12 ORS 238.205 and 238.515(b). “After-tax” contributions are included in the member’s  
13 taxable income for purposes of state or federal income taxation at the time paid to PERS.  
14 “After-tax” contributions are included in computing FAS and in computing the  
15 employer’s contributions paid to PERS.

16 (b) Payments made by a member to PERS for the purchase of additional benefits.

17 (3) “Before-tax” contributions means member contributions required or permitted by  
18 ORS 238.200 or 238.515, which a participating employer has elected to “pick up,”  
19 assume or pay in accordance with ORS 238.205 and 238.515(b). “Before-tax”  
20 contributions are not included in the member’s taxable income for purposes of state or  
21 federal income taxation at the time paid to PERS. “Before-tax” contributions are included  
22 in:

1 (a) Computing final average salary; and

2 (b) Computing the employer’s contributions paid to PERS if the employer has  
3 elected to “pick up” the member contributions.

4 (4) “Calendar month” means the Julian Calendar beginning with the first calendar  
5 day of a month through the last calendar day of that month.

6 (5) “Casual worker” means an individual engaged for incidental, occasional,  
7 irregular, or unscheduled intervals or for a period of less than six consecutive calendar  
8 months.

9 (6) “Contributions” means any contributions required or permitted pursuant to ORS  
10 238.200 or 238.515.

11 (7) “Differential wage payment” means a payment made on or after January 1, 2009:

12 (a) By an employer to a member with respect to any period during which the  
13 member is performing service in the uniformed services, as defined in USERRA, while  
14 on active duty for a period of more than 30 consecutive days; and

15 (b) That represents all or a portion of the wages the member would have received  
16 from the employer if the member were performing service for the employer.

17 (8) “Effective date of withdrawal” *[is] means* the later of:

18 (a) The first day of the calendar month in which PERS receives the last completed  
19 document[s] required *[of the] from a* member who *[is] request*ed *[ing]* a withdrawal *[of*  
20 *the member’s regular account and variable account, if any]*; or

21 (b) The first day of the second calendar month following the calendar month in  
22 which the member terminated employment with all participating employers and all

1 employers in a controlled group with a participating employer. *[PERS receives the*  
2 *required notice of separation from the member's former employer(s).]*

3 (9) "Effective retirement date" means:

4 (a) For service retirements, the date described in OAR 459-013-0260; or

5 (b) For disability retirements, the date described in OAR 459-015-0015.

6 (10) "Elected official" means an individual who is a public official holding an  
7 elective office or an appointive office with a fixed term for the state or for a political  
8 subdivision of the state who has elected to participate in PERS pursuant to ORS  
9 238.015(5).

10 (11) "Emergency worker" means an individual engaged in case of emergency,  
11 including fire, storm, earthquake, or flood.

12 (12) "Employee" has the same meaning as provided in ORS 238.005(7) and shall be  
13 determined in accordance with OAR 459-010-0030.

14 (a) For the purposes of ORS 238.005 to 238.750 the term "employee" includes  
15 public officers whether elected or appointed for a fixed term.

16 (b) The term "employee" does not include:

17 (A) A member of the governing board of a political subdivision unless the individual  
18 qualifies for membership under ORS 238.015.

19 (B) An individual who performs services for a public employer as a contractor in an  
20 independently established business or as an employee of that contractor in accordance  
21 with OAR 459-010-0030.

1 (c) An individual providing volunteer service to a public employer without  
2 compensation for hours of service as a volunteer, except for volunteer firefighters who  
3 establish membership in accordance with ORS 238.015(6).

4 (13) “Employer contribution account” means a record of employer contributions to  
5 the Fund, as required by ORS 238.225(1), and investment earnings attributable to those  
6 contributions, that the Board has credited to the account after deducting amounts required  
7 or permitted by ORS Chapter 238.

8 (14) “Employment” is compensated service to a participating employer as an  
9 employee whose:

10 (a) Period or periods of employment includes only the actual hours of compensated  
11 service with a participating employer as an employee; and

12 (b) Compensated service includes, but is not limited to, paid vacation, paid sick  
13 leave, or other paid leave.

14 (15) “Estimate” means a projection of benefits prepared by staff of a service or  
15 disability retirement allowance, a death or a refund payment. An estimate is not a  
16 guarantee or promise of actual benefits that eventually may become due and payable, and  
17 PERS is not bound by any estimates it provides. (ORS 238.455(6))

18 (16) “FAS” and “final average salary” have the same meaning as provided in:

19 (a) ORS 238.005(8) for all PERS Tier One members;

20 (b) ORS 238.435(2) for all PERS Tier Two members who are not employed by a  
21 local government as defined in ORS 174.116;

22 (c) ORS 238.435(4) for all PERS Tier Two members who are employed by a local  
23 government as defined in ORS 174.116; or

1 (d) ORS 238.535(2) for judge members of PERS for service as a judge.

2 (17) “General service member” means membership in PERS as other than a judge  
3 member, a police officer, a firefighter, or a legislator.

4 (18) “Good cause” means a cause beyond the reasonable control of an individual.  
5 “Good cause” exists when it is established by satisfactory evidence that factors or  
6 circumstances are beyond the reasonable control of a rational and prudent individual of  
7 normal sensitivity, exercising ordinary common sense.

8 (19) “Independent contractor” means an individual or business entity that is not  
9 subject to the direction and control of the employing entity as determined in accordance  
10 with OAR 459-010-0032.

11 (20) “Judge member” has the same meaning as provided in 238.500(3). For purposes  
12 of this chapter, active, inactive, and retired membership of a judge member shall have the  
13 same meaning as ORS 238.005(12)(b), (c), and (d), respectively.

14 (21) “Legislator” means an individual elected or appointed to the Oregon Legislative  
15 Assembly who has elected to participate in PERS pursuant to ORS 238.015(5) as a  
16 member of the Oregon Legislative Assembly as provided in ORS 238.068.

17 (22) “Member cost” means after-tax member contributions and payments made by or  
18 on behalf of a member to purchase additional benefits.

19 (23) “Participating employer” means a public employer who has one or more  
20 employees who are active members of PERS.

21 (24) “PERS” and “system” have the same meaning as the Public Employees  
22 Retirement System in ORS 238.600.

23 (25) “Qualifying position” has the same meaning as provided in ORS 238.005(19).

1 (26) “Regular account” means the account established under ORS 238.250 for each  
2 active and inactive member who has made contributions to the Fund or the account of an  
3 alternate payee of such a member.

4 (27) “Salary” has the same meaning as provided in ORS 238.005(21).

5 (a) “Salary” includes a differential wage payment, as defined in this rule.

6 (b) For a Tier One member, a lump sum payment for accrued vacation pay is  
7 considered salary:

8 (A) In determining employee and employer contributions.

9 (B) In determining final average salary for the purpose of calculating PERS benefits.

10 (c) For a Tier Two member, a lump sum payment for accrued vacation pay:

11 (A) Is considered salary in determining employee and employer contributions.

12 (B) Is not considered salary in determining final average salary for the purpose of  
13 calculating PERS benefits.

14 (28) “Seasonal worker” means an individual whose engagement is characterized as  
15 recurring for defined periods that are natural divisions of the employer’s business cycle  
16 or services.

17 (29) “Staff” means the employees of the Public Employees Retirement System as  
18 provided for in ORS 238.645.

19 (30) “Tier One member” means a member who established membership in the  
20 system before January 1, 1996, as defined in ORS 238.430(2).

21 (31) “Tier Two member” means a member who established membership in the  
22 system on or after January 1, 1996, in accordance with ORS 238.430.

1 (32) “USERRA” means the federal Uniformed Services Employment and  
2 Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334, as in effect on the effective  
3 date of this rule.

4 (33) “Vacation pay” means a lump sum payment for accrued leave in a Vacation  
5 Leave Program provided by a public employer which grants a period of exemption from  
6 work for rest and relaxation with pay, and does not include:

7 (a) Sick leave programs;

8 (b) Programs allowing the accumulation of compensatory time, holiday pay or other  
9 special leaves unless the public employer’s governing body indicates by resolution,  
10 ordinance, or other legislative process, that such leave is intended to serve as additional  
11 vacation leave; and

12 (c) Other programs, such as a Personal Time Off (PTO) plan, which are a  
13 combination of vacation, sick, bereavement, personal and other leaves of pay as defined  
14 and described by a public employer unless the employer has a written policy that clearly  
15 indicates the percentage of the plan that represents vacation leave. If the employer’s PTO  
16 has a cash option, the employer must report to PERS the amount of any lump sum pay-  
17 off for the percentage that represents vacation leave.

18 (34) “Variable account” and “member variable account” mean the account in the  
19 Variable Annuity Account established under ORS 238.260(2) for each active and inactive  
20 member who has elected to have amounts paid or transferred into the Variable Annuity  
21 Account.

22 (35) “Variable Annuity Account” means the account established in ORS 238.260(2).

1 (36)(a) “Volunteer” means an individual who performs a service for a public  
2 employer, and who receives no compensation for the service performed.

3 (b) The term “volunteer” does not include an individual whose compensation  
4 received from the same public employer for similar service within the same calendar year  
5 exceeds the reasonable market value for such service.

6 (37) “Year” means any period of 12 consecutive calendar months.

7 *[(38) The effective date of this rule is January 1, 2009.]*

8 Stat. Auth.: ORS 238.650

9 Stats. Implemented: ORS Chapter 238

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 – DISABILITY RETIREMENT ALLOWANCES**

1    **459-015-0001**

2    **Definitions**

3           The words and phrases used in this division have the same meaning given them in  
4    ORS Chapter 238 and OAR 459-005-0001. Additional terms are defined as follows  
5    unless the context requires otherwise.

6           (1) “Any work for which qualified” means [ : A ] a job, not necessarily the last or  
7    usual job, which the applicant for a disability retirement allowance:

8           (a) Is physically and psychologically capable of performing; and

9           (b) Has, or may obtain with reasonable training the knowledge, skills and abilities, to  
10   perform the job.

11          (2) “Certified vocational consultant” means [ : A ] a person who satisfies the criteria  
12   set forth under either of the following:

13          (a) A Master’s Degree in vocational rehabilitation, and one year of experience in  
14   performing vocation evaluations or developing individualized return-to-work plans; or a  
15   Bachelor’s Degree and two years of such experience. All degrees must have been earned  
16   at an accredited institution; or

17          (b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on  
18   Rehabilitation Counselor Certification; as a Certified Disability Management Specialist  
19   (CDMS) by the Certification of Disability Management Specialists Commission; or a  
20   Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment  
21   Specialist (CWA) by the Commission on Certification of Work Adjustment and  
22   Vocational Evaluation Specialists.

1 (3) “Confidential information” means [ : I ] information of a personal nature such  
2 that disclosure would constitute an unreasonable invasion of privacy as defined by state  
3 law.

4 (4) “Date of disability” means [ : T ] the later of:

5 (a) The day an active member ceased to work because of injury or disease;

6 (b) The date an inactive member separated from employment if the inactive member  
7 applies for a disability retirement allowance within five years from date of separation and  
8 the disability has been continuous from the date of separation; or

9 (c) The date an inactive member was disabled if such disability occurred within six  
10 months from date of separation.

11 (5) “Date of termination” means [ : T ] the date a member terminates from  
12 employment such that an employee/employer relationship no longer exists; the last day  
13 worked (physically on the job), the last day of paid leave, or the last day of an official  
14 leave of absence, whichever is the later.

15 (6) “Extended duration” means [ : A ] a period of not less than 90 consecutive  
16 calendar days, unless the disability is expected to result in the death of the disabled  
17 member in less than 90 days.

18 (7) “Granted service” means that portion of creditable service used solely to  
19 calculate a disability retirement allowance under ORS 238.320 that is not performed  
20 or earned.

21 ~~[(7)]~~ (8) “Independent medical exam” means [ : A ] an exam or exams conducted by  
22 a physician chosen by PERS for purposes other than treatment which results in the  
23 issuance of a report or reports based on those exams, giving an opinion regarding the  
24 claimed injury or disease.

1 ~~[(8)]~~ (9) “Material contributing cause” means ~~[: T]~~ the efficient, dominant, and  
2 proximate cause of the disability, without which the member would not be disabled.

3 ~~[(9)]~~ (10) “Monthly salary” means ~~[:]~~ ~~“[S]salary”~~ as defined in ORS  
4 238.005(21)(a) that is earned in the last full calendar month of employment, and includes  
5 employer payments under ORS 238.205. This includes a differential wage payment as  
6 defined in OAR 459-005-0001.

7 (a) Retroactive payments or payments made due to clerical errors, paid in accordance  
8 with ORS 238.005(21)(b)(C), are allocated to the period the salary was earned or should  
9 have been earned.

10 (b) Payments of salary paid within 31 days of separation are allocated to the period  
11 the salary was earned and should be considered as paid on the last date of employment.

12 ~~[(10)]~~ (11) “Monthly salary received” means ~~[: is]~~ the greater of the monthly salary  
13 paid ~~[, as defined in section (9) of this rule]~~ for the last full calendar month of:

14 (a) Employment before the date of disability; or

15 (b) Differential wage payments made before the date of disability. This subsection is  
16 effective January 1, 2009.

17 ~~[(11)]~~ (12) “Normal retirement age” means ~~[: T]~~ the age at which a member can  
18 retire without a reduced benefit as set forth under ORS 238.005 and 238.280.

19 ~~[(12)]~~ (13) “Other income” means income that ~~[: I]~~ includes, but is not limited to:

20 (a) Salary or wages received as an employee;

21 (b) Self-employment income from:

22 (A) Services industry;

23 (B) Sales;

24 (C) Assembly or manufacturing;

- 1 (D) Consulting;
- 2 (E) Property management;
- 3 (F) Hobby income; or
- 4 (G) Book advances.
- 5 (c) “Other income” does not include:

- 6 (A) Investment income;
- 7 (B) Rent; and
- 8 (C) Royalties.

9 *[(13) Physician: A medical doctor, a doctor of osteopathy, a doctor of oral surgery,*  
 10 *a chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only*  
 11 *within the purview of their license issued by the designated authority of a state.]*

12 *[(14) Periodic review: A review of a member receiving a disability retirement*  
 13 *allowance to determine whether or not a continued allowance is warranted.]*

14 *[(15)](14) “Performance of duty” means [ : M] mental or physical incapacitation*  
 15 *arising out of and in the course of duty and is not intentionally self-inflicted. The injury*  
 16 *or disease must be initially caused, aggravated or accelerated to cause incapacitation by*  
 17 *the performance of the member’s duties in the employment of a participating public*  
 18 *employer. The job must be the material contributing cause of the injury or disease.*  
 19 *Performance of duty includes whatever an employee may be directed, required or*  
 20 *reasonably expected to do in connection with his or her employment, and not solely the*  
 21 *duties peculiar to his or her position.*

22 **(15) “Periodic review” means a review of a member receiving a disability**  
 23 **retirement allowance to determine whether or not a continued allowance is**  
 24 **warranted.**

1 (16) “Physician” means a medical doctor, a doctor of osteopathy, a doctor of  
2 oral surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of psychology  
3 practicing only within the purview of their license issued by the designated  
4 authority of a state.

5 *[(16)]* (17) “Pre-existing condition” means [ : A ] a condition that was not sustained  
6 in actual performance of duty with the current employer.

7 *[(17)]* (18) “Protected health information” means [ : H ] hhealth information created  
8 or received by a health care provider, health plan, or health care clearinghouse, where an  
9 individual has a reasonable belief that the information can identify the individual, which  
10 relates to:

11 (a) The past, present, or future physical or mental health of an individual;

12 (b) The provision of health care to an individual; or

13 (c) The past, present, or future payment for the provision of health care to an  
14 individual.

15 *[(18)]* *Qualifying position: One or more concurrent positions with a participating*  
16 *employer, in a participating class, which requires 600 or more hours in a calendar year.]*

17 (19) “Separation from all service entitling the member to membership in the  
18 system[:]” means the last day worked (physically on the job), the last day of paid leave,  
19 or the last day of an official leave of absence, whichever is the later.

20 (20) “Similar in compensation” means [ : S ] ssalary or income, excluding overtime,  
21 equaling at least 80% of the monthly salary, as defined in section *[(9)]* (10) of this rule.

22 (21) “Similar location: A position in the same general area of the applicant’s  
23 residence or last employment location.

1 (22) “Training or vocational rehabilitation program” means [ : A ] a comprehensive,  
2 coordinated program, usually state or federally funded, to train and assist individuals with  
3 disabilities in securing gainful employment commensurate with their abilities and  
4 capabilities.

5 (23) “Vocational evaluation” means [ : A ] an evaluation conducted by a certified  
6 vocational consultant, to determine the ability of an applicant to perform any work for  
7 which they are qualified.

8 (24) “Work related stress” means [ : C ] conditions or disabilities resulting from, but  
9 not limited to:

- 10 (a) Change of employment duties;
- 11 (b) Conflicts with supervisors;
- 12 (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- 13 (d) Relationships with supervisors, coworkers, or the public;
- 14 (e) Specific or general job dissatisfaction;
- 15 (f) Work load pressures;
- 16 (g) Subjective perceptions of employment conditions or environment;
- 17 (h) Loss of job or demotion for whatever reason;
- 18 (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- 19 (j) Objective or subjective stresses of employment; or
- 20 (k) Personnel decisions.

21 Stat. Auth.: ORS 238.650

22 Stats. Implemented: ORS 238.320 - 238.345 & 238.435(5)

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 – DISABILITY RETIREMENT ALLOWANCES**

1 **459-015-0005**

2 **Eligibility for Disability Retirement Allowances**

3 (1) *[The Legislative Assembly has adopted rigorous criteria for eligibility to draw*  
4 *disability retirement allowance.]* Total, not partial disability, for an extended duration is  
5 required and eligibility for a disability retirement allowance requires that:

6 (a) A member be disabled to such an extent that the member is unable to perform  
7 any work for which qualified *[as defined in OAR 459-015-0001(1)]*; and

8 (b) Is unable to generate any income that is similar in compensation *[as defined in*  
9 *OAR 459-015-0001(20)]* as of date of disability.

10 (2) In determining a member's eligibility for a disability retirement allowance, the  
11 burden of proof is upon the applicant. The Board is not required to prove whether the  
12 applicant is or is not eligible for a disability retirement allowance.

13 (3) Eligibility requirements for duty disabilities.

14 (a) Applicants with less than ten years of PERS employment must establish that they  
15 are members of PERS and were disabled while in the actual performance of duty *[, as*  
16 *defined in OAR 459-015-0001(15)]*.

17 (b) A member who has a pre-existing condition *[(as defined in OAR 459-015-*  
18 *0001(16))]* must prove that the material contributing cause *[(as defined in OAR 459-015-*  
19 *0001(8))]* of the disability was sustained while in actual performance of duty.

20 (c) Work related stress *[, as defined in OAR 459-015-0001(24),]* will not be  
21 considered as the material contributing cause *[, as defined in OAR 459-015-0001(8),]* of a  
22 duty disability unless the applicant establishes all of the following:

1 (A) The employment conditions producing the work-related stress exist in a real and  
2 objective sense;

3 (B) The employment conditions producing the work-related stress are conditions  
4 other than conditions generally inherent in every working situation or reasonable  
5 disciplinary, corrective or job performance evaluation actions by the employer, or  
6 cessation of employment or employment decisions attendant upon ordinary business or  
7 financial cycles;

8 (C) There is a diagnosis of a mental or emotional disorder which is generally  
9 recognized in the medical or psychological community; and

10 (D) There is evidence that the work-related stress arose out of and in the course of  
11 employment.

12 (4) Eligibility requirements for non-duty disabilities. Eligible applicants must have a  
13 minimum of ten years of employment as calculated pursuant to ORS 238.320(6).

14 **(5) A member's disability retirement allowance shall be calculated based on:**

15 **(a) Creditable service; and**

16 **(b) Granted service if the member had not attained:**

17 **(A) Age 55 if the last qualifying position was as a police officer or a firefighter.**

18 **(B) Age 58 if the last qualifying position was as other than a police officer or**  
19 **firefighter.**

20 **(6) Granted service is:**

21 **(a) Not included in the calculation of increased benefits payable under**

22 **ORS 238.380.**

23 **(b) Included in the calculation of increased benefits payable under**

1 ORS 238.385.

2 *[(5) If a member meets the eligibility criteria, the member's disability retirement*  
3 *allowance shall be based on creditable service[time as though the member had*  
4 *continuously worked for a PERS participating employer to:*

5 *(a) Age 55 if retiring due to disability when the applicant's last PERS covered*  
6 *position was as a police officer or a firefighter.*

7 *(b) Age 58 if retiring due to disability when the applicant's last PERS covered*  
8 *position was as other than a police officer or firefighter.*

9 *(c) Actual service if member is over age 55 or 58 as used in (a) and (b) above.]*

10 *[(6)]* (7) Termination of membership. Disability retirement allowances are available  
11 only to PERS members. PERS membership is terminated by either loss of membership or  
12 withdrawal of the member account balance as provided in ORS 238.095. Therefore,  
13 former PERS members who have terminated their membership through loss of  
14 membership or withdrawal are not eligible to receive PERS disability retirement  
15 allowances.

16 Stat. Auth.: ORS 238.650 & 238.095

17 Stats. Implemented: ORS 238.320 - 238.345



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

1 **459-010-0010**

2 **Leave of Absence Without Pay**

3 **(1) For purposes of this rule:**

4 **(a) “Business day” means a day Monday through Friday when PERS is open**  
5 **for business.**

6 **(b) “Major fraction of a month” means a minimum of 11 business days in a**  
7 **calendar month.**

8 ~~[(1)]~~**(2)** Employer/Employee Agreement. An official leave of absence without pay  
9 for any purpose must have the following in order to be considered bona fide:

- 10 (a) An agreement in writing;
- 11 (b) Accordance with the applicable law, rules and regulations;
- 12 (c) The duration specifically stated at the time of granting; and
- 13 (d) Certification to PERS by the employer granting such leave.

14 ~~[(2)]~~**(3)** Creditable Service **and Retirement Credit.**

15 (a) A leave of absence without pay occurring on or after July 1, 1987, which  
16 constitutes the major fraction of a *[calendar]* month:

- 17 (A) May not be used to calculate “years of membership” under ORS 238.300; and
- 18 (B) May not be used to determine “creditable service” *[under ORS 238.005]* or  
19 “retirement credit” under ORS 238.005.

20 (b) A leave of absence without pay occurring before July 1, 1987, which constitutes  
21 the major fraction of a *[calendar]* month:

- 22 (A) Must be used to calculate “years of membership” under ORS 238.300; and

1 (B) Must be used to determine “creditable service” *[under ORS 238.005 or]* and  
2 “retirement credit” under ORS 238.005.

3 (c) A leave of absence without pay occurring on or after January 1, 2004, which  
4 constitutes the major fraction of a month may not be used to determine “retirement  
5 credit” under ORS 238A.140 for any period of employment after the date  
6 membership is established under ORS 238A.100.

7 *[(3)](4)* Reporting Requirement. Unless otherwise agreed upon by PERS, the  
8 employer shall report the following in a format acceptable to PERS:

9 (a) Any period of leave of absence without pay, which constitutes the major fraction  
10 of a *[calendar]* month, for each member at the time the leave begins. The reported period  
11 of leave of absence without pay must include an end date.

12 (b) Any amendment or extension to a previously reported period of leave of absence  
13 without pay.

14 *[(4)](5)* A PERS member on an official leave of absence without pay is not  
15 considered terminated from service with a participating employer.

16 *[(5)](6)* An employee on an official leave of absence without pay on the date the  
17 employer begins to participate in PERS, shall be considered to be an employee on such  
18 date for the purpose of determining eligibility for participation in PERS.

19 *[(6)](7)* A layoff from employment does not constitute a leave of absence without  
20 pay.

21 Stat. Auth.: ORS 238.650 & 238A.450

22 Stats. Implemented: ORS 238.300 & 238A.140

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

1 **459-010-0014**

2 **Creditable Service in 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) Except as provided in OAR 459-010-0010(3), [A]an active member accrues  
11 one month of creditable service for each month in which the member performs service for  
12 the major fraction of the month.

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

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

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

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

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

8            (5) *[Sections (2) and (3) of this rule notwithstanding,]* Except as provided in OAR  
9 459-010-0010(3), an active member who is a school employee will accrue six months of  
10 creditable service if the member performs service for *[all portions]* a major fraction of  
11 each month of a school year that falls between January 1 and June 30, and six months of  
12 creditable service if the member performs service for *[all portions]* a major fraction of  
13 each month of a school year that falls between July 1 and December 31.

14            *[(6) A member may accrue creditable service as provided in [OAR 459-010-*  
15 *0042(3).]*

16            *[(7)]*(6) A member may not accrue more than one month of creditable service for  
17 any calendar month and no more than one year of creditable service for any calendar  
18 year.

19            *[(8)]*(7) The provisions of this rule are effective for service credit determinations  
20 made on or after January 1, 2008.

21            Stat. Auth.: ORS 238.650

22            Stats. Implemented: ORS 238.005 & 238.300

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

1 **459-075-0150**

2 **Retirement Credit**

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 month  
6 in which an active member is being paid a salary by a participating public employer and  
7 for which benefits under ORS Chapter 238A are funded by employer contributions.

8 (2) Except as provided in OAR 459-010-0010(3), [A]an active member accrues one  
9 month of retirement credit for each month in which the member performs service for the  
10 major fraction of the month.

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

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

16 (b) The member starts employment on or before the 15th day of the calendar month  
17 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 month  
19 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 month  
21 and ends employment before the 16th day of the month, but is reemployed in a qualifying  
22 position before the end of the month.

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

5 (5) *[Sections (2) and (3) of this rule notwithstanding,]* Except as provided in OAR  
6 459-010-0010(3), an active member who is a school employee will accrue six months of  
7 retirement credit if the member performs service for *[all portions]* a major fraction of  
8 each month of a school year that falls between January 1 and June 30, and six months of  
9 creditable service if the member performs service for *[all portions]* a major fraction of  
10 each month of a school year that falls between July 1 and December 31.

11 (6) A member may not accrue more than one month of retirement credit for any  
12 calendar month and no more than one year of retirement credit for any calendar year.

13 (7) Credit for the six-month waiting period required by OAR 459-075-0010(2).

14 (a) Upon establishing membership in the pension program, a member shall receive  
15 credit for the waiting period required to establish membership under OAR 459-075-  
16 0010(2).

17 (b) If the member's waiting period before establishment of membership included an  
18 interruption of service as described in OAR 459-075-0010(2)(b), no credit shall be  
19 awarded for the period of employment before the interruption.

20 (8) The provisions of this rule are effective for retirement credit determinations made  
21 on or after January 1, 2008.

22 Stat. Auth.: 238A.450

23 Stats. Implemented: *[OL 2007 Ch. 769]* ORS 238A.140

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

1 ***[459-009-0120***

2 ***Employer Recordkeeping for Multiple Qualified Retirement Plans***

3 *(1) The purpose of this rule is to implement ORS 238.630(5) by establishing the*  
4 *record retention and reporting requirements of employers participating in the Public*  
5 *Employees Retirement System (PERS) that are necessary to assure PERS continued*  
6 *compliance with the limitations on contributions and benefits in Section 415 of the*  
7 *Internal Revenue Code (IRC).*

8 *(2) For purposes of this rule:*

9 *(a) A “qualified retirement plan” is an employees’ trust as described in IRC Section*  
10 *401(a) which is exempt from federal taxation under IRC Section 501(a).*

11 *(b) “Wages” means remuneration paid by the employer in a calendar year for*  
12 *federal income tax withholding purposes under IRC Section 3401.*

13 *(c) “Annual benefit payable” means the benefit, funded by employer contributions,*  
14 *an employee is entitled to receive by virtue of the employee having attained the age at*  
15 *which the employee is eligible to receive a retirement benefit under the terms of a*  
16 *qualified defined benefit plan other than PERS, which is payable annually in the form of*  
17 *a straight life annuity. Notwithstanding ORS 238.205, employer contributions shall*  
18 *include all employee contributions picked up by an employer under IRC, Section 414(h).*

19 *(d) The “projected annual benefit” is the annual benefit payable, as defined in*  
20 *subsection (c) of this section, with the exception that it is determined by using the*  
21 *following assumptions:*

1        *(A) The member will continue employment with the PERS participating employer*  
2 *until reaching the age when eligible to begin full retirement benefits, under the terms of a*  
3 *plan other than PERS;*

4        *(B) The member’s compensation will remain unchanged in determining the full*  
5 *retirement benefit under paragraph (A) of subsection (d) of this section; and*

6        *(C) All other relevant factors used to determine retirement benefits under a plan*  
7 *other than PERS for the calendar year under consideration will remain constant/static*  
8 *for all future calendar years.*

9        *(3) All PERS participating employers that have ever offered one or more qualified*  
10 *retirement plans other than PERS shall maintain the following records:*

11        *(a) For a qualified defined contribution retirement plan(s), an employer*  
12 *participating in PERS who has ever offered one or more qualified defined contribution*  
13 *retirement plans shall maintain the following records for each employee who is a PERS*  
14 *member for such plan(s) the employee has ever been enrolled in:*

15        *(A) A copy of the periodic actuarial valuation report(s) and a copy of the annual*  
16 *statement, given to each PERS member who is also participating in another qualified*  
17 *retirement plan sponsored by the employer, which reflects:*

18        *(i) The employer contributions to the employee’s account in that plan;*

19        *(ii) The employee’s contributions to the employee’s account in that plan, exclusive of*  
20 *rollover contributions and payment of previously withdrawn contributions; and*

21        *(iii) Any addition to the employee’s account in that plan of forfeitures from other*  
22 *participants of the plan.*

1        *(B) A copy of federal W-2 reporting, showing wages, as defined in subsection (2)(b)*  
2 *of this rule, for each PERS member who is also participating in another qualified*  
3 *retirement plan sponsored by the employer.*

4        *(b) For a qualified defined benefit retirement plan(s), an employer participating in*  
5 *PERS who has ever offered one or more qualified defined benefit retirement plans other*  
6 *than PERS shall maintain the following records for each employee who is a PERS*  
7 *member for each plan the employee has ever been enrolled in:*

8        *(A) The plan document with all amendments, actuarial reports, and payroll and*  
9 *personnel records that are used to determine and substantiate the amount of the annual*  
10 *benefit payable as defined in subsection (2)(c) of this rule.*

11        *(B) The plan document with amendments, actuarial reports, and payroll and*  
12 *personnel records that are used to determine and substantiate the amount of the*  
13 *projected annual benefit, as defined in subsection (2)(d) of this rule.*

14        *(C) A Copy of federal W-2 reporting, showing wages, as defined in subsection (2)(b)*  
15 *of this rule, for each PERS member who is also participating in another qualified*  
16 *retirement plan sponsored by the employer.*

17        *(4) Unless otherwise agreed upon:*

18        *(a) The records identified in subsection (a) of section (3) of this rule shall be*  
19 *retained indefinitely beginning with calendar year 1989.*

20        *(b) The records identified in subsection (b) of section (3) of this rule shall be*  
21 *retained for the current year and three consecutive years immediately preceding the*  
22 *current year.*

1           (c) A staff request for a copy of records or information retained by the employer  
2 shall be transmitted to PERS on forms furnished by PERS or in the format required by  
3 PERS within 30 working days of the postmark of the request.

4           (5) For all members who file an application for a service retirement allowance, staff  
5 may request the employer transmit to PERS a copy of or information from one or more of  
6 the records specified in section (3) or (6) of this rule as required in section (4) of this  
7 rule.

8           (6) Notwithstanding OAR 459-009-0110 and sections (4) and (5) of this rule, all  
9 PERS participating employers shall report annually on forms furnished by PERS or in a  
10 format required by PERS the following information pertaining to a calendar year, not  
11 later than March 1 of the succeeding calendar year:

12           (a) Each PERS member's wages, as defined in subsection (2)(b) of this rule;

13           (b) Any other information requested by staff pertaining to the records that are  
14 required to be maintained by this rule.

15           (7) Notwithstanding OAR 459-009-0100 and sections (4) and (5) of this rule, all  
16 PERS participating employers who have ever offered one or more qualified retirement  
17 plans other than PERS shall report annually on forms furnished by PERS or in the format  
18 required by PERS the following information pertaining to a calendar year, not later than  
19 March 1 of the succeeding calendar year:

20           (a) The amount of the employer contributions on behalf of each PERS member made  
21 to another qualified defined contribution retirement plan, as described in paragraph  
22 (3)(a)(A)(i) of this rule;

1        *(b) The amount of employee contributions made to another qualified defined*  
2 *contribution retirement plan, as described in paragraph (3)(a)(A)(ii) of this rule;*

3        *(c) The amount of forfeitures added to each PERS member’s account in another*  
4 *qualified defined contribution retirement plan(s), as described in paragraph (3)(a)(A)(iii)*  
5 *of this rule;*

6        *(d) The amount of employee after-tax contributions made to another qualified*  
7 *defined benefit retirement plan, as described in subsection (3)(b) of this rule;*

8        *(e) The amount of annual benefit payable to each PERS member from another*  
9 *qualified defined benefit retirement plan in the form of a straight life annuity, as*  
10 *described in paragraph (3)(b)(A) of this rule, and the present value (lump sum) amount*  
11 *to fund that straight life annuity;*

12        *(f) The amount of projected annual benefit for each PERS member from another*  
13 *qualified defined benefit retirement plan in the form of a straight life annuity, as*  
14 *described in paragraph (3)(b)(B) of this rule, and the present value (lump sum) amount*  
15 *necessary to fund that straight life annuity; and*

16        *(g) Any other information requested by staff pertaining to the records that are*  
17 *required to be maintained by this rule.*

18        *(8) Participating employers shall be informed of the annual reporting format(s) not*  
19 *later than September of each calendar year for the report(s) due for that calendar year in*  
20 *the succeeding year.*

21        *(9) Any participating employer negligent in retaining documents and records, or*  
22 *delinquent in making records or information available, as required by this rule shall be*  
23 *subject to the sanctions provided for in ORS 238.705.*

1      *Stat. Auth.: ORS 238.630(5), 238.705 & 238.650*

2      *Stats. Implemented: ORS 238.630]*

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 014 – DEATH BENEFITS**

1 ***[459-014-0100***

2 ***Distribution in Event of Death***

3 *In the event that a member of the system dies before retiring, with no surviving next*  
4 *of kin as described by ORS 238.390(2), and without having designated a beneficiary, the*  
5 *amount of money credited to his account at the time of his death shall be paid to the*  
6 *executor or the administrator of his estate. Interest or other earnings shall not be*  
7 *credited thereto after the death of the member except as provided by law. If his estate is*  
8 *not probated, such amount shall be held by the Board in a suspense account not to*  
9 *exceed ten years, pending administration or the appearance of next of kin. Thereafter, it*  
10 *shall be subject to the laws of this state governing escheats.*

11 *Stat. Auth.: ORS 238.390 & 238.650*

12 *Stats. Implemented: ORS 238.390]*





# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 21, 2010

TO: Members of the PERS Board  
FROM: Steven Patrick Rodeman, Administrator, PPLAD  
SUBJECT: Adoption of Rules to Implement Portion of SB 897:  
OAR 459-010-0042, *Retroactive Salary Payments*  
OAR 459-011-0050, *Forfeiture and Restoration of Service Rights*

### OVERVIEW

- Action: Adopt permanent rule modifications to rules impacted by SB 897 regarding retirement credit for retroactive salary payments.
- Reason: To update rules to comply with provisions of SB 897, effective February 8, 2010.
- Policy Issue: No policy issues have been identified.

### BACKGROUND

Senate Bill 897, which became effective on February 8, 2010, provides that if retroactive payment of wages is included in the salary of an employee, the employee shall receive retirement credit for the periods to which the payment is allocated. The proposed rule modifications eliminate redundant OAR 459-010-0042, and move section (4) of 459-010-0042 to OAR 459-011-0050, *Forfeiture and Restoration of Service Rights*. These modifications were adopted as temporary rules at the March 29, 2010 Board meeting as part of the temporary adoption of non-verification portions of SB 897 and are now presented for adoption of permanent rule modifications.

### SUMMARY OF RULE MODIFICATIONS SINCE NOTICE

OAR 459-011-0050: Since notice and temporary adoption, the reference to SB 897 in section (4) and in the "Statutes Implemented" line has been updated to correctly cite the codification of that bill into the Oregon Laws.

### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing was held on April 27, 2010 at 2:00 p.m. at PERS headquarters in Tigard. No members of the public attended. The public comment period ended on May 3, 2010 at 5:00 p.m. No public comment was received.

### LEGAL REVIEW

The attached rules were submitted to the Department of Justice for legal review and any comments or changes are incorporated in the rules as presented for permanent adoption.

### IMPACT

Mandatory: Yes, to comply with statutory changes.

Impact: The changes to OARs 459-010-0042 and 459-011-0050 will eliminate redundancy and clarify the retirement credit provisions of SB 897.

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

### RULEMAKING TIMELINE

March 15, 2010	Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.
March 29, 2010	PERS Board adopted the proposed temporary rule modifications; PERS staff proceeded with permanent rulemaking.
April 1, 2010	<i>Oregon Bulletin</i> published the Notice of Rulemaking Hearing.
April 27, 2010	Rulemaking hearing held at 2:00 p.m. in Tigard.
May 3, 2010	Public comment period ended.
May 21, 2010	Board may adopt the permanent rule modifications.

### BOARD OPTIONS

The Board may:

1. Pass a motion to “adopt modifications to OAR 459-010-0042 and 459-011-0050, as presented.”
2. Direct staff to make other changes to the rules or explore other options.

### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

- Reason: The rules are needed to update rules regarding OPSRP retirement credit for retroactive payments with the provisions of SB 897, effective February 8, 2010.

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.3. Attachment 1 – 459-010-0042

C.3. Attachment 2 – 459-011-0050

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

1 **[459-010-0042**

2 ***Retroactive Salary Payments***

3 *(1) For the purpose of this rule, “retroactive payment” means a payment of salary*  
4 *attributable to a prior period made pursuant to a court order, administrative order,*  
5 *arbitration award, conciliation agreement, or private settlement agreement that resolves*  
6 *a dispute or claim based upon an employee’s rights under employment and wage law or*  
7 *a collective bargaining agreement.*

8 *(2) A retroactive payment must be allocated to the period(s) in which the work was*  
9 *done or would have been done and deemed paid as so allocated pursuant to ORS*  
10 *238.005(21)(b)(C). Payments allocated to any period during which the employee was an*  
11 *active or inactive member must be used in the determination of employee and employer*  
12 *contributions and in the calculation of benefits. Payments allocated to any period of non-*  
13 *membership or retired membership must not be used to determine contributions or*  
14 *calculate benefits.*

15 *(3) Except as provided in OAR 459-010-0014(7), an employee who is an active*  
16 *member on the date of a retroactive payment will receive creditable service for those*  
17 *periods of active or inactive membership to which the payment is allocated.*

18 *(4) An employee who is terminated from employment, withdraws the member*  
19 *account under ORS 238.265, and is reinstated to employment in connection with a*  
20 *retroactive payment may restore membership and service rights as provided in OAR 459-*  
21 *011-0050 within the time period described in Section (2) of that rule or within one year*  
22 *from the date the employee actually returns to employment, whichever is later.*

1        *(5) The provisions of this rule apply to retroactive payments made on or after July*

2        *31, 2003.*

3        *Stat. Auth.: ORS 238.650*

4        *Stats. Implemented: ORS 238.005, 238.105]*

**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 before  
5 the date of the withdrawal, including any service rights attributable to employment before  
6 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.

13 (3) Upon repayment as described in section (2) of this rule, the PERS Chapter 238  
14 Program membership and service rights forfeited by the withdrawal will be restored. The  
15 former member will reestablish membership in the PERS Chapter 238 Program on the  
16 first day of the month following the date of the repayment. Service by the former member  
17 from date of reemployment to the date membership is reestablished shall be attributed to  
18 the PERS Chapter 238 Program. The withdrawn member account will be reestablished in  
19 the amount of the repayment.

20 **(4) An employee who is terminated from employment, withdraws the member**  
21 **account under ORS 238.265, and is reinstated to employment in connection with a**  
22 **retroactive payment may restore membership and service rights within the time**

1 period described in section (2) of this rule or within one year from the date the  
2 employee actually returns to employment, whichever is later. A retroactive payment  
3 must be allocated pursuant to section 2, chapter 1, Oregon Laws 2010. So allocated,  
4 the payment must be used in the determination of employee and employer  
5 contributions and in the calculation of benefits.

6 ~~[(4)]~~(5) Notwithstanding the provisions of this rule, a member who withdraws  
7 pursuant to ORS 238.265 and receives an additional amount pursuant to section 2,  
8 chapter 276, Oregon Laws 2003, may not reestablish membership under section (2) of  
9 this rule.

10 Stat. Auth.: ORS 238.650

11 Stats. Implemented: ORS 238.105, OL 2007 Ch. 769, OL 2010 Ch. 1



# Oregon

Theodore R. Kulongoski, Governor

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May 21, 2010

TO: Members of the PERS Board

FROM: Zue Matchett, Retiree Insurance Program Manager

SUBJECT: Approval of Retiree Health Insurance 2011 Plan Renewals and Rates

### BACKGROUND

The 2011 PERS Health Insurance Program contract renewal will include higher costs for participants enrolled in most of the Medicare programs. The increases are, to a great extent, the result of continued cutbacks in Medicare Advantage plan funding by the federal Centers for Medicare and Medicaid Services (CMS). Although PERS Medicare Advantage plans were not as negatively impacted as initially predicted, the passage of the Federal Healthcare Reform package is anticipated to cause more cuts in future years. Rate results are less onerous than originally anticipated due to the cautious approach that has historically been taken with regard to PERS Health Insurance Program rating. Non-Medicare rate adjustments will vary depending upon the plan selected.

The contract review process began in February this year. After carriers had an opportunity to present their renewals and following some preliminary offers a meeting was held with PERS Health Insurance Program staff, PERS Board Liaison Thomas Grimsley, PERS Director, PERS Chief Financial Officer, PERS Retiree Advisors and consultants. The end result in terms of premium rate changes varies by plan provider and type of coverage for both Medicare enrollees and non-Medicare enrollees.

The PERS Health Insurance Program is expected to experience some impact from healthcare reform. As mentioned previously, funding for Medicare Advantage plans will continue to be challenged in spite of the efforts of the Oregon delegation to improve the base rates upon which CMS reimbursements are developed. Traditional Medicare plans such as the ODS Supplement to Medicare are anticipated to fare better as physician reimbursement under these plans may increase slightly. Preventive benefits are slated for improvement as well. It is likely that PERS will need to make adjustments to the Prescription Drug Program (PDP), however what it will take to remain actuarially equivalent is not yet clear.

PERS contracts with four health plans for a variety of coverages allowing participants the greatest possible choice while maintaining stability for the program. Contracts that are in place are as follows:

**1) The ODS Companies**

- a. Traditional Medicare Supplement
- b. Medicare Advantage PPO Plan
- c. Non-Medicare PPO Plan
- d. Stand alone Prescription Drug Plan (PDP) that covers
  - ODS Medicare and Non-Medicare participants
  - Providence Health Plan Medicare and Non-Medicare participants
  - Clear One Health Plan Medicare and Non-Medicare participants
- e. Dental Plan

**2) Providence Health Plans**

- a. Medicare Advantage Medicare Extra HMO Plan
- b. Medicare Advantage Medicare Choice POS Plan
- c. Non-Medicare PPO Plan

**3) Kaiser Permanente Health Plans**

- a. Medicare Advantage Senior Advantage HMO Plan with prescription drug coverage
- b. Non-Medicare HMO Plan and prescription drug coverage
- c. Dental Plan

**4) Clear One Health Plans (acquired in 2010 by PacificSource Health Plans)**

- a. Medicare Advantage HMO Plan
- b. Non-Medicare PPO Plan

At each renewal it is important to emphasize that the Oregon PERS retiree health insurance program is a voluntary insurance group where eligible members pay the majority of their own premiums for the insurance plan of their choice. In addition to health plan premium, PERS retirees also cover the cost of administration of the program.

PERS unique vendor relationships and the resulting programs that they participate in benefit PERS participants and provide the stability that is the hallmark of the program. Over the past several years, PERS staff and consultants have required continually improving cooperation between the health plans. That cooperation began with the sharing of medical and prescription data, and expanded in 2009 to include joint sponsorships of Wellness fairs. Although vendor collaboration continually improves, the basis of all cooperative efforts remains the two primary items on the original “to do” list. They are:

- the development and enhancement of a formal workgroup comprised of carrier representatives from various disciplines who meet to discuss processes and discern best practices in managing issues specific to the PERS population and,
- the inclusion of all carriers in the periodic wellness fairs that previously were produced by ODS alone.

PERS staff and consultants receive quarterly updates from each vendor regarding activities and results achieved from these programs in the previous quarter. Each vendor has taken responsibility for hosting one of the quarterly reviews.

A notable change that is expected to be in place by January 1, 2011 is the acquisition of Clear One Health Plans by Eugene based PacificSource Health Plans. This change is anticipated to cause little or no disruption to PERS participants; the Clear One name will remain throughout 2011.

Just over ninety-six percent of the enrolled members of the PERS plans are Medicare eligible and, as such, have many commercially marketed Medicare plans competing for their premium dollar. The key to PERS' success has been the Board's approach in maintaining a stable program with dependable health plan vendors, and an acceptable balance between the benefits and premium cost over the years that meets member's needs. PERS staff and the program administrator, in conjunction with plan consultants, continually update retiree presentations clarifying the overall plan value. In addition, PERS staff and the program administrator present a series of educational workshops each spring for PERS eligible members not yet retired, or retired and not enrolled in the Plan.

Following are some demographics and statistics that describe the Oregon PERS Retiree Insurance Program as of April 2010:

	Enrollment	% Change vs. 2009	Receiving Subsidy	Average Age
Medical Plans	52,650	2.3%		77
Medicare	50,694	1.9%	39,543	77
Non-Medicare	1,956	12.1%	823	61
Dental Plans	28,446	6.1%		

Additional statistics can be found in Exhibit I.

PROPOSED HEALTH PLAN CONTRACTS, CONDITIONS AND CHANGES FOR 2011

PERS will continue to contract with Kaiser Permanente Health Plans, ODS Health Plans, Providence Health Plans and Clear One Health Plans for medical insurance for PERS retired Medicare and non-Medicare members.

PERS will continue to contract with Kaiser Permanente Health Plans and ODS Health Plans for dental insurance for PERS retired Medicare and non-Medicare members.

PERS will continue to contract with ODS for a Stand Alone Prescription Drug Program (PDP) covering participants enrolled in ODS, Providence Health Plans and Clear One Health Plans although as the result of healthcare reform the benefits may need to be slightly modified.

For the first year since the Medicare Prescription drug program was implemented there will be no change to the catastrophic limit on the Plan. Minor adjustments have typically been made in the calendar year maximum out of pocket for the PDP allowing PERS to remain actuarially equivalent to the Medicare Prescription Drug Program. Other minor benefit modifications, some required as the result of legislation, will be implemented on a carrier by carrier basis. As always, particular effort was made to minimize any changes to avoid disruption to participants.

Kaiser Permanente will continue to insure and administer medical benefits and the prescription drug program to PERS members who are enrolled in Kaiser Permanente Health Plans that mirrors the ODS administered program, thereby providing uniformity, continuity, and stability for PERS members.

Health Plan premium rates will be implemented as shown on Exhibit II, along with associated rates that include spouses and/or dependents, statutory subsidies and PERS administrative expenses.

#### PROPOSAL REVIEW AND RECOMMENDATIONS

As mentioned previously, governmental reimbursements for Medicare Advantage plans have either remained flat or declined again this year resulting in challenges for this contract review. With the unique partnership enjoyed by the PERS Health Insurance Program and its health plan partners the very best possible outcomes were achieved. In a population as large as PERS, however, a one percent differential can mean millions of dollars. PERS staff and the consultants strive to keep that fact in the forefront when negotiating contract renewals.

As has been the case in years past, in an effort to soften the rate increases, members covered by the ODS managed Prescription Drug Plan will receive a subsidy of approximately \$100 per member per year from PERS surplus reserves that they have contributed to over time. In spite of efforts to manage costs some participants will experience significant increases in premiums in 2011. PERS staff and consultants are pleased, however, to be able to present a stable package of plans allowing retirees to enjoy a variety of competitively priced benefit options. We are pleased to bring these proposals to you, and thereby conclude another year of hard work by our consultants, health plans, retiree advisors, and PERS staff.

PERS staff, the Administrator's staff, and consultants have already started the process of updating the Program Booklet and Plan Change materials for finalization and distribution if the PERS Board approves the proposals presented here. In mid-September, PERS staff and the Administrator's staff will begin Retiree Meetings around the state, and will most likely have the opportunity to meet with 5,000 or more PERS retirees and their dependents during the six weeks of meetings planned from mid-September through October.

Retiree Health Insurance

05/21/2010

Page 5 of 5

Please review the attachments and feel free to call if you have questions. I can be reached at 503-378-8906 or email at [zue.matchett@state.or.us](mailto:zue.matchett@state.or.us)

**STAFF RECOMMENDATIONS**

Staff recommends the Board approve the proposed PERS Retiree Health Insurance Plan contracts, conditions and rate changes for 2011.

Exhibit I – PERS Retiree Health Insurance Program Statistics

Exhibit II – PERS Proposed 2011 Renewal Rates



**EXHIBIT I**

<b>Health Insurance Plans</b>			
Program Enrollment	Totals	Medicare	Non-Medicare
Covered Lives	52,650	50,694	1,956
Retirees (or Surviving Spouses)	42,428	41,269	1,159
Spouses / Dependents	10,222	9,425	797
Average Age of Enrolled Retirees	77	77	61

<b>Health Plan Membership Enrollment</b>			
Clear One Health Plans (Central OR)	1,402	1,376	26
Kaiser Permanente (Portland to Salem)	9,241	8,665	576
Kaiser (California & Hawaii)	77	61	16
ODS Advantage (Oregon)	4,711	4,551	160
ODS Supplement (All 50 States)	25,054	24,491	563
Providence Medicare Extra (Portland to Eugene)	11,549	10,974	575
Providence Medicare Choice	616	576	40
ODS Dental Plan	24,712	23,947	765
Kaiser Dental Plan	3,734	3,516	218

<b>Statutory Health Insurance Premium Subsidies</b>	
Retirees Receiving RHIA	39,543
Retirees Receiving RHIPA	823
RHIA Monthly Payment – \$60 PM	\$ 2,372,100
RHIPA Monthly Payment – \$259(avg) PM	\$ 213,612
Total Monthly Premium Paid to Health Plans:	\$13,575,847

**PERS PROPOSED RENEWAL RATES**

**2011 vs. 2010 All Carrier Rates**

*Including All Carrier Administrative Fees  
Effective January 1, 2011*

**SUMMARY**

Includes non-Statutory proposed subsidies / surcharges

Medical and Prescription Rates to Members before Statutory Subsidies  (Includes Fixed Costs)	Enrollment as of April 2010	2010	2011	Percentage Change 2011 vs. 2010
<b>ODS MEDICAL / RX</b>				
Retiree w/Medicare - Supplement Plan	24,491	\$222.16	\$225.46	1.5%
Retiree w/Medicare - MA PPO Plan	4,551	\$233.01	\$233.01	0.0%
Retiree w/o Medicare - PPO Plan	723	\$749.56	\$810.27	8.1%
<b>PROVIDENCE HEALTH PLANS / RX</b>				
Retiree w/Medicare - MA HMO Plan	10,974	\$190.97	\$219.77	15.1%
Retiree w/Medicare - MA POS Plan	576	\$170.91	\$199.77	16.9%
Retiree w/o Medicare - PPO Plan	615	\$670.36	\$716.90	6.9%
<b>CLEAR ONE HEALTH PLANS / RX</b>				
Retiree w/Medicare - MA HMO Plan	1,376	\$206.74	\$238.74	15.5%
Retiree w/o Medicare - POS Plan	26	\$773.90	\$842.73	8.9%
<b>KAISER OREGON HEALTH PLANS / RX*</b>				
Retiree w/Medicare - MA HMO Plan	8,665	\$200.42	\$211.46	5.5%
Retiree w/o Medicare - HMO Plan	576	\$587.41	\$674.71	14.9%
<b>DENTAL</b>				
Kaiser Dental	3,734	\$51.02	\$51.32	0.6%
ODS Dental	24,712	\$54.52	\$56.24	3.2%

\* Kaiser numbers do not include enrollment in California or Hawaii



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 21, 2010

TO: Members of the PERS Board  
FROM: Kyle J. Knoll, Business Operations Manager  
SUBJECT: 2011-13 Preliminary Agency Request Budget Overview

The purpose of this report is to provide an overview of the 2011-13 Agency Request Budget (ARB) development process and the related Policy Option Packages (POPs), for the Board's initial consideration prior to final review and approval at the July 23, 2010 Board Meeting.

### SUMMARY OF PROPOSED 2011-13 POLICY OPTION PACKAGES (POPS)

The Agency's 2011-13 POPs are derived from the Key Initiatives from PERS' Six-Year Strategic Outlook. Business plans, sponsored by Division Administrators, have business cases that include measurable performance indicators. The over-arching focus is on supporting implementation of Senate Bills (SB) 399 and 897, stabilizing PERS' programs and strategic operations with permanent positions, and maximizing process improvements to manage an increasing workload.

There are 46 permanent positions and 1 limited duration position, or a total of 47 positions, requested in PERS' proposed 2011-13 Policy Option Packages (POPs). When compared to the 2009-11 Legislatively Adopted Budget (LAB), PERS' 2011-13 requested budget would total to 372 positions, an increase of 8 positions, or 2.2%, over the 2009-11 position count of 364.

#### **Senate Bills (SB) 399 and 897 Implementation 13 Positions / 13.0 FTE**

PERS is presenting a request to the May 2010 Emergency Board for funding and position authority to support implementation of Senate Bills 399 and 897 in the 2009-11 biennium (see attached Emergency Board request letter). This POP advances that initial request and confirms continued authority in 2011-13 for thirteen (13) permanent full-time positions. Based on the Emergency Board's disposition of our request, this POP may be modified but is currently conceived to be a continuation of that initial request, with one additional position to handle increased document imaging workload.

*Executive Sponsors: Steve Rodeman, Deputy Director, and Yvette Elledge, CSD Administrator*

#### **Business Enterprise – Core Business Functions 30 Positions / 30.0 FTE**

This POP requests thirty (30) permanent positions to provide continuous support for current workloads and process improvement. Twenty-nine (29) of the positions are requested as a continuation of 2009-11 limited duration positions that are the foundation of the Benefit Application Intake Processing team (8 positions), the Eligibility teams that deal with legacy and post-2003 benefit eligibility (12 positions), the Data Quality initiative (2 positions), the Business Process Owners (5 positions), and the Business Rule Development team (2 positions). One (1)

new position is requested for increased workloads in member appeals and requests for contested case hearings.

The Benefit Application Intake Processing team was formed in the 2009-11 biennium to centralize document intake and processing into one unit to maximize the functionality of workflows. This team works closely with the Eligibility teams to ensure timely benefit payments to retirees. During the last year, PERS increased service levels for timely account payout from 10% to 42% paid within 45 days and decreased interruption of cash flow for members; enhanced performance of eligibility investigations by reducing the number of accounts with bad data from 21% to 16%; and provided additional time for employers to correct member accounts, increasing from 30 days to 60 days. This pro-active model has also increased the accuracy of information provided to members, allowing them to make better-informed decisions resulting in increased customer confidence and satisfaction with PERS.

The Business Process Owners currently facilitate many aspects of the RIMS Conversion Project (RCP) and review major business processes in conjunction with the design, implementation, and enhancement of the new retirement administration system, the Oregon Retirement Information Online Network (ORION). This team will be a critical element for the agency to continue significant process improvements after the completion of RCP.

The Business Rule Development positions were established as limited duration to support RCP; however, the use and development of business rules has extended beyond RCP and has become an integral part of our business practice. Business rules are daily used by staff agency-wide as a resource for ongoing operational guidance.

The one new position request in this POP is due to the increased workload volume in member appeals and requests for contested case hearings. PPLAD has employed a work out of class strategy to address the additional workload. However, the workload has been consistent for some time and is not anticipated to change, requiring an additional position.

*Executive Sponsors: Yvette Elledge, CSD Administrator, and Brian Harrington, BPD Administrator*

### **Infrastructure Maintenance and Enhancement FTE**

**4 Positions / 4.0**

This POP requests three (3) permanent full-time positions and one (1) limited duration full-time position to maintain and enhance foundational elements of the Agency's information systems and infrastructure, including enhancing and replacing aging information and business systems components, improving information retrieval and disaster recovery processes, and ensuring adequate staff support for the Agency's new technology platform. Three of the positions requested are a continuation of 2009-11 limited duration positions – two as permanent positions, and one as a limited duration position. One of the positions requested is new, to provide IT production control for batch runs, trend and performance analysis, and resource balancing.

This POP also includes funding requests to support anticipated maintenance and enhancement needs for the Agency's new technology platform, implementing more effective disaster recovery tools, maintaining the lease for office space at the 72nd Avenue site, upgrading the Call Center system, implementing new productivity tools, and maximizing workspace utilization.

*Executive Sponsor: Jeff Marecic, Chief Information Officer*

REMAINING BUDGET DEVELOPMENT ACTIVITIES

**May 2010:**

Complete input into the Oregon Budget Information and Tracking System (ORBITS) and the Position Inventory Control System (PICS) for Base budget adjustments and Essential Packages, thus producing the Current Service Level (CSL) Budget, formerly referred to as the Essential Budget Level (EBL) Budget. Complete necessary ORBITS and PICS audits with DAS. Notify the PERS Board on updated fiscal impact information for the Policy Packages and overall budget request. Continue drafting the Policy Option Packages (POPs).

**June 2010:**

Complete input into ORBITS and PICS for all requested positions and operational needs for the 2011-13 Agency Request Budget (ARB). Complete necessary ORBITS and PICS audits with DAS. Meet with budget stakeholders to review and refine the ARB.

**July 2010:**

Complete the supporting narrative and present the 2011-13 Agency Request Budget (ARB) for final PERS Board approval at the July 23, 2010 meeting.

**August 2010:**

PERS is currently scheduled as an 'early submittal' agency with a deadline of August 1st for submission of the Agency Request Budget (ARB) to the Governor.

Attachment – May, 2010 Emergency Board Request Letter





# Oregon

Theodore R. Kulongoski, Governor

E-Board

## Public Employees Retirement System

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May 3, 2010

The Honorable Peter Courtney, Co-Chair  
The Honorable Dave Hunt, Co-Chair  
State Emergency Board  
900 Court Street NE  
H-178 State Capitol  
Salem, OR 97301-4048

Dear Co-Chairpersons:

### **Nature of the Request**

The Public Employee Retirement System is requesting that the Emergency Board increase the agency's Other Funds limitation for the 2009-11 biennium by \$2,794,274 and approve position authority for an additional 12 permanent full-time positions (3.13 FTE).

### **Agency Action**

The Oregon Legislature adopted two measures that result in new administrative processes for the agency. The first, Senate Bill 399, allows members to purchase retirement credit via a transfer from certain other tax advantaged plans. The second, Senate Bill 897, had two consequential provisions, one which allows members to request a Data Verification for certain information prior to retirement and the other made retired members of the Oregon Public Service Retirement Plan (OPSRP) eligible to participate in the PERS health insurance program. These bills also established mandatory deadlines for implementation of these new processes: July 1, 2011 for the Data Verification process, and September 1, 2011 for the SB 399 transfers.

PERS is completing a conversion from its legacy computer system (the Retirement Information Management System, or "RIMS") and moving to a new technology platform (the Oregon Retirement Information Online Network, or "ORION"). That conversion, which was to be completed this summer, was reviewed to determine the most efficient and effective manner to incorporate the functionality necessary to administer the new statutory processes into ORION. A cost-benefit analysis by the program management firm Provaliant supports integrating this new functionality into the current project. That alternative is not only the most cost effective, but also is the option most likely to result in the agency achieving success in implementing the new statutory processes by the mandated deadlines. The Integrated Approach adds approximately \$2,869,720 to the current project costs, which is the basis for most of the requested additional budget limitation. Attachment 1 to this letter is an agency summary of the cost-benefit analysis supporting this request.

The Data Verification process will increase the agency's workload as members request these documents. PERS is requesting additional permanent positions in this biennium to adequately prepare and train staff to support this additional workload. The Data Verification process, while similar in kind to work PERS staff already perform, is anticipated to greatly increase the volume of that work as another process and timeline is layered into the member's preparation for retirement. An analysis of the projected workload and staffing strategy is Attachment 2 to this letter, which includes a review of the agency's current structure and staff allocations. This analysis concludes that 12 permanent full-time positions are required to manage the increased workload while still delivering member and employer services at their current levels.

The agency's Legislative Advisory Committee, created by ORS 238.660(10) and comprised of an equal number of labor and management representatives, reviewed this request at a special meeting convened on April 29, 2010. The Committee expressed its unanimous support for the agency's request, citing the improved functionality's enhancement of system transparency and communication. The Committee further contends that expending these additional resources is a prudent investment, allowing members and employers greater access to better information sooner in their retirement planning.

### Action Requested

PERS requests that the Emergency Board:

1. Increase the agency's approved Other Funds limitation from \$80,660,628 to \$83,454,902 for the 2009-11 biennium. This increase would be allocated as set forth below:

Personal Services	
Salary & OPE	\$ 345,670
Services & Supplies	
Office Expense	15,600
Employee Training	3,284
IT Professional Services	2,369,720
Expendable Property (one time expense)	<u>60,000</u>
Total	\$2,794,274

2. Approve the addition of 12 permanent full-time positions in the following classifications:

- 4 Retirement Counselor 1 full-time permanent positions (1.00 FTE)
- 3 Retirement Counselor 2 full-time permanent positions (0.75 FTE)
- 1 Operations & Policy Analyst 1 full-time permanent position (0.25 FTE)
- 1 Operations & Policy Analyst 2 full-time permanent position (0.25 FTE)
- 2 Office Specialist 2 full-time permanent positions (0.50 FTE)
- 1 Principle Executive Manager B full-time permanent position (0.38 FTE)

### **Legislation Affected**

If approved, the additional budget limitation would increase the amount of Administrative & Operating Expenses allocated to this agency by Senate Bill 5539, Section 1 (1) (Chapter 75, Oregon Laws 2009).

Adoption of SB 897 increased the agency's limitation by \$500,000 to develop additional functionality needed to support the Data Verification process. This request for additional budget limitation reflects the complete costs of integrating the Data Verification process into PERS' current IT system conversion project, delivering the newly required functionality within a faster time frame and in a more efficient and effective manner. As a result, incorporating this functionality will ultimately deliver a better system with more functionality for members and employers sooner than the agency would have otherwise been able to deliver.

Lastly, this request provides the limitation necessary to develop and deliver the needed functionality for implementing SB 399 and the health insurance provisions in SB 897 in a more timely, efficient, and cost-effective manner.

Respectfully submitted,



Paul R. Cleary, Executive Director  
Public Employees Retirement System

Attachment 1 – Agency Summary of Senate Bill Cost-Benefit Analysis  
Attachment 2 – Data Verification Workload and Staff Projection



## AGENCY SUMMARY OF SENATE BILL COST-BENEFIT ANALYSIS

PERS management, staff, and contractors conducted an analysis to consider alternative approaches to incorporating the new functionality required by Senate Bills 399 and 897 into the ORION administration system. The following summarizes the analysis and conclusions:

### OVERVIEW OF LEGISLATIVE REQUIREMENTS

#### *Senate Bill 897 – Data Verification*

SB 897 provides that a member can, within two years of their earliest retirement age, request a verification of four data elements: (1) the member's accrued creditable service or retirement credit, (2) the member's "final average salary," (3) the member's regular and variable account balances, and (4) any accumulated unused sick leave, if applicable.

If a verification is produced, SB 897 further provides that, when the member retires, the retirement benefit will be calculated using data that is not less than the amounts provided in the verification, with certain exceptions. Employers will not be able to change that information once the verification is issued. Members will have 60 days after PERS provides the verification to dispute the accuracy of the data in the verification.

The bill also provides that, if PERS overpays a benefit because of an error in the data used to produce a verification, PERS cannot reduce the benefit on account of the error or recover the amount overpaid; instead, the overpayment must be charged to the PERS Contingency Reserve or paid as an administrative expense. Members can request one verification at no cost, and fees may be established for additional verifications.

In general, the implementation of this requirement should be designed to:

- Provide members with a data verification in a reasonable amount of time that contains:
  - Employment history and the number of years and months of service/retirement credit from that employment
  - Salary for each calendar year and the final average salary derived from that data
  - If applicable, regular and variable account balances as of the end of the specified year
  - If applicable, the total amount of unused sick leave accumulated as of the specified date
- Provide employers and members with a process to gather, validate, and correct the data at the time of the request for the verification.
- Provide the member with a process to dispute the data in the verification.
- Ensure that certain data at retirement is not less than the verified amounts, with statutory exceptions.
- Automate the verification process as much as possible, using Online Member Services (OMS), Employer Data Exchange (EDX), jClarety, and FileNet workflow.

Areas of system functionality affected by these requirements also includes Maintain Employment, Position History, and Sick Leave; Maintain, Update, and Review Employer Work Items; Generate Benefit Estimates and Benefit Calculations; and Process Benefit Adjustments.

**AGENCY SUMMARY OF SENATE BILL COST-BENEFIT ANALYSIS**

Necessary system modifications include:

**ORION System deliverables:*****jClarety***

- Verified data will be locked with a specific date. Address the Generate Benefit Estimates (GBE) overrides and how that will interact with locked verification data.
- Build a “Lock” feature that will use the higher amount of verification information or data at retirement. This feature will have to be able to be unlocked in cooperation between PERS and the employer for certain adjustments such as settlements, etc.
- Changes to verification data will be restricted to those allowed in SB 897.
- Build a process to address sick leave data verification. Employers report unused sick leave at termination, so members may already have some balances reported for prior employment segments, but no balances are reported for currently open job segments.
- Modify the system’s current electronic employer work-list functionality for data verification.
- Update the system to address qualifying and non-qualifying employment.
- Develop an edit in the retirement calculation process so that a calculation override won’t override the verified data fields. The calculation also needs a warning message so that staff know a verification was done.
- Develop a process to complete multiple verifications. The system must be able to handle subsequent verification requests and the period of time since the previous verification.
- Changes will need to be made to the Salary Certification process.
- Programming may be needed for the Notice of Entitlement process.
- Modify the system to print a hard copy of a data verification request form and also to provide a data verification in hard copy for members without online access.
- Build a system process to charge for extra verification requests.

***Online Member Services (OMS)***

- Allow members to validate employment and salary history in OMS at the time a verification is requested.
- Expand screens to display all existing salary years and employment history (LWOP, service time adjustments, class changes, etc.).
- Initiate a workflow when a verification request is submitted through OMS.
- Online Member Service forms (electronic or printed) need to be sent to FileNet.

***FileNet***

- Develop workflows for the data verification processes identified above.
- Amend current workflows to account for process changes caused by data verification.

***Employer Data Exchange (EDX)***

- Employers will receive electronic work-list items to verify data and respond electronically.
- Build a verification activity so that, when data is submitted, it connects to our workflows.
- Enhance the Demographic Correction Report process.
- Evaluate other employer activities to streamline data submission and correction.

## **AGENCY SUMMARY OF SENATE BILL COST-BENEFIT ANALYSIS**

### ***Senate Bill 897 – OPSRP Health Insurance***

SB 897 also allows OPSRP Pension members to participate in the health insurance program administered by PERS under ORS 238.410. That participation would allow OPSRP retired members to pay health insurance premiums through the Standard Retiree Health Insurance Account (SRHIA) as a deduction from the member's retirement benefit.

The functionality affected by this requirement includes changes to all aspects of the monthly pension role processing and third-party program administration to account for these additional types of members eligible for these deductions. These areas include: Monthly Pension Role Processing; Pension Role Check Register; Pension Role Exception Report; Monthly Benefit Adjustment Report; Monthly Pension Role Summary Report; Deduction Detail Report; Pension Role EFT Report; Pension Role Business Rules; Member Check File; and Load Health Care TPA File. Also, Online Member Service functionality should be changed to allow these members to manage their participation in this program.

### ***Senate Bill 399 – Trustee to Trustee Purchases***

SB 399 was passed during the 2009 regular session and requires PERS to allow members to pay for creditable service or retirement credit purchases with pre-tax dollars from certain types of tax-advantaged plans. Purchasing this time with pre-tax dollars imposes changes to how the system records, tracks, and reports the nature of these funds for tax purposes. Areas of functionality affected include Member Account Balance Business Rules; Purchase Service Credit Cost Allocation, Letters, and Estimates; 1099-R, 1042, and W-2 Reporting Requirements; and Processing Cash Receipts and Refunds.

### **IMPACT ANALYSIS ON RIMS CONVERSION PROJECT**

The RIMS Conversion Project is on schedule for completion later in 2010 with the deployment of Stage 2B. Our technology partners, HP Enterprise Services, have analyzed the functional areas of the jClarety system that are likely to be affected by these 2009-10 legislative requirements and estimate that this new functionality affects around 15% of the areas that have either already been completed in this project or are slated to be completed later this year. They further estimate those additional efforts are broken out among the new legislative requirements as:

SB 897 Data Verification:	55%
SB 897 Health Insurance:	20%
SB 399 Transfers:	25%

Adding these new requirements to the project's scope will also increase overall costs, as HP Enterprise Services will need to continue to be engaged at a higher operating level, outside project management through Provaliant should be extended for a longer period, and third-party Quality Assurance services as required by DAS policies are extended.

PERS commissioned the program manager, Provaliant, to conduct a cost-benefit analysis of the alternative approaches to incorporating these new requirements into the functionality being provided through RCP. That analysis resulted in their recommending that this additional functionality be integrated into the current RCP structure, rather than be addressed in serial after RCP's expected completion. The principle driver of this recommendation is schedule: waiting to

### AGENCY SUMMARY OF SENATE BILL COST-BENEFIT ANALYSIS

begin on the Senate Bill 399/897 functionality until RCP is completed in the third quarter of 2010 would not allow enough time to implement these new requirements by the first statutory deadline (July 1, 2011). Also, serial deployments of major portions of system functionality so close together are not an efficient use of development and deployment resources. The RCP components still to be deployed would only have a "useful life" of a few months before necessary changes would require re-deployment. Pervasive adjustments to a large number of functional areas mean rigorous regression testing is warranted; two deployments doubles that testing whereas combining the deployments could show significant efficiencies.

Overall, an integrated approach allows a higher probability of success at a lower cost than addressing this functionality in series, or on a fully manual basis without system support. Even this reduced cost approach, however, will require system development resources substantially in excess of the \$500,000 in additional budget authority that was approved in SB 897. The following chart shows the projected costs of each approach for this biennium:

	<u>Integrated</u>	<u>Serial</u>	<u>Manual*</u>
<b>2009-11 Biennium Costs</b>	<b>\$2,869,720</b>	<b>\$3,164,300</b>	<b>\$1,654,895</b>

\* The amount of Manual costs shown are for a single biennium but are compounded each subsequent biennium if system changes are not made to address these additional requirements.

Under any of these scenarios, PERS would need additional budget authority to execute any strategy to comply with these new requirements.

The following chart shows the budget history of the RCP, alone and as a component of the agency's overall Other Funds limitation:

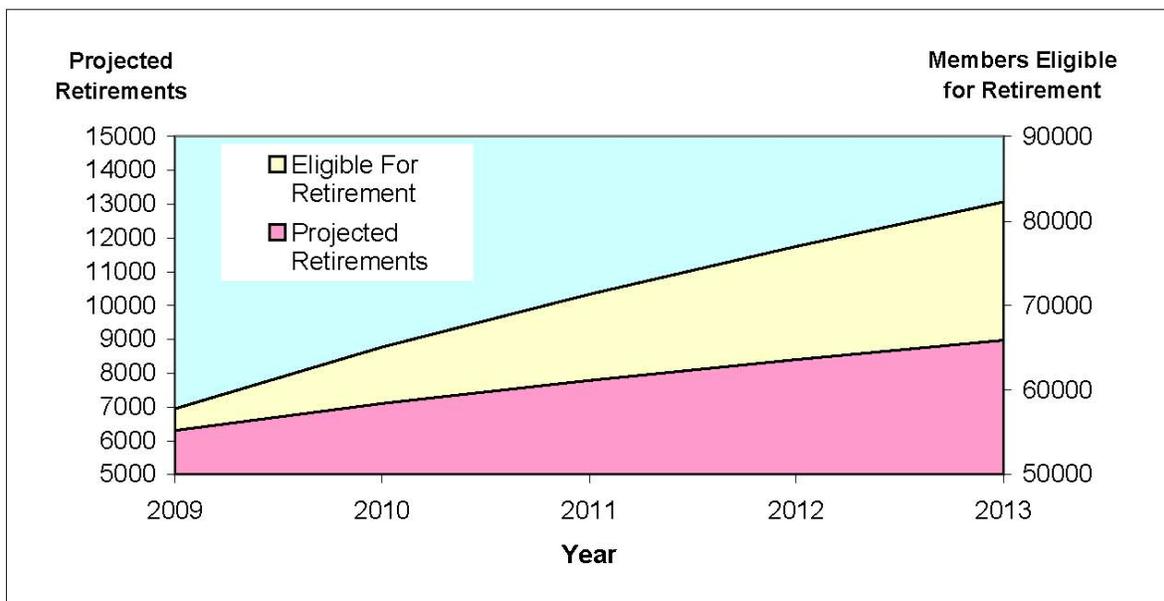
	BIENNIUM		
	2003-05	2005-07	2007-09
<b>RCP BUDGET</b>			
APPROVED BUDGET	\$2,096,632	\$15,112,243	\$13,538,393
LESS ACTUAL EXPENDITURES	<u>\$ 522,519</u>	<u>\$ 9,904,844</u>	<u>\$12,810,538</u>
<b>TOTAL RCP BIENNIAL SAVINGS</b>	<b>\$1,574,113</b>	<b>\$ 5,207,399</b>	<b>\$ 727,855</b>
 <b>PERS OTHER FUNDS LIMITED</b>			
APPROVED BUDGET	\$85,863,923	\$78,371,793	\$81,251,146
LESS AMOUNT UNSCHEDULED	<u>\$3,838,760</u>	<u>\$3,356,364</u>	<u>\$530,066</u>
ADJUSTED LIMITATION	\$ 82,025,163	\$75,015,429	\$80,721,080
LESS ACTUAL EXPENDITURES	<u>\$76,371,874</u>	<u>\$74,446,561</u>	<u>\$77,385,163</u>
<b>TOTAL BIENNIAL SAVINGS</b>	<b>\$ 5,653,289</b>	<b>\$ 568,868</b>	<b>\$ 3,335,917</b>

**AGENCY SUMMARY OF SENATE BILL COST-BENEFIT ANALYSIS**

As this chart demonstrates, PERS has historically been a conservative steward of its budget limitation and has consistently under-spent its RCP allocation. Each biennium, that RCP excess has been carried over. The first element of any additional funding provided by the E-Board could be to approve adding the \$727,855 in 2007-09 project savings to the agency's 2009-11 budget limitation. This additional limitation, added to the \$500,000 that was already included in SB 897 for data verification, would bring the agency's budget authority almost half-way to the necessary added limitation.

## DATA VERIFICATION WORKLOAD AND STAFF PROJECTION

The Data Verification portion of SB 897 creates a projected workload increase for which the agency is not currently staffed. The genesis of this anticipated workload is best demonstrated by analyzing components of this graph, which shows the projected number of PERS members who will reach normal retirement age over the years presented, compared to the projected number of retirements:



### Workload Comparison

Currently, PERS is staffed and funded to service the current level of retired members, which is about 6000 per year. Adding the Data Verification process, however, pulls in not only those people who actually retire from this population, but also those within two years of eligibility. The pool from which these workload estimates are derived increases, therefore, from about 55,000 currently eligible members to a pool of approximately 82,000 members within two years of retirement eligibility. Then, extrapolating from the number of estimate requests that we receive each biennium, an estimated data verification workload of 22,000 requests is derived for the 2011-13 biennium. Both the number of estimate requests and those members within two years of retirement eligibility are likely to increase for the foreseeable future.

The current 19 FTE on the Legacy Eligibility Unit and 7 FTE on the Benefit Eligibility Analysis Unit process approximately 12,000 benefit inceptions per biennium.

## DATA VERIFICATION WORKLOAD AND STAFF PROJECTION

### Process Comparison

The comparison below illustrates the differences between the current workload and the new workload that SB 897 creates:

<b>Current Eligibility Workload</b>	<b>Data Verification Workload</b>
12,000 retirements per biennium	22,500 requests per biennium (est'd.) 82,000 members eligible
1. Eligibility review on benefit inception. Review: - employment - salary history - service/retirement credit <sup>1</sup> Employers <b>only</b> contacted when there are discrepancies or questionable data.	1. Eligibility review. Review: - employment - salary history - service/retirement credit - unused sick leave hours - regular and variable account balances Contact <b>all</b> employers to verify data.
2. Send letter to member <b>only</b> if account requires adjustments that impact contributions, earnings or service/retirement credit. <sup>2</sup>	2. Send member notification to verify data for verification request.
3. Eligibility studies on approximately 16% of accounts.	3. Eligibility study on approximately 16% of accounts.
4. Post 2003 eligibility analysis (EDX).	4. Post 2003 eligibility analysis (EDX).
5. Member Account Maintenance	5. Request employers to verify data.
6. Projects generated by employer requests <sup>3</sup> .	6. Member Account Maintenance
7. Continued process improvement.	7. Send Data Verification final determination to member.
	8. Administer member disputes.

### Staffing Recommendation

To handle this additional workload, PERS recommends that staff be allocated to a new Data Verification Team. The advantage of this option is that, since verifications and retirements both have a statutory requirement for delivery, there would be no competing priorities over which process should be completed first. The existing Eligibility Team could continue to work on pending retirements and other benefit payments. Over time, their workload may be reduced as data verification requests are completed by the Data Verification Team, so the projected increased demands from future estimates and retirements have a better probability of being achieved with current staffing levels.

<sup>1</sup> Average two employment segments for each member account

<sup>2</sup> If issues are found during an eligibility review, an eligibility study is conducted.

<sup>3</sup> Some projects are on hold due to resource limitations.

## **DATA VERIFICATION WORKLOAD AND STAFF PROJECTION**

The Team would be comprised of:

- 4 Retirement Counselor 1 positions to perform eligibility reviews and studies
- 3 Retirement Counselor 2 to perform peer reviews and handle complex accounts
- 1 Operations & Policy Analyst 1 as a lead worker to develop policies and procedures
- 1 Operations & Policy Analyst 2 to administer member disputes
- 2 Office Specialist 2 positions to provide administrative support
- 1 Principle Executive Manager B to manage the new team

The estimated data verification staffing request for 12 full-time permanent positions, 3.12 FTE, assumes that the system will be automated to handle most of the communication and calculations to increase efficiency and avoid manual calculation errors.

### **Cost for 09-11 Biennium (PEMB begins 10/1/2010, 11 staff begin 1/1/2011)**

<b>Effect on Expenditures (By Budget Category and Fund-type): All are Limited Other Funds</b>	<b>2009 – 2011</b>
Personal Services Salary & OPE – 12 positions (3.12 FTE)	\$345,670
Services & Supplies – 12 positions in CSD Training & Office Expense	18,884
Services & Supplies – Expendable & IT Expendable Property for 12 new positions in CSD (One-time costs)	60,000
<b>Total Additional Expenditures – Limited Other Funds</b>	<b>\$424,554</b>

### **Impact of additional staff:**

- Maintains ability to produce timely eligibility studies that support benefit payments; having a designated team would prevent the data verification workload from competing with existing priorities to continue paying timely benefits.
- With the additional staff focusing on the data verification workload, over time the current Eligibility staff workload will decrease as the scope of eligibility reviews on some new retirements decreases. This will allow the current Eligibility staff to complete reviews on non-pending retirement accounts. They can also pro-actively review accounts earlier in the member's life cycle or accounts needing review per an employer's request. Lastly, this staff has a higher probability of meeting anticipated volume increases from Baby Boomer retirements without further augmentation in future biennia.
- Current service levels and processes within the Customer Service Division would not be impacted.

### **Impact of no additional staff:**

PERS does not have the ability to handle the Data Verification program with existing resources unless some drastic changes are made to reorganize the Customer Service Division, such as ending or substantially reducing some current services. Although there are nine Limited Duration positions allocated to the Eligibility Team in the 2009-11 budget, that staffing level is only sufficient to complete eligibility reviews for new retirements and some estimates. If this

**DATA VERIFICATION WORKLOAD AND STAFF PROJECTION**

staff were diverted to the new Data Verification process, timely benefit payments would be seriously impacted and the incidence of estimated benefits and subsequent revisions would increase. Also, retirement estimates are not required by law, and that functionality could be eliminated except in the limited incidence of calculating the cost of a member's purchase.

- Estimates would only be completed for purchase information and members would have to go to Online Member Services to complete their own estimate.
- A backlog would occur for the data verifications and disputes as we pull staff from the other areas for training.
- Timely benefit payments would be impacted and could increase estimated payments, member contacts, and escalations. If we issue estimated payments to meet statutory deadlines, we create a backlog of these unfinished cases.

## PICS Update Form for Emergency Board Position and FTE Actions

Agency Name: Public Employees Retirement System

Emergency Board Date: May-10

Agency #: 45900

Contact Person: Kyle Knoll, Budget Officer or Linda M Barnett, SABR Coordinator

Phone #: (503) 603 - 7568 (503) 603 - 7570

**Note: All columns need to be completed by agency before submission (refer to back page for instructions)**

Action	Position #	Repr Code / Class # / Pay/ Range Options	Class Title	Salary Rate	Position Type	Detail Cross Reference	FTE	# of Months	Phase-In Date	Phase-Out Date	Funding				
											General %	Other %	Federal %	Lottery %	
<b>Example #1</b> E ①	1040023	OA C0104 AA ②	Office Spec 2	\$2,395 ③	PF ④	451-01-00-00000	0.75 ⑤	18 ⑥	1/00 ⑦	9999 ⑦	100%				← ⑧ →
<b>Example #2</b> D - To	3250001	MMN X7002 AA	PEM B	\$ 3,383	PP	010-01-00-00000	0.50	12	07/01	9999	100%				
D - From	3250001	MMN X7002 AA	PEM B	\$ 3,383	PF	010-01-00-00000	1.00	24	07/01	9999	100%				
E	1189701	MMS X7002 AA	PEM B	\$ 3,855	PF	300-05-01-00000	0.38	9	10/10	9999		100%			
E	1189702	OA C0871 AA	OPA 2	\$ 3,903	PF	300-05-01-00000	0.25	6	01/10	9999		100%			
E	1189703	OA C0870 AA	OPA 1	\$ 3,235	PF	300-05-01-00000	0.25	6	01/10	9999		100%			
E	1189704	OA C0841 AA	RC 1	\$ 2,816	PF	300-05-01-00000	0.25	6	01/10	9999		100%			
E	1189705	OA C0841 AA	RC 1	\$ 2,816	PF	300-05-01-00000	0.25	6	01/10	9999		100%			
E	1189706	OA C0841 AA	RC 1	\$ 2,816	PF	300-05-01-00000	0.25	6	01/10	9999		100%			
E	1189707	OA C0841 AA	RC 1	\$ 2,816	PF	300-05-01-00000	0.25	6	01/10	9999		100%			
E	1189708	OA C0842 AA	RC 2	\$ 3,086	PF	300-05-01-00000	0.25	6	01/10	9999		100%			
E	1189709	OA C0842 AA	RC 2	\$ 3,086	PF	300-05-01-00000	0.25	6	01/10	9999		100%			
E	1189710	OA C0842 AA	RC 2	\$ 3,086	PF	300-05-01-00000	0.25	6	01/10	9999		100%			
E	1189711	OA C0104 AA	OS 2	\$ 2,284	PF	300-05-01-00000	0.25	6	01/10	9999		100%			
E	1189712	OA C0104 AA	OS 2	\$ 2,284	PF	300-05-01-00000	0.25	6	01/10	9999		100%			



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 21, 2010

TO: Members of the PERS Board

FROM: Dale S. Orr, Actuarial Services Manager

SUBJECT: Equal to or Better Testing Update

On May 21, Mercer actuaries Matt Larrabee and Scott Preppernau will present a progress report on the Equal to or Better testing currently underway. Their presentation will be forwarded to the Board prior to the Board meeting.





May 21, 2010

## ETOB Testing Update

Oregon Public Employees Retirement System

Matt Larrabee, FSA, EA, MAAA

## Introduction

- On behalf of the PERS Board, Mercer is currently conducting ETOB testing to help assess compliance with the new (2007) ETOB statutory requirements
  - Employers with exemptions from PERS participation for their public safety personnel must have their plans compared to PERS to verify satisfaction of the new ETOB requirements
    - Exemptions from PERS participation can be granted by the PERS Board based on analysis done by the PERS actuary
  - More details on testing can be found in previous 2010 Board presentations and our February and November 2009 presentations
- At the March Board meeting, we:
  - Refined the basis for calculating the “risk-free rate” used in testing
  - Indicated that two employers satisfy ETOB via a “preliminary determination” testing approach
    - Morrow County
    - City of Portland

## Overview

- Since March, preliminary test results have been developed for employers that sponsor the following two types of program designs
  - Defined benefit (DB) – provides a guaranteed life annuity
  - Defined contribution (DC) – accumulates an employee account balance
- The preliminary test results comparing the defined contribution programs to the defined benefit PERS program are challenging to interpret and merit discussion with the Board and other interested stakeholders
- Today we will summarize preliminary testing results for the defined contribution programs
  - Results were developed using a “risk-free rate” testing methodology, as described in our prior presentations on ETOB testing from 2009 and 2010

## Overview

- We will also discuss the possible effects on defined contribution program test results if testing were conducted using an alternative methodology
  - The alternative methodology assumes investments accumulate at the PERS actuarial investment return assumption of 8%
  - The alternative methodology is presented to help stakeholders understand the effect of the risk-free rate assumption on testing results
- At the end of our presentation, we will solicit feedback from the Board and interested stakeholders on the preliminary results presented, and seek guidance on appropriate next steps in the testing process
- Preliminary test results for “ETOB employers” that sponsor a defined benefit program are not presented today
  - Those preliminary results are directly comparable and easily interpreted
  - However, final testing for all programs will be done on a consistent basis
    - Feedback and direction is needed on the preliminary defined contribution program test results before we can finalize any full tests

## Overview

### Guiding Principles and Oregon Administrative Rule (OAR)

- A stakeholder input and rulemaking process established three guiding principles to shape the OAR governing the ETOB test
- The principles and their implications for the test are shown below
  - **Comparability** – *make an “apples-to-apples” comparison*
    - *A single, consistent basis is needed to compare the defined benefit PERS program to the defined contribution programs sponsored by some “ETOB employers”*
  - **Durability** – *results should be consistent unless provisions change*
    - *The test analyzes benefit structures, not individual outcomes*
    - *Uses stable hypothetical data rather than employer-specific data that may change significantly from one testing period to the next*
  - **Cost Effectiveness** – *an appropriate low cost method that does not compromise the validity of results should be used*
    - *Supported by use of hypothetical data*

## Risk-Free Rate Methodology

- The current OAR states:

***“benefits that depend on earnings shall be valued using a risk-free earnings rate”***

- For a defined benefit (DB) program such as PERS, the valuation liabilities developed using a risk-free earnings rate are dramatically higher than those developed in our annual valuation reports to employers
- The risk-free valuation methodology assumes a 4.7% annual asset return
  - This is a proxy for the program’s value to the employee, assuming the life annuity is risk-free and value is assessed based on risk-free rates
- The annual valuation methodology assumes an 8.0% annual asset return
  - Provides expected program cost; is used for employer rate-setting

## Risk-Free Rate Methodology

### Defined Benefit (DB) Programs

- Under either methodology, projected DB program benefit levels are similar
- The risk-free methodology assumes investments earn a risk-free rate
  - As such, under a risk-free rate liabilities are higher as the projected DB benefits are discounted back to the testing date at a lower interest rate
    - Generally, more money would be needed to fund promised benefits
- This concept becomes more clear when illustrated for a sample employee in a defined benefit program:
  - Currently age 45
    - ETOB testing occurs at current age
  - Projected to:
    - Retire at age 60
    - Receive \$30,000 per year at retirement with a 2% annual COLA
      - Receive benefits for 25 years; from age 60 to age 85

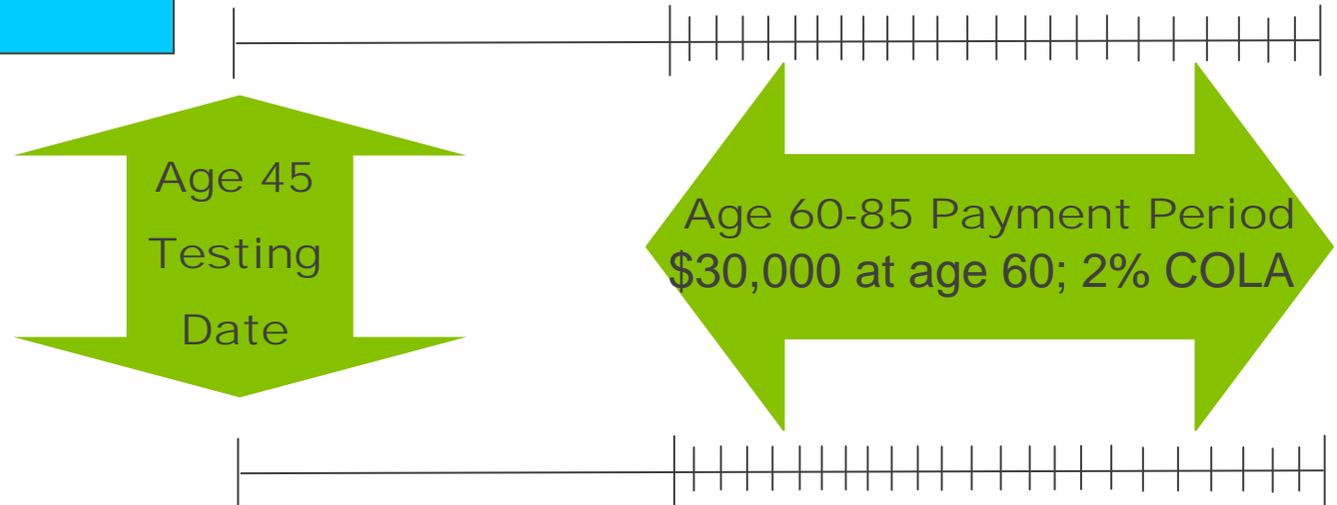
# Risk-Free Rate Methodology

## Defined Benefit (DB) Programs

Present Value of Payments -  
Risk-Free Methodology:

\$288,000

Risk-Free Methodology: Discount payments to test date at 4.7% per year interest



Present Value of Payments -  
Annual Valuation Methodology:

\$132,000

Annual Valuation Methodology: Discount payments to test date at 8% per year

With no change in projected payments from the DB program, the move from the annual valuation methodology to the risk-free methodology “re-prices” the estimated present value of the payments upward by **118%** in this example

## Risk-Free Rate Methodology

### Defined Benefit (DB) Programs

- At an employer level, this concept can be illustrated through a DB program with an expected employer cost of 15% of payroll

<b>Program Type</b>	<b>Expected Cost to the Employer (8.0% interest rate)</b>	<b>Value to the Member on a Risk-Free Rate Basis (4.7% interest rate)</b>
Defined Benefit	15% of payroll	33% of payroll

- The difference between the values shown above for the program is a measure of the difference between employer costs calculated on the basis of the expected (but not guaranteed) long-term rate of return and the cost of providing benefits if assets were invested on a risk-free basis
  - Looking at this another way, the difference between the two results represents a value of the guarantee that a DB program sponsor makes to its participants by investing its assets on a riskier basis and bearing the risk for any long-term shortfall between actual and expected returns

## Risk-Free Rate Methodology

### Defined Benefit (DB) Programs

- The associated investment risk is held by the employer in a DB program, and is of considerable value to the employees, as the numbers on the prior slide illustrate
- The effect of the risk-free methodology on testing is summarized below

- **The risk-free rate methodology substantially increases the assessed present value of the PERS program compared to the annual valuation methodology**
- **The “re-priced” PERS liability is the target benefit level that an employer must meet to satisfy the ETOB requirement under the OAR**
- **All DB programs tend to re-price by similar percentages using the risk-free methodology, so the methodology does not significantly affect test results for “ETOB employers” that sponsor DB programs**
  - **That statement does not hold true for DC programs, which do not substantially re-price due to a change in methodology**

## Risk-Free Rate Methodology

### Defined Contribution (DC) Programs

- In a DC program contributions are made on behalf of the employee each year during the course of his or her working career
- Given the simplicity of a DC program's benefit delivery, for a given year the value of the employer-provided benefit is straightforward:
  - It is the employer's contribution level as a percentage of payroll
- The full-career value of the program will depend on investment returns
  - The employee bears the investment risk in a DC program
- A risk-free methodology does not attempt to place an expected value to the employee on the "risk premium" of returns the employee hopes to achieve in excess of the risk-free rate
  - The rationale for that exclusion is that since the employee bears the investment risk, the "risk premium" is not viewed an employer-provided benefit in the risk-free methodology

## Risk-Free Rate Methodology

### Defined Contribution (DC) Programs

- Per the OAR, both historical and projected future employer contributions were assumed to accumulate at the risk-free rate for testing purposes
- A possible alternative methodology could use the PERS actuarial investment return assumption of 8% to both:
  - Project the account balance accumulation over an employee's career
  - Discount that projected account balance back to the testing date
- Due to the simplicity of a DC program's structure, either methodology produces essentially the same benefit value level on a percentage of payroll basis
  - While the projected balance is much higher under the 8% assumption, the higher balance is discounted back to the testing date at 8%

# Risk-Free Rate Methodology

## DC Programs

- For a sample employer with a 15% annual employer contribution the estimated value of the program under the two alternative methodologies is essentially identical:

<b>Program Type</b>	<b>PERS Investment Return Assumption (8.0% interest rate)</b>	<b>Risk-Free Rate Return Assumption (4.7% interest rate)</b>
Defined Contribution	15% of payroll	15% of payroll

**Under the two methodologies shown, for testing purposes the value of a 15% of payroll employer contribution is 15% of payroll**

## Risk-Free Rate Methodology

### Comparing Defined Benefit & Defined Contribution Programs

- In the ETOB test, defined contribution programs must be compared to the defined benefit PERS program to assess the value to the employee
- Using our two sample employers and two alternative methodologies, test results differ dramatically depending on the testing basis used

	<b>8.0% interest rate and expected asset accumulation rate</b>	<b>4.7% interest rate and risk-free asset accumulation rate</b>
Defined Contribution (A)	15% of payroll	15% of payroll
Defined Benefit (B)	15% of payroll	33% of payroll
ETOB Test Ratio (A) / (B)	100%	45%

- Preliminary ETOB test results were developed on the risk-free rate basis, consistent with the OAR

## Defined Contribution Employers

### Range of Preliminary ETOB Test Results – DC Employers

- ETOB employers that provide defined contribution programs have historically provided annual employer contributions in the range of 15% to 23% of payroll
- For those employers, the risk-free methodology had a similar effect on preliminary test results to those illustrated on the previous slides
- The range of preliminary testing results using the risk-free methodology in the OAR are shown by tier below:

#### % of Benefits Provided Compared to PERS

	Tier 1	Tier 2	OPSRP
<b>Risk-Free OAR Methodology</b>	<b>46% - 66%</b>	<b>40% - 59%</b>	<b>53% - 78%</b>

- While formal test results were not developed using an alternative methodology, the previous slides should give the Board and stakeholders a sense of the potential sensitivity of ETOB test results to an alternative methodology

## Next Steps

- Input and discussion from the Board and other stakeholders
- If the Board finds that the methodology in the current OAR does not appropriately reflect the comparative values of DB and DC programs for ETOB testing, appropriate next steps are:
  - Modification of the OAR based on additional stakeholder input
  - Completion of the testing based on any changes to the methodology specified by modifications to the OAR

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